

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**  
**(LAND DIVISION)**  
**(MOROGORO DISTRICT REGISTRY)**  
**AT MOROGORO**

**LAND APPEAL NO. 22 OF 2022**

*(Arising from the decision of District Land and Housing Tribunal for  
Kilombero in Land Appeal Case No. 409 of 2019 and Original Land Case  
No. 19 of 2019 of Malinyi Ward Tribunal)*

**EMMANUEL NGWENUKE..... APPELLANT**

**VERSUS**

**NISIFORI MRUNDI .....1<sup>ST</sup> RESPONDENT**

**HASSANI KIWELE.....2<sup>ND</sup> RESPONDENT**

**DANIEL KALIMANG'AS.....3<sup>RD</sup> RESPONDENT**

**RULING**

Date of last order: 27<sup>th</sup> October, 2022

Date of Judgment: 1<sup>st</sup> November, 2022

**MALATA, J**

This is a second appeal filed by the appellant, Emmanuel Ngwenuke in this Court on 27<sup>th</sup> July, 2020 challenging the Judgment and Decree of the District Land and Housing Tribunal for Kilombero/Ulanga District at Ifakara ("the DLHT) in Land Appeal No. 409 of 2019 delivered on 27<sup>th</sup> May, 2020. The first appellate tribunal dismissed the appellant's appeal for lack of merits while upholding the lower tribunal's decision. In his petition of appeal, the appellant was armed with four grounds.

On 5<sup>th</sup> October, 2021 the respondents conjointly filed a reply armed with a preliminary objection to the effect that, the Appeal was time barred, thence prayed the same to be dismissed with cost.

When this appeal called for hearing on 27<sup>th</sup> October, 2022 the appellant was absent but appeared through Ms. Josephine Mbena Learned Advocate while the respondents appeared in person. As matter of law, this Court decided to firstly deal with the preliminary objection.

Before submitting, the Respondents prayed to the Court for leave to allow the 3<sup>rd</sup> Respondent, Mr. Daniel Kalimang'asi to submit on the preliminary objection on their behalf. Reacting thereto, Ms. Mbena learned counsel had no objection. Thus, leave was accordingly granted. Impressively, Mr. Daniel Kalimang'asi submitted that the appeal before this Court is time barred as it has been filed beyond the mandatory prescribed period of time which is 60 days from the date of the decision.

Mr. Kalimang'asi continued to submit that, the Appellant is appealing against the judgment in Land Appeal N0.409 of 2019 by the District Land and Housing Tribunal for Kilombero from original Land Case No. 19 of 2019 of Malinyi Ward Tribunal. The impugned judgment was delivered on 27<sup>th</sup> May, 2020 and the present appeal was filed on 27<sup>th</sup> July, 2020 which is 61 clear days after the date of Judgment. As this appeal originated from Ward tribunal then it had to be filed within 60 days. He referred this Court to **Section 38(1) of the Land Disputes Courts' Act [Cap. 216 of 2019]**. He, finally pressed that, the appeal is time barred and asked the Court to dismiss it with costs.

Ms. Mbena for the appellant conceded that the appeal was filed beyond the time limit prescribed by the law which is sixty (60) days. However, it was contended that the time spent by the Appellant waiting to be supplied with copy of Judgment be excluded in accordance with section 19 (2) of the Law of Limitation Act, [Cap. 89 R. E. 2019]. Ms Mbena submitted on the basis that, Appellant could not have filed the

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appeal without Judgment. It was stated that the appellant applied for copies of judgment and proceedings on 20<sup>th</sup> July, 2020 and availed with on 27<sup>th</sup> July, 2020 and proceeded to file this Appeal on the same day. She asked the Court to exclude the time spent for waiting to be supplied with copy of Judgment.

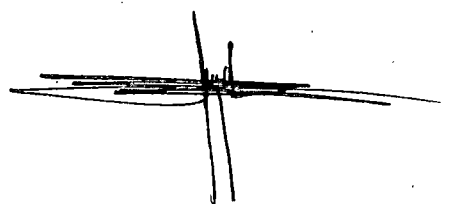
Ms. Mbena argued that, should the Court agree to the respondents then the remedy is not to dismiss but to strike it out. As to the prayed for costs, it was submitted that, it should not be imposed as the case is yet to be determined on merits. Finally, it was submitted that, the preliminary objection is misconceived thus need to be dismissed.

