

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(MOROGORO DISTRICT REGISTRY)

AT MOROGORO

(APPELLATE JURISDICTION)

LAND APPEAL NO. 59 OF 2022

*(Originating from Land Appeal No. 14 of 2022, Before the District Land and Housing
Tribunal of Kilombero, at Malinyi)*

BETWEEN

ALLY KONDO.....APPELLANT

VERSUS

SALHA KONDO..... RESPONDENT

RULING

8th Nov, & 12th Dec, 2022

CHABA, J:

Upon being served with the petition of appeal which was filed by the appellant, **Ally Kondo** on 25th day of May, 2022, the respondent, **Salha Kondo** in filing her reply to the petition of appeal, she raised a preliminary objection on a point of law to the effect that: -

- 1. The appellant's appeal is hopelessly time barred.*

Hearing of the objection was conducted by way of oral submissions. Both parties appeared in persons, and unrepresented. It is trite law that a preliminary objection once has been established as such, it must be heard first because it has a legal effect of disposing the whole matter. The Court of Appeal of Tanzania instructively underscored this position of the law in the case of **Shahida Abdul Hassanali v. Mahed M. G. Karji**, Civil Application No. 42 of 1999 (CAT) where the Court held:

"The law is well established that a court seized with a preliminary objection first required to determine that objection before going into the merits or the substance of the case or application before it"

Placing reliance on the afore-stated position of the law, I have to deal with the objection raised by the respondent to its finality before going into the merits of the appeal. Arguing in support of the preliminary objection, the respondent submitted that the District Land and Housing Tribunal (the DLHT) gave them 60 days to appeal and the said 60 days expired without the appellant even lodged his appeal. She referred this court to the copy of trial tribunal's judgement to fortify her argument.

Basing on the above submission, the respondent prayed the court to dismiss the appeal in its entirety.

In reply, the appellant argued that he was displeased by the decision of the DLHT at Ifakara as he was not afforded with the rights to be heard, and further was forced to submit a written submission during the hearing of the case. He contended that he filed the present appeal on time, as the matter originated from Mang'ula Primary Court, not Baraza la Kata/Ward Tribunal.

In rejoinder, the respondent essentially stated that the matter which originated from Mang'ula Primary Court involved "Mirathi" and Land matters / issues, but the matter at hand stemmed from Baraza la Kata la Mkula / Mkula Ward Tribunal, and to the then District Land Housing Tribunal, at Ifakara, and the appellant, Ally Kondo delayed to lodge his appeal within the prescribed period of time. All in all, she reiterated her prayers in her submission in chief.

Having considered the rival submissions made by both parties and upon gone through the entire record of this case, the preliminary issue is whether the appeal before this court is timeous.

As garnered from the court record, the answer to the above raised question, can be easily extracted from the relevant provisions of the law in which the appeal has been preferred. The applicable law is section 38 of the Land Disputes Courts Act [Cap. 216 R. E, 2019]. The law provides

that:

*"(38. -(1) 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.*

(2) Every appeal to the High Court shall be by way of petition and shall be filed in the District Land and Housing Tribunal from the decision, or order of which the appeal is brought.

(3) 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. [Emphasize is mine].

The law under section 38 (1) of the Land Disputes Courts Act [Cap. 216 R. E, 2019] requires that an appeals from the District Land and Housing Tribunal, in its appellate or revisional jurisdiction, must be filed within 60 days of the date of judgment.

Now, coming to the matter at hand, in the instant case, the decision which is subject to this appeal was delivered on 16th March, 2022 and the present appeal was lodged on 25th May, 2022. Therefore, counting from the date of the judgment to the date of filing this appeal, it is more than 69 days. This is contrary to the provisions of the law cited hereinabove. Considering the position of the law, I join hands with the respondent that for the appeal to be timeous, has to be filed within sixty (60) days from the day of the decision.

In view of the above, there is no doubt that this appeal has been filed out of time, and without obtaining getting leave of the court. It goes without saying that, the respondent's preliminary objection on a point law is meritorious and is hereby sustained.

In the upshot, having found that this appeal has been filed out of time, I hereby struck out with costs. **Order accordingly.**

DATED at MOROGORO this 12th of November, 2022.



M. J. CHABA

JUDGE

12/12/2022

Right of Appeal to the parties fully explained.



M. J. CHABA

JUDGE

12/12/2022

