

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(IN THE DISTRICT REGISTRY OF BUKOBA)**

**AT BUKOBA**

**LAND CASE APPEAL No. 26 OF 2020**

*(Arising from the District Land and Housing Tribunal for Kagera at Bukoba in Application No. 152 of 2014)*

**1. EMMANUEL BAKUNDUKIZE (KENDURUMO)**

**2. MUGANYIZI EMMANUEL**

**3. STANSLAUS MUTAHYABARWA**

**4. HASSAN IBRAHIM KAMILI**

**5. JUSTINIAN KINYAMWEZI**

**6. WINSTON CORNELIUS**

**7. HAMIDU RWEZAULA**

**8. TRYPHON RWEZAULA**

**9. EVODIUS BONIFACE**

**10. HILDEFONSI REVELIAN**

**-----APPELLANTS**

Versus

**ALOYSIUS BENEDICTOR RUTAIHWA ----- RESPONDENT**

**RULING**

**22/02/2021 & 06/04/2021**

**Mtulya, J.:**

This is one of the appeals which brought in this court to test a new science registered in our judicial systems in one hand and limitation of time in filing appeals under the proviso in section 41 (2) of the **Land Disputes Courts Act** [Cap. 216 R.E 2019] (the Act) on the other. The issue which this court is asked to reply is: when does the date of filing an appeal starts. Is it when an appeal is

electronically filed in this court through Judicial Statistics Dashboard System (JSDS) Case Registration or when the court fee is paid and appeal 's conventional documents presented for filing in this court. The facts from the record of this appeal show that on 25<sup>th</sup> February 2020 the **District Land and Housing Tribunal for Kagera at Bukoba** (the Tribunal) in **Application No. 152 of 2014** (the Application) rendered down its decision in favour of Mr. Aloysius Benedicto Rutaihwa (the Respondent). The decision irritated three (3) out of ten (10) Respondents in the Application, namely: Mr. Stanslaus Mutahyabarwa, Hassan Ibrahim & Justinian Kinyamwezi (the Appellants). Being dissatisfied with the decision, the Appellants approached the legal services of Josephat Rweyemamu Advocates to draw and file an appeal for them hence on 9<sup>th</sup> April 2020 Land Case Appeal was electronically registered in JSDS Case Registration and conventional documents of the appeal were presented for registration in this court on 16<sup>th</sup> April 2020.

This date, 16<sup>th</sup> April 2020, which is displayed in the hard documents, was spotted by the Respondent hence filing of the preliminary objection on a point of law (the objection) stating that: *the appeal was filed on 16<sup>th</sup> April 2020 hence incompetent, speculative, frivolous, vexatious and bad in law and the same ought*

*to be dismissed in its entirety with costs on ground that it is contrary to section 41(2) of the Act.* When the appeal was scheduled for mention on 13<sup>th</sup> December 2020, Mr. Bernard Mbakileki for the Respondent prayed to argue the appeal by way of written submission, the prayer which was not protested by Ms. Gisera Rugemalira for the Appellants. The scheduling order was drafted and the last date for mention was set on 22<sup>nd</sup> February 2021 and both parties duly complied with the order and this Ruling was scheduled for delivery, today on 6<sup>th</sup> April 2021.

In his written submission in support of the objection Mr. Mbakileki for the Respondent briefly stated that the appeal is incompetent as it was filed out of forty five (45) days as per requirement of the law in section 41 (2) of the Act. In substantiating his claim, Mr. Mbakileki cited the Exchequer Receipt numbered EC 100574626555IP dated 16<sup>th</sup> April 2020 and Memorandum of Appeal which show that they were presented for filing in this court on 16<sup>th</sup> April 2020. According to Mr. Mbakileki, appeals which are filed out of statutory time, without leave of the court, must suffer the usual consequences of dismissal order with costs. To bolster his submission Mr. Mbakileki cited the precedents in **Halima S. Sukuzi v. Sihaba Nassoro**, Land Appeal No. 141 of 2016 and **Hezron M.**

**Nyachiya v. Tanzania Union of Industrial & Commercial Workers  
& Another**, Civil Appeal No. 79 of 2001.

This thinking was protested by Ms. Gisera Rugemalira for the Appellants, who argued that the Appellants have complied with the law in section 41 (2) of the Act as the appeal was filed within Forty Five (45) days from when the decision of the Tribunal in the Application was delivered. To substantiate her claim, Ms. Rugemalira cited the authority in Rule 21 (1) of the **Judicature and Application of Laws (Electronic Filing) Rules, 2018 GN. No. 148 of 2018**, (the Electronic Filing Rules) which states that: *a document shall be considered to have been filed if it is submitted through electronic filing system*. To bolster her argument, Ms. Rugemalira cited the precedent in **Mohamed Hashil v. National Microfinance Bank Ltd (NmB Bank)**, Revision No. 6 of 2020, where similar objection was overruled by this court and the court held, at page 3 of the Ruling, that: *the evidence on record shows that the application was filed electronically on 10<sup>th</sup> March 2020 and hard copy was filed on 16<sup>th</sup> March 2020, the Revision Application was filed within time*.

