

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

IN THE SUB - REGISTRY OF MWANZA

AT MWANZA

MISCELLANEOUS LAND APPEAL NO. 04 OF 2022

*(Arising from Land Appeal No. 120/2013 and Originating from the Land Application
No.4/2013 before Hungumalwa Ward Tribunal)*

PETER SAMWEL.....APPELLANT

VERSUS

JAMES MATHAYO.....RESPONDENT

RULING

13th & 27th June, 2022

Kahyoza, J.:

Peter Samwel instituted a Land dispute in the Ward Tribunal of Hungumalwa against **James Mathayo**. He emerged successful. Aggrieved James Mathayo appealed to the District Land and Housing Tribunal (the DLHT). The DLHT overturned the decision of the ward tribunal by declaring **James Mathayo** owner of the suit Land.

Dissatisfied, **Peter Samwel** delayed to appeal to this Court. He applied for leave to appeal out of time, the prayer, which this Court granted on **17th November, 2020** in the presence of both parties.

On the **14th day of August, 2021** **Peter Samwel** instituted the current appeal by lodging petition of appeal to the DLHT. Before hearing the appeal commenced, **James Mathayo** raised a preliminary objection to the effect that the appeal was lodged out of time. He prayed the appeal to be dismissed with costs.

Peter Samwel conceded that it was true that he lodged the appeal out of time. He argued attributed the delay to the DLHT, which did not supply him copies of judgment and decree on time.

In his short rejoinder, **James Mathayo** submitted that **Peter Samwel** was not diligent to pursue his case. He was delaying at different stages of the case. He also added that Peter William was not required to seek for any other documents as his evidence was recorded at the ward tribunal.

The record shows that **Peter Samwel** was granted leave to appeal out of time on 17th November, 2020. The Court did not state time within which **Peter Samwel** was required to lodge the appeal, hence, he was

required to appeal within 60 days from 17th November, 2020. There is no dispute that 60 days expired on 16/01/2021.

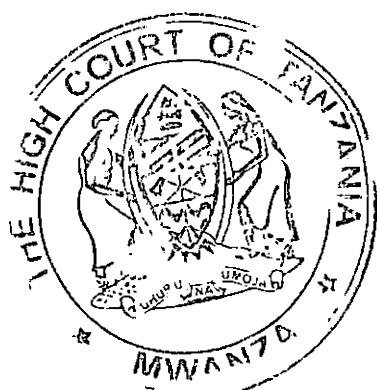
Fortunately for **Peter Samwel**, 16/01/2021 was a Saturday, "*dies non*" so 60 days expired on 18/01/2021. Thus, on 14/08/2021, when Peter filed his appeal, he did so after expiry of time limit. **Peter Samwel** submitted that he delayed to appeal because the DLHT supplied him documents of appeal belatedly. **Peter Samwel** delayed to institute an appeal for more than 7 months. I agree with **James Mathayo** that **Peter Samwel** was no diligent. A diligent litigant cannot delay for such a long time to appeal. I was not convinced that **Peter Samwel's** delay to appeal was caused by the DLHT, which delayed to give him copies of judgment and decree for the reasons; **one**, that the record showed that the tribunal certified the judgment on 06/10/2014. It implies that the DLHT's judgement was ready for collection from 06/10/2014. Not only that but also, **Peter Samwel** annexed a copy of the judgment and decree to the application for extension. **Peter Samwel** filed his application for extension of time on 13/06/2018. He had copies.

Two, even if he had no copies of judgment and decree that was not a bar to institute an appeal. There is no law requiring a person appealing

from the decision of DLHT in exercise of its appellate jurisdiction to attach a copy of the judgment and decree.

In the end, I uphold the preliminary objection that the appeal was lodged out time, hence, incompetent. Consequently, I dismiss the appeal with costs. It is ordered accordingly.

Dated at Mwanza this day of 27th June, 2022.



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J. R. Kahyoza
Judge

Court: Ruling delivered in the presence of the parties. Ms Jackline (RMA) present.

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J. R. Kahyoza
Judge
27/06/2022