

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

TANGA DISTRICT REGISTRY

AT TANGA

LAND APPEAL NO. 01 OF 2023

(Arising from Land Appeal No. 48 of 2019 of the District Land and Housing Tribunal for Tanga at Tanga Originated from Case No. 48 of 2019 of Maweni Ward Tribunal)

PROTUS GEORGE MASURA.....APPELLANT

VERSUS

ANDREW KILAPILO.....RESPONDENT

JUDGMENT

02/10/2023 & 10/10/2023

NDESAMBURO, J.:

This is an appeal filed by the appellant, challenging the decision of the District Land and Housing Tribunal for Tanga (DLHT). The DLHT had previously rendered a decision in favour of the respondent in Land Appeal No. 48 of 2019. Before the DLHT's decision, the respondent had successfully appealed against the decision of the Maweni Ward Tribunal. This earlier decision by the Maweni Ward Tribunal declared the appellant the rightful owner of a parcel of land measuring 1.5 acres in the Kichangani A area.

The brief facts of the appellant's case are as follows. On 28th April 2012, the village council decided to allocate undeveloped areas to its villagers. The appellant was allocated two plots, and he subsequently gave one of these plots to his wife. However, it is alleged that, the respondent unlawfully encroached upon the plot that the appellant had given to his wife and proceeded to sell it. This prompted the appellant to take legal action by initiating proceedings at the Maweni Ward Tribunal. Following a hearing, the Ward Tribunal ruled in favour of the appellant.

The respondent dissatisfied with the Ward's decision, made his way to DLHT raising three grounds of appeal, among them that the matter before the Ward Tribunal was res judicata and that, the appellant had no locus to institute the matter since the land in question belonged to his wife. Having heard the parties, the DLHT ultimately ruled in favour of the respondent.

Being dissatisfied with the above decision, the appellant has lodged the current appeal predicated on two grounds, which are as:

- i. The honourable chairperson erred in law by determining the respondent's appeal, which was time-barred.*

ii. The honourable chairperson erred in law by nullifying the proceedings of the trial tribunal.

Therefore, the appellant prays for this court to allow the appeal with costs, and for the proceedings and the decision of the DLHT to be quashed and set aside. Additionally, the appellant seeks any other orders that this court deems appropriate.

By consent, the appeal was argued by way of a written submission, the appellant was being represented by Mr. Yona Lucas, a learned counsel, whereas the respondent had the service of Mr. