

IN THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
SUMBAWANGA DISTRICT REGISTRY
AT SUMBAWANGA
MISC. LAND APPEAL NO. 19 OF 2021

(Originating from Decision of the District Land and Housing Tribunal for Rukwa District at Sumbawanga in Land Appeal No. 01 of 2019 Land Dispute No. 01 of 2019 Mambwe Nkoswe Ward Tribunal)

EMMANUEL SIMFUKWE.....APPELLANT

VERSUS

TAKSON SIWALE.....RESPONDENT

JUDGEMENT

Date of last Order: 16/09/2022
Date of Judgment: 19/10/2022

NDUNGURU, J.

This is a second appeal. The matter has its genesis from Mambwe Nkoswe Ward Tribunal (henceforth the trial tribunal). At the trial tribunal the respondent herein successfully sued the appellant claiming ownership of piece of land. Dissatisfied the appellant unsuccessfully appealed to the District Land and Housing Tribunal for Rukwa (henceforth the Appellate Tribunal) as the appeal was time barred.

Aggrieved by the appellate tribunal decision, the appellant has preferred this appeal by lodging the following grounds of appeal;

- 1. That the trial tribunal erred in law and fact for not considering the evidence adduced by the appellant which show that he appealed on time.*
- 2. That he failed to file the appeal on time due to the reason that there was no internet to the District Tribunal which used to produce control number for the payment of application in the tribunal so it is not his fault.*
- 3. That on 26th December 2019 he lodged his appeal to the District Land and Housing Tribunal but there was no internet which can be used to give out a control number for appeal fee payment and the problem last until 6th January 2020.*

As this appeal was called on for hearing, both parties appeared in persons, unrepresented. The appellant prayed to this court for hearing of the appeal by way of written submission. This court ordered the case to proceed hearing by way of written submission and the court set a date for each party to file submission.

The appellant submitted that the appeal from Mambwe Nkoswe Ward Tribunal to the District Land and Housing Tribunal was well filed by the appellant on 26th December 2019 as the judgement of the Mambwe Nkoswe Ward Tribunal delivered on 15th day of November 2019 whereby 14 days lapsed the appellant appealed within time.

The appellant submitted that the delay shown in the District Land and Housing Tribunal are the mistake done by the registry instead of recording the date the appeal arrived to the registry the registry

recorded the date they stamped the document instead. He said in the District Tribunal there are illegalities to be challenged, he referenced the case of **Fatuma Mohamed vs Chausiku Selema**, Misc. Land Application No. 71 of 2019.

In this suit, the appellant submitted that the court registry recorded the date which show that the appellant lodged an appeal out of time while the appellant lodged his appeal within time. He argued that this is among the reason for this court to take into consideration and cure the defect caused by the District Land and Housing Tribunal. He urged this court to treat the mistake done by the District Land and Housing Tribunal under section 96 of the Civil Procedure Code, Cap 33 RE 2019. He referenced also the case of **Jewels and Antiques (T) Ltd vs National Shipping Agencies Co. Ltd** [1994] TLR 107.

He prayed this court to allow the appeal with costs by quashing the decision of the District Land and Housing Tribunal

In reply, the respondent submitted that the argument by the appellant lack merit. He submitted that if the appellant had appealed on 26th December 2019, then the said date would have appeared on his appeal which he lodged before the appellate tribunal. The date which the appellant inserted in his grounds of appeal before the appellate tribunal appear to be 6th January 2020. He submitted that this statement

refutes the fact that it was a mistake of the tribunal clerk because if it was a mistake of the clerk, the said date which the appellant argue of 26th December 2019 would have appeared in the said grounds of appeal

The respondent submitted that the date which the appellant claimed to have lodged his appeal which is 26th December 2019 was a public holiday upon which government offices are closed.

The respondent further submitted that the mistake on the part of the tribunal clerk cannot be called illegality. Illegality comes from the decision itself when it accompanied by errors of law or fact. He said the issue of illegality was supposed to be argued in application for extension of time.

He prayed for the appeal be dismissed as it lacks merit.

I have keenly followed the arguments of the both parties and I have read between the lines the appellant grounds of appeal and the entire proceedings of the tribunals below. The question for determination is whether the appeal has merit.

The main complaint by the appellant is that the District Land and Housing Tribunal dismissed his appeal which he filed on time.

The complaint prompted me to scan through the entire record of the proceedings in the both trial tribunal and the appellate tribunal.

Having so done, I find that the decision of the trial tribunal was delivered on 15th November 2019 while the appeal of the appellant was received and filed on 06th January 2020 at the appellate tribunal which is almost 52 days passed.

According to **section 20 (1)** of the Land Disputes Courts Act, Cap 216 provides that: -

"Every appeal to a District Land and Housing Tribunal shall be filed in the District Land and Housing Tribunal within forty-five days after the date of the decision or order against which the appeal is brought."

Without do much, the record is loud and clear that the appellant's appeal was filed out of statutory time of 45 days. The appellant ought to have filed first application for extension of time so as to be allowed to file his appeal out of time at the appellate tribunal. This appeal is therefore premature filed.

In view of the above reason, I have endeavored to assign in this judgement, I find no iota of merit in this appeal. It stands dismissed with costs.

It is so ordered.




D. B. NDUNGURU

JUDGE

19. 10. 2022

ORIGINAL