

THE UNITED REPUBLIC OF TANZANIA
JUDICIARY

IN THE HIGH COURT OF TANZANIA
(DISTRICT REGISTRY OF MBEYA)
AT MBEYA

LAND APPEAL NO. 71 OF 2021

(From the District Land and Housing Tribunal for Mbeya at Mbeya in Land
Application No. 74 of 2020)

SAID ISMAIL NYANG'ONDO.....APPELLANT

VERSUS

YAHAYA M. MBAGO.....1ST RESPONDENT

MWAINI MUSSA MBAGO.....2ND RESPONDENT

DAUD MUSSA MBAGO.....3RD RESPONDENT

SAID MUSSA MBAGO.....4TH RESPONDENT

RULING

Date of Hearing: 09/03/2022

Date of Ruling : 11/03/2022

MONGELLA, J.

The respondents successfully sued the appellant in the District Land and Housing Tribunal for Mbeya at Mbeya (the Tribunal) in Land Application No. 74 of 2020. The suit concerned a farm located at Uhambule Igurusi village within Mbarali district in Mbeya region in which the respondents prayed to be declared the rightful owners.



Aggrieved by the decision the appellant preferred the appeal at hand on three grounds. However, before the hearing of the appeal could take off, the respondents through their advocate, Mr. Alfredy Chapa, filed a notice of preliminary objection. The objection was to the effect that the appellant's appeal has been filed out of the prescribed time.

When the matter came for necessary orders on 25th November 2021, it was scheduled for hearing on 09th March 2022. On the date the matter was scheduled for orders, the appellant appeared through Mr. Felix Kapinga, learned advocate, who held brief of Mr. Goodluck Mgimba, advocate for the appellant. On the date of hearing however, neither the appellant nor his advocate appeared. There was also no information of their whereabouts communicated to the Court. The court thus ordered for the hearing of the preliminary objection to proceed *ex parte* against the appellant.

Mr. Chapa, thus briefly submitted on the point of preliminary objection. He contended that the Tribunal pronounced its judgment on 21st April 2021. The copies of the judgement and decree were ready for collection on 04th August 2021. That is, they were certified on this date. He argued that in accordance with the Land Disputes Courts Act, Cap 216 R.E. 2019, the time limit for appeals on matters emanating from the Tribunal is 45 days. Considering the date on which the appellant filed the appeal at hand in this Court, which was on 21st September 2021, he contended that the period of 45 days had already elapsed. He advanced his argument counting from the date the copies of judgment and decree were ready



for collection. He therefore prayed for the appeal to be dismissed with costs for being filed out of time without the leave of the Court.

After considering the submission by Mr. Chapa and gone through the Tribunal record, I agree with him that the appeal at hand is time barred. **Section 41 (2) of Cap 216** provides for 45 days in filing an appeal from the District Land and Housing Tribunal. **Section 19 (2) of the Law of Limitation Act, Cap 89 R.E. 2019** provides for exclusion of the days in which the appellant awaits for copies of requisite documents for the appeal to be availed. In that case, I agree with Mr. Chapa that the time should be computed from 04th August when the copies of judgement and decree were ready for collection. See also: **Samuel Emmanuel Fulgence v. The Republic**, Criminal Appeal No. 4 of 2018 (CAT at Mtwara, unreported).

Section 19 (1) of the Law of Limitation Act, directs that the day from which the period of time is to be computed shall be excluded. In the premises, the time started to run on 05th August 2021. Counting from that date it is clear that the time for filing the appeal at hand elapsed on 18th September 2021. The appeal was therefore delayed to be filed for four days.

The law on limitation is strict to the extent that a delay of even a single day renders the appeal incompetent before the court. A matter filed out of time ousts the jurisdiction of the court to entertain the same. See: **Tanzania National Roads Agency & The Hon. Attorney General vs. Jonas Kinyagula**, Civil Appeal No. 417 of 2020 (CAT at Kigoma, unreported); **Swilla Secondary School vs. Japhet Petro**, Civil Appeal No. 362 of 2019

(CAT at Mbeya, unreported); **Barclays Bank (T) Ltd. vs. Jacob Muro**, Civil Appeal No. 357 of 2019; and **Mayira B. Mayira & 4 Others vs. Kapinga Rice Project**, Civil Appeal No. 359 of 2019.

In the circumstances, the appeal is found to be incompetent rendering this Court with no jurisdiction to entertain it. It is accordingly dismissed with cost.

Dated at Mbeya on this 11th day of March 2022.


L. M. MONGELLA

JUDGE

Court: Ruling delivered in Mbeya in Chambers on this 11th day of March 2022 in the presence of the 1st, 3rd, and 4th respondents and Ms. Pendo Lukumayi, holding brief for Mr. Alfredy Chapa, advocate for the respondents.


L. M. MONGELLA
JUDGE

