

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

LAND APPEAL NO. 29 OF 2020

(Arising from Land Application No. 140 of 2013 from the District Land and
Housing Tribunal for Mwanza at Mwanza)

**MAYOMBYA MAHUGI (The Administrator of Estate of
MAHUGI NKWABI) APPELLANT**

VERSUS

1. MADOSHI KIYENZE

2. ROBERT MLONGO

3. JOHN RWABUHANGA



..... RESPONDENTS

RULING

Date of last Order: 23.02.2021

Date of Ruling: 24.02.2021

A.Z.MGEYEKWA, J

At the centre of controversy between the parties to this appeal is a parcel of land. The appellant lodged a suit before the District Land and Housing Tribunal for Mwanza in Land Application No. 140 of 2013 was

unsuccessful, hence this appeal. Undeterred, the appellant decided to file the instant appeal which raises four grounds of appeal that constitute the gravamen of this complaint. The grounds of appeal are as follows:-

- 1. That, the Honourable Trial Tribunal grossly erred in law for declaring the 2nd respondent as the lawful owner of the disputed land in absence of tangible evidence compared to the evidence adduced by the appellant.*
- 2. That, the Honourable Trial Tribunal grossly erred in law for holding that the land in dispute sized 2 and a half acres was owned by the 1st respondent who sold it to the 2nd respondent in absence of the evidence to support it.*
- 3. That, the Honourable Trial Tribunal grossly erred in law and fact for admitting the documents contrary to, law and relying on the same to give evidence despite the contradiction and lack of authenticity to evidential value.*
- 4. That, the Honourable Trial Tribunal grossly erred in law and fact for failure to observe that the evidence by the appellant was tighter than the respondent's evidence and relied on the extraneous matter to reach his decision.*

The appeal has hit a snag. On 19th February, 2021, the respondents, through Mr. Anaclet Kamara Laurean, learned Advocate lodged in court a preliminary objection against the appeal which sought to impugn the application on one point of preliminary objection which read:-

" The appeal is hopelessly time barred."

Following the global outbreak of the Worldwide COVID - 19 pandemic (Corona virus), the hearing was conducted via audio teleconference, the applicant enjoyed the legal service of Mr. Mushobozi, learned counsel, and represented and respondents had the legal service of Mr. Kamara, learned counsel.

In arguing for the preliminary objection, Mr. Mujungu was brief but focused. He submitted that the appeal before this court is time-barred because the District Land and Housing Tribunal decision was delivered on 14th February, 2020 and the appellant lodged his appeal before this court on 20th May, 2020. The learned counsel for the respondent went on to submit that section 41 (2) of the Land Disputes Courts Act prescribed the period to file an appeal is 45 days therefore the time came to an end on 29th March, 2020. He added that the appellant was out of time for two months.

On the strength of the above submission, Mr. Mujungu beckoned upon this court to find that the appeal is time-barred, the same be dismissed with costs.

In reply thereto, Mr. Mushobozi admitted that the decision was delivered on 14th February, 2020 and the period of limitation is 45 days in accordance with the law. He further stated that the appellant was required

to file his appeal and accompanied by certified copies of Judgment and Decree. He referred this court to section 51 of the Land Disputes Courts Act which states that where there is lacuna in land laws then the Civil Procedure Code is applicable.

It was Mr. Mushobozi submitted that on 20th February, 2020 the appellant wrote a letter requesting copies of Judgment and Decree and he received uncertified copies on 8th April, 2020 and on 9th April, 2020 they wrote a letter requesting certified copies. In his view, the days started to run after receiving the certified copies. Mr. Mushobozi further submitted that the appellant filed his appeal on 20th May, 2020 thus counting the days from 08th April, 2020 to 20th May, 2020 is only 43 days thus they were within time.

Supporting his argumentation he cited section 19 (1) (2) of the Law of Limitation Act, Cap. 89 [R.E 2019] which excludes time waiting to receive copies. To fortify his submission he cited the cases of **Paulina Samson Ndawavya v Theresia Thomas Madaha**, Civil Appeal No. 45 of 2017 and **Charles Rick Mulaki v William Jackson Magero**, Civil Appeal No. 69 of 2017 HC.

On the basis of the above, the learned counsel for the appellant submitted that the preliminary objection was without merit and urged this

court to dismiss the preliminary objection on the basis that it an issue of technicalities.

In his rejoinder, Mr. Mujungu stated that the appellant's Advocate did not attach the letter dated 20th February, 2020 to prove that he requested copies of Judgment and Decree. He added that instead, the appellant attached the letter dated 09th April, 2020 which was not acknowledged by the District Land and Housing Tribunal while he contradicted himself by stating that on 08th April, 2020 they received the copies. He lamented that the court issued certified copies. He reiterated his submission in chief and stressed that the appeal was lodged out of time. He valiantly argued that this is not an issue of technicality.

In conclusion, Mr. Mujungu urged this court to dismiss the appeal.

As the practice of the Court, I had to determine the preliminary objection first before going into the merits or demerits of the appeal. I have given careful deliberation to the arguments for the application herein advanced by both learned counsels on the preliminary objection so raised. Having done so, it should be now opportune to determine the preliminary objection raised by the respondent's Advocate and the main issue for determination is ***whether the appeal is timeous.***

To begin with, from the factual setting, it is beyond question that having heard the respondent's Advocate submission that the appeal is time-barred, I had to go through the law and the lower court records to find out whether the appeal was filed out of time. The time limit in filing the instant appeal is prescribed under section 41 (2) of the Land Disputes Courts Act, Cap. 216 [R.E 2019]. I wish to reproduce it hereunder for ease of reference:-

"(2) An appeal under subsection (1) may be lodged within fortyfive days after the date of the decision or order: Provided that, the High Court may, for the good cause, extend the time for filing an appeal either before or after the expiration of such period of forty five days." [Emphasis added].

