

IN THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
SUMBAWANGA DISTRICT REGISTRY
AT SUMBAWANGA
MISC. LAND APPEAL NO. 20 OF 2021

(Originating from Decision of the District Land and Housing Tribunal for Katavi at Mpanda in Land Appeal No. 71 of 2020 Original Land Dispute No. 8 /2020 Majimoto Ward Tribunal)

ELIZABETH NG'OMBAYAPI.....APPELLANT

VERSUS

FLORA MAHIZI.....RESPONDENT

RULING

Date of last Order: 18/08/2022
Date of Judgment: 31/10/2022

NDUNGURU, J.

This is a ruling in respect of preliminary objection raised by the respondent's learned advocate challenging competence of this appeal for being filed out of prescribed time and as well the appeal did not adhere to proper procedure as required by law. The challenged appeal was filed in Court by the appellant on the 7th day of June 2021 seeking to challenge the decision of the District Land and Housing Tribunal for Mpanda at Katavi in Land Appeal No. 71 of 2020 delivered on 20th day of April 2021 that favoured the respondent one Flora Mahizi. The matter has its genesis from Majimoto Ward Tribunal (henceforth the trial tribunal). At the trial tribunal the appellant herein successfully sued the

respondent claiming ownership of piece of land. Dissatisfied the respondent successfully appealed to the District Land and Housing Tribunal for Katavi at Mpanda (henceforth the Appellate Tribunal) where the respondent was declared the rightful owner of the disputed piece of land.

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

- 1. That the Appellate Tribunal grossly erred in law by admitting new witnesses and evidence on its appellate level that were neither discredited nor present in the case of first instance and used it to determine the appeal in favour of the respondent.*
- 2. That the Appellate tribunal grossly erred in law and in fact for failure to clearly scrutinize that the trial tribunal did not divide the respondent's estate as inheritance but rather as a property acquired together by both parties to this suit through selling the cows that were left by the appellant's father.*
- 3. That the Appellate tribunal grossly erred in law and fact by quashing the decision of the ward tribunal whose main objective is to mediate the parties and hence it reached an amicable decision in favour of both parties.*

As this appeal was called on for hearing, the appellant was represented by Mr Peter Kamyalile, learned advocate whilst the respondent had a legal service of Mr Sindamenya, learned advocate. Mr Sindamenya raised point of preliminary objection touching the

competence of the appeal. With leave of the court parties agreed to dispose it by way of written submissions. Both parties filed their respective submissions as scheduled by this court.

In support of preliminary objection, as regards the ground that the appellant appealed out of time, Mr. Gadiel Sindamenya submitted that it is a principle of law that all parties aggrieved by the decision of any court/tribunal shall appeal in a period prescribed by the law of which with due regard on land matters is sixty days. He further submitted that the first appellate court delivered its decision on 20th day of April 2021 and the appellant appealed on 20th day of August 2021 four months later. He submitted that the appeal is against the dictate of provision of section 38 (1) of the Land Disputes Courts Act, Cap 216 RE 2019 which requires all appeals from the District Land and Housing tribunal to the High Court to be filed within sixty days.

As regards the ground that the appellant appealed without proper procedure, Mr Sindamenya submitted that it is requirement of the law that any aggrieved party has a right to appeal by way of petition filed in the District Land and Housing Tribunal where the order was made as per section 38 (2) of the District Land and Housing Tribunal. He said the appellant did not abide to the proper procedures of the law, thus prayed the appeal be dismissed.

In reply, Mr Kamyalile submitted that the appeal was filed within sixty days which is statutory time per section 38 (1) of the Land Disputes Courts Act, Cap 216. He said the decision subject to this appeal was delivered on 20th day of April and the appeal was filed on 7th day of June 2021, thus he said the appeal was filed within 48 days.

Mr Kamyalile submitted that the appeal was filed on 7th day of June 2021 and the payment was made on 11th day of August 2021 due to problem that occurred on government gateway at Katavi registry. The fact which is supported by the affidavit sworn by the Chairman of the District Land and Housing Tribunal of Mpanda at Katavi on 18th day of July 2022 and filed before the court on 27th day of July 2022. He prayed for the court to take judicial notice of it as per the case of **Atlantic Electric Ltd vs Morogoro Region Cooperative Union** [1984] Ltd [1993] TLR 12.

Mr Kamyalile submitted further that it is a trite of the law that parties to case cannot be punished by the mistake done by the court itself. He said the position was laid down in the case of **Ndo Africana Estate Ltd vs District Commissioner for Lindi District and Three Others**, Civil Application No. 12/07 of 2022.

Mr Kamyalile said based on the authority above it is unfair and unjust to penalize the appellant for the mistake that was done by District

Land and Housing Tribunal of Mpanda at Katavi which is beyond her control.

As regards the second ground, he submitted that appeal complied with all the requirement of the law as required by section 38 (2) of the Land Disputes Courts Act, Cap 216 2019. The petition of appeal was filed and received at District Land and Housing Tribunal of Mpanda at Katavi. The issue of dispatching the petition of appeal and record is the duty of the tribunal. Therefore, he said their non compliance is not the mistake of the appellant. therefore, the 2nd preliminary objection lacks merits. He prayed for the preliminary objection be dismissed with costs.

