

IN THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

MOROGORO DISTRICT REGISTRY

AT MOROGORO

LAND APPEAL NO. 122 OF 2022

*(Arising from Land Case No. 47 of 2014 District Land and Housing Tribunal for
Kilosa)*

SALEHE ABDALLAH SALUM1ST APPELLANT

SALEHE OMARY SHAWEJI.....2ND APPELLANT

VERSUS

**ABDALLAH MOHAMEDI SULUMWA (as the administrator of the estate of
late Shela Shabani)RESPONDENT**

RULING

Date of Last Order: 5th December 2022

Date of Ruling: 16th December 2022

MALATA, J

The appellants in this appeal were the respondents in the District Land and Housing Tribunal (DLHT) for Kilosa vide Land Application No. 47 of 2014. The Tribunal decided the case in favour of the respondent by declaring him the lawful owner of the Land in dispute, and that the appellants were trespasser on the land.

Aggrieved thereto, appellants filled appeal before this court with three grounds. The respondent filed reply to the memorandum of appeal with a preliminary objection that, **the appeal is hopelessly time barred.**

As a matter of practice and law this preliminary objection has to be settled before going into the merit of this appeal. On 5th December, 2022 the matter came for hearing of the preliminary objection and the appellant enjoyed the representation of Mr. Deo Niragira, learned counsel while the respondent appeared in person.

Submitting on the point of preliminary objection the respondent being a lay person had nothing much to submit, he stated that the decision appealed against was delivered on 4/10/2021 and the respondent was given 45 days within which to appeal against the decision. The present appeal was filed on 11/10/2022, therefore the appeal was filed out of time, more than one year as such it is contrary to the law. He thus prayed the appeal to be dismissed with costs.

Replying to the submission by the respondent, the learned counsel for the appellant stated that it is true that the decision of the District Land and Housing Tribunal (DLHT) was delivered on 4/10/2021, the appellant was dissatisfied with the decision and on 15/11/2021 the appellant submitted a letter to the DLHT requesting to be supplied with the copy of judgment

and decree. On 18/11/2021 the appellant lodged appeal in the High Court, Morogoro Registry. On the same date the Deputy Registrar of the High Court instructed the appellant to attach the decree of the DLHT for his appeal to be duly filed. On 20/08/2022 the appellant wrote another letter reminding the Tribunal of his request of copy of judgment and decree.

The learned counsel further submitted that, on 06/09/2022 the appellant was supplied with copies of judgment and decree and he filled the appeal before this court on 11/10/2022. He submitted that, the time to appeal commenced after receiving the certified copy of the decision. He further submitted that the appellant did not file the appeal out of time in terms of section 19(2) of the Law of Limitation Act, Cap 89, R.E 2019. The section depicts that, the time within the appellant was waiting to supplied with copy of judgement has to be excluded. He referred this court to the case of **Mitlen Ilonje vs. Kashi Haonga**, Misc Land Application no. 03 of 2017, HC, Mbeya (unreported)

In closing his submission, the learned counsel was of the view that the effective date of counting the days to appeal is the date of certification of the copies of judgment and decree and not the date of delivery of judgment, hence this appeal was filed just 35 days from the date of

certification of the said document and therefore this appeal is filed within time.

In rejoinder the respondent insisted that the preliminary objection be upheld.

After hearing submissions from the parties, the main issues for determination at juncture two, these are;

- (i) Which law governs an appeal from the decision originating from the District Land and Housing Tribunal to High Court.
- (ii) Whether there is an automatic exclusion of time spent for obtaining copy of judgment and decree.

In response to the first issue, it is clear that the present appeal originated from the District Land and Housing Tribunal for Kilosa in Land Case No.47 of 2014. The DLHT enjoyed the original jurisdiction hence the time frame for the present appeal is provided under section 41 of the Land Disputes Courts Act, Cap 216 R.E 2019 (LDCA) which provides: -

"41(1) Subject to the provisions of any law for the time being in force, all appeals, revisions and similar proceeding from or in respect of any proceeding in a District Land and Housing Tribunal

in the exercise of its original jurisdiction shall be heard by the High Court.

(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."

The above cited provisions of the law clearly provide for time limit within which the aggrieved party may appeal from the District Land and Housing Tribunal exercising original jurisdiction to the High Court, that is forty-five (45) days from the date of judgment not from the date when the certified copies of the judgment and decree are obtained.

