

**IN THE HIGH COURT OF TANZANIA**  
**IN THE DISTRICT REGISTRY OF DODOMA**  
**AT DODOMA**

**LAND APPEAL NO. 03 OF 2022**

**FATUMA TELLY MWALUANDA** (Administratrix  
of the Estate of the late Yohana George Mwaluanda.....**APPELLANT**

**VERSUS**

**TEKLA KAHESI MKWAJU** (Administratrix  
of the Estate of the late George Mlagazya..... **RESPONDENT**

(Appeal from the Judgement of the District Land and Housing Tribunal  
Dodoma O.Y. Mbega-Chairman)

Dated 19<sup>th</sup> day of November 2021

In

Land Application No. 307 of 2019

.....

**RULING**

17<sup>th</sup>March & 8<sup>th</sup>April, 2022

**MDEMU, J:.**

This is an appeal from Land Application No. 307 of 2019. Briefly, the late George Mlagazya filed land application to the District Land and Housing Tribunal seeking an order that he be given back his money from the legal owner of the house in dispute to the tune of Tanzanian shillings four million; compensation; general interest to the tune of Tanzanian shillings eight million; permanent injunction against the Respondent or his agents

acting on his instruction from interference with the Appellant's land; costs of the case and any other reliefs which the Tribunal may deem fit and just to grant.

It was alleged that, the Appellant entered into agreement with the deceased one Yohana George Mwaluanda to purchase a house belonging to the deceased located at Chinyoya Dodoma at the tune of Tshs. 17,000,000/= and the Appellant had paid Tshs. 4,000,000/=. After the demise of Yohana George Mwaluanda, the Respondent started to claim the suit premises without knowing such agreement between the Appellant and the deceased.

The District Land and Housing Tribunal of Dodoma held want of contract of sale of the suit premises between the Appellant and the deceased person one Yohana George Mwaluanda, thus declared the suit premises to be property of the deceased. The Appellant was ordered to pay rent due and that, Tshs. 4,000,000/= paid for purchasing the suit land be remitted to the Appellant. Equally, Appellant's family were ordered to vacate the suit premises.

Aggrieved by that decision, the Appellant decided to file the instant appeal which raises three grounds of appeal, to wit: -

- 1. That, the trial Tribunal erred in law and facts by granting the Respondent the sum of Tanzania Shillings four million against the balance of probability.*
- 2. That, the trial Chairman erred in law and facts in deciding against the issues framed*
- 3. That, the trial Chairman erred in law and facts by not granting costs to the Appellant.*

The appeal has hit a snag. On 15<sup>th</sup> of February, 2022 the Respondent lodged a notice of preliminary objection to the effect that:

- i. That, the Appellant's petition of appeal is defective before the eyes of law since it is out of time thereof.*
- ii. That, the Appellant's petition of appeal is completely defective before the eyes of law thereof.*

When the matter was called for hearing on 17<sup>th</sup> of March 2022, the Appellant enjoyed the service of Ms. Salma Sadick, learned Advocate whereas the Respondent appeared in person.

In arguing the preliminary objection, the Respondent was brief and focused on the first limb of objection that, the appeal was to be lodged within forty-five (45) days. She submitted that, the judgment subject to this appeal

was delivered on 19<sup>th</sup> of November 2021 and the appeal was filed on 5<sup>th</sup> of January 2022, thus filed out of time. On the second limb of objection, she said that, as the appeal originated in the District Land and Housing Tribunal of Dodoma in its original jurisdiction, it has to be titled memorandum of appeal and not petition of appeal. She therefore prayed the appeal to be dismissed with costs.

In reply thereto, the Appellant Advocate submitted that, the appeal is not time barred. According to him, it was filed electronically on 29<sup>th</sup> of December 2021 at 00.22 hours in terms of Rule 21(1) of Judicature and Application of Laws (Electronic Filing) Rules, GN. No. 148/2018. She also cited the case of **Mohamed Hashil v. National Microfinance Bank Ltd (NMB BANK), Revision No. 106 of 2020** (unreported) to support her submissions. She added that, they had to physically follow up the matter in court buildings for control number which they received on 5<sup>th</sup> of January 2022.

