

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(LAND DIVISION)  
AT DAR ES SALAAM  
LAND APPEAL No 18 OF 2021

MICHAEL MICHAEL CHILONGOZI ..... APPELLANT  
VERSUS

MARIA STEPHEN MLAMBITI ..... RESPONDENT

(Being an appeal from the Judgment and Decree of the District Housing  
and Land Tribunal for Ulanga District at Mahenge)

(Hon. R.W. MMBANDO-CP)

Dated the 26th day of October, 2020

in

Land Application No. 04 of 2020

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**RULING**

Date of Last Order: 23/02/2022 &

Date of Ruling: 18/03/2022

**S.M. KALUNDE J**

This is a ruling in respect of a preliminary objections on a point of law raised by the respondent against an appeal filed before this Court by the appellant. Aggrieved by the decision of District Housing and Land Tribunal for Ulanga District at Mahenge ("the trial tribunal"), in Land Application No 04 of 2020, dated 26<sup>th</sup> day of October, 2020, the appellant lodged the present appeal. on being served with the petition of appeal, the respondent filed their reply. Together with the reply, the

respondent filed a Notice of Preliminary raising two points of law namely: -

- 1. That, this appeal is bad in law as it contravenes the dictates section 38 (2) of the the Land Disputes Courts Act [Cap. 216, R.E. 2019] which requires every appeal to the High court shall be by way of petition of appeal and shall be filed in the District Land and Housing Tribunal from the decision or order which the appeal is brought; and*
- 2. That, the appeal is bad in law as it is time barred.*

Leave was granted that the preliminary objections be argued by way of written submissions. Submissions of the respondent were drawn and filed by **Mr Paschal Paschal Luhengo**, the learned counsel; whereas those of the appellant were drawn and filed by learned counsel **Mr. Mohamed Mkali**. I thank both counsel for being of assistance in the resolution of this legal dispute.

At the outset, Mr. Luhengo intimated of his desire to abandon the first point of objection, he preferred to proceed on the last ground. The last point raised an objection that the present appeal was time barred. In support of the above-mentioned point,

the counsel informed the Court that in terms of the provisions of section 41 (2) of **the Land Disputes Courts Act [Cap. 216, R.E. 2019]** (henceforth "the LDCA") the present appeal was time. The counsel submitted that according to the respective provision an appeal ought to have been filed within 45 days from the date of the impugned decision. In elaborating his position, he argued that the impugned decision was delivered on 26<sup>th</sup> day of October 2020 whilst the present appeal was filed 4<sup>th</sup> February 2021. His view was that, by the time the appeal was filed the appellant was late by at least some 53 days from the date of the impugned decision. He added that even assuming that the limitation period started to run on 17<sup>th</sup> December, 2020, the appeal was still late by almost five (5) days. Relying on the above submissions he prayed that the appeal be dismissed.

In response, Mr. Mkali argued that there was no disputed that the decree was extracted on 17<sup>th</sup> December, 2020. He added that the appellant collected the same on 23<sup>rd</sup> December, 2020 and filed the appeal on 4<sup>th</sup> February, 2021. The counsel intimated that counting from the 23<sup>rd</sup> December, 2020 when he received the copies he was well within time when he filed the appeal. In

addition to that the counsel cited section 19(2) of **the Law of Limitation Act, [Cap. 89 R.E. 2019]** (henceforth "the LLA") for the position that filing the period between delivery of the impugned decision and obtaining should be automatically excluded from the limitation period. The counsel added that since the appellant filed the appeal electronically (E-filing) sometimes in January, 2021 and subsequently presented the hard copies on 04<sup>th</sup> February, 2021, he was well within the prescribed limitation period. To cement his position, he cited the decision of this Court in the case of **Felix Ezekiel Maketa & Another vs. Tanzania International Container Terminal Services (TICTS)**, Labour Revision No. 147 of 2020 (unreported) and rules 8 and 21(1) of **the Judicature and Application of Laws (Electronic Filing) Rules, 2018, G.N. No. 148 of 2018**. He prayed that the objection be overruled with costs.

In re-joining the counsel for the respondent was of the view that the exclusion of the period for waiting the decision of the trial tribunal was not automatic. Imploring that the appellant ought to have applied for extension of time. Otherwise, he

recapped his submission in chief and prayed that the objection be upheld.

