

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

[LAND DIVISION]
AT ARUSHA

LAND APPEAL NO. 13 OF 2020

(Originating from decision of the District Land and Housing Tribunal for Arusha,
in Land Application No. 31 of 2012)

PHANUEL KISOTA (*Suing as the Legal Representative
of the late Syra Mburumburu*) **APPELLANT**

Versus

JOSEPH MUNGAYA **1ST RESPONDENT**

MATHIAS MUNGAYA **2ND RESPONDENT**

WILSON OLE NGARASHI **3RD RESPONDENT**

RULING

27th May & 6th August, 2021

Masara, J.

In the District Land and Housing Tribunal for Arusha (the trial Tribunal), the Appellant sued the Respondents for a piece of land measuring 2½ acres located at Ilkiushin Village, Oltrument Ward in Arumeru District (the suit land). The trial Tribunal dismissed the Application, declaring neither the Appellant nor the Respondents as lawful owners of the suit land. That decision aggrieved the Appellant. On 23/3/2020, he filed this appeal on five grounds of appeal which I will not reproduce herein for reasons that will be apparent hereunder.

Before the appeal was set for hearing, the advocate for the Respondents filed a notice of Preliminary Objection, to the effect that the *Appeal is hopelessly time barred*. It was resolved that the preliminary objection raised be determined first. Parties resolved and the Court acceded that hearing thereof proceeds by way of written submissions.

Submitting in support of the Preliminary Objection, Mr. Yusuf Mlekwa, learned advocate for the Respondent, contended that time limit for filing an appeal from

the District Land and Housing Tribunal to this Court is 45 days from the date the decision was made. He made reference to section 41(1) of the Land Disputes Courts Act, Cap. 216 [R.E 2019]. The learned advocate went on to state that the judgment in respect of Land Application No. 31 of 2012 was delivered on 23/1/2019 and that forty five days lapsed on 9/3/2019; but the appeal was lodged in this Court on 23/3/2020 more than a year thereafter. He prayed that the appeal be dismissed with costs for being hopelessly time barred.

On his part, the Appellant conceded that the judgment was delivered on 23/1/2019 but it had a fundamental error; to wit, it was erroneously dated as having been delivered on 9/10/2018. The Appellant became aware of the anomaly and applied for rectification of the error in the judgment so as to tally with the decree. He thus filed Misc. Land Application No. 301 of 2019 seeking for correction of the errors apparent on the judgment. According to the Appellant the application was heard and the impugned judgment was rectified on 13/2/2020, and soon thereafter he lodged this appeal on 23/3/2020.

The Appellant further submitted that in accordance with Order XX Rule 3 of the Civil Procedure Code, Cap. 33 [R.E 2019], a judgment must contain a date which it was delivered. He maintained that time started to run from 13/2/2020 when the anomaly was rectified and not otherwise. On the strength of the submission made, the Appellant urged the Court to dismiss the Preliminary Objection and order the appeal to be heard on merits.

I have scrutinized the Preliminary Objection raised by the counsel for the Respondents, the submission by both sides and the trial Tribunal records. The only issue calling for determination is whether the appeal is time barred.

As the record shows, the judgment in respect of Land Application No. 31 of 2012 was delivered on 23/1/2019. This is reflected from the judgment and decree in respect of that appeal. Time to file appeals originating from the District Land and Housing Tribunal to this Court in the exercise of its original jurisdiction is 45 days as provided under section 41(2) of the Land Disputes Courts Act, Cap 216 [R.E 2019]. The provision provides:

*"(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."*

In his submission, the Appellant contended that the judgment had errors as it was dated that it was delivered on 9/10/2018 while the decree is dated 23/1/2019. He thus filed Misc. Land Application No. 301 of 2019 seeking for rectification of the judgment. The application was heard and rectified judgment was issued to the Appellant on 13/2/2020. He therefore concluded that time started to run on that date.

Unfortunately, the Appellant did not attach the rectified copy of the judgment or an order rectifying the judgment. He did not submit the erroneously dated judgment. He also did not submit the order made in respect of Misc. Land Application No. 301 of 2020. Incidentally, the counsel for the Respondent, who had raised the preliminary objection, did not file a rejoinder to disprove the assertions made by the Appellant. His silence leads me to believe that he agrees with the Appellant that there was an error in the original judgment and that the same was rectified. Considering that the Appellant appeared before me unrepresented, he should be given a benefit of doubts. This benefit notwithstanding, hearing of the appeal shall be dependent upon supply of the order made pursuant to Application No. 301 of 2020. Failure to supply that order may lead to reversal of the findings herein.

For the reasons stated above and subject to what I have stated in the previous paragraph, the preliminary objection raised is overruled. I direct that the appeal be heard and determined on merits. Costs in the course.

Order accordingly.




Y. B. Masara
JUDGE

6th August, 2021