

IN THE HIGH COURT OF TANZANIA

(MTWARA DISTRICT REGISTRY)

AT MTWARA

LAND APPEAL NO. 20 OF 2021

**(Originating from the District Land and Housing Tribunal for Lindi at Lindi
in Land Application No. 12 of 2019)**

LIWALE DISTRICT COUNCIL.....APPELLANT

VERSUS

MIC TANZANIA LIMITED.....1ST RESPONDENT

HTT INFRANCO LIMITED.....2ND RESPONDENT

MICHELLE JONATHAN.....3RD RESPONDENT

IBRAHIM IDRISA.....4TH RESPONDENT

RULING

26th Aug. & 22nd Oct., 2021

DYANSOBERA, J.:

In this matter the appellant, Liwale District Council, was the applicant before the District Land and Housing Tribunal for Lindi at Lindi vide Land Application No.12 of 2019. After a full trial, the District Land and Housing Tribunal for Lindi (which will be referred as the Tribunal for the purpose of this matter) decided in favour of the respondents particularly by declaring the third respondent the rightful owner of the suit land. The Tribunal dismissed the application with costs. Aggrieved, the appellant has filed his memorandum of appeal containing five grounds of appeal. However, before the appeal is called for hearing, the respondents on diverse dates raised a preliminary point of objection to wit; that the appeal is hopelessly time barred.

As a matter of practice and law this preliminary objection has to be settled before going into the merit of this appeal.

On 26.8.2021 the matter came for hearing of a preliminary objection. Both parties were represented whereas the appellant was represented by Mr. Erasto Nombo (State Attorney) and respondents were jointly represented by Mr. Songea. On the part of the parties prayed to settle the preliminary objection by way of written submissions whereby they complied with the order of this court.

On the part of the respondents, they filed a joint written submissions prepared and filed by Mr. Rainery Songea, the learned advocate from Phoenix Advocates and Mr. Obeid Mwandambo, the learned advocate from Rex Advocates. In their submission in chief the learned counsel submitted that this appeal originated from the District Land and Housing Tribunal for Lindi at Lindi therefore the appellant had to appeal within forty-five (45) days from the date the impugned judgment was delivered by the trial learned Chairman. In the light of that submission the learned advocates argued that the impugned judgment was delivered on 30th day of April, 2021 in the presence of the appellant's counsel but the appeal which is before this court was filed on 22nd day of June, 2021 as it is seen at the signature of the Registry Officer and vide the Judiciary Statistical Dashboard System (JSDS) as it was on 23/06/2021. In view of that the learned advocate were of the settled view that this appeal was filed on the 54 days from the date of delivery of the impugned judgment. To fortify their argument, the learned counsel referred this court to section 41(1) and (2) of the Land Disputes Courts Act, [Cap. 216 R.E. 2019].

It was stressed on part of the respondents that the appeal was filed out of time and was contrary to section 41(1) and (2) of the Land Disputes Act (supra) and that the preliminary objection meets all the requisites enshrined in the case of **Mukisa Biscuits Manufacturing**

Co. Ltd. v. West End Distributors Limited (1969) E.A. 696 since the present preliminary objection is in the nature of a demurrer and raises a pure point of law.

Respecting the remedy of filing an appeal filed beyond the prescribed statutory period, this court was referred to the Law of Limitation Act, Cap 89 R.E.2019 specifically section 3(1) which directs the dismissal of the entire appeal. To buttress their argument, they cited the case of **TANESCO Ltd. vs. Bakari Mayongo**, Lab. Div. SBWG. Rev. No.02 of 2015[2015] LCCD 1. Counsel for the respondents were of the view that parties should comply with the scheduling provided in the laws in order to appeal within the prescribed time and that there is no automatic appeal under section 41(2) of the Land Disputes Courts Act which allows a party to seek an extension of time prior to filing an appeal. To substantiate their argument, they referred this court to the case of **DED Sengerema D/Council v. Peter Msungu & 13 Others**, Lab. Div. Mwanza, and Misc. Appl. No.27/2013 (unreported) where this court observed that when an action is time barred a party seeking to initiate it must first apply for extension of time. The other case cited was **Amina A. Tangale v. Hamisi Mwamkwaya**, Land Appeal No.16 of 2020 High Court of Tanzania at Mtwara (unreported) in which this court dismissed the appeal on the ground that the appeal was filed out of time without obtaining leave to file appeal out of time. Reference was also made to the case of **Mathew Martin v. Managing Director, Kahama Mining Corporation**, Civ. Case No.79/2006 (unreported) where his Lordship Kalegeya, J(as he then was) quoted with approval from the holding of the High Court of Tanzania in the case of **John Cornel v. Grevo (T) Limited**, Civ. Case No.70 of 1998 where it was stated that "However unfortunately it may be for petitioners, the law of Limitation

on action knows no sympathy or equity. It is a merciless sword that cuts and deep into those who get caught in its web”.

