

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(IN THE DISTRICT REGISTRY OF KIGOMA)**

**AT KIGOMA**

**(APPELLATE JURISDICTION)**

**MISC. LAND APPEAL NO. 6 OF 2022**

(Originating from Land Appeal No. 86/2020 of the District Land and Housing Tribunal  
Before: Hon. F. Chinuku, Chairperson)

**PASIA E. MAHINJA-----APPELLANT**

**VERSUS**

**HAWA ALLY-----RESPONDENT**

**JUDGMENT**

31/5/2022 & 6/6/2022

**F.K. MANYANDA, J**

This is an appeal by Pasia E. Mahinja, hereafter, the Appellant, who is bemused by the judgment of the District Land and Housing Tribunal for Kigoma, hereafter referred to as "the DLHT" dated 6/10/2021. In that judgment the DLHT dismissed an appeal by the Appellant herein from a judgment of Ward Tribunal for Itebura ward, hereafter the trial tribunal, after sustaining an objection that the appeal before the DLHT was time



barred. In the trial Tribunal the Respondent successfully sued the Appellant for ownership of a piece of land measuring one acre in Land Case No. 9/2020. Therefore, the Appellant was aggrieved and appealed to the DLHT, which, as stated above, dismissed the appeal. undaunted she has come to this court with the instant appeal.

The appellant lodged a memorandum of Appeal with three complaints which may be paraphrased as follows;

- 1. The DLHT erred in law and facts by hearing an appeal instead of hearing the raised preliminary objection.*
- 2. That by hearing the appeal before hearing the raised preliminary objection violated mandatory practice and procedures of hearing cases which contain a preliminary objection, in such a situation it is a preliminary objection which is heard first before the main matter.*
- 3. That hearing the appeal only meant the raised preliminary objection failed it could not be sustained later on.*

The Respondent filed a reply to the memorandum of appeal in which she also raised a preliminary objection to the hearing of the appeal on one point of law that this appeal is time barred.

To save time, this Court ordered hearing of both the preliminary objection and the appeal on ground that in case the Preliminary Objection is overruled, then the appeal will also be determined, hence save time.

At the hearing of the Preliminary Objection the Appellant was represented by Mr. Gilagiza Issa Omari, learned Advocate while the Respondent was unrepresented.

Arguing in support of the Preliminary Objection the Respondent submitted adopting her reply to the memorandum of Appeal and added that the appeal is late by one day because the impugned judgement was delivered on 6/10/2021 and the appeal filed on 7/12/2021. If counted the 60 days end on 6/12/2021, hence one day later. Submitting in reply Mr. Gilagiza argued that the appeal is in time because the judgment was delivered on 6/10/2021 and a copy of the judgment obtained on 25/11/2021 while the appeal was filed on 7/12/2021. He was of the views that the appeal was lodged 12 days after obtaining the said copy of judgment.

In a short rejoinder, the Respondent submitted that the period for waiting a copy of the judgment is inapplicable.

Submitting in support of the Appeal Mr. Gilagiza argued that in ground one the DLHT erred when it upheld a preliminary objection after hearing the appeal. The DLHT, according to him, ought to hear first the Preliminary Objection and then after deliberating it, to hear the appeal, if he Preliminary Objection was overruled.

He also argued in support of ground two that the second and third grounds are in line with the first ground. He prayed the appeal to be allowed.

On her side the Respondent simply argued that the DLHT approach in handling of the Preliminary Objection and was correct in law because both the Preliminary Objection and the appeal were argued together, then when determining it, considered the Preliminary Objection and sustained it, the DLHT did not make a finding on the appeal. She prayed the appeal to be dismissed.

Having heard the urging submissions from both sides, I find the only issue here is whether the appeal is meritorious.

It is trite law that where a court is seized with a preliminary legal issue, it has to dispose off that legal issue first before going into the merits of the concerned matter. This was the holding in the case of **Shahida Abdul Hassanali Kassam vs Mahedi Mohamed Gulamali Kanji**, Civil Application No. 42 of 1999 (unreported) the court of Appeal of Tanzania stated as follows;-

*"the whole purpose of preliminary objection is to make the court consider the first stage much earlier before going into the merits of an application...so in a preliminary objection a party tells the court that the existing circumstances do not give you*

*jurisdiction. It can not be gain said that the issue of jurisdiction has always to be determined first"*

Equally the court of Appeal re-stated the position in **Bank of Tanzania vs Devram P. Valambia**, Civil Application No. 15 of 2002 (unreported) by stating that;

*"The aim of a preliminary objection is to save the time of the court and the parties by not going into the merits of an application because there is a point of law that will dispose of the matter".*

In the instant appeal, the Respondent is objecting to the hearing of the case reasons that it is time barred because the appeal was filed one day late.

