

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT TANGA

MISCELLANEOUS LAND CASE APPEAL NO.3 OF 2019

(From the Decision of the District Land and Housing Tribunal of Korogwe
District at Korogwe in Land Case Appeal No. 83 of 2017 and Original
Ward Tribunal of Kabuku Ndani Ward in Application No.16 of 2016)

JUMA M. NG'OMBENIAPPELLANT

VERSUS

ALBERT L. JILALARESPONDENT

RULING

MRUMA,J:

This is a ruling on preliminary objection raised by the Respondent to the effect that the Appellant's Appeal is time barred.

Judgment of the District Land and Housing Tribunal of Korogwe at Korogwe District in Land Appeal No.83 of 2017 between the parties was delivered on 22nd May 2018 and this appeal was presented for filing on 4th October 2018 which is 135 days.

Section 38(1) of the Land Disputes Courts Act [Cap 216 R.E. 2002] provides as follows:

"Any party who is aggrieved by a decision or order of the District Land and Housing Tribunal in exercise of its appellate or revisional jurisdiction may within sixty days

after the date of the decision or order appeal
to the High Court (Land Division)”

As stated above the present appeal was presented for filing 135 days after the date of the judgment of the district land and Housing tribunal which was handed down on 22nd May 2018, therefore it is clearly out of time.

The Appellant has submitted that the period of sixty days starts to court from the date the copy of the judgment is certified by the Chairman and that since the copy of judgment was certified on 12/9/2018 and the present appeal was filed on 5th October 2018, then the appeal is within the prescribed time of sixty days.

With due respect to the Appellant section 38(1) of the Land Disputes Courts Act [Cap. 216 RE 2002] which prescribes for a limitation period for filing an appeal against decision of the District Land and Housing Tribunal does not state that the period start to run after copy of judgment or order is certified or signed. The law states clearly that “any party aggrieved ***may within sixty days after the date of the decision or order appeal to the High Court***” The words “after the date of the decision” does not mean on or after the date the copy of the decision is certified or signed.

For any person who finds himself unable to lodge an appeal within the time prescribed, there is a remedy under the proviso to section 38(1) of the Land Disputes Courts Act. The said proviso states:-

“Provided that the high court may for good and sufficient cause extend the time for filing an appeal either before or after such period of sixty days has expired”.

The Appellant has submitted that he could not appeal within the prescribed period of 60 days because he did not get a copy of judgment in time. In my view that could be a good ground in an application for extension of time within which one could file an appeal out of time. It cannot be a ground to allow an appeal filed out of time and without leave to proceed for hearing.

That said, the preliminary objection raised by the Respondent is upheld and in terms of section 3(1) and (2) of the Law of Limitation Act [Cap. 89 R.E 2002 which provides that:

“Subject to the provisions of this Act, every proceedings described in the first Schedule to this Act and which is instituted after the period of limitation prescribe therefor opposite thereto in the second column, shall be dismissed whether or not limitation has been set up as a defence”

This appeal is dismissed. It is dismissed because appeal is a proceeding described in the first schedule Part II items 1 and 2 of the

schedule to the Law of Limitation Act. Where such an appeal is filed out of time it has to be dismissed whether or not limitation has been set up as a defence. In terms of sub-section (2) (b) of section 3 of the same Act appeal is said to have been filed when a memorandum or petition of appeal is filed. In the present case the petition of appeal was filed on 4th October 2018 which was well after the period of limitation prescribed by the law. The Respondent will have his Costs.

Order accordingly.



A.R. MRUMA

JUDGE

09/03/2020

Date: 11/03/2020

Coram: A.R. Mruma, J.

Appellant: present in person

Respondent: Present in person

Court Clerk: Nakijwa

COURT:

Ruling delivered.



A.R. Mruma

Judge

Dated at TANGA this 11th Day of March, 2020