Besides, the learned advocates for the respondent submitted that the facts of this case are so clear that time for filing an appeal appearing in the Memorandum of appeal as well as JSDS (Judiciary Statistical Dashboard System) shows that the appellant lately filed an appeal for 8 to 9 days which might be observed as a short delay. Also, they submitted that the purpose of indicating the time for action to the provisions of the law is to make sure that actions or cases are taken to an end. They further insisted that as per requirement of law where time of action lapses even for a single day the only remedy is to apply for the extension of time with good cause as it was decided in the case of **Mistry v. Hussein and Others**, Civil Application No.6 of [2017] TZCA 101 whereby the Court held that the applicant had to account for each day of delay.

More so, the learned advocates submitted that in the present case the appellant has not accounted for each day of his delay for filing his appeal out of time. In the light of that submission, the learned advocates argued that the appellant may allege that he was lately supplied with the copies of the judgment and decree that would have been a good cause for extension of time. On the footing the learned advocates for the respondents submitted that the law is self-satisfactory and there is no need to apply section 19 of the Law of Limitation Act, (supra).

The learned counsel for the respondents went further and cited the case of **Juma M. Ngómbeni v. Albert L. Jilala**, Misc. Land Case No.3 of 2019 High Court of Tanzania (Land Division) at Tanga and **Amina A. Tangale v. Hamis Wankya** (supra) that every proceeding described in

the first schedule to the Law of Limitation Act and instituted after the period of limitation prescribed therefore opposite thereto in the second column shall be dismissed whether or not limitation has been set up as a defence. At last, the learned counsel for the respondents argued that since the appellant failed to comply with the clear provision of the law then section 3(1) of the Law of Limitation Act (supra) should come into operation. Also, on the other hand, they submitted that the entire appeal filed by the applicant be dismissed with costs.

In response, it was argued for the appellant that under no circumstances appeal could be filed in the High Court of Tanzania without obtaining the certified copies of the impugned judgment and decree in terms of Order XXXIX of the Civil Procedure Code, [Cap. 33 R.E. 2019] which are necessary documents for this appeal. Mr. Nombo explained that the law provides for the time requisite for the intended appellant to obtain such documents and when such time should start to run against him or her. In view of that submission the learned State Attorney cited section 19(2) of the Law of Limitation Act, [Cap. 89 R.E. 2002].

Mr. Nombo went further and argued that the requisite time to be excluded when obtaining copies of the judgment and a decree for the appeal purposes has been provided. To cement his argument, he referred this court to the case of **Mohan Diary v. Rantilal Bhurabhai** [1966] E.A 571 which was cited by the Court of Appeal in the case of **Valere McGivern v. Salim Farkrudin Balal**, Land Case No.22 of 2011 CAT at Tanga observed that the time limit for filing an appeal started to run as from the date when the copy of the judgment and decree were certified.

In light of that submission, the learned State Attorney contended that he was representing the appellant in the trial Tribunal and on 30.04.2021 applied for the certified copies of the judgment and decree for appeal purpose and the documents were supplied to him on 19.5. 2021. He was of the view that in such circumstances, the appeal was filed within time in view of the express provision of the law governing the appeals from the subordinate courts to the High Court. Reference was made to the case of **Registered Trustees of Marian Faith Healing Centre@ Wanamaombi v. The Registered Trustees of the Catholic Church of Sumbawanga Diocese**, Civil Appeal No. 64 of 2007(unreported) which was cited by the Court of Appeal in the case of **Velere McGivern v. Salim Farkrudin Balal** (supra).