As to a second preliminary objection, she argued that, the Land Courts Disputes Act, Cap.216 under Section 38(2), the appeal is to be by way of petition of appeal. She said therefore, the appeal is properly before this court thus the preliminary objections be dismissed with costs.

I have given careful observation to the arguments for and against the preliminary objection herein as advanced by both parties. Having done so, the issue for determination is whether the preliminary objection is meritorious.

To begin with the first preliminary objection that the appeal is out of time; it be known that, forty-five (45) days as time limit in filing appeals is prescribed under section 41 (1) and (2) of the Land Disputes Courts Act, Cap. 216 R.E 2019. Counting the days, the last date of filing the appeal was to be 2<sup>nd</sup> of January 2020.

The learned Counsel for the Appellant line of argument is that; the appeal was filed on 29<sup>th</sup> of December 2021 via electronic filing. The procedure in filing documents through electronic filing is governed by the Judicature and Application of Laws (Electronic Filing) Rules, 2018 specifically Rule 21 and 22 provides that: -

*"21(1) 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 specific time is set by the court or it is rejected"*

*"22(a)where a document is filled with, served on, delivered or otherwise conveyed to the Registrar or Magistrate in charge using the electronic filing service and is subsequently accepted by the Registrar or Magistrate in charge, it shall be deemed to be filed, served, delivered or conveyed".*

The above provision of the law provides procedures to file documents online. The Appellant's counsel didn't attach the electronic printout which could have supported her assertion that, the appeal was filed on 29<sup>th</sup> of December 2021 at 00.22 hours. This makes the Court to believe that the same was filed on 5<sup>th</sup> day of January 2022. The case of **Mohamed Hashil v. National Microfinance Bank Ltd (NMB)** (supra) cited is distinguishable in the sense that, in the said case, the system confirmed that the Appellant filed her revision on time and submitted the printout to such effect, facts which are lacking in the instant case. That said the first preliminary objection is sustained.

Coming to the second preliminary objection, the issue to be determined is whether for matters originating from the District Land and

Housing Tribunal (DLHT) exercising its original jurisdiction, an appeal have to be filed in the form of petition of appeal or a memorandum of appeal.

The provisions of section 38(1) (2) of the Land Disputes Courts Act require an appeal to the High Court be through filing a petition of appeal in exercise of its appellate or revision jurisdiction. The section reads:

*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.*

Since the DLHT was exercising its original jurisdiction, the above provision is not applicable and instead, the proper provision is section 41 of Cap.216 which reads:

*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.*



As quoted above, it is not prescribed in the above provisions if appeals from the District Land and Housing tribunal in exercise of its original jurisdiction be by way of petition or memorandum of appeal.

As observed, in the instant appeal, the Appellant deployed the tittle petition of appeal. However, I do not think if this omission is fatal in the sense that, **one**, the lacuna in section 41 of Cap.216 on want of prescription on the form of appeal be either in a memorandum or petition of appeal have to be filled by applying the provisions of section 38 of Cap. 216 that require the appeal be by way of petition of appeal. The reason is one that, in my view, I do not think if the Legislature intended appeals to the High Court from DLHT exercising appellate or revision jurisdiction be by way of petition of appeal and those in its original jurisdiction be by way of memorandum of appeal as the Respondent wants to be.


**Two**, the words petition of appeal or memorandum of appeal whether used interchangeably, in my view, applying the principles of overriding objective, may not render the grounds of appeal in either memorandum of appeal or petition of appeal invalid. In other words, the appeal may not be rendered incompetent on account of mere use of phrases

memorandum of appeal instead of petition of appeal and vice versa. This objection is accordingly overruled.

As stated above, the first objection on time limitation of the appeal has been sustained. Remedy for the appeal which is time barred and filed without leave of the court to extend time, is to dismiss it, as I hereby do. The Appellant to bear costs.


Order accordingly.



  
**Gerson J. Mdemu**  
**JUDGE**  
**08/04/2022**

**DATED** at **DODOMA** this 8<sup>th</sup> day of April, 2022



  
**Gerson J. Mdemu**  
**JUDGE**  
**08/04 /2022**