Applying the above provision of law, the prescribed period in filing an appeal or revisions and similar proceeding from or in respect of any proceeding in a District Land and Housing Tribunal in the exercise of its original jurisdiction is 45 days. Both learned counsels have not disputed that the time limit is 45 days.

Mr. Mushobozi's line of argument is basically that the appellant was required to file an appeal accompanied by copies of Judgment and Decree. In his view, the time started to run after receiving the certified copies, therefore, they are within time. Reading section 41 (1) of the Land

Disputes Act the prescribed time starts from the date after the decision was made. The learned counsel for the appellant went extra mile by referring this court to section 19 (1), (2), and (3) of the Law of Limitation Act, Cap. 89 [R.E 2019] whereas the time to wait for copies of Judgment and Decree is excluded. Section 19 (1), (2), and (3) of the Law of Limitation Act Cap. 89 [R.E 2019] cannot apply while there is a proper section 41 (2) of the Land Disputes Courts Act, Cap. 216 [R.E 2019] which provides for time limit and extension of time. This section allows the exclusion of time that the appellant used in waiting to be furnished with copies of the decision.

I am in accord with Mr. Mushobozi that the law is settled that a party is entitled to seek refuge in the provisions of section 19 (2) of the Law of Limitation Act, Cap. 89 [R.E 2019], this position has been restated in a plethora of the Court of Appeal of Tanzania decisions. In the case of **Tropical Air (T) Ltd v Godson Eliona Moshi**, Civil Application No.09 of 2017 (unreported), **Mary Kimaro v Khalfan Mohamed** (1995) TLR 2002, and **the Registered Trustees of the Marian Faith Healing Centre @ Wanamaombi v the Registered Trustees of the Catholic Church Sumbawanga Diocese**, Civil Appeal No. 64 of 2006, the Court of Appeal held that:-

" There is no dispute section 19 (2) of the Law of Limitation Act Cap. 89 [R.E 2002] provides that:-

(2) In computing the period of limitation prescribed for an appeal, an application for leave to appeal, or an application for review of the 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.

Once the appellant makes such an application, the mere fact he has an application but has not been furnished with a copy, without any default in his part, is sufficient to entitle him to secure the exclusion of the period from computing the period of limitation for appeal." [Emphasis added].

Applying the above authority, it is worth noting that the time is not automatically excluded. The condition precedent for seeking this insulation is that a party indenting to benefit from the leverage the applicant has to move the court and show which step was taken in obtaining those copies.

Nonetheless, the appellant's Advocate has submitted that the appellant wrote a letter requesting certified copies on 20th February, 2020, unfortunately, the appellant did not attach the said letter. There is no clear justification to prove the period when he requested the copies and

the date when he received the said copies on 08th April, 2020. Reading the court records, from 14th February, 2020 the date when the judgment was delivered to on 08th April, 2020 when he received the said copies approximately two months lapsed.

I should state at this juncture that I am not going along with Mr. Mushobozi's averment that they wrote a letter requesting for copies of judgment and Decree on 20th February, 2020 without attaching any prove to resolve the issue, the same remains a mystery if the same was ever requested and if so such request was done immediately. This uncertainty means that it is possible that the certification thereof was done at the instance of the appellant and prompted after time for filing an appeal had elapsed. Therefore, proof of request would have quelled all those ifs.

The court knows that the Judgment was delivered on 14th February, 2020 without having the benefit of knowing what happened in between these dates and whether the appellant requested the said copies or not. Therefore, this court is not sure whether the copies were requested on 20th February, 2020, or not at all. The absence of such trigger means that this court is not moved to grant the appellant's Advocate prayer because this Court cannot rely on the appellant's mere words that they received uncertified copies on 08th April, 2020 in exclusion of the letter applying for

copies. In the case of **Registered Trustees of the Marian Faith Healing Centre @ Wanamaombi** (supra), the Court of Appeal of Tanzania certified itself that the appellant proved that he wrote a letter applying for copies and both parties received the copies on the same date.

As rightly pointed out by the learned counsel for the respondent that the appellant was required to prove that he wrote a letter requesting to be supplied with the said copies then the court could be in a position to satisfy itself and reckon the time. The letter dated 19th April, 2020 which was attached with a copy of the appeal does not suffice since it was written after the prescribed period of 45 days. In my view, the applicant's grounds are suitable grounds for extension of time.

For the avoidance of doubt, I have read the two cases cited by Mr. Mushobozi; **Paulina Samson Ndawavya** (supra) and **Charles Rick Mulaki** (supra). In **Paulina's** case the issue for discussion was based on issuing a certificate after the preparation and delivery of a copy of proceedings to the appellant. Likewise in **Mulaki's** case this court analysed section 41 of the Land Disputes Courts Act. In that case the issue was based on jurisdiction of the court. The cases are distinguishable from the instant case. In the instant case, unlike the two cases above, the issue

is the exclusion of time that the appellant used in waiting to be furnished with copies of the decision.

For reasons canvassed above, I find the appeal before this court was filed out of the prescribed time and in terms of section 3 of the Law of Limitation Act, Cap. 89 [R.E 2019] the remedy is to dismiss the appeal. Thus, I proceed to dismiss the Land Appeal No.29 of 2020. Each party to shoulder his own costs.

Order accordingly.

Dated at Mwanza this date 24th February, 2021.




A.Z.MGEYEKWA

JUDGE

24.02.2021

Ruling delivered on 24th February, 2021 via audio teleconference, and Mr. Mushobozi, learned counsel for the appellant, and Mr. Mujungu, learned counsel for the respondents were remotely present.


A.Z.MGEYEKWA

JUDGE

24.02.2021