In addition, the learned State Attorney submitted that upon payment of the appropriate fees for collection of the documents, the appeal was filed on 22.06. 2021. He was, therefore, under impression that the time to appeal to this court started to run from the date the judgment and decree were certified that is from 19.5. 2021. According to him, since the appeal was lodged on 22.6.2021 that is after 34 days then it was within the 45 days as required by the law for filing an appeal to this court. He was emphatic that the position is as what was decided in the case of **Marian Faith Healing Centre@ Wanamaombi v. The Registered Trustees of the Catholic Church of Sumbawanga Diocese**(supra) and **Velere McGivern v. Salim Farkrudin Balal** (supra) that the days waiting for obtaining the certified copies of the impugned judgment and decree need to be excluded in computing the time.

In conclusion, the learned State Attorney urged this court to allow the appeal with costs because the appeal was filed within time allowed

by the law and reject the preliminary objection raised by the respondents which intend to defeat the interests of justice.

In rejoinder, Counsel for the respondents insisted that the appeal was filed out of 45 days as provided by section 41 of the Land Disputes Courts Act (supra). They disagreed with the argument that the time of appeal start to run from the date the copies of the impugned judgment and decree were certified by the District Land and Housing Tribunal and that, on the contrary, the law is clear that the time of appeal starts to run from the date of delivery of the decision or order as per section 41 of the Land Disputes Courts Act. They went further and argued that from 30.04.2021 to 22.6.2021 there are 53 days passed to filing the appeal which means that the appellant delayed to file his appeal for eight (8) days.

In a further elaboration, the learned advocates for the respondents also responded on three things, one on the application of section 19(2) of the Law of Limitation Act. Two, application of Order XXXIX of the Civil Procedure Code [Cap. 33 R.E. 2019] and three application of the decision of **Valerie McGivern v. Salim Farkrudin Balal**(supra).

With regard to the application of section 19(2) of the Law of Limitation Act, the learned advocates argued that the section is distinguishable from the circumstances of this case and application of this section is not automatic since the same has to be applied for formal application brought under section 14(1) of the Law of Limitation Act. They emphatically submitted that if things could have gone automatically there would have been no need of having the Law of Limitation Act to regulate time of action by the parties.

In the same line they argued that the decision of the Court in the case of **Valerie McGivern v. Salim Farkrudin Balal** (supra) is not

applicable in the present case due to the fact that it requires a party who wish to benefit under section 19(2) of the Law of Limitation to formally request the copy of the judgment and decree in written form. But in the present case the appellant did not attach either in the memorandum of appeal or written submission in reply , the written letter requesting the copy of the judgment and decree though what is attached in the submission were the copies of the judgment and decree. The learned advocates went further and argued that the rationale of making formal application is for the court to prepare the requested documents immediately for the intended purpose. It was argued that without that letter the court will prepare in a normal way. They were of the view that the appellant's argument on the invocation of section 19(2) lacks legal justification since he failed to produce the written letter evidencing the request for the copies of judgment and decree for the purpose of filing this appeal.

With respect to application of Order XXXIX of the Civil Procedure Code (supra) it was contended that the invocation of the Order in this case is irrelevant and very distinguishable as far as the circumstances of this case are concerned. In the alternative, it was submitted that that would be a good ground for application for extension of time to appeal and not as a defence to cure the appeal lodged out of time. The learned advocates for the respondents maintained that the appeal is out of time for the delay of 8 days and the same is supposed to be dismissed as per law of Limitation Act, Cap 89 R.E. 2019 specifically section 3(1) with costs. Their advice was that the remedy available to the appellant is to pursue an application for extension of time under section 14(1) of [Cap. 89 R.E. 2019] and section 41 (2) of [Cap 216 [R.E. 2019] upon showing good cause to that effect. To buttress this

argument, the case of **John Cornel v. Grevo (T) Ltd** (supra) was cited.

Having considered the rival submissions of both parties, I, at the outset, agree to what the learned counsel for the respondents have submitted that this appeal was filed out of time. The reasons for my decision are as follows; **one**, the Law of Limitation Act (supra) is very clear that where the period of time is prescribed in another law then the LLA cannot apply. This is provided under section 43 (f) of the Law of Limitation Act which provides that:

"43. This Act shall not apply to-

(f) any proceedings for which a period of limitation is prescribed by any other written law, save to the extent provided for section 46".

Also, section 46 of the Law of Limitation (supra) reads as follows: -

"Where a period of limitation for any proceeding is prescribed by any other written law, then, unless the contrary intention appears in such written law, and subject to the provision of section 43, the provisions of this Act shall apply as if such period of limitation had been prescribed by this Act".