In building up his earlier submission, Mr. Mbakileki stated that a document is deemed to be filed in court when payment of court fee is complete and the proof payment of fee exhibited by exchequer

receipt. To bolster his argument, Mr. Mbakileki cited several precedents of this court and Court of Appeal in **Camel Oil (T) Ltd v. Bahati Moshi Masabile & Bilo Star Debt Collector**, Civil Appeal No. 46 of 2020; **Misungwi Shilumba v. Kanda Njile**, (PC) Civil Appeal No. 13 of 2019; **John Chuwa v. Athony Ciza** [1992] TLR 233; and **Halima S. Sukuzi v. Sihaba Nassoro**, (supra). It is the contention of Mr. Mbakileki that the electronic registration of land appeals cases goes together with the payment of appropriate court fees, and failure to do so within forty five (45) days for land case appeals, render the appeals incompetent for want of time limitation prescribed in section 41 (2) of the Act.

On my part, I explored the guiding principles in a dispute like the present one where there are rules regulating the introduction of electronic filing of appeals in our courts enacted in the Electronic Filing Rules, in one hand and **Court Fees Rules of 2018, GN. No 247 of 2018** (the Court Fees Rules) regulating the filing of conventional documents in our courts, on the other. It is unfortunate that both Rule 21 of the Electronic Filing Rules and Rule 3 of the Court Fees Rules are silent on the nexus of the electronic filing of documents and date of payment of court fees and presentation of the conventional or manual documents for filing in court as part of

cherishing both introduction of new science and taking on board the traditional rules of filing cases in our courts.

It is fortunate that both Rules have received a bundle of precedents in their respective separate interpretations. In the Court Fees Rules, the courts of record, both this court and Court of Appeal are in agreement that a document is deemed to be filed in court when payment of court fee is done and the proof of payment of fees exhibited by the exchequer receipt (see: **Camel Oil (T) Ltd v. Bahati Moshi Masabile & Bilo Star Debt Collector** (supra); **Misungwi Shilumba v. Kanda Njile** (supra); **John Chuwa v. Athony Ciza** (supra); and **Adamson Mkondya & Another v. Angelina Kukutona Wanga**, Misc. Land Application, No 521 of 2018). With regard to the Electronic Filing Rules, however, there are two interpretations of the Rules with distinct reasoning.

The First school of thought in this court is of the opinion that the filing of an appeal/application is considered when the appeal/application electronically registered in this court, regardless of payment of the fees and date of filing hard copies (see: **Mohamed Hashil v. National Microfinance Bank Ltd (NmB Bank)** (supra). The reasoning of this school is that the electronic system is recognized by the law as a current means of filing documents in our

courts as per the Electronic Filing Rules. The other school thinks that it is upon payment of court fees where registration is said to have been initiated (see: **Camel Oil (T) Ltd v. Bahati Moshi Masabile & Bilo Star Debt Collector** (supra) and **Mailande Augustine Mpemba v. Pius Rwegasira & Two Others**, Land Appeal No. 23 of 2020). The reasoning of this school is that the law in Electronic Filing Rules has not changed the law, procedure and practice of payment of court fees to be the recognition of registration of suits in courts.

This problem of interpretations may be harmonized by inviting section 3A of the **Civil Procedure Code** [Cap. 33 R.E. 2019] (the Code) which inserted the overriding objectives principle (the Principle) as part of cherishing articles 13 (6) (a) and 107 (2) (b) & (e) of the **Constitution of the United Republic of Tanzania** [Cap. 2 R.E. 2002] (the Constitution) in favour of right to be heard; right of appeal; speed trials; and affordable costs to the parties in determining suits. The principle has already received precedents in a bundle of decisions in our superior court (see: **Yakobo Magoiga Gichere v. Peninah Yusuph**, Civil Appeal No. 55 of 2017; **Gaspar Peter v. Mtwara Urban Water Supply Authority (MTUWASA)**, Civil Appeal No. 35 of 2017; and **Njoka Enterprises Limited v. Blue Rock Limited & Another**, Civil Appeal No. 69 of 2017).

However, the Principle cannot be invited to rescue situations which are against the law (see: **Mandorosi Village Council & Others v. Tuzama Breweries Limited & Others**, Civil Appeal No. 66 of 2017 and **Mariam Samburo v. Masoud Mohamed Joshi & Two Others**, Civil Appeal No. 109 of 2016). The practice of our superior court also shows that it cannot be invited and applied blindly (see: **District Executive Director, Kilwa District Council v. Bogeta Engineering Company**, Civil Appeal No. 37 of 2017).

