

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

IRINGA DISTRICT REGISTRY

AT IRINGA

LAND APPEAL NO. 08 OF 2021

**(Originating from Application No. 90 of 2017, in the District Land and
Housing Tribunal for Njombe at Njombe)**

BETWEEN

VICTORIA YAKOBO.....1st APPELLANT

JULIUS DANDA.....2nd APPELLANT

VERSUS

ISRAEL MAKINDA..... RESPONDENT

RULING

26th October & 16th December, 2021.

UTAMWA, J.

One VICTORIA YAKOBO and JULIUS DANDA (the appellants), were aggrieved by the decision (the impugned judgment) of the District Land and Housing Tribunal for Njombe, at Njombe (the DLHT), in Land Application No. 90 of 2017. They thus, preferred this appeal. Before the DLHT, ISRAEL MAKINDA (the respondent) had sued the two appellants for recovery of land measuring 15 acres located at Nyangoro hill Hwayanzuha in Yakobi village. The Respondent claimed that, he has been in occupation of the disputed land for more than 30 years. The appellants and the respondent

are in fact, in a dispute over the boundaries. The DLHT decided in favor of the respondent. The appellants were aggrieved as shown above, hence this appeal.

Before this court, the appellants were represented by Mr. Godfrey Mwakasege, learned advocate whereas the respondent appeared in person. When the appeal was called upon for hearing, the court suspected that the same was time barred. It therefore, ordered the parties to address it on the issue of time limitation. Owing to the consensus by the parties, the court directed them to argue the issue by way of written submissions.

The learned counsel for the appellants submitted that, the decision of the DLHT was delivered by the Chairman on 19th January 2021 in the presence of the parties. Later on, the DLHT issued to the parties the copies of the impugned judgment and decree on 26th February 2021 (henceforth the copies). He further submitted that, between the 23rd and the 25th March 2021, the appellants filed the memorandum of appeal to this Honorable Court electronically. The appeal was then admitted one week later by the Deputy Registrar of this court. The appellants were however, required to submit a hard copy of the memorandum of appeal at the registry of this court. That is when the registry officer endorsed that, the date of filing the appeal was the 14th April 2021 instead of the earlier date when it had been filed electronically. This trend thus, led to an impression that the appeal was out of time for three days.

It was also the contention by the learned counsel for the appellants that, the appeal was timely filed as required by section 41(2) of the Land

Disputes Courts Act Cap 216 R.E 2019 (the LADCA). These provisions guide that, an appeal of this nature may be lodged within 45 days computed from the date of the decision or order to be appealed against. The appellants were also entitled to the deduction of the days which were necessary for obtaining the copies. He supported this legal stance by the decision of the Court of Appeal of Tanzania (the CAT) in the case of the **Director of Public Prosecution v. Mawazo Saliboko @ Shagi and others, Criminal Appeal No. 384 of 2017**. This precedent interpreted the provisions of section 379(1)(b) of the Criminal Procedure Act, Cap. 20 (the CPA). These provisions also sets time limitation for a category of criminal appeals from subordinate courts to this court.

The appellants' counsel thus, urged this court to determine the appeal on its merits.

On his part, the respondent submitted that, the appellants ought to have provided evidence that they applied for the copies timely so that they could prove that it was the DLHT which delayed to provide the same. It was also the appellants' duty to obtain the copies. The appellants were also not sure if they wanted to appeal, hence the delay. He thus, urged this court to set aside the appeal with cost.

In his rejoinder submissions, the counsel for the appellants essentially reiterated his submissions in chief. He added that, the appeal was admitted electronically on 1st April 2021 before the expiry of 45 days.

I have considered the record, the rival submissions by the parties and the law. The issue before me as hinted earlier, is whether or not the appeal

at hand was filed timely. According to the record and the contentions by the parties, it is not disputed that the impugned judgment was delivered on the 19th January, 2021. The record shows that, the copies were ready for collection on the 26th February, 2021 as shown on the copies of the impugned judgment, the decree and the proceedings of the DLHT. The appellants also argued that they received the copies on that same date. The record further shows that, the memorandum of appeal was filed in this court on the 14th April, 2021 vide the rubber stamp endorsed on its top. It is also not disputed that, according to section 41(1) of the LADCA, the time limitation for filing appeals of the nature like the one under discussion is 45 days from the date of the decision to be appealed against.

In the matter at hand, though the impugned judgment was undisputedly delivered on the 19th January, 2021, the record shows that, the memorandum of appeal was filed on the 14th April, 2021 as demonstrated previously. By simple arithmetic, therefore, the memorandum of appeal was filed after a lapse of about three months from the date of pronouncing the impugned judgment, hence beyond the prescribed time limitation of 45 days. Nonetheless, I agree with the learned counsel for the appellants that, in computing the time limitation, his clients were entitled to the deduction of the time which was necessary for obtaining the copies. This is vide section 19(1)-(3) and (5) of the Law of Limitation Act, Cap. 89 R.E 2019. The provisions of section 379(1)(b) of the CPA cited above by the learned counsel for the appellants were thus, irrelevant in this matter at hand since this is not a criminal appeal.

