

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**MUSOMA DISTRICT REGISTRY**

**AT MUSOMA**

**LAND APPEAL NO. 124 OF 2021**

*(Arising from the decision of District Land and Housing Tribunal in Land Case  
No. 130 of 2020 of Musoma at Musoma)*

**CATA MINING LIMITED..... APPELLANT**

**VERSUS**

**OBETHO JOSEPH WEREMA..... RESPONDENT**

**RULING**

*26<sup>th</sup> & 31<sup>st</sup> October 2022.*

**M. L. KOMBA, J.:**

Origin of this appeal is a land dispute. Respondent was claiming in the District Land and Housing Tribunal for Mara at Musoma (the Tribunal) Land case No. 130 of 2020 that he is the lawful owner of the disputed land which appellant occupied without compensation. Respondent testified to the effect that he bought the disputed land from one Makoye Madimilo, producing his contract for sale and confirmed that the sale was blessed by the village council. He said the disputed area is now occupied by the appellant.

The appellant is a Mining Company which started mining activities in Kataryo village in 2015. In response to respondent assertion, the appellant confirmed that the disputed land did not belong to the Company neither to the

respondent but it belongs to Mr. Makoye. From this submission the Tribunal decided in favour of the respondent.

Undeterred, Fredrick Edward Mwacha Sindano decided to file the instant appeal which raises nine grounds of appeal that constitute the gravamen of this complaint. The appeal has hit a snag.

On 26<sup>th</sup> October 2022 when the appeal was fixed for hearing, the respondent, through Raphael Lukindi, learned Advocate presented a preliminary objection against the appeal on one point of law that the appeal is lodged out of time. As the practice of the Court, I had to determine the preliminary objection first before going into the merits or demerits of the appeal. That is the practice of the Court founded upon prudence which I could not overlook.

In arguing preliminary objection Mr. Lukindi explain in length his reason for saying that the appeal is out of time that the Tribunal delivered a judgment on 22/10/2021 and that according to law the appeal was supposed to be filled on or before 05/12/2021. Mr. Lukindi went on to submit that the appellant filed appeal on 07/12/2021 and the appeal is out of time for two days from the available 45 days.

The learned counsel for respondent continues to submitted that he is aware of the GN 247 and GN 248 both of 2018 regarding Electronic Filing of

documents and Electronic Payment both Rules are originated from the Judicature and Application of Laws Act, Cap 358. Counsel cited rule 21(1) which provides as to when the document is deemed to be filled, rule 3 mandatory of payment of fees while insisting that these two Government Notices must be read together.

Mr. Lukindi was of the submission that the petition of appeal show date of filling online is 03/12/2021, date of admission is 06/12/2021 and date of creation control number and date of payment is 07/12/2021. He said there are several court decisions in filling the gap as to when the document is file whether upon filling of the court fee or upon filing online and refer this court to the case **of Emanuel Bakundukize (Kendumuo) vs. Allosius Benedicto Rutabilwa** Land Appeal No. 26/2020 Bukoba (unreported) where Mtulya, J was discussing two school of thoughts over the issue and decided to accept the date when the exchequer receipt was issued. Mr Lukindi provided list of authorities in support his position including **Jones Lugakingira vs. Herbert Kairuki Memorial University** Labour Revision 247 of 2021 HC, **Fredic Edward Mwacha Sindano vs. Tabia Shabani Mwalemi and another** land Appeal No. 206 of 2021 HC Land Division, **Chris George Kasalile vs. Tanzania Institute of Education and AG** Misc. Cause 26/2022 HC Dar es Salaam, **Ahmed Mohamed Suu and**

**another vs. Mohamed Suu and two others** Civil Application 12/17/2019

CA Dar es Salaam. He concluded by saying the appeal is out of time and there is no extension of time preferred hence ought to be dismissed with costs.

In reply thereto, advocate for the appellant, Mr. John Never claimed that the appeal is not time barred as the same was filed on 03/12/2021 and that according to section 47 of Land Courts Act, Cap 216 (the Act) the same was supposed to be filed within 45 days. It was his submission that the appellant filed this appeal within 43 days that is, within prescribed time.

Mr. John request this court to read rule 3 of GN No. 148 where the word electronic filing is defined to mean the submission of documents through the electronic filing system, which means its via internet. He further subscribes to Rule 10(6) on the procedure for filling the document and insisting the court should note the use of word 'shall' as used in the rule. While distinguishing authorities relied by the respondent, he stresses this court to note the electronic filing date which is 03/12/2021 and the appeal is not time barred on basis of rule 21(1) of GN No. 148 of 2018.

