

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

AT DODOMA

LAND APPEAL CASE NO. 17 OF 2020

**(Originating from the Judgement delivered on 23rd December, 2019 by the
Dodoma District Land and Housing Tribunal before H.E. Mwihava in the Land
Case No. 57 of 2018)**

JOYCE ZAKAYO KAKWAYAAPPELLANT

VERSUS

ONESTORI SIRILI TARIMO..... 1ST RESPONDENT

DOMINICK MASSAWE..... 2ND RESPONDENT

MUVINA GENERAL SUPPLIES AND

COMPANY LTD..... 3RD RESPONDENT

JUDGMENT

19/5/2022 & 27/6/2022

KAGOMBA, J

The appellant, Joyce Zakayo Kakwaya, being aggrieved by the decision (judgment) of the District Land and Housing Tribunal for Dodoma at Dodoma (henceforth “Dodoma DLHT” or “trial tribunal”) has filed this Appeal based on five grounds, to challenge the impugned judgment of the Dodoma DLHT.

In the trial tribunal, the appellant sued her husband (1st respondent) and two others (2nd and 3rd respondents) vide Application No. 57 of 2018 for nullification of the sale and transfer of House No. 39 Block “F” Nkuhungu South in Dodoma Municipality (henceforth “the suit house”) from the 1st respondent to the 2nd respondent and that the title thereof be revert to the 1st respondent. She also prayed for an order of forceful eviction of the 2nd respondent from the suit house, among other orders.

The appellant had claimed that the suit house was a matrimonial property jointly owned by the 1st respondent and herself. After a full trial, the Dodoma DLHT found that the 1st respondent individually bought the suit house on 23/8/2010 and sold the same to the 2nd respondent on 19/8/2013. The trial tribunal also found the appellant’s case to be an afterthought, hence dismissed it with costs. It’s that decision of the trial tribunal which has prompted this appeal. The grounds of appeal are as follows:

1. That, the trial tribunal erred in law and fact by deciding that the suit house was mortgaged to the 2nd respondent without satisfaction of the spouse’ consent since the same is a matrimonial house which ought to be supported by the consent of the spouse.

2. That, the trial tribunal erred in law and fact by deciding that there was a sale agreement between the 1st respondent and the 2nd respondent without such an agreement being tendered in before it.
3. That, the trial tribunal erred in law and fact by deciding that the appellant knew the case between the 1st respondent and the 2nd respondent without having evidence to support the same.
4. That, the trial tribunal erred in law and fact by not taking into account the value of the premises in dispute as shown in the valuation report compared to the loan owed by the 1st respondent from the 2nd respondent.
5. That, the trial tribunal erred in law and fact by considering a **loan** and **sale** as the same thing while the two are quite different and have different procedures to execute.

On the date of hearing of the appeal, Mr. Emmanuel Bwile, learned advocate who appeared for the appellant, prayed to drop the third and fourth grounds of appeal and proceeded to submit on the first, second and fifth

grounds only. For a reason to be unveiled very shortly in due course, I shall not produce the arguments put forth by Mr. Bwile in his otherwise fairly loaded submission. Suffice to say at this juncture that, after Mr. Bwile had finished his submission in chief, Ms. Joanitha Paul, learned advocate representing the 2nd and 3rd respondents, who despite looking vividly tired for what naked eyes conveyed to us to be an advanced pregnancy and may she be blessed for that, she courageously made a very useful reply.

She fronted her concern that the appeal before the court was filed out of time. She briefly elaborated that, while the judgment of the Dodoma DLHT was delivered on 23/12/2019, the appeal was filed on 12/2/2020. Thereafter she proceeded with replies to the rest of the grounds along the line of what Mr. Bwile and Mr. Onestori Sirili Tarimo, the 1st respondent had submitted.

It is trite law that matters of law such as time limitation or jurisdiction, can be raised at any stage of the case. This was stated by the Court of Appeal in **Shahida Abdul Hassanal Kassam v. Mahedi Mohamed Gulamali Kanji**, Civil Application No.42 of 1999 (Unreported) and **R.S.A**

Limited v. Hanspaul Automechs Limited and Another, Civil Appeal No. 179 of 2016. In the latter case, the Court of Appeal held as follows:-

'It is settled law that, an objection on a point of law challenging the jurisdiction of the court can be raised at any stage, it cannot be gainsaid that it has to be determined first before proceeding to determine the substantive matter...

Thus, since the jurisdiction to adjudicate any matter is a creature of statute, an objection in that regard is a point of law and it can be raised at any stage'.

A similar decision was made in the famous case of **Tanzania-China Friendship Textile Co. Ltd v. Our Lady of the Usambara Sisters** [2006] TLR 70.