In the appeal at hand therefore, the reckoning period was the 26th February, 2021 when the copies were ready and when the appellants received the same. Again, by simple arithmetic, it is clear that the memorandum of appeal was filed after a lapse of 47 days from the date when the appellants received the copies. The appeal was thus, in my view, filed two days out of the 45 days, being the time prescribed by law. Indeed, this period of delay may appear to be too short for blaming the appellants. Nevertheless, the law does not categorize the periods of delay. It guides that, a delay is a delay, even a single-day delay is a delay like any other longer period; see the decision by the CAT in the cases of **National Bank of Commerce Ltd v. Partners Construction Company Ltd, CAT Civil Appeal No. 34 of 2003** (unreported) and **Hemedi Ramadhani and 15 others v. Tanzania Barbours Authority, Civil Appeal No. 63 of 2001, CAT at Dar as Salaam** (unreported).

The contention by the appellants' counsel that he filed the appeal electronically earlier than the 14th April, 2021 is not tenable since the record does not support it. In my settled opinion, though filing matters in courts electronically is currently recognized by our law, a party who files a matter through that mode is bound to do so according to the time limitation prescribed by the law. The record must also show that fact. That party is also duty bound to prove that he filed the matter electronically and timely whenever an issue of time limitation arises. In the matter at hand, the appellants did not at all produce any evidence of filing the appeal electronically earlier than the 14th April, 2021 which is shown on the memorandum of appeal. The mere unsworn contentions by the appellants'



counsel from the bar cannot thus, override what is shown in the record. Besides, the law guides that, court records are presumed to be genuine and accurately representing what happened (in court), they cannot thus, be easily impeached, unless there is evidence to the contrary; see **HalfaniSudiv. AbiezaChichili [1998] TLR. 527**. In the case at hand there is no such evidence which impeaches the scenario shown by the record.

The above mentioned averment by the appellants' counsel is further weakened by his failure to state the exact date on which he purportedly filed the appeal at hand electronically. In his submissions, he only said that he filed it electronically between the 23rd and the 25th March 2021. This shows that he was uncertain of the exact date. A date of filing a document must be specifically cited for purposes of computing the time limitation. This is because, in computing time limitation each day is material. It is more so since the time limitation is set by a number of days. Furthermore, the appellants' counsel is contradicted by the record. This is because, it is indicated in the record that, the filing fees for this appeal were paid on the 13th of April, 2021 and the exchequer receipt was issued on 14th of April, 2021 (see a copy of the exchequer receipt attached to the memorandum of appeal issued to one Baraka Ngonde, for purposes of filing the appeal at hand). Indeed, it is trite law, that, the date of filing a document in court is the date of paying the requisite filing fees.

It follows thus, that, since filing a matter electronically is a matter of fact, the same must be proved by evidence and not by mere averments. Otherwise, the law of limitation will be totally circumvented with impunity

since feign litigants will simply take shelter under such loophole. Again, since the appellants are the ones who aver that they filed the appeal through that mode earlier to the 14th April, 2021, they bear the burden of proving that fact. This is so because, the law guides that, he who alleges a fact must prove it. In my further opinion, the best forum for proving such facts would be in an application for extension of time where the appellants would have an opportunity to prove their averments by affidavital evidence. This is so because, mere submissions on points of facts like the ones made by the appellants' counsel herein above, do not have any evidential value for proving a fact; see the decision by the CAT in the case of **The Assistance Imports Controller (B.O.T) Mwanza v. Magnum Agencies Co. L.T.D, CAT Civ. Appeal No; 20 of 1990, at Mwanza**(unreported). The appellants therefore, ought to have applied for and obtained extension of time before filing the appeal at hand.

In view of the above findings, I am convinced that, the appeal at hand is time barred. The only legal remedy for an appeal of this nature is to dismiss it as per section 3(1) of Cap. 89 (supra). The respondent's prayer for this court to set aside the appeal was thus, a misconception of law. I accordingly dismiss the appeal at hand. I make no order as to costs since the issue on time limitation was raised by the court *suomotu* as shown above. It is so ordered.



J. H. K Utamwa
JUDGE
16th December, 2021.

16/12/2021.

CORAM; JHK. UTAMWA, J.

For the Appellants: Mr.GeofreyMwakasege, advocate.

For Respondent: present in person.

BC; Ms. Gloria. M.

Court: Ruling delivered in the presence of Mr.GeofreyMwakasege, advocate, for bothrappellants and the respondent, in court this 16th day of December, 2021.

