

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF MWANZA)**

AT MWANZA

MISC. LAND APPEAL NO. 8 OF 2021

MAISHA TABU APPELLANT

VERSUS

PEMBELE GOMBANILA RESPONDENT

JUDGMENT

3rd August, & 15th September, 2021

ISMAIL, J.

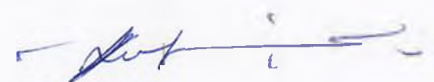
This appeal emanates from the decision of the District Land and Housing Tribunal for Geita, sitting in Geita, in respect of Appeal No. 25 of 2020. At stake between the parties is the ownership of a piece of land that the appellant claims ownership and possession thereof since 1974. The said matter was dismissed following a point of objection which was raised by the respondent, arguing that the appeal was time barred, it having been filed on 25th March, 2020, while the impugned decision of the Ward Tribunal for Mtakuja Ward was delivered on 19th December, 2017. The objection on the time bar was sustained and the appeal was dismissed.



The appellant was not happy with the decision. He chose to institute an appeal to this Court, citing decisional errors in the decision that dismissed his appeal. The appeal has been preferred by way of Memorandum of Appeal, and three grounds have been raised as reproduced, in verbatim, as follows:

- 1. That the trial chairperson erred in law and fact by deciding the case without considering that the decision of the High Court as decided by Hon. Mgeyekwa, J did not direct the respondent to file an application for execution.*
- 2. That the trial chairperson erred in law and fact for not carrying out a research on the case file taking into consideration that the tribunal did not have a chairperson for a long spell, making it difficult to determine the appeal as was directed by this Court (Hon. Mgeyekwa, J).*
- 3. That the trial chairperson erred in fact for not considering the fact that the case file was not remitted to the tribunal following a call for records and the appellant's follow ups, thereby delaying the submission of the petition of appeal which was prepared ahead of time.*

Hearing of appeal was done by way of written submissions consistent with the schedule drawn by the Court. Submitting in support of appeal, the appellant submitted that, while the decision of the Court (Hon. Mgeyekwa, J) quashed and set aside the proceedings in Misc. Application No. 6 of 2018 and ordered trial de novo, such order did not direct that the filing of the



appeal should comply with time prescription requirements. Surprisingly, however, the trial chairperson dismissed the appeal while the respondent's counsel was allowed to institute Misc. Application No. 114 of 2019. The appellant imputed lack of diligence by the respondent. He supported his contention by citing the decision of the Court of Appeal in ***Kambona Charles (an Administrator of the estate of Charles Pangani) v. Elizabeth Charles***, CAT-Civil Application No. 529/17 of 2019 (unreported). It was the appellant's contention that dismissal of Appeal Case No. 25 of 2020 ignored the order of the Court (Hon. Mgeyekwa, J).

The appellant further contended that the trial chairperson erred when he overlooked the fact that the District Land and Housing Tribunal for Geita did not have a chairperson, and that when the files were remitted back, it was difficult to have them disposed of timely. In conclusion, the appellant urged the Court to restore his appeal and have it determined on merit.

Rebutting the appellant's contention, the respondent began by castigating the point of timeliness of the appeal. He argued that this is a new ground which does not feature in the petition of appeal. The respondent argued further that, even then, the appellant does not dispute that he was out of time. His only dispute, the respondent argued, lies in the circumstances which caused his lateness in preferring the appeal.


Reverting to the substance of the appeal, the respondent argued that after the order of Hon. Mgeyekwa, J, it was the appellant's responsibility to ensure that the process of having the appeal heard and determined by another chairperson is triggered. The respondent wondered how long would the respondent wait for action to restart the process, and how he would know if the appellant had not lost interest in the matter. In the respondent's view, a solution to this inaction was to let the decision of the Ward Tribunal executed. Interpreting the Court's order for remitting the matter for hearing before another chairperson, the respondent argued that this order was intended or meant that Appeal No. 6 of 2019, which was lodged in the Tribunal at Geita, should proceed for hearing before another chairperson and not to institute a new appeal (Appeal No. 25 of 2020) as the appellant did. He argued that the District Land and Housing tribunal was correct in its decision to dismiss the appeal for being filed out of time, since time started to tick against the appellant after the pronouncement of the decision of the Ward Tribunal in Application No. 6 of 2018.

