

**IN THE HIGH COURT OF TANZANIA**

**MOROGORO SUB-REGISTRY**

**AT MOROGORO**

**LAND APPEAL CASE NO. 6 OF 2022**

*(Arising from Land Application No. 63 of 2019; In the District Land and Housing Tribunal for Ulanga, at Mahenge, R. W. Hon. Mmbando, Chairman)*

**SIMON LUSILUSI KAYIPILA } .....APPELLANTS**

**IMELDA LUSILUSI KAYAPILA }**

**VERSUS**

**SALUM NGENGELE (Suing as an Administrator of the Estates of the Late  
ALLY NGENGELE NGAKONYOLA )..... RESPONDENT**

**JUDGMENT**

15<sup>th</sup> December, 2022

**CHABA, J.**

On 11<sup>th</sup> day of August, 2011, the District Land and Housing Tribunal for Ulanga, at Mahenge declared the appellants as trespasser over the estate of the late Ally Ngengele Ngakonyola. The appellants were aggrieved by that decision and filed petition of appeal before this court. On 10<sup>th</sup> day of December, 2021, the respondent namely, Salum Ngengele filed a reply thereto contained a Notice of preliminary objection on a point of law (PO) to the effect that the present appeal is time barred. The

respondent therefore prayed for this court to struck out the appeal filed by the appellants with costs.

With the leave of the Court, the preliminary objection on a point of law was disposed of by way of written submissions. Submission by the respondent was drawn and filed by Mr. Sikujua Funuki while the appellants' submission was drawn and filed by Ms. Donatila Teendwa Antoni, both learned advocates. Both parties complied with the court's scheduled order by filing their respective written submissions within time.


Submitting in support of the raised preliminary objection on behalf of the respondent, Mr. Funuki averred that the Land Disputes Courts Act [Cap. 216 R. E, 2019] (the DLHT) provides a limit of forty-five (45) days to appeal to the High Court of Tanzania against the decision or order of the District Land and Housing Tribunal (the trial Tribunal) when exercising its original jurisdiction under section 41 (2) of the DLHT.

He highlighted that the trial Tribunal pronounced its judgment on 11<sup>th</sup> day of August, 2021 but the appeal was filed on 7<sup>th</sup> day of October, 2021 before this court. Therefore, counting from the date when the judgment was delivered to the date when the instant appeal was filed before this court, already forty-five days (45) had been expired because the appeal was lodged in this court on the 58<sup>th</sup> day, which is a delay of thirteen (13)

days and the copy of judgment was ready for collection by all parties from the date of decision.

He continued to highlight that it is trite law and an elementary principle of law that an appeal which is time barred is incompetent and hence worth to be dismissed. He averred that in the case of **Yakoub Shaame Mohamed v. Tum Abdi Ally and 2 Others**; Land Appeal No. 6 of 2021; HC - Dsm (Unreported) this court (Ismail, J.) was faced with a similar situation as exhibited at p. 5 and 6 of the typed judgment. Upon hearing both parties the court sustained the raised preliminary objection, and proceeded to dismiss the appeal with costs for being incompetent before the court.

Based on the above submission, Mr. Funuki prayed the court to follow same stream by sustaining the respondent's preliminary and dismiss the appellant's appeal.

Resisting the preliminary objection, Ms. Donatila Teendwa Antony submitted that the appeal was filed within 41 days, hence competent before the court. She cited Rule 21 (1) of the Judicature and Application of Laws (Electronic Filing) Rules, 2018, GN. 2018 of 2018 which states that: - 



*"A document shall be considered to have been filed if it is submitted through the electronic filing system before midnight, East African time, on the date it is submitted, unless a specific time is set by the court or it is rejected".*

She continued that the instant appeal was filed electronically through the Judiciary Statistical Dashboard System (JSDS) at 10:03:20 hours on 20/09/2021 with reference no. 95449966; hence filed within 41 days from the date of the impugned judgment delivered on 11/08/2021. It was further submitted that, arithmetically the respondent was wrong to hold that the appeal was out of time. To reinforce his argument, the learned advocate referred this court to the case of Mohamed **Hashil v. National Microfinance Bank Ltd (NMB Bank)**, Civil Revision No. 106 of 2020, High Court (T), Labour Division Dar Es Salaam (Unreported) wherein this Court (A. E. Mwipopo, J.) overruled the preliminary objection upon placing reliance on the Government Notice No. 2018 of 2018.

