

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(SUB - REGISTRY)

AT MOROGORO

LAND APPEAL CASE NO. 48 OF 2022

(From the decision of District of Land and Housing

Tribunal of Morogoro at Morogoro in case No. 81 of 2018)

HELENA AUGUSTINE..... APPELLANT

VERSUS

ANTONIA BENEDICT RESPONDENT

RULING

last order: 27.09.2022

Ruling: 07.10.2022

HASSAN, J

This ruling emanates as a result of preliminary objection raised by the Respondent Antonia Benedict through his representative one Mr. Nkamia to the effect that:

- 1. The appeal is time bared, contrary to Section 41(2) of the Land Disputes Courts Acts CAP 216 R.E 2019.*

At the hearing, the learned counsel Mr. Jerome Luanda appeared for the appellant while Mr. Gerald Nkamia appeared for the Respondent.

Arguing in supporting of preliminary objection, Mr. Nkamia submitted That the appellant had lodged an appeal out of time contrary to the Law. The judgment was delivered on 14th January, 2022, which up to 28th February, 2022 is forty-five days which is allowed in law.

He went on submitting that from 29th February, 2022 the appellant should have explain, as to why she did not appeal within the time. With that, he prayed to this Court to dismiss the appeal for being filed out of time with cost.

In reply Mr. Luanda Learned advocate for the appellant submitted by citing section S.41 (1) of the Land Dispute Court Act, Cap 216 [R.E.2019], which shows that the appeal from the District Land and Housing Tribunal (DLHT) shall be lodged within 45 days.

He also referred the court to S.19(2) of the Law of Interpretation of Law Act, (Chapter 89), which provide for the exclusion of the time when the copy of the Judgment is not received. He added that, the appellant had earlier requested the copy of the Judgment for four days unsuccessful. He also requested though a letter dated 8th January, 2022.

He further submitted that the Judgment was received on 28th March, 2022 after being certified. Therefore, counting the days, from

Right of appeal explained to the parties.



A handwritten signature in blue ink, appearing to read "S. H. Hassan", is written over the printed name.

S. H. HASSAN

JUDGE

07/10/2022

28th March, 2022 to 9th May, 2022, it will be 42 days which is within the time according to the Law of Limitation as under section 19(1), (2) provides:

"19(1) In computing the period of limitation for any proceeding, the day from which such period is to be computed shall be excluded.

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.

In supporting of his submission, the learned counsel draw authority to the case of **Bukoba Municipal Council Vrs New Metro Merchandise**, Civil Appeal No 374 /2021 (unreported), which reinforces the principle laid down under section 19(2) of the Law of Interpretation of Law Act, which allow automatic exclusion of period of time used to obtain a copy of the Judgment.

From the outset, Mr. Luanda prayed to the court to dismiss this preliminary objection with cost in order to avoid multiplicity and delay of the case in court.

Having gone through the rival submissions advanced by parties and the court records, I am on the view that the controlling issue for determination is whether the raised preliminary objection on point of law is meritorious.

As addressed above, it is very clear that the provisions governing the appeals, revision and similar proceedings from or in respect of any proceedings in DLHT in exercising original jurisdiction is under Section 41(1) and (2) of the Land Dispute Court Act CAP 216 [R.E 2019].

The Section 41(1) provide inter alia that;

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.

And in subsection (2) of the same Act provides that;

An appeal under subsection (1) may be lodged within forty-five days after the date of the decision or order:


Again, as I have enlightened hereinabove, section 19(2) (supra) comes in to offer more detailed information on how it should be, if there is a delay on the part of the court to disseminate copy of judgment or any other necessary documents depending upon the nature of the relief thought.

Now reverting to the respondent's submission, it is apparent from the record that the decision of DLHT was delivered on 14th January, 2022 in which date, up to 28th February, 2022 was forty-five days which is allowed in law. However, looking on the record of the judgment, it is vivid that the appellant received the certified copy of judgment on 28th March, 2022 and the appeal was lodged on 9th May, 2022. Thus, counting the days, from 28th March, 2022 to 9th May, 2022, it will be only 42 days which is well within the time stipulated. Here reference can be made at section 41(1) and (2) (supra).

Based on the foregoing, I found that the case referred by the advocate for respondent, that of **Bukoba Municipal Council Vs New Metro Merchandise, Civil Appeal No 374 /2021,** is applicable in this circumstance.

In my considered opinion and to the extent of my observation above, I find the notice of Preliminary objection fore-fronted by the respondent lacks merits and accordingly dismissed with cost.




S. H. HASSAN
JUDGE
07/10/2022