

**IN THE HIGH COURT OF TANZANIA  
(IN THE SUB-REGISTRY OF MWANZA)**

**AT MWANZA**

**LAND APPEAL NO. 45 OF 2022**

*(Originating from District Land and Housing Tribunal for Ukerewe in Land Application  
No. 9 of 2021)*

**VICTOR MALELE MATABA.....APPELLANT**

**VERSUS**

**JOHA DAUDI MATABA (Administratrix  
of the Estate of the Late DAUDI PIUS MATABA).....RESPONDENT**

**RULING**

*Date of Last Order: 07/03/2023*

*Date of Ruling: 13/03/2023*

**Kamana, J:**

In the preliminaries, this Court raised two issues *suo motto*. These were whether the appeal was filed within the time specified under section 41(2) of the Land Disputes Courts Act, Cap.216 [RE.2019] and when the appeal is considered to have been lodged in Court.

Submitting on the two issues, Mr. Maligisa Sakila, learned Counsel for the Appellant contended that the appeal was filed within the time limit as stipulated in section 41(2) of the Land Disputes Court Act. The learned Counsel submitted that the appeal was filed on 25<sup>th</sup> July, 2022

following the decision of the District Land and Housing Tribunal (DLHT) for Ukerewe, delivered on 10<sup>th</sup> June, 2022. Computing the days from 11<sup>th</sup> June, 2022 to 25<sup>th</sup> July, 2022, the learned Counsel observed that there are 45 days which renders the appeal to have been filed within the prescribed time. It was his submission that the time in which the appeal is considered to have been filed in Court is when the same is filed online.

Responding, Mr. Kadaraja Justine, learned Counsel for the Respondent, had a different opinion. In his view, the computation of the time limit ought to have been started on the same day the impugned judgment was delivered, which was 10<sup>th</sup> June, 2022. In this regard, the learned Counsel submitted that since the appeal in question was filed on 1<sup>st</sup> August, 2022, according to Judiciary System, the same was filed out of time for six days. He was of the firm opinion that the appeal is deemed to have been filed upon the payment of the filing fees. To Support his position, this Court was referred to the cases of **Camel Oil (T) Ltd v. Bahati Moshi Masabile and Another**, HC Civil Appeal No.46 of 2020 and **Bilo Star Debt Collector Co. Ltd v. Bahati Moshi Masabile**, Civil Appeal No. 46 of 2019. Mr. Kadaraja beseeched this Court not to be lenient by dismissing the appeal with costs.

Rejoining, Mr. Sakila was brief. He reiterated his position in submission in chief. He insisted that what transpired after 25<sup>th</sup> July, 2022 with regard to his appeal was beyond his client's control as he did his part by filing the appeal online.

It has been the position in this jurisdiction before the inception of online filing that documents are deemed to have been lodged in Court when the filing fees are duly paid. This position was accentuated in a number of decisions including the decision of the Court of Appeal in the case of **John Chuwa v. Anthony Ciza** [1992] TLR 233 where it was observed:

*'According to the learned judge, the date of filing the application is the date of the payment of the fees and not that of the receipt of the relevant documents in the registry. Mr. Akaro, learned advocate for the applicant, conceded that before me and I cannot fault the learned judge there.'*

With the coming into force of the Judicature and Application of Laws (Electronic Filing) Rules, 2018 (GN. No. 148 of 2018), the question which this Court is asked to provide answers is whether the position is still valid taking into consideration that Rule 21(1) of the Rules stipulates

that the document is considered to have been filed when it is electronically filed. To determine this question, I think it is pertinent to reproduce Rule 21(1) of the Electronic Filing Rules as follows:

*'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 a specific time is set by the court or it is rejected.'*

In interpreting Rule 21(1), this Court has divergent positions. The first position is to the effect that once the document is submitted through the electronic filing system, the same is deemed to have been filed. The second position takes the opposite as it considers the document submitted through the electronic filing system as completely filed upon the payment of court fees. This Court, in the case of **Emmanuel Bakundukize and Others v. Aloysius Benedictor Rutaihwa**, Land Case Appeal No. 26 of 2020 expounded the two positions as follows:

*'The First school of thought in this court is of the opinion that the filing of an appeal/application is considered when the appeal/application electronically registered in*

*this court, regardless of payment of the fees and date of filing hard copies (see: **Mohamed Hashil v. National Microfinance Bank Ltd (NmB Bank) (supra)**. The reasoning of this school is that the electronic system is recognized by the law as a current means of filing documents in our courts as per the Electronic Filing Rules. The other school thinks that it is upon payment of court fees where registration is said to have been initiated (see: **Camel Oil (T) Ltd v. Bahati Moshi Masabile & Bilo Star Debt Collector (supra)** and **Mailande Augustine Mpemba v. Pius Rwegasira &Two Others**, Land Appeal No. 23 of 2020). The reasoning of this school is that the law in Electronic Filing Rules has not changed the law, procedure and practice of payment of court fees to be the recognition of registration of suits in courts.'*

It was in line with the first position that the learned Counsel for the Appellant contended that submission of the appeal through the electronic filing system establishes a complete filing regardless of non-

payment of court fees within the time. I distance myself from that position.

It is my considered view that payment of filing fees is a prerequisite for an appeal to be considered to have been filed in Court. The coming into force of section 21(1) of the Rules was not meant to do away with the requirement of paying filing fees. In this regard, despite the provisions of Rule 21(1) of the Rules, complete submission of the documents before the Court is considered to be effected when Court fees are duly paid. This practice has been stressed in **Misungwi Shilumba v. Kanda Njile**, HC- (PC) Civil Appeal No. 13 of 2019; **Camel Oil (T) Ltd v. Bahati Moshi Masabile & Bilo Star Debt Collector**, HC-Civil Appeal No. 46 of 2020; and **Mailande Augustine Mpemba v. Pius Regasira and Two others**, Land Appeal No 23 of 2020. In the case of **Mailande Augustine Mpemba's (Supra)**, the Court stated:

*' ..it is settled law that for purposes of calculating limitation period where date of filing was contested, unless it was filed inform a pauperis it is date of exchequer receipt that counted unless through a formal application for extension of time/ which is not the case*

*here/ it was sufficiently established,' (a) that for the purposes of payment the applicant was late in the day availed the control number (b) that the exchequer receipt was backdated (c) that the delay was caused by the Registry Officers in action.'*

In the case at hand, the impugned judgment was pronounced on 10<sup>th</sup> June, 2022 and payment of fees for instituting the appeal was effected on 29<sup>th</sup> July, 2022, almost four days after the lapse of forty five days. In such circumstances, it is clear that the appeal before this Court was filed out of time. That being the position, the appeal is dismissed with costs. It is so ordered.

Right to appeal explained.

**DATED at MWANZA** this 13<sup>th</sup> March, 2023.



A handwritten signature in blue ink, appearing to read 'KS Kamana', written over a horizontal line.

**KS KAMANA**

**JUDGE**