The applicant was therefore, required to file his appeal within forty-five days from the date of Judgment of the DLHT, the appellant stated that he failed to appeal within the time prescribed by law days because he was yet to be availed with the copy of decree and judgment.

The question is, is it mandatory for appeal from the DLHT in exercise of its original jurisdiction to be accompanied by the copy of judgment and decree. The Land Court Disputes Act provides for time within which the appeal should be filed but it doesn't further state how the appeal to the

High Court should be. The Land Dispute Court Act (LDCA) do not outline the procedure for filing an appeal to the High Court.

This court read section 56 of the Land Dispute Court Act and noted that it sanctions the Minister to make regulations for the better carrying out of provisions of LDCA. Land Disputes Court (the District Land and Housing Tribunal) Regulations, 2003 (GN no. 174 of 2003) made under section 56 is silent on how the appeal should be preferred. Since the LDCA and its Regulations are silent on what should be filed and how, it goes without saying therefore that, we have to apply the general law on civil matters, the Civil Procedure Code Cap.33 R.E. 2019.

Order XXXIX Rule 1 (1) provide that.

*Every appeal shall be preferred in **the form of a memorandum** signed by the appellant or his advocate and presented to the High Court (hereinafter in this Order referred to as "the Court") or to such officer as it appoints in this behalf and the memorandum **shall be accompanied by a copy of the decree appealed from** and (unless the Court dispenses therewith) of the judgment on which it is founded*

Under the cited provision of law, it is clearly provides for what should be filed "*Memorandum of Appeal accompanied by a copy of the judgment*

appealed." Therefore, it was mandatory for the appellant to obtain a copy of judgment and attach to memorandum of appeal without it no valid appeal.

All said and done on this issue, it is therefore resolved that, the applicable law to appeals under section 41 of the Land Disputes Court Act is Order XXXIX of the Civil Procedure Code Cap.33 R.E. 2019.

With regard to the second issue, this court is of the view that, bearing in mind that, the import of Order XXXIX Rule 1 (1) Civil Procedure Code Cap.33 R.E. 2019 requiring the attachment of copy of judgment, it is therefore, with no iota of doubt that, exclusion of time under section 19(2) of the Law of Limitation Act spent in obtaining copy of judgement is automatic and the time start to run from the date of notification. The section confirms that;

19.-(1) In computing the period of limitation for any proceeding, the day from which such period is to be computed shall be excluded

*(2) 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 requisite***

for obtaining a copy of the decree or order appealed from or sought to be reviewed, shall be excluded. (Emphasis is mine)

The above position gets blessing from the court of appeal decision in ***BUKOBA MUNICIPAL COUNCIL VERSUS NEW METRO MERCHANDISE*** Civil Appeal No, 374 Of 2021 where the court had these to say;

"Nevertheless, as rightly submitted by the counsel for the parties, section 19 (2) and (3) of the LLA excludes a period spent in securing copies of judgement and decree in computing time prescribed for lodging an appeal, an application for leave to appeal, or an application for review of judgment. For ease of reference, we reproduce hereunder the whole of section 19 of the LLA:

"19. (1) In computing the period of limitation for any proceeding, the day from which such period is to be computed shall be excluded.

(2) 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 requisite for obtaining a copy of the decree appealed from or sought to be reviewed, shall be excluded.

(3) Where a decree is appealed from or sought to be reviewed, the time requisite for obtaining a copy of the judgment

on which it is founded shall be excluded/ [Emphasis added]

The Court considered the import of the above provision of the law in the case of ***Alex Senkoro & 3 Others v. Eliambuya Lyimo (as administrator of the estate of Frederick Lyimo, deceased)*** (*supra*). In that appeal, one of the grounds of appeal and the argument of the counsel for the appellants was that, in terms of section 19 (2) and (3) of the LLA, the respondent was not entitled to an automatic exclusion of the period of time requisite for obtaining a copy of the decree or judgment appealed from the District Court to the High Court. That such an exclusion had to be made pursuant to an order of the court in a formal application for extension of time. Having revisited the provision of the law, the Court held:

"We entertain no doubt that the above subsections expressly allow automatic exclusion of the period of time requisite for obtaining a copy of the decree or judgment appealed from [in computing] the prescribed limitation period. Such an exclusion need not be made upon an order of the court in a formal application for extension of time. "[Emphasis added]

It further held that:

"...the exclusion is automatic as long as there is proof on the record of the dates of the critical events for the reckoning of the prescribed limitation period. For the purpose of section 19 (2) and (3) of the LLA, these dates are the date of the impugned decision, the date on which a copy of the decree or

judgment was requested and the date of the supply of the requested document."

