

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB-REGISTRY OF MUSOMA**

AT MUSOMA

MISC. LAND APPEAL NO. 59 OF 2021

ALEX MATATA WARYOBA APPELLANT

VERSUS

FELISTER WAMBURA RESPONDENT
***(Arising from the decision of the District Land and Housing Tribunal for
Tarime at Tarime in Land Appeal No. 51 of 2020)***

RULING

3rd and 3rd November, 2021

KISANYA, J.:

This ruling resolves the issue whether the appeal is timeous. That issue was raised by the Court, *suo mottu*, after noticing that the petition of appeal to challenge the decision of the District Land and Housing Tribunal (DLHT) for Tarime at Tarime in Land Appeal No. 51 of 2020 was lodged beyond sixty (60) days specified by the law.

Briefly, Alex Matata Waryoba, who happens to be the appellant in this appeal sued the respondent, Felister Wambura. The complaint was lodged before Nyamagaro Ward Tribunal whereby, the appellant moved the trial tribunal to order the respondent to remove or uproot trees planted in his land. His complaint was dismissed for want of merit. Not amused with the

decision of the ward tribunal, the appellant appealed to the DLHT for Tarime at Tarime. His appeal was dismissed on 16th April, 2021. Still aggrieved, the appellant has come to this Court by way of appeal. His petition of appeal was lodged in the DLHT for Tarime on 16th June, 2021, thereby giving rise the issue under consideration.

When invited to address the Court on the issue whether the appeal is timeous, the appellant who appeared in person conceded that the appeal was lodged out of time for one day. He prayed to withdraw it to apply for extension of time within which to appeal.

Replying, Mr. Zakaria Nyarombo, learned advocate who appeared for the respondent urged the Court to dismiss the appeal for being time barred. He also prayed for costs on the ground that the respondent had incurred costs related to this appeal.

On my part, an appeal against the decision of the DLHT in the exercise of its appellate jurisdiction is required to be lodged within sixty (60) days from the date of the impugned decision or order. This is pursuant to section 38 (1) of the Land Disputes Courts Act [Cap. 216, R.E. 2019] which provides:

*"Any party who is aggrieved by a decision or order or of the District Land and Housing Tribunal in the exercise of its appellate or revisional jurisdiction, may **within sixty days after the date of the decision or order, appeal to the***

High Court: *Provided that, the High Court may for good and sufficient cause extend the time for filing an appeal either before or after such period of sixty days has expired.*

Now, in terms of section 38(2) and (3) of the LDCA, the appeal to this Court is initiated by way of petition and filed in the DLHT which gave rise to the decision subject to this appeal, for transmission to the High Court.

From the foregoing position of law, the time within which to appeal against the impugned decision in this case lapsed on 15th June, 2021. However, the record bears it out that the petition of appeal was lodged in the DLHT for Tarime at Tarime on 16th June, 2021. Therefore, as rightly conceded by the appellant, the appeal was lodged beyond the time specified by the law for one day.

The law is settled that if the delay of even a single day is not accounted for, there would be need of having laws prescribing periods within to take certain actions or steps. [See for instance, **Bushiri Hassan vs Latifa Lukio Mashayo**, Civil Application No. 3 of 2007 (unreported). In that regard, the appellant ought to have applied for extension of time and account for the delay. Otherwise, this Court is enjoined not to entertain any matter which is time barred. This position was stated by the Court of Appeal in **Moto Matiko Mabanga vs Ophir Energy Plc and 6 Others**, Civil Appeal No. 119 of 2021 (Tanzlii). In terms of section 3(1) of the Law of

Limitation Act [Cap. 89, R.E. 2019], the proper recourse against a time barred matter is to dismiss the same. Therefore, this appeal cannot be marked withdrawn as requested by the appellant.

The upshot of the matter is, therefore, that the Court dismisses the appeal for being lodged out of time. Regarding the costs, the same are not awarded because the appeal is disposed of basing on the issue raised by the Court, *suo mottu*.

DATED at MUSOMA this 3rd day of November, 2021.




E. S. Kisanya
JUDGE

Court: Ruling delivered this 3rd day of November, 2021 in the presence of the appellant and Mr. Zacharia Nyarombo, learned advocate for the respondent.

Right of appeal explained.


E. S. Kisanya
JUDGE
03/11/2021