It's thus also a trite law that since the issue of time limitation has a bearing on the jurisdiction of the court, the same has to be determined first. For this reason, this court turned to determining whether the appeal was

filed within time or otherwise. A glance at the court's records confirmed Ms. Paul's concern. The impugned judgment of the Dodoma DLHT was delivered by Hon. H.E. Mwihava, Chairman, on 23/12/2019 while this appeal was filed on 12/2/2020, being fifty-one (51) days after the judgment. This being a land dispute originating from the Dodoma DLHT in exercise of its original jurisdiction, the provision of section 41 of the Land Disputes Courts Act, [Cap 216 R.E 2019] (henceforth "the **LDCA**") is applicable. The law provides in the cited section 41 as follows: -

" 41. Appeals and revision

(1) Subject to the provisions of any law for the time being in force, all appeals, revisions and similar proceeding from or in respect of any proceeding in a District Land and Housing Tribunal in the exercise of its original jurisdiction shall be heard by the High Court.

(2) 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 added in subsection (2)]

It is therefore clear that the law required the appellant to lodge her appeal before expiration of the statutory period of forty-five (45) days, which upon counting, the same elapsed on 6/2/2020. If a good cause for the delay was shown, the appellant could have been granted extension of time according to subsection (2) of section 41 of the **LDCA**. Since there was no such an application lodged and granted prior to the filing of the appeal, the jurisdiction of this court to determine this appeal becomes extinct, not even the overriding objective principle can rescue the situation.

In the case of **District Executive Director, Kilwa District Council v. Bogeta Engineering Limited**, Civil Appeal No. 37 of 2017 (unreported), the Court of Appeal observed, with regard to jurisdiction and time limitation in a similar matter, that:-

'The Court cannot have jurisdiction to entertain an appeal which is time barred and no extension of time has been sought and granted. We think the issue of time limit is not a technicality which goes against the just determination of the case or undermines the application of the overriding objective principle contained in sections 3A (1) and (2) and 3B (1) (a) of Act No. 8 of 2018.' [**Emphasis added**]

It is for lack of jurisdiction that all the others issues argued in this appeal shall not be deliberated upon.

The next issue is about the remedy for filing the appeal out of time. I have read the provisions of sections 3(1), 43 and 46 of the Law of Limitation Act [Cap 89 R.E 2019] (henceforth "**LLA**") as well as the provisions of the **LDCA**, on the remedy available. Section 3(1) of **LLA** requires dismissal of the proceedings instituted after the period of limitation. The provision however refers to limitation periods specified in the schedule to the **LLA**. In this case the time limitation is not provided for under the said schedule but in another written law, specifically section 41(2) of the **LDCA**. In this

situation it could be said that the remedy provided for under section 3(1) does not apply.

The above doubt on applicability of section 3(1) of **LLA** could be deepened by the provision of section 43(f) of **LLA** which excludes certain proceedings from the application of the **LLA**. It states that the Act (**LLA**) shall not apply to "*any proceedings for which a period of limitation is prescribed by any other written law, save to the extent provided for in section 46*".

Since as I have said, the period of limitation for filing an appeal from the trial Tribunal to this court is provided for under section 41 of the **LDCA**, the provision of section 43 of **LLA** could be interpreted to exclude the appeal in hand. However, since the exclusion under section 43 of **LLA** is qualified by the words "*save to the extent provided for in section 46*", the issue as to whether the appeal before the court should be dismissed, by invoking the remedy provided for under section 3(1) of **LLA**, has to be decided by interpreting section 46 of **LLA**. The provision of section 46 is quoted in full, for guidance and clarity;

'46. Periods of limitation prescribed by other written laws

Where a period of limitation for any proceedings is prescribed by any other written law, then, unless the contrary intention appears in such written law, and subject to the provisions of section 43, the provisions of this Act shall apply as if such period of limitation had been prescribed by this Act'.

[Emphasis added]

The **LDCA** does not provide for the consequences of an appeal filed out of prescribed time, neither does it specify or even imply, directly or indirectly that the provisions of **LLA** shall not apply. Under such circumstances, the provision of section 3(1) of **LLA** shall apply to provide remedy for late filing of the appeal, as if such period of limitation of forty-five days (45) has been provided for by the **LLA**.

It is worth noting that while Ms. Paul raised the issue of time limitation as the first point in her reply submission, Mr. Bwile did not bother to rejoin on it. I think he knew the appeal was out of time. If that is the case, he

should have known better the consequences and should have taken necessary steps to avert the same before filing the appeal.

That said, the appeal is accordingly dismissed with costs.

Dated at Dodoma this 27th day of June, 2022



A handwritten signature in blue ink, appearing to read "Abdi S. Kagomba".

ABDI S. KAGOMBA

JUDGE