

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

LAND CASE APPEAL No. 51 OF 2021

(Originating from Land Application No. 13/2016 DLHT at Muleba)

BARTAZARY ANICENTAPPELLANT

VERSUS

SABINA SELESTINI1ST RESPONDENT
GODFREY SELESTIN.....2ND RESPONDENT
FERDINAND LAURIAN.....3RD RESPONDENT
BURCHARD GUGEMELA.....4TH RESPONDENT
ROBINSON TIGELELWA.....5TH RESPONDENT
ERICK BAINOMUGISHA.....6TH RESPONDENT

JUDGMENT

02nd November & 02nd November 2021

Kilekamajenga, J.

The appellant lodged the instant appeal before this Court challenging the decision of the District Land and Housing Tribunal of Muleba. In response, the 1st, 3rd and 6th respondents filed the reply and raised a point of preliminary objection thus:

"This appeal was hopelessly lodged out of time and without leave of this Honourable Court."

The case was finally scheduled for hearing of the point of objection. The appellant appeared in person and without representation. The 1st, 4th and 6th respondents were present and enjoyed the legal services of the learned



advocate, Mr. Lameck John Erasto. The other respondents were absent and the Court ordered the matter to proceed for hearing in their absence.

Mr. Lameck argued that the instant appeal is incompetent before this Court because it was brought out of time. He argued further that, the decision of the District Land and Housing Tribunal was delivered on 02/03/2021 but the appellant lodged the appeal on 09/06/2021. In other words, the appeal was lodged after the expiry of three months. He referred the Court to **Section 41 (2) of the Land Disputes Courts Act, Cap. 216 RE 2019** which requires the appellant to prefer an appeal within 45 days from the date of judgment. Mr. Lameck further insisted that, the appeal should be dismissed with costs as per **Section 3 of the Law of Limitation Act, Cap. 89 RE 2019.**

In response, the appellant argued that, he was delayed the copy of judgment and decree hence preferred the appeal out of time. When rejoining, Mr. Lameck stressed on the points argued in the submission in chief.

In this appeal, the major issue is whether or not the appeal was lodged out of time. Under **Section 41 (2) of the Land Disputes Courts Act**, the law requires the appellant to lodge an appeal 45 days from the date of judgment. The Section Specifically provides that:


41 (1) N/A

(2) An appeal under subsection (1) may be lodged within 45 days after the date of the decision or order.

Based on the above provision of the law, it is evident that the instant appeal which was lodged after the expiry of three months without leave of the Court is incompetent. According to Section 3 of the Law of Limitation Act, the appeal deserves dismissal. I hereby sustain the point of objection and dismiss the appeal with costs. It is so ordered.

DATED at BUKOBA this 02nd day of November, 2021.





Ntemi N. Kilekamajenga.
JUDGE
02/11/2021

Court:

Ruling delivered this 02nd November 2021 in the presence of the 1st, 4th, and 6th respondents and their counsel, Mr. Lameck John Erasto (Advocate) and the appellant present in person. Right of appeal explained to the parties.




Ntemi N. Kilekamajenga.
JUDGE
02/11/2021

