

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

LAND APPEAL NO 19 OF 2021

MARWA MAGIGE APPELLANT

VERSUS

RAPHAEL RICHANI MACHABARESPONDENT

*(Arising from Land Application No. 180/2016 in the District Land and Housing Tribunal for Mara
at Musoma)*

RULING

7th September, 2021

Kahyoza, J.

The district land and housing tribunal (the **DLHT**) adjudicated **Marwa Magige** a trespasser and **Raphael Richani Machaba** the owner of the suit land vide Land Application No. 180/2016 on the 23rd March, 2020. Aggrieved, **Marwa Magige** appealed to this Court raising 24 grounds of appeal. Before the appeal was heard on merit, Mr. Gervas, the respondent's advocate raised the preliminary objection with four limbs. He abandoned two limbs and retained two limbs of the preliminary objection as follows-

- 1) The appeal was incompetent for being time barred; and

2) This appeal is an abuse of the court process.

The respondent's advocate submitted in support of the preliminary objection that the appeal was filed out of time. He contended that the **DLHT** delivered the judgment, which precipitated to this appeal on the 23rd March, 2020 and that **Marwa Magige** was required by law, to appeal within 45 days. To support his submission, he cited section 41(2) of the **Land Disputes Courts Act**, [Cap. 216 R.E. 2019]. He added that the appellant lodged the appeal after 329 days have elapsed without first applying for extension of time to appeal out of time.

The respondent's advocate submitted that the appellant first filed Land Appeal No.42/2020, which this Court struck out on the ground that the same was filed out of time. This Court struck out the appeal on the 5/8/2020. Undaunted, **Marwa Magige** applied for extension of time to appeal out of time. The Court baptized the application as Misc. Land Application No. .48/2020. The application was dismissed for want of merit.

Still aggrieved, **Marwa Magige** instituted the current appeal.

The appellant submitted that the appeal was lodged on the time allowed by law and that is why the Court admitted it.

There is no dispute that a person aggrieved by the decision of the DLHT while exercising its original jurisdiction has to appeal within 45 days. See section 41 of the Land Disputes Courts Act, (supra) cited by the respondent's advocate, which 41(2) states that-

(2) An appeal under subsection (1) may be lodged within forty five days after the date of the decision or order:

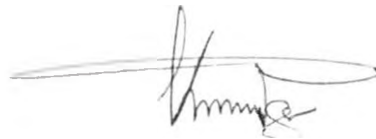
Provided that, the High Court may, for the good cause, extend the time for filing an appeal either before or after the expiration of such period of forty five days.

It is on record that **Marwa Magige** lodged the current appeal on the 23rd February, 2021. He instituted the appeal from the decision of the DLHT delivered on the 23rd March, 2020, which is obviously after 45 days without leave of this Court to appeal out of time. **Marwa Magige** is certainly aware of the fact that his attempt to have time extended for him to appeal out of time met this Court's deaf ear. While dismissing **Marwa Magige's** application for extension of time, the Court advised the parties that "*an aggrieved party is entitled to appeal to the Court of Appeal..*" . **Marwa Magige** did not take up that advice, as he decided to re-institute the appeal to this Court. I have no better word to depict the status of **Marwa Magige's** appeal than that it is incompetent as it was filed out of time. **Marwa Magige** filed the appeal rebelliously out time.

The Court of Appeal held in **Ali Shabani and 48 Others v. TANROADS and A.G.** Civil Appeal No. 261/2020 (unreported) as the suit was time barred, the only order was to dismiss it under section 3(1) of the **Law of Limitation Act**, [Cap.89 R.E. 2019]. I find that since **Marwa Magige** instituted the appeal out of time, the only remedy is to dismiss it.

In the upshot, I uphold the preliminary objection that the appellant lodged the appeal out of time. Consequently, I dismiss the appeal with costs.

It is ordered accordingly.



J. R. Kahyoza
JUDGE
7/9/2021

Court: Ruling delivered in the presence of the appellant in person and Mr. Gervas, the respondent's advocate and the respondent in person. B/C Ms. Millinga present.



J. R. Kahyoza
JUDGE
7/9/2021