

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY OF KIGOMA)

AT KIGOMA

(APPELLATE JURISDICTION)

LAND APPEAL NO. 01 OF 2022

(Originating from Land Application No. 47 of 2018 of the District Land and Housing Tribunal for Kigoma)

IDRISA HARUNA-----APPELLANT

VERSUS

ZAINABU NTAGARUGWA-----RESPONDENT

RULING

15th March, 2022 & 20th April, 2022

F. K. MANYANDA, J

This ruling concern a preliminary objection raised by the Counsel for the Respondent to the hearing of the appeal on one ground that the appeal is time barred.

In 2018 the Appellant, Idrisa Haruna, filed Land Application No. 47 of 2018 against the Respondent, Zainabu Ntagarugwa, for ownership of a

piece of land in the District Land and Housing Tribunal for Kigoma, hereafter the DLHT. The said Land dispute was decided in favour of the Respondent on 7/10/2021. The Appellant was not satisfied, hence planned to appeal to this court, hence, the instant appeal.

When came for hearing, the Counsel for the Respondent felt that the appeal is out of time, hence the current objection.

At the hearing of the preliminary objection the Appellant was represented by Mr. Masendeka Anania Ndayanse, learned Advocate and the Respondent enjoyed representation services of Mr. Sylvester Damas Sogomba, learned Advocate.

It was Mr. Sogomba who started arguing in support of the objection.

He submitted that the appeal is late by 38 days counted from 7/10/2021 to 30/12/2021 when this appeal was filed minus the grace period of 45 the Land Disputes Courts Act, [Cap, 216 R. E. 2019].

For more clarity the Counsel for the Respondent submitted that from 7/10/2021, the 45 days elapsed on 21/11/2021. The copy of judgment was supplied on 12/10/2021. From the date, when the copy of judgment was supplied to the Appellant, to 30/12/2021 when the appeal was filed, it was already out of time.

The Counsel added further that a form of delivery of copies shows that the Appellant collected the copy of the judgment on 19/11/2021 but the supplying registry officer endorsed on the collection form that "alichelewa kuifuata" means that he was late to follow it. He prayed the preliminary objection to be sustained and the appeal dismissed.

On his side, Mr. Ndayanse submitted that the appeal is not barred by time, he opposed the objection arguing that the same is baseless. He conceded that the impugned judgment was delivered on 7/10/2021; but he quickly pointed out that time is reckoned from the date of obtaining the copy of the impugned decision not on date of delivery of the judgment. He argued that if counted the days from 19/11/2021 to 30/12/2021, the days are 41, hence within the 45 days period limit.

Mr. Ndayanse discredited the words on the form for collection of the copy of the judgment arguing that the Appellant was diligent and made follow ups. He gave an example that the Appellant filed a letter requesting for the copy of the judgment on 7/10/2021 the very date of judgment delivery. He argued that, the fact that the Respondent obtained the copy of the judgement within five (5) days is not under the Appellants control. He prayed for the preliminary objection to be overruled, and appeal proceed to hearing.

In rejoinder, Mr. Sogomba argued that the Appellant was supposed to be vigilant after submitting the letter requesting for the copy of the Judgement, but chose to stay home and dry, hence was late.

Those were the submission by the counsel for both parties, I have dispassionately considered the same. From the submissions of the learned minds, I find that the following facts are not disputed, that the impugned Judgement was delivered on 07/10/2021 and that the appeal was filed on 30/12/2021. It is not in dispute either that the period wasted pending supply of copies of judgement and decrees is not included when reckoning of time.

Therefore, the counsel lock horns as to when the said copies of judgement and decree were supplied to the Appellant so that time can start to be reckoned from that date.

The Counsel for the Respondent says the same was supplied on 12/10/2021, therefore, if counted from that date to 30/12/2021, there are 66 days hence the appeal is out of time.

The Counsel for the Appellant says the appeal documents were supplied on 19/11/2021, therefore if counted from that date to 30/12/2021 there are 41 days, hence the appeal is in time.

The basis for the Counsel for the Respondent to conclude that the copy of the impugned judgement and decree were supplied on 12/10/2021 is because his client the Respondent, Zainabu Ntagalugwa, received her copies on that date and that the form of the Appellant for collection of the documents is endorsed that it was lately collected.

The basis for the Counsel for the Appellant to conclude that the copies were lately supplied to his client, is that the client the Appellant, Idrisa Haruna, was not informed by the DLHT registry about readiness of their collection.

In such a situation what does the laws say? It is trite law that once a party has applied for the records for appeal purposes, it becomes a duty of the registry officer to inform that party when the documents are ready for collection. However, it is also a duty of the said party to make follow up although the second duty is not imposed by law but best practice.

I am guided by the principle which was delivered in the case of **Transcontinental Forwarders Ltd Vs Tanganyika Motors Ltd**, [1997] TLR 328 where it was stated at page 330 as follows: -

*"I wish to say only that reminding the Registry after applying for a copy of the proceedings etc. and copying the request to the other party **may indeed***

be the practical and realistic thing to do, but it is not a requirement of the law. (emphasis added).

It follows therefore, in the matter at the hand it was only prudent for the Appellant to make follow ups to the registry but it was the registry which was obliged to notify him of collection of the document when they were ready.

Mr. Sogomba argued that his client made closer follow ups that is why she was supplied on 12/10/2021. On the other hand, Mr. Ndayanse also argued that his client also made follow ups but was supplied on 19/11/2021.

To me it appears and, that is my views, that each party made efforts of following up each one on its own step. The Respondent was earlier and the Appellant was slower but each made efforts for following up. The endorsement of the registry officer on the collection form tells it all that the Appellant was slower, but that does not waive the fact that he made efforts.

On top of my views expressed above, these are matters of evidence which are not pure of law see **Mukisa Biscuits Manufacturing Company Limited vs West Ends Distributors Company Limited** [1969] EA 696

To this end, I find the preliminary objection as none meritorious.
Consequently, I do hereby overrule the same costs in the course.




Sgd: F. K. Manyanda

Judge

20/4/2022