

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

**(IN THE DISTRICT REGISTRY OF DAR ES SALAAM)**

**AT DAR ES SALAAM**

**LAND APPEAL NO. 6 OF 2021**

**YAKOUB SHAAME MOHAMED ..... APPLICANT**

**VERSUS**

**TUM ABDI ALLY .....1<sup>ST</sup> RESPONDENT**

**VUMBI MSHAM ..... 2<sup>ND</sup> RESPONDENT**

**ASHA KILINDO ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

28<sup>th</sup> February, & 23<sup>rd</sup> March, 2021

**ISMAIL, J.**

This appeal arises from the decision of the District Land and Housing Tribunal for Temeke at Temeke, in respect of Land Application No. 282 of 2017. The 1<sup>st</sup> respondent, then featuring as the applicant, moved the Tribunal to declare that she is the lawful owner of a piece of land, located at Kijaka, Kimbiji, within Kigamboni Municipality, in Dar es Salaam Region.

The trial proceedings proceeded ex-parte, following non-appearance of the appellant and 2<sup>nd</sup> and 3<sup>rd</sup> respondents, all of whom were allegedly served with notices of hearing. At the end of the trial proceedings, the

Tribunal declared the 1<sup>st</sup> respondent as the lawful owner of the land in dispute. The decision irked the appellant, hence his decision to institute the instant appeal. The memorandum of appeal has eight grounds of appeal.

The appeal is facing a formidable impediment by way of a preliminary objection filed by the 1<sup>st</sup> respondent. The contention is that the appeal is time barred.

Pursuant to an order dated 28<sup>th</sup> February, 2022, the preliminary objection was disposed of by way of written submissions. Submitting in support of the preliminary objection, Mr. Omar Abubakar Ahmed, counsel who represented the 1<sup>st</sup> respondent, argued that the appeal was filed on 13<sup>th</sup> July, 2020, two years since the decision sought to be challenged was delivered. The decision was delivered on 30<sup>th</sup> May, 2018. In learned counsel's view, the provisions of section 41 (2) of the Land Disputes Courts Act, Cap. 216 R.E. 2019, were flouted as time prescription for appeals under the said provision is 45 days after the date of the decision.

He prayed that the appeal be dismissed with costs.

For his part, the appellant was adamant that the appeal is timeous. His view was premised on the fact that, oblivious of the date on which the decision was delivered, he was supplied with a copy of the judgment on 29<sup>th</sup> May, 2020. He took the view that days prior to being supplied with a copy

of the decision ought to be excluded, consistent with the requirement set out under section 19 (5) of the Law of Limitation Act, Cap. 89 R.E. 2019.

From the parties' brief encounter with each other, the question is whether the appeal is time barred.

Prescription of time for appeals originating from the Tribunal is provided for under section 41 (2) of Cap. 216, which states as follows:

***"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."***  
[Emphasis supplied].

From this excerpt, computation of time starts from the date on which the decision was delivered. In our case, forty-five days ought to have run from 30<sup>th</sup> May, 2018. The appellant contends that he was not served with the notice of the decision and that he came to know of the case on 29<sup>th</sup> May, 2020.

While it may be true that he got wind of the adverse decision on 29<sup>th</sup> May, 2020, there is no proof that a copy of the said decision was served on the appellant on the same day. But even assuming that it was supplied on the date that the appellant alleges it was, two things emerge. **One**, that

exclusion of the days would only occur in respect of the days before which the said decision was ready for collection. In our case, it is not known when exactly the decision was ready for collection. **Two**, that resort would be had to the day on which the decision was certified. In the instant case, the only available date on which to gauge timeliness of the appeal is the date on which the decision was certified. A glance at the decision shows that the same was certified on 28<sup>th</sup> August, 2018. This means that computation forty-five days begins on 28<sup>th</sup> August, 2018, and this is consistent with the Court of Appeal's decision in **Samuel Emmanuel Fulgence v. Republic**, CAT-Criminal Appeal No. 4 of 2018 (unreported). In the said decision, a similar issue arose and it was addressed as follows:

*"The record is silent as to when the proceedings were ready for collection. Nonetheless, the judgment of the Resident Magistrate Court was certified and was ready for collection on 28<sup>th</sup> day of October, 2015. The period from the date of acquittal of the appellant, that is, 21<sup>st</sup> day of August, 2015 to the date the certified copy of the judgment was ready for collection, that is, 28<sup>th</sup> day of October, 2015, is excluded in computing the forty-five days. As such the respondent ought to have filed its appeal latest on 13<sup>th</sup> day of December, 2015. It follows then that the petition of appeal filed on 26<sup>th</sup> day of February, 2016 was filed out of time. The High Court*

*ought not to have entertained the appeal as it was time barred."*

See also: ***Aidan Chale v. Republic***, CAT-Criminal Appeal No. 130 of 2003; and ***Director of Public Prosecutions v. Moris Odonya @ Odhiambo***, HC-Criminal Appeal No. 152 of 2019 (unreported).

This would take the appellant up to 12<sup>th</sup> September, 2018, to institute the appeal to this Court. Instead, the instant appeal was filed 23 months later, meaning that it is inordinately outside the time prescription. As the 1<sup>st</sup> respondent contended, the said appeal is incompetent.

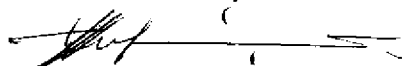
The next logical question relates to the consequence of the time barred appeal. The 1<sup>st</sup> takes the view that the appeal should be dismissed with costs. I fully subscribe to this contention. The only remedy available, in the circumstances, is to invoke section 3 (1) of Cap. 89 which provides as hereunder:

*"Subject to the provisions of this Act, every proceeding described in the first column of the 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.**"* [Emphasis supplied]

I, consequently, sustain the objection and order that the appeal be dismissed with costs.

Order accordingly.

DATED at **DAR ES SALAAM** this 23<sup>rd</sup> day of March, 2022.



**M.K. ISMAIL**

**JUDGE**

