

THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
(MOROGORO DISTRICT REGISTRY)
AT MOROGORO

LAND APPEAL NO. 34 OF 2023

(Arising from decision of Morogoro District Land and Housing Tribunal; Misc. Application No. 997 of 2023 and Misc. Application No. 448 of 2019 originating from Land Application No. 147 of 2014)

ILUMINATA MUSHI APPELLANT

VERSUS

**SALIMA SELEMANI JUMA (administratrix
of estate of Selemani Juma) RESPONDENT**

RULING

Hearing date on: 20/7/2023

Ruling date on: 25/7/2023

NGWEMBE, J.

This is a ruling born from preliminary objections preferred by the learned advocate for respondent who raised three grounds against this appeal. Those grounds are recapped hereunder: -

1. The appeal is hopelessly time barred;
2. The appeal is Res - Judicata; and
3. The appeal is untenable as the order sought to be challenged is not appealable.

Briefly, this appeal is against the decision of the District Land and Housing Tribunal of Morogoro in Miscellaneous Land Application No. 997 of 2022 intended to seek an order for execution of a decision of Misc. Land Application No. 448 of 2019 which decision was delivered on 16/7/2020 in favour of the respondent herein, same was not appealed against.

I have perused critically on the ruling of the tribunal in Misc. Land Application No. 448 of 2019 whereby parties were represented by learned advocates Ndanu and Tarimo as in this appeal. Both argued their application by way of written submissions. In conclusion, the tribunal had this to say: -

"The first respondent to pay rent arrears from March, 2015 to date, the same to be paid to the applicants (administratrix of estates) account and the first respondent is also ordered to continue paying rent monthly with effect from August, 2020"

Proceeded to order as follows: -

"The rent arrears and monthly rent paid to the applicants account is not subject to any use pending the hearing and determination of the main case which is a land application No. 147 of 2014 following the nature of that case"

To the best, those orders were not appealed against since 2020 to date. However, those orders were not complied with by the appellant herein, hence the respondent filed an application for execution which was registered as Misc. Application No. 997 of 2022 for orders of execution which same was granted on 18/01/2013.


Having in mind that history of this matter, the question is whether this appeal is time barred? To answer this question, the learned advocate Ndanu Emmanuel argued vehemently that the appeal is caught in the web of time limitation because it is intended to challenge both Misc. Application No. 997 of 2022 as well as Misc. Application No. 448 of 2019. Cited section 41 of the **Land Disputes Court Act** which provide time limitation to appeal against its decision within 45 days. Repeated that the decision in Misc. Land Application No. 448 of 2019 was delivered on 16/7/2020 to date is more than two (2) years, thus time barred.

In response to this point of law, the learned advocate B. Tarimo clearly stood firm that the appeal is timeous for same was intended to challenge the decision on execution as per Misc. Application No. 997 of 2022 which same was delivered on 19/01/2023 and this appeal was filed on 24/02/2023, thus within 45 days prescribed by law. Advocate Tarimo proceeded to convince this house of justice that *decision* according to section 2 is defined to include judgement, ruling or orders. Therefore, the decision for execution is appealable as in this appeal.

I find this point alone is capable to dispose of the whole matter, when need arise I will discuss other grounds of objection. I think our law is well settled on how to raise and argue an objection based on point of law. Obvious once an objection is raised in respect to an appeal or action before the court, such objection must first be determined conclusively. Such position was alluded in the case of **Munawer M. Pardar Vs. Jubilee Insurance Co. (T) Ltd [2016] TLS LR 235**, where the Court of Appeal held: -

"The law is well established that a court seized with a preliminary objection is first required to determine that objection before going into the merits or the substance of the case or application before it"

The purpose of determining an objection prior to the hearing of the main suit or appeal or application is to serve time of the court, parties and minimize costs. The reason is clear that, once the objection is sustained, means the whole suit or appeal or application comes to an end and parties are allowed to take their right cause to the ends of justice. Equally this position was rightly promulgated by the Court of Appeal in the Case of **Bank of Tanzania Vs. DP Valambhia, Civil Application No. 15 of 2002** where it was held: -



"The aim of a Preliminary Objection is to save time of the court and of the parties by not going into the merits of the suit/application because there is a point of law that will dispose of the matter summarily. The result is to render all subsequent proceedings a nullity".

Of course, there are basic elements which must be followed in raising preliminary objections, including the requirement that an objection must be on point of law. When argued successfully, it should be capable of disposing of the whole suit or appeal or application. This position was pronounced in the famous case of **Mukisa Biscuit Manufacturing Co. Ltd Vs. West End Distributors Ltd [1969] EA 694**; followed by many other cases including the cases of **COTWO (T) OTTU UNION Vs. Hon. Idd Simba Minister of Industries and Trade & Others [2002] T.L.R 88**; **CITI BANK CIVIL APPLICATION NO. 112 of 2003 Court of Appeal Dar es Salaam Registry**.