In rejoinder, Mr Sindamenya submitted that the appellant did not attach the receipt for the adverse party to contest. He further submitted that it was within time when he filed an application No. 20 of 2021 applying for execution of the same case in Mpanda Tribunal Registry and on the same occasion when the appellant received the application summons then the appellant rushed to the High Court to appeal so as to stop the proceedings of application for execution.

Mr Sindamenya contended that the affidavit sworn by the Chairman of the District Land and Housing Tribunal at Katavi dated 18th day of July 2021 was not served to them for contestation. He said the

same to cases referred to by learned counsel for the appellant were not served to them.

Having considered the arguments by the counsel for the parties on the preliminary objections, I remain with one main issue to consider that is, whether the appeal is time barred.

It is not disputed that the law governing this appeal is Land Disputes Courts Act, Cap 216 RE 2019 specifically **section 38 (1)** which reads;

"Any party who is aggrieved by a decision or order of the District Land and Housing Tribunal in the exercise of its appellate or revisional jurisdiction may within sixty days after the date of the decision or order appeal to the High Court Land Division."

Being guided by the above provision, any party aggrieved by the decision of the District Land and Housing Tribunal has to file to this court a petition of appeal within sixty days from the date of the decision sought to be challenged. The decision sought to be challenged in this matter was delivered on 20th day of April 2021, thus, the 60 days was

supposed to be counted from 20th April 2021 when the decision was delivered.

As regards when is the date of filing this appeal, I have two lines of arguments on this point. **One**, the respondent's counsel contended that the appellant filed her appeal on 20th day of August 2021 four months later after payment of fee. **Two**, the appellant's counsel contended that the appellant filed her appeal on 7th day of June 2021 when the petition of appeal was registered at the tribunal. Further learned counsel for the appellant acknowledged that fee payment was made on 11th day of August 2021 and the same was supported by affidavit sworn by the Chairman of the District Land and Housing Tribunal of Mpanda at Katavi dated 18th day of July 2022 where learned counsel urged this court to take judicial notice of it.

The fact that there was a problem on payment system does not in itself refute the fact that the appeal was filed out of time at the appellate tribunal. The reason as contained in the affidavit explaining failure to effect fee payment on time ought to have been applied in an application for extension of time as good cause for delay and not at this stage of appeal.

So, what is actual date of filing an appeal to this court? is it the date of registration of the petition of appeal at the tribunal or the date of fee payment.

This court being faced with similar situation in **Adamson Mkondya and Another vs Angelika Kokutona Wanga**, Land Application No. 512 of 2018 and **Came Oil (T) Ltd vs Bahati Moshi and Another**, Civil Appeal No. 46 of 2020, Mwanza concluded that, the matter is taken to be properly filed in court only after fees are paid, and that, the date of presentation of application for filing cannot be treated as the date for filing. Also, in the case of **John Chuwa vs Anthony Sizya** [1992] TLR 233 the Court of Appeal held that;

"According to the learned judge, the date of filing the application is the date of the payment of the fees and not that the receipt of the relevant documents in the registry. Mr. Akaro, learned advocate for the appellant, conceded that before me and I cannot fault the learned judge there."

Applying the above position in the cited authorities to the fact of this case, it is without doubt that in this case the appellant filed her appeal on 7th day of June 2021 and the payment of fee was made on 11th day of August 2021 the date which she was out of time for six days

as the days expired on the 5th day of August 2021. In the light of the foregoing the preliminary objection raised by the respondent has merit and I hereby uphold it.

Now what is the remedy for the appeal filed out of time? Under section 3 (1) of the Law of Limitation Act, Cap 89 RE 2019 is to have it dismissed. The provision reads:

3.-(1) Subject to the provisions of this Act, every proceeding described in the first column of the Schedule to this Act and which is instituted after the period of limitation prescribed therefore opposite thereto in the second column, shall be dismissed whether or not limitation has been set up as a defence."

The Law of Limitation Act under section 2 (1) defines the term proceeding as referred in the above provision to include appeals. The definition reads:

"Proceeding" means a suit, an appeal or an application, and includes proceedings under customary law;

In view of the above provision of the law and basing on the fact that the appellant in this appeal filed appeal out of prescribed time limitation without prior extension of time within which to appeal sought and granted by this court as per dictates of section 38 (1) of the Land Disputes Courts Act [supra], I am inclined to hold that the appeal was time barred and the same is hereby dismissed with order to costs.

It is so ordered.



D. B. Ndunguru
D. B. NDUNGURU

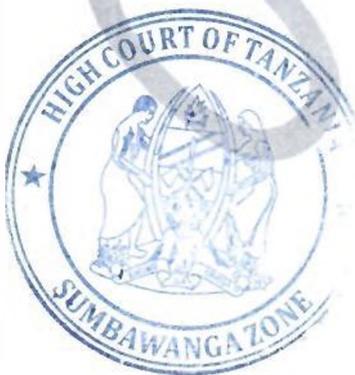
JUDGE

31. 10. 2022

Date - 31/10/2022
Coram - Hon. M.S. Kasonde - DR
For Appellant - Mr. Peter Kamyalile Adv.
Appellant -
Respondent - Absent
B/C - Zuhura

Mr. Peter Kamyalile - Advocate: This matter comes for Ruling and we are ready.

Court: Ruling delivered this 31st day of October, 2022 in the presence of Mr. Peter Kamyalile, learned advocate for the appellant and in absence of the respondent.




M.S. KASONDE

DEPUTY REGISTRAR

31/10/2022