

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**ARUSHA DISTRICT REGISTRY**

**AT ARUSHA**

**LAND APPEAL NO. 184 OF 2022**

*(C/F Application No. 23 of 2018 District Land and Housing Tribunal of Karatu at Karatu)*

**JULIANA AXWESSO TLEMU** (Presented by

Safari Gadiye through Power of Attorney ) ..... **APPELLANT**

**VERSUS**

**NASIBU GADIYE** ..... **1<sup>ST</sup> RESPONDENT**

**SHIDOLIA TOURS** ..... **2<sup>ND</sup> RESPONDENT**

**RULING**

02<sup>nd</sup> August & 08<sup>th</sup> September, 2023

**TIGANGA, J.**

This appeal emanates from the decision in Application No. 23 of 2018 from the District Land and Housing Tribunal of Karatu at Karatu (the trial tribunal) in which the appellant sued the respondents for trespassing into his land measuring 1.5 acres located at Sumawe area within Ganako Ward in Karatu District.

Before the appeal could be heard on merit, the respondent jointly raised the following point of preliminary objection; ***That, this appeal is incompetently filed before this court for being time barred.*** Haring of the objection was by way of written submissions, the appellant

had representation of Mr. Samwel Welwel whereas the respondents were dully represented by Mr. Fridolin Bwemelo, all learned Advocates.

Supporting the objection raised, the respondents submitted that, the law governing appeals originating from the District Land and Housing Tribunal is the **Land Disputes Courts Act**, [CAP 216 R.E 2019]. Under section 41 (2) of this law, an appeal may be lodged within forty-five days after the date of the decision or order. In the appeal at hand, the decision of the trial tribunal was delivered on 17<sup>th</sup> August 2022 but this appeal was filed on 18<sup>th</sup> November 2022 which is almost ninety days after the delivery of the decision.

Mr. Bwemelo further submitted that, one may file his appeal outside of the prescribed time if s/he obtained the copy of the judgment and decree late and that the time of waiting for those copies can be excluded in computing the period of limitation as per section 19 (2) and (3) of the **Law of Limitation Act**, [Cap 89 R.E 2019]. To be accommodated with this provision however, the date on which the appellant requested the copy of the said decree or judgment would be determined whether he had justifiable reason to file his appeal out of time without seeking leave. To cement this contention, the learned counsel cited the Court of Appeal decision in the case of **Alex Senkoro and 3 Others vs. Eliambuya**

**Lyimo (As Administrator of estates of the Frederick Lyimo, Deceased)**, Civil Appeal No. 16 of 2017 where it was held that;

*"For the purpose of section 19(2) and (3) of the LLA, these dates are the date of the impugned decision, the date on which a copy of the decree or judgment was requested, and the date of the supply of the requested document."*

The learned counsel went on arguing that, in the appeal at hand, it is not known if the appellant's lateness was due to copies of Judgment and proceedings as she didn't disclose when she requested them. That according to the Petition of Appeal filed, the appellant alleged to have obtained a copy of the judgment and decree on 06<sup>th</sup> November 2022, however, the copy of the judgment does not show when it was issued. From this non-disclosure by the appellant of the important dates, Mr. Bwemelo submitted that, either the appellant delayed applying for the copy of the judgment and decree or did not make due diligence in making follow up in obtaining the copy of the judgment and decree in time.

He also referred this Court to the case of **Daudi Robert Mapuga & 417 Others vs. Tanzania Hotels Investment Ltd & 4 Others**, Civil Application No. 462/18 of 2018, CAT at Arusha where the Court of Appeal while referring to the case of **Mohsin Mohamed Taki Abdallah vs. Tariq Mirza & Four Others**, Civil Application No. 100 of 1999

emphasized that the appellant must all along exercise diligence in the pursuit of the intended appeal including reminding the registry of his application for copies of judgment and proceedings. From this principle, the learned counsel submitted that the appellant was duty-bound to make a follow-up for the copy of the judgment and decree to be able to appeal within the prescribed time. Thus, as long as he has not disclosed to this court the reason for the delay in obtaining the said documents, it is obvious that the delay was the result of his negligence. He prayed that this appeal be dismissed with costs against the appellant.

Opposing the preliminary objection raised, Mr. Welwel submitted that, after the trial tribunal had delivered its decision on 17<sup>th</sup> August 2022, the decree was issued and supplied to the parties on 6<sup>th</sup> October 2022 and this Appeal was filed timely on 18<sup>th</sup> November 2022 which was within 45 days as required by law.

The learned counsel further argued that the appellant did not need to file a copy of letters requesting for Judgment and Decree as the same should have been filed in an application for extension of time and is a point of fact that needs scrutiny contrary to the principle regarding preliminary objections as laid down in **Mukisa Biscuits Manufacturing Company Limited vs. West End Distributors Limited** (1969) EA 696.