I have gone through the submissions made by Mr. Daniel Kalimang'asi on behalf of the Respondents herein and the opposing submissions made by Ms. Mbena learned Advocate for the appellant. Before proceeding to determine the matter, I find indebted to start by citing the cornerstone Section 38 (1) of the Land Disputes Courts' Act [Cap. 216 of 2019], which provides;

*"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;***

*Provided that the High Court may for good and sufficient cause extend the time for filing an appeal either before or after such period of sixty days has expired."*

As correctly submitted by respondents and conceded by the appellant, it is undisputed that the appeal was filed out time in contravention of section 38 (1) cited herein above. However, Ms. Mbena

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argued that if the Court excludes the number of days spent by the appellant struggling to obtain copy of Judgment and decree, then this appeal would be in time as per section 19 (2) of the Limitation Act, [Cap. 89 R. E. 2019] as it provides:

*"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 required for obtaining a copy of the decree or order appealed from or sought to be reviewed, shall be excluded".*

It is in this Court's firm view that, the requirement obtaining and attaching copy of judgment and decree to the petition of appeal on matters originating from ward tribunals is unfounded in law. What the law under section 38 (2) requires is filing a petition of Appeal in the District Land and Housing Tribunal which heard the appeal as first appellate tribunal. On receipt of the petition of appeal, section 38 (3) ***the Land Disputes Courts' Act [Cap. 216 of 2019]*** requires that;

*"Upon receipt of a petition under this section, the District Land and Housing Tribunal shall within fourteen days dispatch the petition together with the record of the proceedings in the Ward Tribunal and the District Land and Housing Tribunal to the High Court".*

Based on the above provision of the law, this Court finds that, there is no requirement of attaching judgment and decree to the petition of appeal but only to file petition with Tribunal and on receipt of the same dispatch the petition together with the record of the proceedings in the Ward Tribunal and the District Land and Housing Tribunal to the High Court.

As to the opinion by Ms. Mbena on invocation of section 19(2) of the Law of Limitation Act, [Cap. 89 R. E. 2019], this Court is of the firm legal position that, the same can only be invoked if the law requires attachment of Judgment and decree in filing petition of appeal. This is not one of the requirements in this kind of the petition under section 38 supra. As such the appellant's argument lacks legs to stand on thus no merits.

The fundamental question that needs to be answered is; what is the effect of this petition of appeal filed out of time limit?

In response thereof, I am guided by principles in **Civil Appeal No. 457 Of 2020 between North Mara Gold Mine Limited Vs Sinda Nyam Boge Ntora** (Court of Appeal unreported) while reconfirming its previous decision held that;

*With respect to the respondent's counsel, this has been our position in our previous decisions such as, **Hezron M. Nyachia v. Tanzania Union of Industrial and Commercial Workers & Another, Civil Appeal No. 79 of 2001** (unreported), cited in another unreported case of **The Director General NSSF v. Consolata Mwakisui**, Civil Application No. 329/01 of 2017. In the latter case we held: -*

***"It is important to state here that; the Court considered the effect of the application filed out of time in the High Court and its consequence under S. 3 of the Law of Limitation Act. The authority is therefore inapplicable to proceedings filed in this Court. The reason is that the Law of Limitation Act does not apply to such proceedings. In effect, whenever an appeal or application is filed out of time, the practice has been to strike it out".***

It is undisputed that, the present petition of appeal is before the High Court where the law of limitation Act is applicable in determining the effect of appeal which is time barred. It goes without saying therefore that, section 3 (1) of the Law of limitation Act, Cap.89. R.E. 2019 come into play. The section provides;

*"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.***

Further section 3(2) supra provides that

*For the purposes of this section a **proceeding** is instituted-*

*(a) .....*

*(b) in the case of an appeal, when the appeal is preferred either by filing a memorandum of appeal or in such other manner as may be prescribed by any written law;"*

Therefore, in response to above posed question on the effect of the appeal which is time barred, I am of the settled legal position that, the Appellant's petition of appeal has to suffer dismissal in line with the above principled of law and not striking out as suggested by Ms. Mbena learned Counsel for the appellant. I thus hold the same.

All said and done, I uphold the respondents' preliminary objection and dismiss the appeal with costs.

It is so ordered.

**DATED at MOROGORO** this 1<sup>st</sup> day of November, 2022.

  
G. P. Malata

**JUDGE**

01/11/2022

**Court**

Judgement delivered on 1<sup>st</sup> November, 2022 in chamber in the presence of Ms. Josephine Mbena for the appellant and Respondents in person.

  
G. P. Malata

**JUDGE**

01/11/2022

Rights of appeal explained to the parties.



  
G. P. Malata

**JUDGE**

01/11/2022