

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MBEYA DISTRICT REGISTRY

AT MBEYA

LAND APPEAL NO 35 OF 2020

(Originating from Application No. 290 of 2019 in the District Land and Housing Tribunal for Mbeya)

1. SIWETU MBENDULE
2. ELICK NGELYAMA guardian of  
(suing on behalf of the minor) ENOCK NGELYAMA
3. ASIA KINDOLE
4. MONICA SHOLA guardian of  
(suing on behalf of the minor) NICKSON KAMWELA
5. ELIA IBRAHIM
6. ANTONIETHA DENYA
7. BARAKA ANDREAS NGELYAMA
8. STELLA MSELENGA
9. ADILI SHOMA NYUMILE
10. PHILIPO UHAGILE
11. PETRO ILAMWA
12. TUMPE TOSSY
13. BONITA NKANGA

APPELLANTS

VERSUS

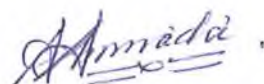
MADIBIRA AGRICULTURAL MARKETING COOPERATIVE

SOCIETY LIMITED..... RESPONDENT

RULING

A.A. MBAGWA J.

This ruling results from a preliminary objection raised by the respondent to the effect that the appeal is incompetent on the ground that it is time barred. The issue being on a point of law, this Court had to dispose it first before hearing the appeal on merits.



The advocate for the respondent raised two points of preliminary objection, but when the matter came for hearing, Mr. Twamalenke abandoned the second preliminary objection. He thus, remained with the first preliminary objection to the effect that;

**The appeal is incurable defective for being time barred.**

In arguing in support of objection, Mr. Twamalenke submitted that section 41(2) of the Land Disputes Courts Act provides forty five (45) days for lodging an appeal. He said that the present appeal was filed after almost forty nine (49) days as the decision appealed was delivered on 14/7/2020 while the appeal was lodged on 2/9/2020. He submitted that section 19(2) (3) of the Law of Limitation Act [Cap. 89 R: E 2019] provides for automatic exclusion of time where the necessary documents were supplied belatedly. He added that in this appeal the appellants lodged memorandum of appeal before they were supplied with copies of judgment, proceedings and order as the appeal was brought on 2/9/2020 whilst the attached order was signed on 8/9/2020. The respondent's counsel thus submitted that the appellants waived their right under section 19 of the Law of Limitation Act. The counsel insisted the computation of time starts running from the date of delivery the impugned decision. He finally prayed the appeal to be struck out with costs.



In reply, Baraka Chipamba, learned advocate submitted that they wrote a letter to be supplied with necessary documents and were supplied with certified copies on 8/9/2021. He said that section 19(2)(3) of the Law of Limitation Act excludes time spent for obtaining order. He was thus opined that since they were supplied with necessary documents on 8/9/2021, the time from 14/7/2020 to 8/9/2021 should be excluded. Mr. Chipamba added that memorandum of appeal is stamped 02/9/2020 while payment as per receipts was paid on 16/9/2020. He cited the case of **Adamson Mkodya vs Awadhi Komba**, Msc. Land Application No. 521/2018, High Court of Tanzania Land Division at Dar Es Salaam (Unreported) where it was held that where the date of presenting the document is earlier than the date of payment of court fees then the date of payment is taken to be a date of filling. He opined that they are entitled to automatic exclusion of time in terms of section 19 of the Law of Limitation Act. To further his argument, he relied on the cases of **The Registered Trustees of the Marian Faith Healing Centre @ Wanamaombi vs. The Registered Trustees of the Catholic Church Sumbawanga Diocese**, Civil Appeal No. 64 of 2006, Court of Appeal of Tanzania at Dar es salaam(unreported) and **Alex Senkoro & 3 Others Versus Eliambuya Lyimo (As Administrator of the Estate of Frederick Lyimo, Deceased)**, Civil Appeal No. 16 of 2017, CAT at Dar



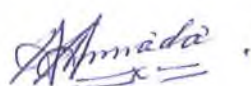
Es Salaam (Unreported). He emphasized that the appeal is within time and prayed the court to overrule preliminary objection with costs.