Finally, the learned advocate prayed the court to dismiss the preliminary objection with costs for lacking of merit.

In rejoinder, Mr. Funuki submitted that refence no. 95449966 is nowhere to be seen in the JSDS. He accentuated further that the only reference in relation to the present appeal which is seen to be filed in the system of JSDS is reference no. 64276087 which shows that it was filed



on 7<sup>th</sup> day of October, 2021 and not on 20<sup>th</sup> day of September, 2021. He concluded that reference no. 95449966 is not found in the JSDS.

To round up, he reiterated his prayer that since the appeal is time barred its remedy is to be dismissed with costs.

I have gone through the rival submissions advanced by both parties. I have also read the decisions that were referred to me by both sides. The issue before me is whether the appeal is proper before this court.

As the record speak for itself, there is no dispute that appeals originating from the District Land and Housing Tribunal exercising its original jurisdiction has to be filed at the High Court within 45 days as specified under section 41 (2) of the Land Disputes Courts Act [Cap. 2016 R. E. 2019]. I have also viewed the appellants' petition of appeal and found that it was filed on 7<sup>th</sup> day of October, 2021. The said petition was accompanied with payment receipt with Bill Reference No. 921272071341385 and Control Number 991400511465 which shows that the payment was done at 16:55:39 on 29<sup>th</sup> day of September, 2021 and the receipt was issued on the 7<sup>th</sup> day of October, 2021.

The appellants submitted that the instant appeal was filed electronically through electronic filing known as the Judiciary Statistical Dashboard System (JSDS) at 10:03:20 hours on 20<sup>th</sup> day of September,

2021 with reference no. 95449966. I have visited the JSDS and found that reference No. 95449966 is not reflected in the JSDS. What is found is reference no. 64276087 which shows that it was filed on 7<sup>th</sup> day of October, 2021 and not on the 20<sup>th</sup> day of September, 2021.

The appellants' payment receipt accompanied by the petition of appeal shows that, a Bill with Reference No. 921272071341385 and Control No. 991400511465 its payment was effected or done at 16:55:39 hours on 29<sup>th</sup> day of September, 2021 and the receipt was issued on the 7<sup>th</sup> day of October, 2021. Therefore, counting from 12<sup>th</sup> day of August, 2021 after the impugned judgment was delivered to 28<sup>th</sup> day of September, 2021 is 47 days. That means two days has been excluded (the 11<sup>th</sup> day of August, 2021 when the judgment was delivered and on 29<sup>th</sup> September, 2021 when the appeal was lodged).

From the above observation, it is clear that the petition of appeal was filed before this court out of the mandatory prescribed period of forty-five-day (45) and delayed for two (2) days. The appellants' failed to justify when payment of the petition of appeal was done. According to the available records, no doubt that the date of payment is that which is reflected on the electronic print-out receipt with Control No. 991400511465 paid on 29<sup>th</sup> day of September, 2021 at 16:55:39 hours.





Based on the above analysis and submissions of both parties in a bid to assist this court understand when exactly the petition of appeal was lodged before the court, and to the extent of my findings, I tend to disagree with the learned advocate for the **respondent** that the appellants delayed to file the present appeal for 13 days. On the same wavelength, I am not in agreement with the **appellant** that the appeal was filed on the 41<sup>st</sup> day from the date of payment. Rather, I agree with the respondent's submission that the instant petition of appeal is incompetent before this court for a reason of being time barred as it is evident from the court record that it was filed in court out of time for two (2) days, without any justifiable reasons. In law, the delay even of a single day, must be accounted for. See: **Shabir Tayabali Essaji vs Farida Seifuddin Taya ba li Essaji**, Civil Application No. 206/06 of 2020.

Accordingly, I sustain the preliminary objection on a point of law raised by the respondent and order that the appeal be struck out with costs. **It is so ordered.**

**DATED** at **MOROGORO** this 30<sup>th</sup> day of December, 2022.



  
**M. J. CHABA**

**JUDGE**

**30/12/2022**