

**THE UNITED REPUBLIC OF TANZANIA
JUDICIARY**

**IN THE HIGH COURT OF TANZANIA
(DISTRICT REGISTRY OF MBEYA)
AT MBEYA**

LAND APPEAL NO. 33 OF 2017

(From the District Land and Housing Tribunal for Mbeya in Land
Application No. 126 of 2008)

LEWIN BENARD MGALA.....APPELLANT

VERSUS

LOJASI MUTUKA MKONDYA.....1ST RESPONDENT

MAURID IKULUBA MWANZENGU.....2ND RESPONDENT

BERNARD MGALLA.....3RD RESPONDENT

RULING

Date of Last Order: 04/12/2019
Date of Ruling : 27/02/2020

MONGELLA, J.

This is a ruling on preliminary objection raised by the Respondents against the appeal filed in this Court by the Appellant. The Respondents raised a preliminary objection to the effect that the Appellant's appeal is time barred. Since both parties were unrepresented, for interest of justice this Court ordered the appeal to be argued by written submissions.

The Respondents argued in their submissions that according to paragraph 2 of Part 11 of the Schedule to the Law of Limitation Act, Cap 89 R. E. 2002

the time limitation is forty five days. They argued that the judgment of the District Land and Housing Tribunal (Tribunal) in Land Application No. 126 of 2008 of which this appeal lies, was delivered on 24/03/2017. They stated that under the Law of Limitation the appeal at hand ought to have been filed by 08/05/2017, that is, within 45 days. However, on the contrary, the appeal was filed on 17/08/2017 which was after the elapse of 103 days and thus out of time and without leave of this Court. The Respondents thus prayed for the appeal to be struck out with costs.

Responding to the Respondents' submission, the Appellant argued that his appeal is not time barred because after the Tribunal decision was delivered on 24/03/2017, the Appellant was following up on the copies of judgment and decree which were availed to him on 06/07/2017. He argued that his appeal was then filed on 17/08/2017 which was within 45 days from the date he obtained copies of the judgment and decree from the Tribunal. To buttress his argument he cited the case of **Alfeya Mwaveya v. Dickson Tweve**, Misc. Land Application No. 03 of 2007 in which this Court held that time starts to run after issuance of the certified copies of the decision. In conclusion the Appellant urged the Court to allow the appeal to proceed to be heard on merits as it was impossible for him to lodge the appeal without having copies of the Tribunal judgment and decree.

I have considered the arguments by both parties as presented in their written submissions. I must first point out that appeals from the District Land and Housing Tribunal to the High Court in the exercise of its original jurisdiction are governed by **section 41 (1) and (2) of the Land Disputes**

Courts Act, Cap 216 R.E. 2002 as amended by section 41 of the Written Laws (Miscellaneous Amendments) Act, No. 2 of 2016 and not the Law of Limitation Act as stated by both parties. Section 41 (2) thereof specifically states:


"An appeal under subsection (1) may be lodged within forty five days after the date of the decision or order:

Provided that, the High Court may, for good cause, extend the time for filing an appeal either before or after the expiration of such period of forty five days."


The Appellant argued that the delay was caused by the delay in issuing copies of judgment and decree and thus time should start to run after the date of obtaining such copies. As much as I agree with the Appellant that waiting for copies of judgment and decree amounts to sufficient reasons for delay and as per **section 19(2) of the Law of Limitation Act** the said time should be excluded, I do not agree with the course taken by him in lodging the appeal. It has been decided by the Court of Appeal and this Court in several occasions that the exclusion of time for waiting for copies of judgment and proceedings is not automatic. A party must first lodge an application for extension of time to file the appeal and waiting for copies of judgment and proceedings shall be taken as sufficient reason to warrant the Court to grant the extension of time to file the appeal out of time. See: ***Kisioki Emmanuel v. Zakaria Emmanuel***, Civil Appeal No. 140 of 2016 (CAT, unreported). See also: ***Michael Eliawony Makundi v. Geoffrey Eliawony Makundi***, Probate Appeal No. 04 of 2019 (HC-Mbeya, unreported).

Therefore failure to adhere to this procedure is a fatal irregularity and makes the appeal incompetent before the Court. In the upshot, I find the Appellant's appeal hopelessly time barred for being filed after the elapse of 103 days without leave of the Court. The appeal is therefore incompetent before this Court and is dismissed with costs.

Dated at Mbeya on this 27th day of February 2020.



L. M. MONGELLA
JUDGE
27/02/2020

Court: Ruling delivered in Mbeya in Chambers on this 27th day of February 2020 in the presence of both parties appearing in person.


L. M. MONGELLA
JUDGE
27/02/2020

Right of appeal to the Court of Appeal has been duly explained.




L. M. MONGELLA
JUDGE
27/02/2020