The Respondent reckoned the time from the date of delivery of the judgment on 6/10/2021 to the date the appeal filed on 7/12/2021, whereas if 60 grace period are deducted, then one day is out of time as the same ended on 6/12/2021.

On the other hand, the Counsel for the Appellant reckoned the time excluding a period between 6/10/2021 and 25/11/2021 which is a period of 50 days therefore, according to him, the appeal is in time.

From the submissions of the parties I find that the controversy is about this period of 50 days.



The Respondent says, the issue of spending these days without appealing is not one to be argued here. I think she meant that it requires proof by evidence, hence it could be argued in an appropriate forum let us say application for extension of time.

It is trite law that extension of time is a descretion of the court which is exercisable judiciously. Among the criteria looked at include; but to limited, length of delay, reason for delay, prejudice to opposing side is likely to suffer, likelihood of success of the matter for which the application is made and whether there are illegalities on the record.

There is a plethora of authorities on this position of the law including the case of **Lyamuya Construction Company Ltd vs The Board of Registered Trustees of Young Women Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported) where the court of Appeal provided the following guidelines for grant of extension of time;-

- a. The applicant must account for all the period of delay;
  - b. The delay should not be in ordinate;
  - c. The applicant must show diligence and not apathy negligence or sloppiness in the prosecution of the action that he intended to take;
- and

d. If the court feels that there are sufficient reasons such as the existence of a point of law sufficient importance such as the illegality of the decisions sought to be challenged.

These guidelines were restated in various cases including **Bruno Wencesalus Nyalifa vs The Permanent Secretary and Another**, Civil Appeal No. 82 of 2017, **Sebastian Ndaula vs Grace Rwamafe**, **Civil Application No. 4 of 2014 and Elfazi Nyatega and 3 others vs Caspian Mining Ltd**, Civil Application No. 44/08 of 2017 to mention a few.

In **Bruno Wenceslaus Nyalifa** (supra) the court of Appeal stated as follows;

*"Delay of even a single day, has to be accounted for otherwise there would be no proof of having rules prescribing periods within which certain steps have to be taken"*

It follows therefore, that the single delay day in this appeal has to be accounted for.

The respondent questions whether the Appellant can account for the delay in this appeal and her answer is in negative. I think she is right.

I say so because the forum for giving evidence showing the good cause for delay is in an appropriate application where parties can give evidence to prove their contentions.

In a case of **Aidan Chale vs Republic** [2005] TLR this court entertained an appeal which was filed out of time on good cause. The Court of Appeal of Tanzania said as follows;

*"We think that there is nothing inherently wrong in a court to which an application has been made to consider all or any of those matters as "good cause" for admitting an appeal out of time. But we have to come back to the same point that a court should not act suo motu in favour of a party by assuming the existence of request to extend the period limited by statute for bringing on appeal to it".*

In this appeal although the Appellant has not asked to extend the time but insists that the appeal is within the time, he relies on facts needing evidence. Such evidence is proof that she was waiting for copies of judgment. My perusal of the record did not reveal anywhere that she had applied for it. Proof of application for copies of judgment does not only entitle a party to exclusion of time waiting for copies but also proves his diligence to follow-up his or her right.

I therefore, agree with the Respondent that in order for the Appellant to prove that he or she did apply for copies and that the same were



supplied to her on 25/11/2021, needs a proper forum in an appropriate application for extension of time where she can present her evidence.

The facts as stand now, the appeal was late by one day. Therefore, it was filed out of time of 60 days prescribed for filing appeals in High Court for Appeals emanating from Ward Tribunals.

Consequently, I do hereby strike out the purported appeal for been time barred. Having found that the appeal is incompetent and struck out the same, then I need not go into the merits of the purported appeal.

Costs to be borne out by the Appellant. Order accordingly.



  
**F.K. Manyanda**

**Judge**

**6/6/2022**