

**IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF MUSOMA
AT MUSOMA**

LAND APPEAL NO 42 OF 2019

*(Originating from Land Application No 41 of 2018 in the District Land and Housing Tribunal
for Mara at Musoma)*

NYAMUSHA MUNDAAPPELLANT

Versus

EDWARD MUHINGA RESPONDENTS

RULING

31st March & 15th April, 2020

Kahyoza, J.

Edward Muhinga sued Nyamusha Munda in the District Land and Housing Tribunal (**the DLHT**) at Musoma praying to be declared a lawful owner of the suit premises. Edward Muhinga won the case. Aggrieved by the decision of the **DLHT**, **Nyamusha Munda** appealed to this Court praying for an order to quash the decision of the trial Tribunal and to declare him the lawful owner of the suit land.

Nyamusha Munda, the appellant raised eight grounds of appeal and the respondent opposed the appeal by filing a reply. The respondent raised a preliminary objection contending that the appeal was time barred.

There are undisputed facts born by the record of the **DLHT**, which are: that the trial tribunal delivered its judgment on the 19th September, 2019 and the appellant wrote a letter to request a copy of Judgment on 23rd September, 2019. Copies of the judgment and decree were ready for collection on 11th October, 2019 and the appellant collected a copy on the same date. Thereafter the appellant filed a

petition of appeal on the 15th November 2019. Thus, the appeal was lodged 36 days after the appellant had obtained a copy of the judgment.

The issue for determination is whether the appeal is incurably defective for being time barred.

The laws governing appeals for matters originating in the District Land and Housing Tribunal are the **Land Dispute Court Act, [Cap. 216]** and the **Civil Procedure Code [Cap.33 R.E. 2019]**. The **Land Dispute Court Act** prescribes time within which to lodge an appeal whereas the **Civil Procedure Code** provides the procedure for lodging the appeal.

The **Land Dispute Court Act, [Cap. 216]** provides that an appeal may be lodged within forty-five days after the date of the decision or order appealed against. Section 41 (2) of Cap. 216 states that-

“41(2). 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 filling an appeal either before or after the expiration of such period of forty five days.”

It is settled that the **Civil Procedure Code [Cap.33 R. E. 2019]** applies to the land disputes where the **Cap. 216** is silent. See section 51 (1) of the **Cap. 216**. It states that-

*“51.-(1) In the exercise of the respective jurisdictions, the High Court and District Land and Housing Tribunals shall apply **the Civil Procedure Code, 1966** and the Evidence Act, 1967-”*

The **Land Dispute Court Act, [Cap. 216]** does not provide the procedure of lodging an appeal from the **DLHT** to the **High Court**. For that reason, a party aggrieved by the decision of the **DLHT** has to resort to the procedures provided

under the **Civil Procedure Code**. Rule 1 of Order XXXIX of the **Civil Procedure Code** provides among other things that a party who wish to appeal has to lodge a memorandum of appeal accompanied by a copy of the decree and of a judgment appealed from. It states-

“1.-(1) Every appeal shall be preferred in the form of a memorandum signed by the appellant or his advocate and presented to the High Court (hereinafter in this Order referred to as "the Court") or to such officer as it appoints in this behalf and the memorandum shall be accompanied by a copy of the decree appealed from and (unless the Court dispenses therewith) of the judgment on which it is founded.” (emphasis supplied).

From the above, it is beyond dispute that the appellant was required to file his memorandum of appeal within 45 days from the date of the decision accompanied with a copy of the judgment and decree. The appellant was not able to get a copy of the judgment and of a decree from the **DLHT** until 11th October, 2019, when 45 days had expired. Thus, a copy of the judgment was not supplied to the appellant on time.

The question this Court has to answer is whether the appellant should be condemned for the time taken by the **DLHT** to type its judgment and draw a decree. The law excludes the time required to prepare a copy of the judgment and decree where such documents are *sine qua non* for lodging an appeal. **Section 19 (2) of the Law of Limitation Act [Cap 89 R. E 2019]** as follows.

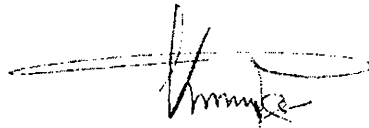
“19(2) In computing the period of limitation prescribed for an appeal, an application for leave to appeal, or an application for review of judgment, the day on which the judgment complained of was delivered, and the period of time requisite for obtaining a copy of the decree or order appealed from or sought to be reviewed, shall be excluded.” (emphasis supplied).

I am also persuaded by the Indian case of *Krishnappa Ramasa Walvekar v Ramchandrasa Ramasa Walvakar and Others*, **AIR 197** where the Court stated as follows:-

“Once the appellant make such an application, the mere fact that he has made an application but has not been furnished with a copy, without any default in his part is sufficient to entitle him to secure exclusion of the period computing the period of limitation of appeal”

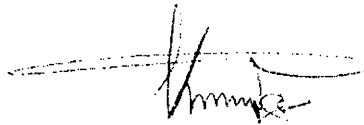
Given the above position of the law, I am of the firm view that the appeal was lodged within the prescribed time as it provided by section 41 (2) of the **Land Dispute Court Act, [Cap. 216]** and section 19(2) of the **Law of Limitation Act, [Cap 89 R.E. 2002]**. Consequently, the preliminary objection is dismissed with costs.

It is ordered accordingly.



J. R. Kahyoza
JUDGE
15/4/2020

Court: Ruling delivered the presence of the appellant and the respondent in person. B/C Mr. Charles present.



J. R. Kahyoza,
JUDGE
15/4/2020

