

**IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY OF DODOMA
AT DODOMA**

LAND APPEAL NO. 9 OF 2022

JARED YUNUS SHILLA.....APPELLANT

VERSUS

1. JEREMIA YUNUS SHILLA

2. JACKLINE AMRI

3. THOMAS YUNUS SHILLA

.....RESPONDENTS

(Appeal from the Judgment of the District Land and Housing Tribunal for
Iramba at Kiomboi)

(B. J. Shuma – Chairman)

Dated 06th December, 2021

In

Land Application No. 16 of 2020

RULING

26th September & 4th November, 2022

MDEMU, J:.

This is an appeal from Land Application No. 16 of 2020. Briefly, the Appellant filed an application against the Respondents praying for judgment and decree that he be declared a legal owner of a 5 acre's land located at Jengelungulu Village within Iramba District; a declaratory decree that the Respondents are trespassers in the suit land from 22nd June, 2022 onwards; an order of eviction of the Respondents and their

agents; an order of perpetual injunction permanently restraining the Respondents and their agents from occupying or claiming title of the suit property; payment of general damages and costs of this application.

The District Land and Housing Tribunal of Iramba (the DLHT) held that, the land belong to the late Yunus Shilla since the Appellant failed to prove ownership of the same. Aggrieved by that decision, the Appellants decided to file the instant appeal on nine grounds of appeal. The appeal has hit a snag. On 6th May, 2022 the Respondents lodged a notice of preliminary objection to the effect that the appeal is time barred.

When the matter was called for hearing of the preliminary objection on 26th September, 2022, the Appellant enjoyed the service of Mr. Thomas Kitundu, learned Advocate whereas the Respondents was represented by Mr. Mwigamba, learned Advocate too.

In arguing the preliminary objection, Mr. Mwigamba stated that, the appeal is out of time because the judgment of the DLHT was delivered on 6th December, 2021 while this appeal was filed on 11th February, 2022 in which, according to the law, the appeal was to be filed within forty five (45) days from the judgment, date. In the record, the Appellant filed his appeal after twenty (20) days from the time limit of forty five (45) days.

It was his submissions that, the Appellant ought to have applied for leave to appeal out of time instead of appealing without leave. He prayed the Court to dismiss the appeal by citing the case of **Alex Maganga vs. Abubabakri Mkikite & 2 Others, Misc. Land Application No. 274/2020** (unreported).

In reply thereto, Mr. Kitundu submitted that, appeals from the DLHT in exercise of original jurisdiction are governed by Section 41 (1)(2) of Cap. 216 and not section 52(2) of the Land Disputes Courts Act as submitted by Mr. Mwigamba.

He argued that, the appeal is in time because the decision was delivered on 6th December, 2021 and the Appellant was supplied with the copy of judgment and decree on 14th of January, 2022 following his application of such documents made on 08th December, 2021. He argued to have filed the appeal online (JSDS) on 19th January, 2022 at 13:16 hours and it was admitted the same day and paid the fees to that effect on 20th January, 2022 at 11:04 hours. He said therefore, according to Rule 21 (1) of the Judicature and Application of Laws (Electronic Filing Rules) 2018, GN. No. 148 of 2018 and the case of **Mohamed Hashim vs. National Microfinance Bank Ltd, Revision No. 106 of 2020** (unreported), the law was complied with.

He expounded further that, parties are required to pay necessary fees after electronic filing as per the case of **Mustapha Bway Akunay vs. Mosses Meinat Laizer & Others, Land Reference No. 06/2020** (unreported) and that of **Matoto Matoto vs. Makuru Ireya, Land Application No. 8/2021** (unreported).

It was his submissions further that, from 8th December, 2021 to 20th January 2022 during payment of fees it was within the 45 days. He added that, time is counted from the date he was supplied with the certified copies of judgment. He cited the case of **Registered Trustees of Marian Faith Healing Centre (Wanamaombi) vs. The Registered Trustees of the Catholic Church Sumbawanga, Civil Application No. 64/2006** (unreported) to bolster his assertion. He prayed that the objection be overruled with costs.

