

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

(DISTRICT REGISTRY OF MTWARA)

AT MTWARA

LAND APPEAL NO. 22 OF 2020

*(Arising from Land Appeal No. 35 of 2019 in District Land and Housing
Tribunal for Mtwara at Mtwara)*

JAPHET ALFAYO BWIRE APPELLANT

VERSUS

SHAIBU AHMAD IDD & 2 OTHERSRESPONDENTS

RULING

Hearing date on: 10/6/2021

Ruling date on: 22/6/2021

NGWEMBE, J:

The appellant, Japhet Alfayo Bwire, lodged this appeal intending to challenge the decision of the District Land and Housing Tribunal for Mtwara. The appellant being aggrieved with that decision, preferred this appeal armed up with four (4) grounds. However, before the appeal is called for hearing, same was encountered with one ground of preliminary objection to wit; *the appeal is untenable in law for being hopelessly time barred.*



According to the settled principles of law, once an action is encountered with an objection, such objection must first be decided before hearing the appeal on merits. Following such laid down principle, parties who are represented by learned counsels, were invited to argue the preliminary objection as summarized herein below.

The respondent/objector is represented by Mr. Robert Dadaya learned counsel, who briefly argued that, right to appeal is a creature of statute, that it must be filed within the time provided for by the statute. In respect of this appeal, the impugned decision was made on 26/6/2020, while this appeal was instituted in this court on 30/9/2020, equal to 95 days from the date of judgment. Such delay was contrary to section 41 (1) and 42 (2) of the Land Disputes Courts Act Cap 216 R.E 2019. Accordingly, an appeal from the District Land Tribunal exercising original jurisdiction to is only 45 days. Instead the appellant lodged his appeal after 95 days from the date of judgement without seeking and obtaining extension of time. Thus, this court lacks jurisdiction to entertain the appeal.

Supported his argument by referring this court to the case of **Mussa Said Chiteha Vs. Jafari Issa Nangola, Misc. Land case Appeal No. 14 of 2012 HC** Mtwara. Also referred this court to the case of **Yoramu Mkabole & Another Vs. R [1984] T.L.R 79**. Concluded his submission by praying this court to dismiss the appeal with costs.

Responding to the arguments advanced by Mr. Dadaya, the learned advocate Makubi Kunju, argued quite convincingly, that the appeal was



filed in court timeously and is valid before this court. Proceeded to distinguish the cases cited by the respondent as inapplicable in the circumstances of this appeal.

He pointed out that, the impugned decision was delivered on 25/6/2020 and soon thereafter, the appellant on 16/7/2020 lodged a request for a copy of judgement, but he was availed on 10/9/2020 and the appeal was filed in this court on 30/9/2020. Thus within 45 days from the date he received copy of the judgement. Added that, the time used to wait for a copy of judgement is automatically excluded, without necessarily seeking extension of time from the court.

To support his argument, he cited section 19 (2) of the Law of Limitation Act which exclude time used to wait for the copy of judgement, decree or order. To buttress this position, he cited the case of **DPP Vs. Mawazo Saliboko & Others, Criminal Appeal No. 384 of 2017** and the case of **Alex Senkoro & Others Vs. Eliyambuya Lyimo, Civil Appeal No. 16 of 2017**. Therefore, rested by praying the objection be overruled with costs.

In brief rejoinder, Mr. Dadaya reiterated to the submission in chief and added that, there is no automatic extension of time, and court extends time under section 41 (1) of Court Land Disputes Settlement as opposed to the Law of Limitation Act.



I think the law is settled on the issue of time limitation. The first issue to be decided is which law is applicable between the Court Land Disputes Settlement Act and the Law of Limitation Act? The answer is found in the statute itself. Section 43 (f) of the Law of Limitation Act excludes application of the Act if the period of time is prescribed in another law. The subsection is quoted hereunder for ease of reference:-

Section 43 This Act shall not apply to-

- (f) *"any proceedings for which a period of limitation is prescribed by any other written law, save to the extent provided for in section 46"*

Section 46 likewise, makes reference to section 43. The present appeal is related to land dispute whose time frame in case of appeal from District Land Tribunal exercising original jurisdiction is provided for in section 41 which is quoted hereunder:-

Section 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"

The two sections are not in conflict, but they operate together. When the specific law provides period of time, the Law of Limitation Act as a general law won't apply.

Time limitation always has been considered as material point of law, which must be observed, adhered to, and complied with religiously. Failure to observe time limitation has adverse consequences to the basic rights preserved in the Constitution of our Country. For instate appealing against an impugned decision is one of the basic rights, but time limitation may negatively affect such right. This position was well discussed by the Court of Appeal in the case of **Tanzania Fish Processes Vs. Christopher, Civil Appeal No. 161 of 1999** (CAT) where it was held:-

"Limitation of time is material point in the speed administration of justice. Limitation is there to ensure that the party does not come to court as and when he chose".

In this appeal, the question remains, whether, this appeal was lodged in court timeously as prescribed by the law? The answer is found in the records that, the appeal was filed in this court on 30th September, 2020, while the impugned judgement was delivered on 25th day of June, 2020. According to the cited sections of law, the appellant lodged his appeal after expiry of more than 95 days from the date of delivery of judgement. However, the learned advocate for appellant, argued quite strongly, that the time spent for waiting of a copy of judgement must be excluded as

provided for under the Law of Limitation Act. In this point, I tend to agree with Mr. Dadaya that exclusion of time while waiting for a copy of judgement and or decree or order is a good ground for extension of time under subsection 2 of section 41 of the Act. Otherwise, under the law the issue of automatic exclusion of time does not exist under the Court Land Disputes Settlements Act.

It is a trite law that, once time limit is specifically provided for, it must be complied with. This position was pronounced clearly in the case of **Tanzania Dairies Ltd Vs. Chairman, Arusha Conciliation Board and Isack Karangi [1994] TLR 33**, held:-

"Once the law puts a time limit to a cause of action that limit cannot be waived even if the opposite party desists from raising the issue of limitation".

The law is clear like a brightest day light that, an aggrieved person must appeal as of right from the decision of the district Land Tribunal its original jurisdiction within fort-five days. Otherwise, the law provides upon having good cause for delay to apply before this court for extension of time. Failure to do so is fatal to the appeal itself.

Accordingly, the appellant ventured to this court belatedly, and the law of limitation knows no mercy to whoever is caught therein. Unfortunate the appellant is one of them who has trespassed to the merciless law of time limitation. Therefore, I proceed to dismiss this appeal with no order as to costs.



I accordingly order.

Dated at Mtwara in chambers this 22nd day of June, 2021.



P.J. NGWEMBE

JUDGE

22/6/2021



Date: 22/6/2021

Coram: Hon. A.H. Msumi, DR

Appellant: Mr. Hosea Chamba L/b Mr. Makubi Kunju

1st Respondent: Mr. Robert Dadaya, Advocate

2nd Respondent: } Both absent

3rd Respondent: }

B/C: Asha – RMA

Order: Ruling delivered today in chambers in the presence of the Appellant and Mr. Mr. Hosea Chamba learned Advocate holding brief for Mr. Makubi Kunju learned Advocate for the appellant and Mr. Robert Dadaya learned Advocate for the 1st Respondent. The 2nd and 3rd Respondents are absent.

A.H. Msumi

DEPUTY REGISTRAR

22/6/2021