On the absence of the chairperson, the respondent's take is that the appeal process could still be re-ignited because the tribunal had other members of staff who would attend to the appeal while awaiting the file from the High Court. He played down the contention that the Tribunal did not

have the chairperson yet the respondent was able to file execution proceedings. On the time bar, the respondent argued that section 19 of the Law of Limitation Act, Cap. 89 R.E. 2019 does not allow exclusion of computation of time during which the chairperson of the Tribunal was absent. He prayed that the appeal be dismissed.

In his rejoinder submission, the appellant reiterated what he submitted in chief. He took the view that chairperson of the Tribunal was wrong to dismiss the appeal, contrary to the decision of the Court. He argued that, doing so was is contrary to the legal requirement as set out in ***Tanzania Breweries Ltd v. Edson Dhobe & 19 Others***, HC-Misc. Civil Application No. 96 of 2000 (unreported). The appellant wondered how would the Tribunal handle the matter while there was no Chairperson who would handle the matter.

With respect to section 19 of Cap. 89, the appellant argued that such provision is irrelevant in the circumstances of this case, as the same has no bearing on the instant appeal. He urged the Court to be inspired by the import of Article 107(2) (e) of the Constitution of the United Republic of Tanzania which places emphasis on dispensation of justice without being tied up with undue technical provisions which may obstruct dispensation of justice.



From these brief submissions, the broad question to be resolved is whether the appeal carries any merit.

As I embark on the disposal journey, let me begin by stating from the outset that this appeal is lacking in merit and I dismiss it. I will explain why, and I will do so by combining all the grounds of appeal in my analysis. The dispute that constitutes the basis for this appeal revolves around the decision of the District Land and Housing Tribunal to dismiss Land Appeal No. 25 of 2020. The dismissal was on account of the fact that the said appeal was filed outside the time prescription. As submitted by both parties, filing of the dismissed appeal came after the decision of the Court which ordered that proceedings in Appeal No. 6 of 2019 be quashed, judgement and decree set aside, and the matter be tried *de novo*, before another chairperson. This is what triggered the appellant's decision to institute a fresh appeal, thinking that the *de novo* hearing ordered by this Court entailed starting afresh from the level of filing another appeal. In my considered view, and the respondent has rightly contended, this was a flawed approach, and the Tribunal was right to reject a fresh appeal whose filing was belated.

But even assuming that the appeal was not time barred as adjudged by the trial Tribunal, I would still hold that the decision to file a fresh appeal was an act that went far overboard the Court's decision. This is so, because



trial de novo was only intended to have the appeal whose decision bred the appeal to this Court heard afresh. It is in conformity with the meaning of the de novo hearing, a Latin phrase which means "**from the new.**" It means that **"when a court hears a case de novo, it is deciding the issues without reference to any legal conclusion or assumption made by the previous court to hear the case...."** (See: <https://www.law.cornell.edu>).

Thus, if the appellant chose to begin from the scratch by choosing to file a new petition of appeal, doing so was out of the scope ordered by the Court, and that such filing, if allowable, ought to have conformed to the requirements of the law on the time prescription. It was quite in order that the appeal which was sneaked after expiry of the time limit and in the pretext of complying with the decision of the Court was dismissed for being time barred. The decision of the trial Tribunal was consistent with the provisions of section 20 (1) of the Land Disputes Courts Act, Cap. 216 R.E. 2019 which provides as follows:

*"Every appeal to a District Land and Housing Tribunal shall be filed in the District Land and Housing Tribunal within forty-five days **after the date of the decision or order** against which the appeal is brought. [Emphasis added]"*

The date of the decision the appellant sought to impugn was 19th December, 2017, while the appeal was filed on 25th March, 2020. This was in excess for two years from the date the appeal fell due for filing. The delay was mammoth, unjustified and depicting nothing but lack of diligence.

In the upshot of all this, I find the appeal lacking in merit and I dismiss it. I further direct that the appellant should, if he is still interested, go back to the District Land and Housing Tribunal for Geita at Geita and restart proceedings in Appeal No. 6 of 2019, consistent with the order of the Court in Misc. Land Appeal No. 23 of 2019.

The respondent will have his costs.

Order accordingly.

DATED at **MWANZA** this 15th day of September, 2021.


M.K. ISMAIL

JUDGE



Date: 15/09/2021

Coram: Hon. C. M. Tengwa, DR

Appellant: Mr. Paul Hombo, Advocate

Respondent: Precela Pancras, Advocate

B/C: J. Mhina

Court:

Judgment delivered today in the presence of both sides.

C. M. Tengwa
DR
15.09.2021

