

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(IRINGA SUB REGISTRY)  
AT IRINGA**

**LAND APPEAL CASE NO. 21 OF 2022**

*(Originating from Application No. 53/2020 of the District Land and Housing Tribunal of  
Njombe before Hon. G. F. Ng'humba, Chairperson.)*

**JUMA HASAN LUVASILE**

(Administrator of the estate of

the late Hasan Said Luvasile) .....

**APPELLANT**

**VERSUS**

**MASHANGILIO CHUSI** .....

**1<sup>ST</sup> RESPONDENT**

**HELIOS TOWERS TANZANIA**

**INFRANCO LIMITED** .....

**2<sup>ND</sup> RESPONDENT**

**VODACOM TANZANIA PLC** .....

**3<sup>RD</sup> RESPONDENT**

**RULING**

*14<sup>th</sup> March & 11<sup>th</sup> May, 2023*

**I.C MUGETA, J:**

This is a ruling on a preliminary objection raised by the 3<sup>rd</sup> respondent that the appeal is time barred contrary to section 41(2) of the Land Disputes Courts Act, [Cap. 216 R.E 2019]. The same was argued by way of filing written submissions. The appellant is unrepresented whereas the 3<sup>rd</sup> respondent is represented by Juvenalis Ngowi, learned advocate.



In supporting the preliminary objection, the 3<sup>rd</sup> respondent's advocate argued that the judgment in Application No. 28 of 2018 was delivered on 12<sup>th</sup> August 2022 in favour of the respondents. That this appeal was filed on 28<sup>th</sup> September 2022. He contended that computing the time from when the judgment was delivered to the filing of this appeal, 45 days within which to appeal per section 41(2) of Cap. 216 had lapsed.

The appellant's counsel challenged the 3<sup>rd</sup> respondent's preliminary objection that the appeal is not time barred. He argued that the reckoning date is 16<sup>th</sup> August 2022 when the proceedings were certified. He argued further that it is settled law that the exclusion of time requisite to obtain a copy of judgment appealed against is automatic as provided under section 19(2) of the Law of Limitation Act, [Cap. 89 R.E 2019]. To cement his argument, he cited the case of **Bukoba Municipal Council v. New Metro Merchandise**, Civil Appeal No. 374 of 2021, Court of Appeal of Tanzania – Bukoba (unreported).

In his rejoinder, the 3<sup>rd</sup> respondent's counsel maintained that the exclusion of time in obtaining copies of judgment is not automatic and the reckoning date is from when the judgment is delivered. He argued that the application of the Law of Limitation Act is limited only when this court is



exercising its original jurisdiction and not in its appellate jurisdiction as provided under section 52(2) of Cap. 216 as this is the specific law. He argued further that it is the principle of law that specific law should first be invoked before the general law. To buttress his argument, he cited the case of **Zuberi Mussa Ngaola & 2 Others v. Abdallah Uwesu Kiporoya** (Administrator of the Estate of the Late Salum Mohamed Ngaola), Criminal Appeal No. 279B of 2013 (unreported) which stated that where there is a specific law providing for time limitation, the general law on limitation cannot apply.

The 3<sup>rd</sup> respondent's counsel contended further that section 43 and 46 of the Law of Limitation Act excludes application of the Law of Limitation Act to any proceedings for which a period of limitation is prescribed by any other written laws. Thus, section 19(2) and (3) cannot apply where there is a specific law providing for the time limitation on lodging appeal. To cement his argument, he referred the court to the case of **Fortunatus Nyigana Paul v. Permanent Secretary Ministry Affairs and Another**, Civil Appeal No. 37 of 2014 (unreported). He distinguished the Bukoba Municipal Council case cited by the appellant's counsel with the



present appeal as in that case the matter originated from the District Court and not DLHT.


The record show that the impugned judgment was delivered on 12<sup>th</sup> August 2022 and together with the proceedings were certified on 16<sup>th</sup> November 2022. It follows, therefore, that the reckoning time in the present appeal was 16<sup>th</sup> August 2022 when the documents were certified and became ready for collection. Since the appeal was filed on 28<sup>th</sup> September 2022 it was within time. It is settled that the exclusion of time in waiting for certified copies of judgment and decree is automatic provided that the dates of critical events for the reckoning of time are proved per the case of **Alex Senkoro and 3 Others v. Eliambuya Lyimo**, Civil Appeal No. 16 of 2017, Court of Appeal of Tanzania at Dar es Salaam (unreported)

The 3<sup>rd</sup> respondent advocate's argument that section 19 of the Law of Limitation Act cannot apply in this matter as there is a specific law providing for time limitation is misconceived. This is because section 19 does not provide for time limitation on appealing from the DLHT to this court. It is a general provision which provides for the exclusion of certain



periods when computing time in all cases irrespective of the law providing time limitation in a particular case.

The preliminary objection is hereby overruled with costs.

  
*Mugeta*  
**I.C. MUGETA**  
**JUDGE**  
**11/05/2023**

**Court:** Ruling delivered in chambers in the presence of the appellant in person, Irene Yunus, advocate holding brief for Martin Mdoe, advocate for the 1<sup>st</sup> respondent, Irene Yunus, advocate holding brief for the Eva Msandi, advocate for the 2<sup>nd</sup> respondent and Irene Yunus, advocate for the 3<sup>rd</sup> respondent.

**I.C. MUGETA**

**JUDGE**

**11/05/2023**