

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)**

IN THE DISTRICT REGISTRY OF MUSOMA

AT MUSOMA

Misc. LAND APPEAL CASE No. 23 OF 2022

*(Arising from the District Land and Housing Tribunal for Mara at Tarime in
Land Appeal Case No. 156 of 2017, Originating from Baraki Ward Tribunal
in Land Dispute No. 20 of 2017)*

WAMBURA WARYOBA NYANGIRA APPELLANT

Versus

MUHERE MWITA MARWA RESPONDENT

JUDGMENT

22.08.2022 & 22.08.2022

Mtulya, J.:

An appeal was registered in **Land Appeal Case No. 23 of 2022** in Land Registry of this court protesting a Ruling of the **District Land and Housing Tribunal for Mara** (the district tribunal) which determined **Land Appeal No. 156 of 2017** (the appeal) emanated from the **Baraki Ward Tribunal** (the Ward tribunal) in **Land Case No. 20 of 2017** (the case) which was determined a dispute between Mr. Wambura Waryoba Nyangira (the appellant) and Mr. Muhere Mwita Marwa (the respondent).

After full hearing of the case, the ward tribunal came to its conclusion on the finality of the matter on 8th September 2017 and resolved in favour of the appellant. The decision was not

well received by the respondent hence preferred the documents of appeal at the district tribunal on 12th October 2017 within 45 days as per requirement of the law. However, the respondent declined to pay the prerequisite filing fees until on 13th November 2017, which was out of statutory time to file appeals in the district tribunals emanated from the ward tribunals.

Noting the fault, the respondent raised a point of preliminary objection protesting the jurisdiction of the district tribunal to determine a matter which was filed out of time. In order to substantiate his complaint, the appellant had cited the precedent in **The Board of Trustees of National Social Security Fund v. New Kilimanjaro Bazaar Limited**, Civil Appeal No. 16 of 2004. However, the objection was overruled by the district tribunal and reasoned, at page 3 of the Ruling, that:

...there was internet problem on the side of our tribunal on the new paying system through Government Paying Gateway (GePE) hence all citizens were required to pay filing fees through the DLHT for Mwanza and even the appellant paid filing fees through DLHT for Mwanza, but they received his appeal on 12th October 2017 pending payment of the filing fee through DLHT for

Mwanza. With the above reason, the appellant appeal was filed on time, but the problem was on the side of the DLHT for Tarime...it is for the foregoing reason the preliminary objection raised by the respondent is hereby dismissed.

The appellant did not agree with the interpretation of the district tribunal hence rushed in this court complaining on the subject and prayed this court to state on proper interpretation of the law on: when is the appeal is said to have been lodged in the district tribunal with regard to the day of receipt of relevant documents of an appeal and date of the payment of the necessary fees.

It was fortunate that both parties were aware of the various precedents of this court and Court of Appeal (the Court) in a bunch of precedents which stated that it is a settled law that an appeal is deemed to have been lodged when court fees have been fully paid (see: **John Chuwa v. Anthony Ciza** [1992] TLR 233, **Suzani Rose Sanga v. Mussa Seleman Mbwana**, Civil Appeal No. 296 of 2020 and **Misungwi Shilomba v. Kanda Njile** (pc) Civil Appeal No. 13 of 2019).

Today morning when the parties were called to argue the present appeal in this court, the respondent decided to hire the legal services of learned counsel Mr. Yessey Simeon Lubanda to argue the appeal on his behalf whereas the appellant appeared in person without any legal representation. However, after short consultations, discussions and brief submission of the appellant, Mr. Lubanda decided to concede the appeal, but complained that the fault was caused by the district tribunal and this court may issue necessary orders to the district tribunal for interest of justice of the parties.

Finally, Mr. Lubanda prayed the appeal be allowed without any costs as he was a gentleman in conceding the appeal and intends to file fresh and proper application for enlargement of time in the district tribunal duly attached with an affidavit of the tribunal's clerk who had caused all the fracas in the delay. However, the said prayer or costs was protested by the appellant arguing that he has been following up and appearing for the case from Ifakara with a lot of costs.

In my considered opinion, the question which this court was invited to reply has already been determined and received a reply of the Court, based in Tanga Registry on 20th August 1992

in the precedent of **John Chuwa v. Anthony Giza** (supra) when it held that:

...the date of filing the application is the date of payment of necessary court fees, and not that of the receipt of the relevant documents in the registry.. An affidavit of a person so material, as the cashier in this case, has to be filed.

This passage shows the directive of the Court on the subject and this court and the Court itself have been following the directives without any reservations clauses. This cannot be altered after good thirty (30) years. There may be good reasons to depart from the practice, especially after introduction of new science in our registries, but this court has no mandate to do so. In any case, after introduction on filing science in our registry, this court had already issues directives on how to align with the new technologies in our registries (see: **Emmanuel Nakundize & Others v. Aloysius Benedictor Rutaihwa**, Misc. Land Appeal Case No. 26 of 2020; **Mwaija Omary Mkamba v. Mohamed Said Msuya & Others**, Land Application No. 142 of 202; and **Chris George Kasalile v. Tanzania Institute of Education & Another**, Misc. Cause No. 26 of 2022).

Having said so, I have decided to quash the decision and set aside proceedings of the district tribunal in the application for want of proper application of laws regulating time limitation in land matters. The respondent, if so wish, may file an application for enlargement of time attached with relevant materials to persuade the district tribunal to decide in his favour. This court cannot, in cases like the present one, issue other necessary orders to the district tribunal than setting aside the proceedings and quashing the decision.

I am aware the parties were in dispute since 2017 and the appellant complained on costs incurred in the case, but this court has a practice of declining costs in circumstances where officers of this court concede obvious points of law and in a situation where a dispute may raise again to identify the rightful owner of the disputed land. I award no costs in the present appeal. Each party shall bear its own costs.

Ordered accordingly.

A blue ink signature of F. H. Mtulya, written in a cursive style with a long horizontal stroke extending to the right.

F. H. Mtulya

Judge

22.08.2022

This judgment was delivered in chambers under the seal of this court in the presence of the respondent's learned counsel Mr. Yessey Simeon Lubanda and in the presence of the parties, Mr. Wambura Waryoba Nyangira and Mr. Muhere Mwita Marwa.



F. H. Mtulya

Judge

22.08.2022