

**IN THE HIGH COURT OF TANZANIA  
MWANZA DISTRICT REGISTRY  
AT MWANZA  
LAND APPEAL No. 17 OF 2020**

*(Originating from, the Judgment of the District Land and Housing Tribunal for Mwanza  
at Mwanza in Land Application No. 33 of 2013)*

**OSWALD MWANDUMUSYA..... APPELLANT**

**VERSUS**

**SOSTENES SAMBUA ..... 1<sup>ST</sup> RESPONDENT**

**GAUDENCE ALOYCE SAMBUA ..... 2<sup>ND</sup> RESPONDENT**

**MWANZA CITY SACCOS LIMITED..... 3<sup>RD</sup> RESPONDENT**

**ADILI AUCTION MART ..... 4<sup>TH</sup> RESPONDENT**


**RULING**

27<sup>th</sup> August & 18<sup>th</sup> Dec, 2020

**TIGANGA, J.**

This Ruling is in respect of the preliminary objection raised by the counsel for the respondent Mr. James Njelwa, Advocate to the effect that; *"this appeal is hopelessly time barred"*.

The appeal against which the preliminary objection has been preferred emanates from the decision of the District Land and Housing Tribunal for Mwanza dated 25/10/2019 which did not satisfy the appellant.



Following that dissatisfaction, the appellant appealed against the decision on 01/04/2020.

With leave of this court, the appeal was argued by way of written submissions. Parties through their respective counsel filed their respective submissions as ordered. In his submission in chief filed in support of the preliminary objection, Mr. Njelwa, Advocate submitted briefly that the judgment was delivered on 25/10/2019 and the appeal was filed 01/04/2020 which is a total of 159 days from the date of delivery of the said judgment.

He submitted that section on 41 of the Land Disputes Courts Act [Cap 216 RE 2019] provides that an appeal should be lodged within forty five days after the date of the decision or order.

It is his submission that, the appellant delayed for about 114 days from when the statutory 45 days expired. He submitted further that the appeal was filed without leave of the court to file it out of time. He relied on the authority in the case of **Mechanical Installation and Engineering Company Limited vs Abubakari Ndenza Maporo &**



**Another** [1987] T.L.R 44. He prayed the appeal to be dismissed with costs.

Mr. Fabian Mayenga, Advocate for the appellant in his submission in reply to the submission filed by Mr. James Njelwa learned Counsel, admitted that the date of judgment and the date the appeal was filed was correctly stated as submitted by Mr. Njelwa, Advocate. However, he submitted that the Appeal is not time barred, as on 08/11/2019 the appellant requested to be supplied with the certified copies of judgment, decree and proceedings in Land Application No. 33/2013 for appeal purposes but the same were not ready until on 21/02/2020 when they were certified ready for collection.

He submitted that counting from 21/02/2020 when copies were ready for collection; 45 days are ending on 06/04/2020. He submitted that had he not applied for copies of judgment, and proceedings then the submission by Mr. Njelwa would have merited. He submitted that the cited case of **Mechanical Installation and Engineering Company Limited** (supra) is irrelevant in this circumstance. On the other hand he invited this court to appreciate on the decision of the High court in case **Martha Robert vs The Managing director Kashere Enterprises**, HC Civil

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*there is lacuna when it comes to the time to file an appeal from the District Land and Housing Tribunal to the High court,*

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properly interpreted by my learned senior sister, Hon. Makani, J in **Abdi Rahmu Mohamud Darma's** case there is no lacuna in that section, it is a requirement under it that the appeal must be filed within 45 days from the date of delivery judgment. Failure to do so, one must file and ask for extension of time. If the non supply of the copy of judgment and proceedings is the reason for delay then it must be shown in the affidavit filed in support of such application. For short of that, there is no way the appellate court would know the reason of delay to be non supply of the copy of judgment and decree.

That said, I find merit in the objection, the same is sustained, the appeal was filed out of 45 days provided by the statute without an order extending time. It is therefore time barred in terms of section 41 (2) of the Land Disputes Courts Act, [Cap 216 R.E. 2019]. Since the same has not been heard on merits the same is struck out with costs.

It is so ordered.

**DATED** at **MWANZA** this 18<sup>th</sup> December, 2020



**J. C. Tiganga**  
**Judge**  
**18/12/2020**

