



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

**LAND CASE APPEAL NO. 22 OF 2019**

*(Arising from the District Land and Housing Tribunal for Kagera at Bukoba in Land Application No. 200/2010)*

**EMMANUEL RUGEIYAMU.....1<sup>ST</sup> APPELLANT  
ALOYS RUGEIYAMU.....2<sup>ND</sup> APPELLANT  
MALICELINA RUGEIYAMU.....3<sup>RD</sup> APPELLANT**

***VERSUS***

**BERNEGO BENJAMIN.....RESPONDENT**

**RULING**

*Date of last order 08/04/2021*

*Date of ruling 21/05/2021*

***Kilekamajenga, J.***

The appellants appeared before this Court challenging the decision of the District Land and Housing Tribunal for Kagera at Bukoba. In response, the respondent filed a reply to the petition of appeal resisting the appeal. He also raised three points of preliminary objection thus:

- 1. That the appeal is filed out of time without leave;*
- 2. That the 2<sup>nd</sup> and 3<sup>d</sup> appellant did not sign the purported petition of appeal;*

*3. That the petition of appeal is not accompanied with the decree appealed therefrom (sic).*

The parties were finally invited to argue the points of preliminary objection. The first appellant appeared in person and without legal representation whereas the respondent was absent but enjoyed the legal services of the learned advocate, Mr. Alli Chamani. Before hearing, the first appellant informed the Court that the matter should proceed in absence of the 2<sup>nd</sup> and 3<sup>rd</sup> appellants because they ought to appear but they willfully failed. As a result, the Court ordered the matter to proceed in the absence of the 2<sup>nd</sup> and 3<sup>rd</sup> appellants. During the oral submission, the counsel for the respondent dropped the 2<sup>nd</sup> point of objection and decided to argue the 1<sup>st</sup> and 3<sup>rd</sup> limbs of preliminary objection.

On the 1<sup>st</sup> limb of preliminary objection, Mr. Chamani argued that the appellant was supposed to lodge the instant appeal within 45 days from the date when the judgment was delivered. On this point, he invited the Court to consider **section 41(2) of the Land Disputes Courts Act, Cap. 216 RE 2019**. He argued further that, the judgment was delivered on 01/02/2019 while the appeal was filed on 10/05/2019 and there was no leave to appeal out of time. The appellant was supposed to seek extension of time before lodging the appeal as it was stated in the case of **Ponsian Baitatafe v. Khalid S. Hussein and 3 others,**

**Civil Appeal No. 28 of 2016.** In line with **section 3 of the Law of Limitation Act, Cap. 89 RE 2012**, the appeal should be dismissed.

On the 3<sup>rd</sup> limb of preliminary objection, Mr. Chamani argued that the instant appeal violated **Order XXXIX, Rule 1(1) of the Civil Procedure Code, Cap. 33 RE 2019** which requires the memorandum of appeal to be accompanied by a decree appealed against. This stance was also taken in the case of **Leonard Katto v. Geoffrey Mujuni Fedelis and Dastan Peter, Land Appeal No. 30 of 2018**. In this appeal, the appellant did not attach the decree to the memorandum of appeal. Mr. Chamani finally urged the Court to allow the points of preliminary objection and dismiss the appeal with costs.

In response, the first appellant insisted that the appeal was filed in time because time began to run when he secured the copy of judgment and proceeding from the trial tribunal. The first appellant further submitted that he got the copy of judgment in April 2019 and lodged the appeal on 10<sup>th</sup> May 2019. He therefore lodged the appeal within 45 days as required by the law. In response to the 3<sup>rd</sup> limb of objection, the first appellant stated that he attached the copy of the decree to the appeal hence the respondent's points of objection are devoid of merit.

In disposing of the points of preliminary objection, I take the discretion to start with the 3<sup>rd</sup> limb. On this limb, the counsel for the respondent argued that the appellant failed to attach the decree to the appeal something which is contrary to the law. I have perused the appeal and found out that the appellant attached the decree to the memorandum of appeal. Therefore, this argument was misconceived and devoid of merit.

On the first limb of objection, the counsel for the respondent argued that the appeal was time barred and the appellant did not seek leave to file it out of time. I have perused the court file and found the following information: the judgment of the District Land and Housing Tribunal which is sought to be challenged was delivered on 01<sup>st</sup> February 2019. The copy of judgment was certified on 02<sup>nd</sup> April 2019; that means it was ready for collection just a day after the date of delivery. But, the appeal was lodged before this Court on 10<sup>th</sup> May 2019. In line with **section 41(2) of the Land Disputes Courts Act**, the appeal was time barred because it was filed after the expiry of 45 days. The section provides:


**41.-(1) N/A**


**(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.*

Based on the above provisions of the law, the appellant was supposed to lodge the appeal within 45 days from the date when the judgment was delivered and not from the date when he secured the copy of the judgment and proceedings. As 45 days had elapsed, the appellant was supposed to apply for leave to appeal out of time before lodging the instant appeal. For that reason therefore, I hereby allow the first limb of objection and dismiss the appeal with costs for being filed out of time. Order accordingly.

**DATED** at **BUKOBA** this 21<sup>st</sup> Day of May, 2021.

  
**Ntemi N. Kilekamajenga.**  
**JUDGE**  
**21/05/2021**



**Court:**

Ruling delivered this 21<sup>st</sup> May 2021 in the presence of the 1<sup>st</sup> appellant and the learned counsel for the respondent, Mr. Alli Mtupesa Chamani. Right of appeal explained.

  
**Ntemi N. Kilekamajenga.**  
**JUDGE**  
**21/05/2021**