In respect to this appeal, I find all objections are on points of law. As I have stated above, objection on time limitation is statutory and is a very important point of law. Usually, time limitation to dispensation of justice is fundamental. Statutes on time limitation are part of justice system for proper running of judicial function.

Therefore, whoever seeks justice to the court of law must be diligent and timeous in instituting his action/appeal before any court of law. Failure to act diligently entitles the court to dismiss such application or appeal filed in defiance of limitation provisions.

The question of time limitation itself is material point of law capable of standing alone when argued properly. The question is whether this appeal was filed out of time? To answer this question, I have to peruse the nature of the appeal itself. First, the appellant was in

fact, aggrieved with execution order as Misc. Application No. 997 of 2022. However, that application was for execution of a tribunal's order of Misc. Application No. 448 of 2019. The question is whether one may appeal against execution order but be happy and comfortable with the decree/order that led into execution application? In any event the orders which lead into the subsequent application for execution order was appealable but did not offend the appellant.

As rightly discussed above, the orders meted by the trial tribunal in Misc. Application No. 448 of 2019 was delivered on 16/7/2020 thus by February, 2023, same was totally out of time. Therefore, this application cannot stand against the time limitation provided for under the law.

I find this ground alone is capable of disposing of this application without labouring much on the rest of grounds of objection. It is settled, time limitation is both material fact and law in any suit or action in a court of law. The essence of time limitation serves dual interests, first is for the interest of parties and courts of law or tribunal; second is the interest of the general public under the Latin maxim of *interest Reipublicae ut sit Finis Litium*, meaning it is for the interest of the Republic that there should be an end to litigation. See **Ansaar Muslim Youth Center Vs. Ilela Village Council & Another (Civil Application No. 310 of 2021) [2022] TZCA 615** and **Fortunatus Lwanyantika Masha & Another Vs. Claver Woshi Limited (Civil Appeal No. 144 of 2019) [2022] TZCA 433**. In another case of **Dominc Ishengoma Vs Geita Gold Mining Ltd (Civil Application No. 146 of 2020) [2022] TZCA 803** it was revealed that the appellant was actually not aggrieved by the decision, but changed the mind later when right to appeal was hopelessly time barred, the Court of Appeal observed the following: -

"It is equally significant to state, that, free access to the courts of law and timely justice are available for those who readily, diligently and effectively make good use of the courts, just as the bottom-line has been that, endless litigation and timely justice do not co-exist. Moreover, I am mindful of an undisputed fact that, most of the matters so instituted by the applicant did not directly intend to challenge the said impugned decision, as initially, the applicant had no qualms with the impugned decision until such time when came up with new formula and calculations, therefore change of mind"

The legislature preserved the principle on time limitation, by enacting not only the Law of Limitation Act, but also in land disputes from District Land and Housing Tribunal to the High Court. Many more statutes have time limitation. Whoever intends to bring an action in a court of law or appeal to the superior court, as the appellant in this appeal, must observe time limitation.

Once the suit or appeal or application is caught in the web of time limitation, even for a single day, such merciless law will not leave the appeal or other matter safe. It will cut deep to offenders of time limitation and end up dismissing out all hopes of the appellant/applicant. In this point there are countless precedents including the cases of **John Cornel Vs. A. Grevo (T) Ltd, Civil Case No. 70 of 1998, Night Support (T) LTD Vs. Benedict Komba, Revision No. 254 of 2008;** and **Bushiri Hassan Vs. Latifa Lukio Mashayo, Civil Application No. 3 of 2007** where held: -

"Delay, of even a single day, has to be accounted for otherwise there would be no point of having rules prescribing period within which certain steps have to be taken"

In respect to this appeal, the appellant delayed for almost two years, that is from 16/7/2020 to 24th February, 2023. In all respect, this appeal is caught in the web of merciless law of time limitation. Consequently, the whole appeal cannot stand. It is very unfortunate that the appellant and her learned counsel did not pay any consideration to the law of limitation in their attempt of this pursuit. Reciprocally, the law will not take their clause in substance when that cause had defied the law of limitation as expounded herein.

Having so reasoned, I proceed to dismiss this appeal for being time barred. Due to the nature of this appeal, the respondent is awarded costs.

I accordingly order.

Dated at Morogoro this 25th day of July 2023



P. J. NGWEMBE

JUDGE

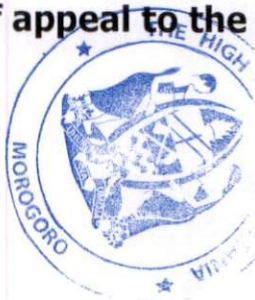
25/7/2023

Court: Ruling delivered in chambers on this 25th day of July, 2023 in the presence of appellant and his Counsel Mr. Tarimo and in presence of Respondent.

A.W. Mmbando, DR

25/07/2023

Right of appeal to the Court of Appeal explained.



A.W. Mmbando, DR

25/07/2023