In the present appeal the objection is based on the point of law with regard to two (2) pieces of subsidiary legislation, called the Electronic Filing Rules and Court Fees Rules. It is fortunate that both pieces of the legislation emanated from one (1) parent legislation baptized in the name of **Judicature and Application of Laws Act** [Cap. 358 R.E. 2019] (the JALA). In think, in my considered opinion, intervention may be done in terms of enacting specific provision to regulate the matter on one hand or interpretation of the Court of Appeal to set a new precedent on the other.

I understand the existing nexus with regard to interpretation of the registration of applications or appeals and payment of court fees stated by our superior court in the precedent of **John Chuwa v. Athony Ciza** (supra) on 20<sup>th</sup> August 1992, that: *the date of filing the*



*application is the date of payment of fees and not that of receipt of the relevant documents in the registry.* However, the precedent was handed down in August 1992 before amendment of the Constitution to insert article 13 (6) & 107A in 2000; insertion of section 3A in the Code in 2018; and enactment of the Electronic Filing Rules in 2018.

I am also aware that the interpretation in the precedent set by our superior court in **John Chuwa v. Athony Ciza** (supra) is still good law in our jurisdiction. However, the intervention of Rule 21 (1) of the Electronic Filing Rules brought some challenges to it. It is displayed that science and JSDS have brought in this court a new ideas which need to be grasped well by both the parties and learned counsels. I also understand the law in Rule 21 (1) of the Electronic Filing Rules which provides that: *a document shall be considered to have been filed if it is submitted through electronic filing system,* was enacted to grease court's businesses. However, the Rules are silent on what follows after the electronic filing with regard to filing of conventional or hard copies of the documents and payment of the courts fees. I perused Rules 21 up to 27 of the Electronic Filing Rules, which are so detailed on the rules regulating filing and time limitation, but there is not specific touch on electronic filing of a document and payment of court fees.

The practice of this court has been that it is invited to interpret provisions of the law after an enactment has been passed by appropriate authorities. If there are ambiguities in an enactment, the court will interpret to resolve the uncertainties. If there is no specific provision regulating certain issues that will be for the appropriate authorities to amend the legislation or pieces of subsidiary legislation, if it finds it necessary or else awaits for intervention by our superior court's directives. This court as a minister of justice is enjoined to administer the law as it finds in the text (see: **Yeromino Athanase v. Mukamulani Benedicto** [1983] TLR 370). It is my considered view that the law in both the Electronic Filing Rules and Court Fees Rules need to be harmonized in search of specific provisions regulating procedures of filing documents electronically and payments of courts fees to avoid unnecessary interpolations, which this court cannot be part of it.

Having said so and considering there are conflicting precedents of this court on the subject, and noting the directives of the Court of Appeal in **John Chuwa v. Athony Ciza** (supra) on payment of court fees, and regarding the provision in section 41(2) of the Act, and recognizing the appeal was filed on 16<sup>th</sup> April 2020 as per Exchequer receipt, which is out of statutory time, the appeal imperiled the usual

consequences of dismissal order with costs for want of time limitation.

In any case, in the present appeal there are no materials registered displaying reasons of one week delay after the appeal's documents were electronically filed. I think, if there are lapses in filing conventional documents after electronic filing of documents in JSDS, explanations ought to be registered. Otherwise, appellants or applicants may wish to present hard copies of documents any time they see it fit in their schedule. To my opinion, that is not the intention of the drafters of the Electronic Filing Rules. Nevertheless, even if they were materials depicted reasons of delay in filing conventional documents of the appeal in this appeal, this court in this appeal would not have been a proper forum to determine the reasons of delay. The materials were supposed to be registered in an application for enlargement of time as per the Act or Electronic Filing Rules.

As part of advice, parties and their learned counsels once they find themselves out of statutory time in filing conventional documents after the electronic filing of the documents within time, they may prefer an application for enlargement of time and register relevant materials as per requirement of the law in Rule 24 of the

Electronic Filing Rules and/or proviso in section 41 (2) of the Act. In conclusion, this appeal was filed out of statutory time based on court fee payment substantiated by Exchequer Receipt numbered EC 100574626555IP dated 16<sup>th</sup> April 2020. Therefore, the Respondent's objection is hereby sustained and the appeal is dismissed with costs.

It is so ordered.

  
  
F.H. Mtulya  
**Judge**  
06.04.2021

This Ruling was delivered in chamber under the seal of this court in the presence of the Third & Fourth Appellants, namely: Mr. Stanslaus Mutahyabarwa & Mr. Hassan Ibrahim Kamili respectively, and in the presence of the Respondent, Mr. Aloysius Benedictor Rutaihua accompanied with his learned counsel Mr. Bernard Mbakileki.

  
  
F.H. Mtulya  
**Judge**  
06.04.2021