

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(THE DISTRICT REGISTRY OF BUKOBA)
AT BUKOBA**

MISC. LAND APPEAL NO. 60 OF 2022

(Arising from the District Land and Housing Tribunal for Karagwe at Kayanga in Misc. Applications No. 49 of 2021 dated 09.05.2022, Misc. Application No. 22 of 2020, Land Appeal No. 70 of 2018, Originating from Ihanda Ward Tribunal Civil Case No. 93 of 2018)

ASIMWE EMMANUEL APPELLANT

VERSUS

HORDIA EMMANUEL RESPONDENT

JUDGMENT

20th February & 10th March, 2023

OTARU, J.:

The Appellant **ASIMWE EMMANUEL** and the Respondent **HORDIA EMMANUEL** were among the wives of the late Mzee Emmanuel. Each of them was given a portion of land by the husband within the same neighbourhood. Sometimes in 2018 the Respondent sued the Appellant in Ihanda Ward Tribunal for encroaching over her portion of land. The Tribunal decided in her favour and ordered the Appellant to stop encroaching. Dissatisfied, the Appellant appealed to the District Land and Housing Tribunal for Karagwe at Kayanga (Appeal No. 70 of 2018). The Appeal was dismissed for want of prosecution due to her non-appearance. Again dissatisfied, the Appellant filed Misc. Application No. 22 of 2020 praying for restoration of the dismissed Appeal. The Application never saw the light of day because it too was dismissed for being time barred.

Not amused by the dismissal order, the Appellant filed Misc. Application No 49 of 2021 moving the tribunal to set aside the dismissal of Appeal No. 70 of 2018. The Application was again dismissed for the reason that the Appellant should have appealed against the Dismissal Order in Misc. Application No. 22 of 2020, hence this Appeal. The Appellant has filed the Memorandum of Appeal with 5 grounds of appeal.

When the case was called on for hearing, both parties appeared in person. The Appellant could not submit anything substantial in relation to the Appeal as she was explaining the merits of the Appeal which are contained in four of the grounds instead of advancing reasons for restoration of the Application. The same are vacated for being irrelevant. The 2nd ground of Appeal which I find to be relevant, is to the effect that Misc. Application No. 22 of 2020 should have been struck out instead of dismissed. The Appellant therefore prayed for her Appeal to be allowed. The Respondent opposed the Appeal in general terms.


It is trite law that limitation of time goes to the jurisdiction of the court and that once the matter is out of time, the court ceases to have jurisdiction. Section 3 of the **Law of Limitation Act**, (Cap. 89 R.E. 2019) provides for dismissal of proceedings that are instituted out of time. This position is well explained by the Court of Appeal in numerous instances including the case of **Hezron M. Nyachiya v. Tanzania Union of Industrial and Commercial Workers & Another**, Civil Appeal No. 79 of 2001 (CAT Dsm) (unreported).

Further emphasis is found in the case of **Ali Shabani & Others vs Tanzania National Roads Agency (TANROADS) & Another** (Civil Appeal 261 of 2020) (CAT Tanga) (unreported) in which, as in the case at hand, the Appellant had appealed against the order of dismissing the suit for being time barred, arguing that it should have been struck out instead. The court held; *'As the suit was time barred, the only order was to dismiss it under Section 3(1) of the Law of Limitation Act'*.

In the final analysis, I find no reason for faulting the decision of the District Land and Housing Tribunal for Karagwe at Kayanga of dismissing Misc. Application No. 22 of 2020 as it was the right thing to do. Consequently, I find the Appeal to lack merits and is hereby dismissed accordingly. Due to circumstances of this case, each party to bear own costs.

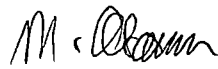
It is so ordered.

DATED at **BUKOBA** this 10th day of March, 2023.


M. P. Otaru
JUDGE

Court: Judgement delivered in court in the presence of the Appellant and the Respondent, both in person.

The right of appeal is duly explained to the parties.


M.P. Otaru
Judge
10/03/2023