Having summed up the submissions of the parties, I gather that the remaining question for my determination is whether the objection raised by the counsel for the respondents is merited. I propose to start by looking at the governing law in relation to appeals originating from the District Land and Housing Tribunal. The applicable law is section 41(2) of the LDCA. For ease of reference the entire section 42 is reproduced hereunder:

*"41.-(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 is mine]

In terms of section 41(2) above an appeal to this Court from proceedings of the District Land and Housing Tribunal in

the exercise of its original jurisdiction shall be lodged within forty-five days after the date of the decision. However, the respective provisions and the entire LDCA does not outline the entire procedure for filing an appeal. It is for that reason that, in terms of section 51(1) of LDCA **the Civil Procedure Code, Cap 33 R.E. 2019** ("the CPC") is applicable in proceedings before the trial tribunal. The procedure for lodging appeals under the CPC is provided for under the provisions of **Order XXXIX Rule 1 (1)**. Under the said provision it is the requirement that a Memorandum of Appeal must be accompanied by a copy of the judgment and decree from which the appeal arise.

In appreciation of the fact that a party may fail, for one or more reasons beyond their control, to obtain a copy of the judgment and decree, section 19(2) of the LLA requires that the period spent awaiting judgment and decree be excluded. The section reads:

*"19(2) In computing the period of limitation prescribed for an appeal, an application for leave to appeal, or an application for review of judgment, the day on which the judgment complained of was delivered, and the period of time requisite for obtaining a copy of the decree or*

*order appealed from or sought to be reviewed, shall be excluded."*

[Emphasis is mine]

My examination of the above provisions leads me to a conclusion that the drafters and legislators of section 19(2) intended to provide an automatic exclusion of the time requisite to obtain the copy of the proceedings, judgment or order appealed. However, I should add that the automatic exclusion is available to a party who can demonstrate with evidence or present some materials from which the court may recon the important dates for appreciation of the timelines for calculation of the limitation period. This seems to be the view adopted by the Court of Appeal in the case of **Alex Senkoro & Others vs. Eliambuya Lyimo** (Criminal Appeal No.16 of 2017) [2021] TZCA 104; (13 April 2021 TANZLII).

I am also convinced that the situation is different to an individual intending to appeal and find themselves out of the 45 days outlined under section 41 of the LDCA. In the later they must apply for extension of time to lodge the petition of appeal.

In the present case, as rightly argued by the respondents, the records of appeal show that the decision of the tribunal that was appealed against was delivered on 26<sup>th</sup> day of October 2020. On the same day the counsel for the appellants requested to be supplied with copies of Judgment and Decree. Another letter was filed by the appellant himself on 04<sup>th</sup> November, 2020. The records show that the decree was extracted on 17<sup>th</sup> December, 2020. Applying the provisions of section 19(2) of the LLA to the above facts leads me to a conclusion that the period from 26<sup>th</sup> day of October 2020, when the decision was delivered, and 17<sup>th</sup> December, 2020 when the decree was extracted and made available for collection ought to be, and is hereby, excluded from computation of the period of limitation prescribed for an appeal under the provisions section 41(2) of the LDCA. On that account, in terms of section 19(2) of the LLA, the clock of limitation started to winddown against the appellaant from the 18<sup>th</sup> of December, 2020 and expired on 31<sup>st</sup> January, 2021.

Mr. Mkali contended that he collected the judgment and decree on 23<sup>rd</sup> December, 2020. However, when he lodged his appeal there was no information or materials supporting his



contention that he collected the said judgment and decree on the 23<sup>rd</sup> December, 2020. On another limb he contended that the appeal was filed electronically sometimes in January, 2021. Again, he could not provide any specific date or evidence that what he said is in fact a true representation of what happened. Looking at the circumstances, I have no material before to sufficient to reckon the timelines for computation of the limitation period. I say so because in the present case the 45 days limitation period expired on expired on 31<sup>st</sup> January, 2021 whilst the appeal was filed on 04<sup>th</sup> February, 2021. By the time the appeal was filed the appellant was out of time by at least 4 days. If the appellant indeed wanted to benefit from an automatic extension, he should have availed some materials to show when he collected the decision and the date when he made the online filing. However, that was not done. In absence of supporting information or evidence, the Court is left to second guess or believe the mere words of the appellant and his counsel. In the circumstances the appellant ought to have filed an application for extension of time. He did not do so, instead he decided to file the appeal without leave of the Court. In my view, that was not correct.

All said and done, I am inclined to agree with the respondents that the appeal was filed out of time and without leave of the court. Consequently, I uphold the second preliminary objection raised by the respondent. The appeal is dismissed with costs.

**It is so ordered.**

DATED at **MOROGORO** this **18<sup>th</sup>** day of **March, 2022**.

A handwritten signature in blue ink, appearing to read "S.M. Kalunde".

**S.M. KALUNDE**

**JUDGE**