The present appeal originated from the District Land and Housing Tribunal for Lindi at Lindi in Land Application No.12 of 2019. The DLHT enjoyed the original jurisdiction hence the time frame for the present appeal is provided under section 41 of the Land Disputes Courts Act (supra) which provides: -

"41(1) Subject to the provisions of any law for the time being in force, all appeals, revisions and similar proceeding from or in respect of any proceeding in a District Land and Housing Tribunal in the exercise of its original jurisdiction shall be heard by the High Court.

(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."

As far as the quoted provisions of the law are concerned together with the nature of the matter at hand it is apparent clear that the Land Disputes Courts Act (supra) has specifically provided for the period of which an aggrieved party to the land application entertained by the District Land and Housing Tribunal exercising original jurisdiction who wish to appeal to this court has to do so within forty five (45) days from the date the Tribunal delivers its judgment and not to the date when the certified copies of the judgment and decree are obtained. Indeed, the law is so clear and there is no conflict on that area from section 41, 43 and 46 of the same Act when they are read between the lines.

Two, as to the exclusion of the days waiting for supply of the certified judgment and decree. With due respect I beg to differ with what the appellant had submitted that the time to appeal to this court starts from 19.5.2021 when he was furnished with the certified copies of the judgment and decree. From 19.5.2021 to 22.6.2021 there are 34 days thus, he was within the forty-five days. Surely, I am inclined with what the learned counsel for the respondents had submitted that section 19(2) of the Law of Limitation Act (supra) and the decision in the case of **Valerie McGivern v. Salim Farkrudin Balal** (supra) are not applicable in the present case due to the fact that it requires a party who wish to benefit under section 19(2) of the Law of Limitation to formally request the copy of the judgment and decree in written form. But in the present appeal case the appellant did not attach either in the memorandum of appeal or written submission in reply the written letter

requesting the certified copies of the judgment and decree though what is attached in the submission were the copies of the judgment and decree. For clarity I reproduce what the Court stated in the above case referred by the appellant as follows: -

"Suffice to say, section 19(2) of LLA and holding in the decision cited above reinforce the principle that computation of the period of limitation prescribed for an appeal, is reckoned from the day on which the impugned judgment is pronounced the appellant obtains a copy of the decree or order. **However, it must be understood that section 19(2) of LLA can only apply if the intended appellant made a written request for the supply of the requisite copies for the purpose of an appeal.**"

In the light of the above quotation, I find the above decision and section 19(2) of LLA are not applicable in the case at hand. Also, I am of the settled view that the appellant filed his appeal on the fifty-four (54) days from the date of delivery of the intended impugned judgment.

In addition, I also concede with what the learned counsel for the respondents submitted that the reason given by the appellant by relying on Order XXXIX of the Civil Procedure Code would be a good /sufficient reason for seeking an extension and not at this juncture. Since this appeal is time barred the remedy is as argued by the learned advocates of the respondents that is to dismiss it with costs as was decided in the case of **DED Sengerema D/Council v. Peter Msungu and 13 Others** (supra) and **TANESCO Ltd v. Bakari Mayongo** (supra).

For the foregoing reasons the preliminary objection raised by the Respondents is upheld and in terms of section 3(1) and (2) of the Law of Limitation Act (supra) which provides:

"Subject to the provisions of this Act, every proceeding described in the first Schedule to this Act and which is instituted after the period of limitation prescribed therefor opposite thereto in the

second column, shall be dismissed whether or not limitation has been set up as a defence.”

Since the appeal is the proceeding described in the first schedule Part II items 1 and 2 of the schedule to the Law of Limitation Act. Thus, where such an appeal is filed out of time it has to be dismissed whether or not limitation has been set up as a defence. Also, subsection 2 to section 3(b) of the Law of Limitation Act has provided at what stage the appeal is said to have been filed in this court is when the memorandum of appeal or petition of appeal is filed. In the present case the appeal was filed on 22.06.2021 which was after the period prescribed by the Law of Limitation Act.

I, therefore, dismiss this appeal with costs. Order accordingly.



W.P. Dyansobera

Judge

22.10.2021

This ruling is delivered under my hand and the seal of this Court this 22nd day of October, 2021 in the presence of Ms Priscilla Mapinda, learned Counsel for the 2nd and 3rd respondents but in the absence of the appellant

Rights of appeal to the Court of Appeal explained.



W.P. Dyansobera

Judge