

IN THE HIGH COURT OF TANZANIA

(MTWARA DISTRICT REGISTRY)

AT MTWARA

LAND APPEAL NO.4 OF 2022

*(Originating from the District Land and Housing Tribunal for Mtwara at
Mtwara in Land Application No.44 of 2019)*

MAHMOUD MOHAMED MNEKANO.....APPELLANT

VERSUS

MARIAM ABDALLAH NDINDA.....RESPONDENT

RULING

23/02/2023 & 8/3/2023

LALTAIKA, J.

The appellant herein **MAHMOUD MOHAMED MNEKANO**, is appealing against Land Application No.44 of 2019 tried and decided by the District Land and Housing Tribunal (herein after DLHT) for Mtwara at Mtwara. The respondent, on the other hand, resisted the appeal as she filed a reply to the Petition of Appeal accompanied by a Notice of Preliminary Objection on point of law on 19/4/2022. The Notice is twofold: **one**, the appeal is time barred. **Two**, the petition of appeal is unmaintainable and defective for being verified and attached with a good number of annexures as evidence.

On 23/2/2023 the matter came for hearing of the preliminary objections. The appellant appeared in person and unrepresented while the respondent was represented by Mr. Jackson Wilbert, learned advocate. Before oral

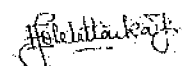


submissions of the preliminary objections commenced Mr. Wilbert told this court that the appellant had amended his memorandum of appeal thus, he prayed to withdraw one preliminary objection. To this end, the respondent remained with one preliminary objection which the learned counsel prayed to submit for.

Submitting for the preliminary objection, Mr. Wilbert contended that in the light of section 41(1) and (2) of the Land Disputes Courts Act [Cap. 216 R.E. 2019] the appeal was time barred. The learned counsel submitted that the District Land and Housing Tribunal for Mtwara in Land Application No.44 of 2019 delivered judgement on 18/1/2022. He contended further that the appellant in the instant appeal filed this appeal on 8/3/2022 as can be seen in the memorandum of appeal. The learned counsel stressed that the signature of the registry officer proves the same. Mr. Wilbert argued that the appeal is out of 45 days as provided by law. He submitted further that this is because from 18/1/2022 to 8/3/2022 makes the appeal late for four days.

Furthermore, the learned counsel averred that the appellant has not prayed for extension of time to file out of time as provided by law. The learned counsel insisted that because of such late filing, the appeal is to be struck out as per the case of **Stephen Masatu Wasira v Joseph Sindi Warioba and the AG** [1999] T.L.R. 334. To this end, the learned counsel prayed this appeal to be struck out with costs.

In response, the appellant submitted that he brought his appeal on 2/3/2022. He went and argued that upon arrival at the registry, the registry officer received it and told him that he could not pay for the same because

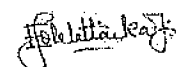


there was network problem. The appellant submitted further that the registry officers promised him the officers in the registry would work on it as per the date. He argued further that they promised to call him and send him the control number for payment.

More so, the appellant contended that on 7/3/2022 he received a call and was given a control number and on 8/3/2022 paid the court fee. The appellant averred that even before he brought the same, it is true the judgment of the District Land and Housing Tribunal was delivered on 18/1/2022 and 19/1/2022 he requested for copy of judgement and proceedings of the same. He submitted that he started making follow up but was only given the same on 14/2/2022. The appellant stressed thereafter he started working on his appeal till the date that he filled the same. To this end, the appellant argued that he firmly believes that he is on time though he did not get any written acknowledgment from the registry when they received his documents. In addition, he insisted that he has a printout from the court showing that his appeal was received on 2/3/2022.

Having dispassionately considered the submissions of both parties on the preliminary objection, the issue is whether the said preliminary objection has merit. Before I start determining this matter, it crucial to make the record clear that the respondent had abandoned or dropped the second preliminary objection. Therefore, the submissions made above were on the first preliminary objection.

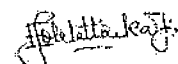
I have gone through the record availed to me and it is uncontentious that the memorandum of appeal was filed on 8/3/2022. More so, it is true



that the copy of the judgment and decree shows that were delivered on 18/1/2022 but the same do not bear the date when were supplied to the appellant.

As submitted by Mr. Wilbert that counting from when the date when judgment and decree were delivered to the date when appellant lodged his appeal in this registry, it is true that the appellant delayed for four days. However, the appellant in his submission contended that he was supplied with the same by the District Land and Housing Tribunal on 14/02/2022 while he had applied for the copy of judgment and proceedings on 19/1/2022. Based on these two arguments, I find out that the tribunal is the one to blame because its records do not bear a date when it certified and supplied the same to the appellant. I say so because, I am aware of the provision of the law which provide for exclusion of certain periods in computing a period of limitation of any proceeding. Since the copies of judgment and decree of the tribunal do not show when they were certified and supplied to the appellant then, the respondent cannot claim that the appeal was filed out of time as provided by section **41(2) of the Land Disputes Courts Act [Cap. 216 R.E. 2019]**.

As I have intimated early that the period of time requisite for obtaining a copy of the judgment on which it is founded shall be excluded. This position is enshrined under section 19(3) of the Law of Limitation Act [Cap.89 R.E. 2019]. Again, since the copies of judgment and decree supplied to the appellant misses the date when were certified and supplied to the appellant makes this court to assume what the appellant had submitted is true.



Therefore, the time which the appellant applied and waited for the copies of judgment and proceedings of the tribunal shall be excluded as per section 19(3) of the Law of Limitation Act.

In the line of the above observation, I am fortified that the appellant filed his appeal on time. Said and done, the preliminary objection by the respondent is overruled with no order as to costs. However, parties are argued to concentrate on speeding up the hearing of this matter so as to meet the ends of justice.

It is so ordered.



E.I. LALTAIKA

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**JUDGE
8.3.2023**

Court:

This ruling is delivered under my hand and the seal of this court on this 8th day of March 2023 in the presence of Mr. Jackson Wilbert, learned advocate for respondent and the appellant who has appeared in person, unrepresented.



E.I. LALTAIKA

A handwritten signature in blue ink, appearing to read "E.I. Laltaika", written over a horizontal line.

**JUDGE
8.3.2023**

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