In rejoinder, Mr. Mwigamba conceded that the Law governing appeal originating from the DLHT to be Section 41 (1) and (2) of Land Courts Disputes Act and not Section 52 (2) of the same Act he submitted in chief. He argued that, the Court have to be guided by the documents filed in Court which shows that, the memorandum of appeal was filed on 11th February, 2022. He said, what Mr. Kitundu submitted are not part and parcel of pleadings. He added that, they raised the preliminary objection basing on the pleadings served.

On the point that time for obtaining copies of judgment be excluded, in his view is a reason to be advanced in an application for extension of time. He therefore argued the Appellant to apply first for extension of time and account for the delay thereto.

I have given careful observation to the arguments for and against the preliminary objection as advanced by both parties. Having done so, the issue for determination is whether the preliminary objection is meritorious. In Law, time limit in filing appeal to the High Court is prescribed under section 41 (1) and (2) of the Land Courts Disputes Act, Cap. 216 R.E 2019, that is, forty -five (45) days after judgment date. According to the record, the impugned judgment was delivered on 6th December, 2021. Counting the days, the last date of filing the appeal was to be by 20th of January, 2022.

The learned counsel for the Appellant line of argument is that, the appeal was filed electronically on 14th January, 2021. The procedure in filing appeal or application through electronic filing is governed by the Judicature and Application of Laws (Electronic Filing) Rules, 2018 specifically Rule 21 and 22 which provide that: -

"21 (1) A document shall be considered to have been filed if it is submitted through the electronic filing system before midnight, east Africa time, on the date it is

submitted, unless specific time is set by the Court or it is rejected".

"22 (a) where a document is filed with, serve on, delivered or otherwise conveyed to the Registrar or Magistrate in charge using the electronic filing service and is subsequently accepted by the Registrar or Magistrate in charge, it shall be deemed to be filed, served delivered or conveyed.

That being the legal position, the contention by the Appellant's counsel that he filed the appeal electronically on 14th January, 2022 is not tenable since the record does not support it. In my settled opinion, although filing matters in Courts electronically is currently recognized by our law, a party who files a matter through that mode is bound to do so according to the time limitation prescribed by the law. The record must also clearly indicate that compliance.

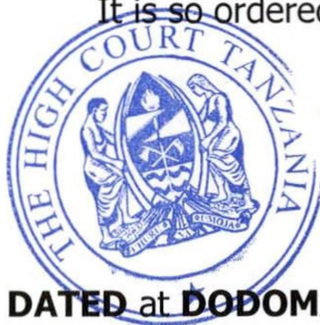
In the matter at hand, the Appellant did not at all produce any evidence of filing the appeal electronically on 14th of January, 2021 which is shown on the memorandum of appeal. The mere unsworn contentions by the Appellant's counsel from the bar cannot thus override what is shown in the record. Besides, the law guides that, Court records are presumed to be genuine and accurately representing what happened,

they cannot thus, be easily impeached unless there is evidence to the contrary. See **Halfan Sudi vs. Abieza Chichili [1998] T.L.R.0 527.**

It follows thus, since filing a matter electronically is a matter of fact, there must be evidence for proof thereof and not by mere averments. If that is not strictly observed, the law of limitation will be totally circumvented with impunity since feign litigants will simply take shelter under such loop holes.

In view of the foregoing observations, I am convinced that the appeal at hand is time barred. The objection is accordingly sustained. Remedy for the appeal which is time barred and filed without leave of the Court to extend time is to dismiss it, as I hereby do. Each part to bear own costs.

It is so ordered.



Gerson J. Mdemu

JUDGE

04/11/2022

DATED at DODOMA this 04th day of November, 2022



Gerson J. Mdemu

JUDGE

04/11/2022