He added that, in the matter at hand, it is immaterial and irrelevant to apply for extension of time while the appellant was within time.

To cement his argument, he referred the Court to the case of **Alex Senkoro and 3 Others vs. Eliambuya Lyimo** (supra) where the Court of Appeal considered the fact that both judgment and decree were certified simultaneously by the trial tribunal and argued that, in the appeal at hand copy of decree show that it was certified and issued on 6<sup>th</sup> November, 2022. Therefore, it is obvious that even the Judgment was issued on the same day hence, exclusion was automatic. He prayed that the preliminary objection be dismissed with costs for being meritless.

In his brief rejoinder, the respondents' counsel argued that the copy of judgment which is attached to the grounds of appeal bears the date 17<sup>th</sup> August 2022 which means that, after delivery parties were issued with the copies of judgments. This shows that the appellant got the copy of the judgment in time but she negligently decided to sleep over his right to appeal, thus no one should suffer the consequence of her negligence. He insisted that this appeal be dismissed.

Having gone through the parties' rival arguments, the only issue for determination is whether the objection raised is meritorious or not, putting it another way round, it read whether this appeal is time-barred. While

the appellant insists that although was filed beyond forty-five days from the date of the judgment, he was served by Section 19 (1) and (2) of the Law of Limitation Act which stipulates that;

*"19.-(1) In computing the period of limitation for any proceedings, the day from which such period is to be computed shall be excluded.*

*(2) In computing the period of limitation prescribed for an appeal, an application for leave to appeal, or an application for review of the judgment, the day on which the judgment complained of was delivered, and the period of time requisite for obtaining a copy of the decree or order appealed from or sought to be reviewed, shall be excluded."*

In the case of **Valerie Mcgivern vs. Salim Farkrudin Balal**, Civil Appeal No. 386 of 2019, CAT at Tanga (unreported), the Court of Appeal of Tanzania faced with similar predicament, in resolving it, on page 11 of its judgment, cited approval the decision in the case of **Registered Trustees of the Marian Faith Healing Centre @ Wanamaombi vs The Registered trustee of the Catholic Church of Sumbawanga Diocese**, Civil Appeal No. 64 of 2006 (unreported) which held *inter alia* that:

*"...the period between 2/5/2003 and 15/12/2003 when the appellants eventually obtained a copy of the decree ought to have been excluded in computing time"*

The Court of Appeal of Tanzania went on to say;

*"Suffice to say, section 19(2) of LLA and the holding in the decision cited above reinforce the principle that computation of the period of limitation prescribed for an appeal, is reckoned from the day on which the impugned judgment is pronounced **the appellant obtained a copy of the decree or order appealed by excluding the time spent in obtaining such decree or order.** However, it must be understood that section 19(2) of LLA can only apply if the intended appellant made a written request for the supply of the requisite copies for the purpose of an appeal." Emphasis added.*

A similar stance was also held in the case of **Mohamed Salimini vs. Jumanne Omari Mapesa**, Civil Appeal No. 345 of 2019, CAT at DSM (Unreported) [2020]TZCA 1825 that;

*"The above fact should be taken together with the fact that it is undisputed that under Section 19(2) of the LLA, the time used to obtain a copy of the decree has to be excluded in computing time used to appeal"*

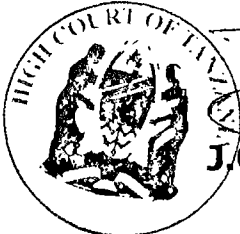
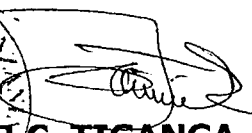
Applying all of the above authorities in the current objections raised, it is evident that, the decree attached to the Petition of Appeal was issued on 6<sup>th</sup> October 2022 after the appellant wrote to the trial tribunal on 1<sup>st</sup> September 2022, a letter which was received on 12<sup>th</sup> September 2022. Counting from 6<sup>th</sup> October 2022 to 18<sup>th</sup> November 2022 when this appeal was filed, it was 43 days hence within time as required by law.

Although the respondent asserted that, the judgment was signed on 17<sup>th</sup> August, 2022 which was the day it was delivered and the appellant had not stated when she was availed the same then time should start to count from that day. I, however, differ with his contention because as intimated briefly above, a petition of appeal could not be complete without copies of judgment and decree. In the circumstances, the appellant did not have to apply for an extension of time before filing the appeal because the decree clearly shows when she availed of such a copy.

In the circumstances, the objection raised is overruled with cost for want of merit. The present appeal is not time-barred, the same should proceed to be heard on merit.

It is accordingly ordered.

**DATED** and delivered at **ARUSHA** this 08<sup>th</sup> day of September 2023

   
**J.C. TIGANGA**  
**JUDGE**