I have given careful deliberation to the arguments for and against the preliminary objection herein advanced by both learned counsel. Having done

so, it should be now opportune to determine the preliminary objection raised by the respondent's Advocate and the main issue for determination is whether the preliminary objection is meritorious.

To begin with, from the factual setting, it is beyond question that having heard the respondent's Advocate submission that the appeal is time-barred, I had to go through the court records to find out whether the appellant lodged the instant appeal within time. The time limit in filing the instant appeal is prescribed under section 41 (2) of the Act. I wish to reproduce it hereunder for ease of reference;

*" (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]*

The record of present appeal show that the judgement was delivered on 22/10/2021, that being the position as rightly argued by the both counsel, the appeal was required to be filled in court within 45 day as above quoted, that is on or before 05/12/2021. The court found that, although the appellant argued the petition of appeal was electronically filed on the court on 03/12/2021 the record further shows the petition was admitted on 06/12/2021 and online payment was done on 07/12/2021 after creation of

control number which was done on the same date. That being the position of the matter, the court has found the issue to determine here is whether the appeal was filed in court within or out of time prescribed by law.

The court has found our law recognizes electronic filing system as one of the means of filing cases in our courts. The position of the law is that, once a document has been submitted in the court through electronic filing system the same is considered to have been filed. This is provided under Rule 21 (1) of the Judicature and Application of Laws (Electronic filling) Rules, 2018 which provides that: -

*'A document shall be considered to have been filed if it is submitted through the electronic filing system before midnight, East African time, **on the date it is submitted**, unless specific time is set by the court or it is rejected.'*

The position of the law stated in the above quoted provision of the law has been followed by our courts in various cases, which some of them are the cases of **Rose Ongara and 2 Others v. National Health Insurance Fund, Labour Revision**. No.313 OF 2020 at DSM, **Kitumbo Security Company Limited V. Vimajo & Sons Limited**, Civil Appeal No. 12 of 2020, HC at Tabora (both unreported) and **Mohamed Hashil vs National Microfinance Bank Ltd (NMB Bank)** (Labour Revision 106 of 2020) [2020] TZHCLD 3789 (06 November) it was stated in the later case that the

document which has been filed through electronic filing system is considered to have been filed in court on the date it was submitted.

Provision of law is clear that the document is deemed to have been filed electronically on the date it is submitted. The court has considered the argument by the counsel for the respondent that, GN 148 must be read together with GN 147 about payment. According to him the document is said to have filled when court fee was paid. If that argument will be accepted then it should be taken the application was hopelessly filed in the court out of time prescribed by the law and the remedy available is to dismiss the application.

The court has failed to agree with respondent's counsel submission after seeing that, although it is true that court fee must be paid for the services rendered, the same should not be taken as a position to qualify in the filling process as there are two different Rules to that effect. If the intention of the maker was the rules to be used simultaneous, it could provide those requirements in one rule. Interpretation of electronic filling as provided in rule 3 when read together with rule 10 (6) and the stamp of the court on the petition of appeal, court has found that the appeal was filed in the court well within the time prescribed by the law and it cannot be said the petition

of appeal was filed in the court out of time as argued by the counsel for the respondent.

The court has considered the position of the law stated in the case of **Emmanuel Bakundukize (supra)** and the said case is distinguishable from the present one, in Bakundukize case the application was filed out of time and the payment was made on the same day. In the present case the petition was filed on time serve for the payment which was done two days later on the fault of the court. In **Fredric Edward Sindano case (supra)** respondent filed document electronically on 26/12/2021 but the system confirms that the same was filled on 24/09/2021 while the limitation according to law was on 12/09/2021, this is different from the objection at hand where the court stamp confirm the filling date was 03/12/2021. The same to the rest of authorities supplied by respondent are distinguishable and there is none among them which necessitated the two GN to be read together.

The court has come to its stance basing on position of the law under Rule 21 (1) of the Electronic Filing Rules is very clear and without any ambiguous that a document is considered it has been filed in the court on the date it was submitted through the electronic filing system, there is no any justifiable reason which can make the court to take the application at hand was filed



out of time. In the premises the court has found the preliminary objection raised by the respondent cannot be upheld.

Appeal as filled by the appellant to be determine on merit in expediate mode.

Objection overruled with costs.



NK

**M. L. KOMBA**

**JUDGE**

**31 October 2022**

**Court:** Ruling delivered on 31/10/2022 in chamber, counsel were remotely connected via teleconference and there fulltime in attendance.

NK

**M. L. KOMBA**

**JUDGE**

**31 October 2022**