In the present appeal we have shown herein that the crucial issue before the High Court was whether an exclusion of time provided under section 19 (2) of the LLA is subject to an order of the court. Given the clear position of the law that section 19 (2) and (3) of the LLA provides for an automatic exclusion of time requisite for obtaining a copy of the decree or judgment appealed from when computing the period of limitation for lodging an appeal, the High Court ought to have automatically excluded the period between the date of judgment and the date of obtaining a copy of the impugned judgment which according to the appellant it was on 15th May, 2016."

Also, in the case of **Alex Senkoro & 3 others V. Eliambuka Lyimo** (as administrator of the estate of Fredrick Lyimo deceased). Civil Appeal No 16 of 2017 (unreported) the Court of Appeal observed that; -

*"We need to stress what we stated in the above case that the **exclusion is automatic as long as there is proof on the record** of the dates of the critical events for the reckoning of the prescribed limitation period. For the purpose of **Section 19 (2) and (3) of LLA** these dates are the date of the **impugned decision, the date on which a copy of the***

decree or judgment was requested and the date of the supply of the requested document [Emphasis added]."

Based on the principles of law tinted herein above, it is with no malingering of doubt that, exclusion of time as per section 19 of Law of Limitation Act is automatic. The second issue is therefore settled as well.

Invoking the afore stated principles, excluding time from the date of judgment on 4th October, 2021 to the date of certification of judgement on 06/09/2022 and counting from 06/09/2022 to the date of filing the appeal on 11/10/2022, it is clear that the appeal was filed within thirty-five (35) days which is within the forty-five (45) days provided by section 41(2) of the Land Disputes Court Act. The record speaks by itself.

The court in the above cited cases are to the effect that the record has to speak on how the matter was dealt from the date of judgment to the time of filing the appeal. In the present case, record demonstrates that; **One**, there is a proof on court records showing when the decision was delivered, it is clear that, appellant requested for the copies of decree and judgment which later granted. Going by record the impugned decision was delivered on 04/10/2021, on 15/11/2021 he requested for a copy of judgment and the said letter was received by DLHT on 15/11/2021. **Two**, on 26/6/2022 the appellants reminded DLHT through a letter dated 20/6/2022 on the

same the bears the DLHT seal of receipt. **Three**, the copy of judgment and decree were certified by DLHT on 06/09/2022. **Four**, there is no record of date of receipt of judgement and decree by the appellants. **Five**, the appeal was filed on 11/10/2022, **Six**, counting from the date of certification on 06/09/2022 to the date of filing the appeal on 11/10/2022, it is clear thirty-five (35) days passed. Since the time limit to file such appeal is forty-five days as per section 41(2) of the Land Disputes Courts Act, and based on the principles from the court of appeal decisions cited herein above, then it goes without saying that, the appellant filed the appeal within thirty-five (35) days from the date of certification, thus the appeal was filed within the prescribed time limit of forty-five (45) days. The record speaks. Based on the such records, it is therefore clear that, the appellants filed appeal within time. I accordingly hold so.

All said and done, I am inclined to agree with the appellants that the appeal was filed within time. Consequently, I dismiss the preliminary objection raised by the respondent. Each party to bear its own cost. The appeal shall proceed on merits.

It is accordingly ordered

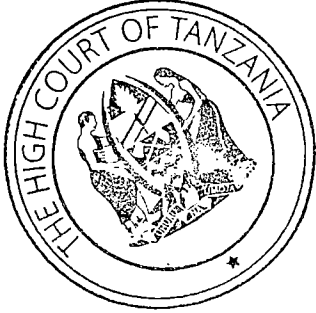
DATED at **MOROGORO** on this 16th day of December, 2022.

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G.P. MALATA

JUDGE

16/12/2022

Rights of appeal explained to the parties.



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G.P. MALATA

JUDGE

16/12/2022