In rejoinder, Mr. Twamalenke insisted the appeal is time barred. He also distinguished the cases cited by the appellant's counsel.

I have canvassed the arguments by both counsel on the issue and the available record. There is no dispute that the decision from which this appeal arises was delivered on 14/7/2020 in the District Land and Housing Tribunal for Mbeya in Application No. 290 of 2019. Further, it is common cause that the appellants wrote a request letter for copies of the proceedings, order and drawn order.

Counsels for the parties differ as to when the appeal was actually filed. Mr. Twamalenke submitted that the appeal was filed on 02/9/2021 before the appellants were supplied with certified copies of proceedings and drawn order and therefore the appellants waived their right to automatic exclusion of time whilst Mr. Chipamba held the view that although memorandum of appeal is purportedly stamped 02/9/2021, the court fee was paid on 16/9/2021 after being supplied with certified copies of proceedings and drawn order, hence the time started to run from 8/9/2021.

In resolving this issue, I found it prudent to revisit the laws governing land appeals in particular section 41(1) of the Land Disputes Courts Act



[Cap. 216 R:E 2019] which requires appeal to the High Court to be lodged within forty five (45) days from the date of the decision. Meanwhile, section 19(2)(3) of the Law of Limitation Act [Cap 89 R:E 2019] provides for automatic exclusion of time spent for obtaining copies of decree, order or judgment provided there is written request for the same. This was clearly stated in the case of **Valerie Mcgivern versus Salim Farkrudin Balal**, Civil Appeal No. 386 of 2019 CAT at Tanga (Unreported) where the Court held as follows;

*“Suffice to say, section 19(2) of LLA and the holding in the decision cited above reinforce the principle that computation of the period of limitation prescribed for an appeal, is reckoned from the day on which the impugned judgment is pronounced the appellant obtains a copy of the decree or order appealed by excluding the time spent in obtaining such decree or order. However, it must be understood that section 19(2) of LLA can only apply if the intended appellant made a written request for the supply of the requisite copies for the purpose of an appeal.”*

The law does not provide for circumstances in which automatic exclusion can be waived as contended by Mr. Twamalenke. The only condition imposed through case law is proof of the written request for the necessary documents. In fact, even the counsel for the respondent did not cite any authority to support his argument. The fact that the appellant had requested in writings to be supplied with proceedings, order and drawn order and the same were supplied on 8/9/2021, tells it all that the



time started to run against the appellants from 08/09/2021. The question as to when the appeal was filed need not detain me as it is settled law that a document is deemed to be filed in court when payment of court fee is done and the proof thereof is the exchequer receipt. See the case of **John Chuwa vs Anthony Ciza [1992] TLR 233** and **Msasani Peninsula Hotels Limited & 5 Others Versus Barclays Bank Tanzania Limited & 2 Others**, Civil Application No. 192 of 2006 CAT at Dar es Salaam (Unreported).


Since the appellants obtained certified copies of proceedings, order and drawn order on 8/9/2021 and court fee was paid on 16/9/2021 as exhibited by Exchequer Receipt No. 23493929, it goes without say that appeal was lodged within forty five (45) days provided by the law.

That said and done, the preliminary objection is found meritless. Consequently, it is hereby overruled. Costs to follow event.

It is so ordered.

Right of appeal fully explained.



  
**A.A. Mbagwa**  
Judge  
03/01/2022

Ruling delivered in the presence of the 2<sup>nd</sup> appellant Elick Ngelyama and Twamalenke counsel for the respondent this 3<sup>rd</sup> day of January, 2022.

A handwritten signature in blue ink, appearing to read 'A.A. Mbagwa', with a horizontal line underneath.

**A.A. Mbagwa**  
**Judge**  
**03/01/2022**