

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

IN THE DISTRICT REGISTRY OF TANGA

AT TANGA

LAND APPEAL NO. 26 OF 2019

(Originating from Land Appeal No. 58 of 2018 of Tanga District Land and Housing Tribunal and Land Complaint No/2015 from Kigombe Ward Tribunal)

MADARAKA RAMADHANI.....APPELLANT

VERSUS

SAUMU MHINA.....RESPONDENT

JUDGMENT

MRUMA, J.

A complaint was lodged at Kigombe Ward Tribunal by Saumu Mhina against Madaraka Ramadhani in 2015. After the case was fully heard, the tribunal ruled in favour of Saumu Mhina. Madaraka Ramadhani was not happy with that decision so he sought to appeal to the District Land and Housing Tribunal of Tanga at Tanga. His appeal proved futile as it was dismissed with costs. The honourable chairperson gave reasons for her decision in that the Ward Tribunal Decision is annotated so as to favour the Appellant. The learned Chairperson observed that had the appeal being not annotated then the Appellant would have been out of time to file IT. Basing on the first date appearing on the Ward tribunal's

decision, i.e. 18/06/2015, the chairperson ruled out that the appeal filed in 2018 was hopelessly time barred. The Appellant was disgruntled again and he has appealed to this Court on five (5) grounds which are as hereunder:

- 1. That the honourable Chairperson erred in law and in fact in not satisfying himself the background and the validity of the purported decision dated 18/06/2015 and the one dated 11/11/2018.*
- 2. That the honourable Chairperson erred in law and in fact when she failed to observe scrutinily (sic) the date at which such very decision was at first instance delivered within the knowledge of the parties.*
- 3. That the honourable Chairperson erred in law and in fact in not closely observing that on the diverse dates of June, 2019 the Kigombe ward tribunal was dissolved, until November 2018 when it was resumed and or revived.*
- 4. That the honourable Chairperson grossly erred in law and in fact in holding and or concluding that the very appeal was time barred on accounting (sic) from 18/06/2015 while during such date it wasn't pronounced and the Ward Tribunal's existence had already been dissolved.*

5. That the honourable Chairperson erred in law and in fact in not faulting the participation of the Secretary of the Ward Tribunal in the decision making delivered on 11/11/2018.

The Appellant thus prayed that the decision of the District Tribunal be quashed and set aside with costs.

On 18/03/2021 when the matter came for hearing, the Appellant was present in person while the Respondent was represented by Mr. Obediodom Chanjarika, learned senior counsel. The matter was argued orally and it was the Appellant, Madaraka Ramadhani who submitted first. In his submission in support of the appeal, the Appellant, being a lay man submitted on the grounds unorderedly.

He stated that he opposes the District Appellate Tribunal's decision which decided that his appeal was out of time. He further submitted that the Ward tribunal was dissolved in 2015. By then, it had already prepared its decision but the same was not delivered to parties. He said that when the tribunal was resumed in 2018, he was summoned and the judgment was read. He was aggrieved by that decision and so he appealed to the District Land and Housing Tribunal which later gave a ruling that he was out of time without considering the circumstances surrounding the matter in the Ward Tribunal.

In reply, Counsel for the Respondent Mr. Chanjarika submitted that the District Appellate Tribunal's decision was proper. According to him, the judgment was delivered on 18.06.2015 in presence of the parties. He said that when the Appellant filed his appeal in 2018, he was time barred for more than three years. The date appearing as 2018 was purposely inserted to favour the Appellant's appeal.

The learned counsel also submitted on the fifth ground and stated that on the record available the secretary of the Ward Tribunal did not participate in the decision making.

The appellant did not have much to rejoin than to reiterate that his appeal was filed within time.

In the course of composing this judgment I discovered that grounds 1-4 of this appeal are new grounds in that they were not raised at the first appellate tribunal. Upon this discovery, the court has no option but to struck them out and continue to deliberate on the fifth ground which was also raised in the first appellate court, (See the cases of **Abdul Athuman v. Republic** [2004] T.L.R. 151, **Samwel Sawe v. Republic**, Criminal Appeal No, 135 of 2004, CAT and **Luma Manjano v. Republic**, Criminal Appeal No. 211 of 2009, CAT (both unreported), among others.

Now remaining with the issue of time, the records of the Ward Tribunal show clearly that "Uamuzi umetolewa leo siku ya tarehe 18/06/2015" which simply mean that judgment was delivered on 18.6.2015.

After that the text which indicates that judgment was read on 18th June, 2015, below it is a text that appears to be written in a different ink which reads that the petition was read on November 11, 2018 before the following members:-

1. Fatuma Ally Chairperson;
2. Chappy J. Chappy Member;
3. Job Likingo;.....Member;
4. Ally Halidi and
5. Omary Abdi.

As correctly observed by the learned Chairperson of the appellate District Tribunal save for the Chairperson, the set of assessors whose names were recorded to be present and to have signed the decision which is purported to have been read on 11th November, 2018 are completely different from the set of assessors who heard the matter and whose decision was delivered to the parties on 18TH June 2015. It follows therefore that the records of the trial tribunal were tempered with. In absence of any explanation from the Appellant as regards to the differences in the ink (i.e. pen), used in the two dates, I tend to agree

with the learned chairperson that the records were tempered with a view to favour the Appellant. The correct date in which the judgment was delivered to parties was on 18th June 2015 and by filing his appeal on 26th March, 2019, the Appellant's appeal was clearly time barred.

That said, I find this appeal to be hopeless and I dismiss it with costs to the Respondent here and below.

Order accordingly,




A.R. MRUMA

JUDGE.

Delivered at Tanga this 26th day of October, 2021.