

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(DODOMA DISTRICT REGISTRY)
AT DODOMA

LAND APPEAL NO. 56 OF 2020

HUSSEIN SAID AHMED (Administrator of the
estate of the Late ASHA ISMAIL) **APPLICANT**

VERSUS

STANLEY SHIRIMA (Administrator of the
estate of the Late PETER SHIRIMA) **RESPONDENT**

RULING

5/4/2022& 25/4/2022

MASAJU, J

The Appellant, Hussein Said Ahmed (the Administrator of the Estate of the late Asha Ismail), filed an appeal against the decision of the District Land and Housing Tribunal for Singida at Singida in Miscellaneous Land Application No. 79A/2017 which was decided in favour of the Respondent, Stanley Shirima (The Administrator of the estate of the late Peter Shirima.)

In reply, the Respondent filed reply to the Memorandum of Appeal against the appeal along with a Notice of preliminary objection on a point of law, thus;

"This appeal filed by the Appellant is hopelessly time barred".

The preliminary point of law was heard in the Court on the 5th day of April, 2022. Mr. Tadey Lister, the learned counsel appeared for the Appellant while the Respondent was advocated for by Mr. Mussa Chemu, the learned counsel.

The Respondent submitted in support of the preliminary point of law that the appeal is time barred contrary to section 41(2) of the Land Dispute Courts act [Cap 216 RE 2019]. That, the said law provides that any appeal arising from the decision of the District Land and Housing Tribunal should be lodged in the Court within 45 days from the date of the decision.

That, the impugned decision was passed on the 30th day of March, 2020. That, the Memorandum of Appeal was lodged in the Court on the 10th day of June, 2020. That means more than 70 days had already elapsed. The Respondent prayed the Court to dismiss the appeal with costs.

On his part, the Appellant contested the preliminary point of law and argued that, the matter is not time barred. That, Notice of Preliminary Objection appearing in reply to Memorandum of appeal is not a preliminary objection on point of law because the Respondent did not cite the law that has been contravened. The Appellant cited the case of **Mathias Ndyuki and 15 others Vs Attorney General (CAT) Civil Application No. 144 of 2015, Dar es salaam Registry** (unreported) to support his argument. The Appellant prayed the purported Notice of Preliminary Objection with its contents be struck out of the Court.

In the alternative, the Appellant submitted that the Ruling was delivered on the 30th day of March 2020 but the drawn order was extracted on the 8th day of April, 2020. That, the Drawn order need to be attached to the memorandum of Appeal. That, the Appellant thus filed Notice of Appeal

in the trial Tribunal on the 8th day of April, 2020. That, the Appellant then applied for copy of proceedings and Ruling of the trial Tribunal for appeal purposes. That, the Bill of payment of the said record of proceedings, Ruling and the Drawn Order were issued on the 7th day of May, 2020. That, the payment thereof was made through M-PESA on the 11th day May, 2020. That, the Ruling and Drawn order were served upon the Appellant on the 11th day of May, 2020. That, the time started to run against the Appellant on the 11th day of May, 2020 in accordance with section 19(2) of the Law of Limitation Act [Cap 89 RE 2019] which provides that the time for waiting for judgment and record of proceedings to be excluded from the time line for filing appeal or other remedies. That, the appeal was lodged on the 10th day of June, 2020 and the payment thereof was made on the 24th day of June, 2020. That, from the 11th day of May, 2020 to 10th day of June, 2020 is 28 days and from the 11th day of May 2020 to 24th day of April, 2020 is 43 days. Therefore in either of the two, the appeal was still within time. The Appellant prayed the preliminary objection raised by the Respondent be struck out of the Court and the appeal be heard on merit.

In rejoinder, the Respondent submitted that there was no legal need for citing the law in support of the preliminary point of law. That, this was to be cited when the preliminary point of law has been called upon for hearing. That, according to section 41(2) of the Land Disputes Courts Act (Cap 216] the Drawn order or Ruling were not necessary for purposes of lodging the appeal in time. The Respondent maintained his submissions that the appeal was filed out of time and prayed the appeal to be dismissed with costs.

That is what was shared by the parties in the Court.

The Appellant alleged to have been supplied with the copy of Ruling and Drawn order by the trial Tribunal on the 11th day of May, 2020. His allegations being supported by the Bill of Payment as it can be seen in the original record of the trial Tribunal. It is also evident that the Appellant filed Notice of Appeal in the trial Tribunal in time, on the 8th day of April, 2020 thus there is proof of his good intention in pursuing his right, the appeal in the Court.

Section 19(2) of the Law of Limitation Act [Cap 89] provides for exclusion of the time for obtaining copy of decision in computing the right time of filing an appeal. In that case, the trial court's Ruling and Drawn Order was supplied to the Appellant on the 11th day of May, 2020 and he filed his appeal in the Court on the timeline for filing an appeal in line with section 41(2) of the Land Disputes Courts Act [Cap 216] which is 45 days from the date of the decision of the District Land and Housing Tribunal.

That said, the purported preliminary objection on the point of law by the Respondent is hereby overruled accordingly in its entirety for want of merit. The parties shall bear their own costs.



GEORGE M. MASAJU

JUDGE

25/5/2022