

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

AT MUSOMA

MISC. LAND APPEAL NO. 8 OF 2021

MATOTO MATOTO APPELLANT

VERSUS

MAKURU IREGA RESPONDENT

**(Appeal from the judgment of the District Land and Housing
Tribunal for Mara at Musoma in Application No. 79 of 2018)**

RULING

10 and 18th May, 2021

KISANYA, J.:

This appeal has been preferred by Matoto Matoto, the appellant. He challenges the decision of the District Land and Housing Tribunal for Mara at Musoma in Application No. 79 of 2018 in which, he sued the respondent, Makuru Irega for trespassing into his land located at Nyamatare village within Serengeti District. In its judgment that was delivered on 27th November, 2020, the trial tribunal found the appellant's case devoid of merit. It went on to declare Makuru Irega as the lawful owner of the suit land.

That decision aggrieved the appellant who lodged the present appeal on 5th February, 2021.

In view of the above, when the matter was called on for hearing on the 4th day of May, 2021, I probed Mr. Ostack Mligo, learned advocate who appeared for the appellant to address the Court whether the appeal is timeous. The respondent did not appear.

At first, Mr. Mligo indicated that he lodged the appeal on 19th January, 2021 through electronic filing system. When probed as to when the filing fees was paid, he prayed for time to submit on the issue raised by the Court, *suo motu*. The hearing proceed on 10th January, 2021. The learned counsel conceded that the filing fees was paid on the 5th February, 2021. He therefore conceded that the appeal was filed out of time and prayed to withdraw it but with leave to refile. He also requested the court to spare the appellant from paying the filing fees in the subsequent appeal.

I have dispassionately reviewed the record and submissions by the learned counsel for the appellant. The issue that I have to address is whether the appeal is timeous. The provision governing appeals of this nature, and time limitation in particular, section 41 of the Land Disputes Courts Act [Cap. 216, R.E 2002] which provides:

"41.-(1) Subject to the provisions of any law for the time being in force, all appeals, 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 shall be heard by the High Court.

*(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 the good cause, extend the time for filing an appeal either before or after the expiration of such period of forty five days."

Reading from the above cited provision, the time within to lodge an appeal against the decision of the District Land and Housing Tribunal in the exercise its original jurisdiction as in the matter at hand is 45 days, which starts to run after the date of the impugned decision or order.

As indicated herein, the impugned judgment was delivered on 27/11/2020. I am mindful that in terms of Order. XXXIX of the Civil Procedure Code [Cap. 33, R.E. 2019], the copy of judgment and decree are required to be appended to the petition of appeal. This implies that the time starts to run against the aggrieved party after receiving the copies of judgment and decree.

Gracing from the copy of judgment attached to the petition of appeal, it is revealed that the said copies were availed to the appellant on

11th December, 2020. Therefore, in terms of section 41(2) of the Land Courts Disputes (*supra*), the appellant ought to have lodged the appeal on or before 25th January, 2021. Although he signed the petition of appeal on 19th January, 2021, it was on 5th February, 2021 when the petition was filed in the Court. This is also evidenced by exchequer receipt which reveals that the fees for filing the petition of appeal was paid on 5th February, 2021. The law is settled that the date of filing the matter is the date of paying the filing fees. See **John Chuwa vs Antony Ciza** [1992] TLR 233.

I have also noted the appeal was lodged electronically on 19th January, 2021. Therefore, in terms of rule 21 of the Judicature and Application of Laws (Electronic Filing) Rules, G.N. 148 of 2018, the said appeal is considered to have been filed on 19th January, 2021 when it is submitted through the electronically filing. However, it is my considered view that, submission of the document through electronically does not do away with payment of filing fees. If filing fees is required to be paid, then the date of filing is the date of paying the required fees. It is not enough for an advocate or a party to the case to submit the document electronically and relax without taking the necessary action of paying the fees.

Further, pursuant to rule 24 of the Judicature and Application of Laws (Electronic Filing) Rules (supra), if the party misses the deadline due to the reason that the electronic filing system was not in operation, the Deputy Registrar is required to be moved informally not later than 15:00 on the next day for appropriate relief. In my view, this rules applies also to the party who misses the system deadline of paying the filing fees when the system is unable to give him a control number for paying the filing fees. Thus, he should consult the Deputy Registrar for appropriate relief.

In the instant case, nothing suggests that the Deputy Registrar was consulted to make appropriate relief. It is for that reason that, I consider that the appeal was lodged on 5th February, 2021 when the filing fees was paid. Therefore, it was lodged out of time for about six days which were required to be account for before lodging the appeal.

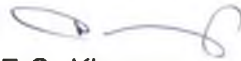
In view of the foresaid, the appeal is incompetent before the Court for being time barred. I accordingly strike out the appeal with no order as to costs because the respondent did not enter appearance. It is so ordered.

DATED at MUSOMA this 18th day of May, 2021.




E. S. Kisanya
JUDGE

Court: Ruling delivered this 18th day of May, 2021 in the presence of Mr. Ostack Mligo, learned advocate for the appellant and in the absence of the respondent.



E.S. Kisanya
JUDGE
18/05/2021