

IN THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
SUMBAWANGA DISTRICT REGISTRY
AT SUMBAWANGA
MISC. LAND APPEAL NO. 18 OF 2020

*(Originating from Decision of the District Land and Housing Tribunal for Katavi
Region at Mpanda in Land Appeal No. 25 of 2019, Civil Case No. 07 of 2019 Inyonga
Ward Tribunal)*

EFREM TOPHILO NDUKA.....APPELLANT

VERSUS

ALBERTHO JUMA KANORO.....RESPONDENT

RULING

Date of last Order: 10/02/2022

Date of Judgment: 21/04/2022

NDUNGURU, J.

This is a second appeal. The matter has its genesis from Inyonga Ward Tribunal (henceforth the trial tribunal). At the trial tribunal the appellant herein successfully sued the respondent claiming ownership of 30 acres of land. Dissatisfied the respondent successfully appealed to the District Land and Housing Tribunal for Katavi at Mpanda (henceforth the Appellate Tribunal) where the Appellate Tribunal allowed the appeal for the ground that trial tribunal entertained the dispute while it has no pecuniary jurisdiction.

Aggrieved by the appellate tribunal decision, the appellant has preferred this appeal by lodging the following eight grounds of appeal;

- 1. The appellate tribunal erred in law and in fact in importing from the air the value of the suit land as Tshs. 3,000,000/= whose valuation the said chairperson is not competent nor has she the mandate to do so, being not a qualified land value.*
- 2. The appellate tribunal erred in law and in fact in dismissing the sale agreement which was dully executed and signed by the seller/respondent, the purchaser/appellant, two witnesses somebody Patrick, witness of the seller/respondent, Charles Nduka a witness of the purchaser/appellant, in the presence of Daudi Paulo, the chairman of Isengo A village government simply because the wife of the seller /respondent had not consented to the sale, despite the fact that the said seller/respondent willfully and happily pocketed Tshs. 400,000/= without the consent of his wife.*
- 3. The appellate tribunal erred in law and in fact not evaluating properly the evidence of the purchaser/appellant herein and that of the seller/respondent, even a lay person will note that evidence of the purchaser/appellant bears more weight that of the seller/respondent*
- 4. The appellate tribunal erred in law and in fact for holding that the seller/respondent sold two acres at Tshs. 400,000/= in 2017 whereas the said seller/respondent admitted at inyonga Ward Tribunal that the sale transaction of 30 acres at 400,000/= took place in 2010 as evidenced by the sale agreement.*
- 5. The appellate tribunal erred in law and in fact by holding that the Inyonga Ward tribunal proceedings and judgement are null and void simply because one of the assessors who took part in the proceedings*

has not signed the judgement, a holding which is bad and strange in law

- 6. The appellate tribunal erred in law and in fact by condemning the Inyonga Ward Tribunal for referring to corruption and Takukuru issue in its judgement which action did not in any way affect the said judgement.*
- 7. Any competent tribunal and or court of law which finds a party to the suit as a liar, un scrupulous untrustworthy and who has failed to back up this claim by proper evidence and who finally loses his case, that person must be condemned to pay and compensate costs incurred by the winning part. Here the learned trial chairperson has erred in law and in fact to rule otherwise.*
- 8. The district Land and Housing Tribunal for Katavi at Mpanda handed over to the appellant the judgement in 16th January 2020 hence this appeal is being lodged within the allowable legal time.*

As this appeal was called on for hearing, the appellant appeared in person, unrepresented whilst the respondent had a legal service of Mr. Sweertbert Nkumpilo. The learned advocate for the appellant raised preliminary objections which he abandoned 2nd, 3rd, 4th limbs of objections. The appellant prayed to this court for hearing of the appeal by way of written submission. This court ordered the case to proceed hearing by way of written submission and the court set a date for each counsel for them to file submission.

Submitting in support of preliminary objection Mr. Nkumpilo submitted that it is cardinal principle of law that appeals from District Land and Housing Tribunal to High Court while exercising its appellate jurisdiction shall be lodged to the High Court within sixty days after the date of decision as per **section 38 (1)** of the Land Dispute Courts Acts, Cap 216 RE 2019.

Mr Nkumpilo submitted further that the judgement and decree of the District Land and Housing Tribunal via Land Appeal No. 25 of 2019 were pronounced on 20th day of November 2019 whereby sixty days elapsed since on 19th day of January 2020.

He went on submitting that the appellant lodged an appeal on 13th Day of March, 2020 after the expiry of 54 days without first applying for leave to appeal out of time as per the provision of section 38 (1) of the said Act.

He argued that any appeal which is lodged to the court out of time renders the appeal incompetent under the eyes of the law and has one remedy which is to dismiss the appeal with costs. He referred the case of **Marwa Magige vs Raphael Richanimachaba**, Land Appeal No 19 of 2021.

He finally prayed for the appeal be dismissed with costs for being incompetent.

In reply, Mr Efrem Nduka argued that the case cited by the counsel for the respondent is silent as to when the appellant Marwa Magige obtained the proceedings, judgement and decree from the court registry so that the appellant can take advantage of **section 21** of the Law of Limitation Act, Cap 89 RE 2019, thus it is irrelevant.

Mr Nduka submitted that Judgement of the Appellate Tribunal was delivered on 20th November 2019 in the absence of the appellant. He then wrote a letter dated 25th November 2019 which was received by the Appellate Tribunal on 26th November 2019 requesting to be furnished with the Judgement, decree and proceedings, however he was answered. He said the tribunal did not explain the cause of delay to furnish the proceedings on 16th January 2020 which were ready for collection on 20th November 2019.

He submitted that by taking advantage of section 21 of the Law of Limitation Act (supra) the days in his case started to run on 16th January 2020 and by 13th March 2020 when the appellant lodged his petition of appeal in court only 56 days had elapsed well within the limited number of days.

He finally said the preliminary objection does not hold any water thus be dismissed with costs.

Now the question to determine before this court is whether preliminary objection raised by the respondent stand.

It is apparent, upon my perusal of the records of this appeal, that the Appellate Tribunal delivered its Judgement in Land Appeal No. 25 of 2019 on 20th November 2019 and the appellant has filed this appeal on 13th March 2020 before this court, almost 54 days has elapsed from the statutory date of filing the petition.

It is prudent to revisit the law governing land appeal arising from the District Land and Housing Tribunal when exercising its appellate or revisional jurisdiction. The position is provided under section 38 (1) of the Land Disputes Courts Act, Cap 216 RE 2019.

"38 (1) Any person 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."

As stated herein above, the appellant lodged petition of appeal which was admitted on 13th March 2020 by the Appellate Tribunal, thus in the light of the above position of the law, the appellant delayed to file

the petition of current appeal for almost 54 days without leave of this court to appeal out of time.

That being the case, the appellant knowingly the fact that time to file an appeal is out of statutory time, he ought to have applied an application for extension of time as per the proviso of **section 38 (1)** of the Land Disputes Courts Act (supra), it reads thus;

"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."

Having discussed above, I do not hesitate to declare that the appeal by the appellant before this court is incompetent in the eyes of the law as it was filed out of time.

I find the appeal is out of time, the only remedy is to dismiss as per **section 3 (1)** of the Law of Limitation, Cap 89 RE 2019.

In the result, I uphold the preliminary objection that the appellant lodged the appeal out of time. No order as to costs.

It is so ordered.




D. B. NDUNGURU

JUDGE

21. 04. 2022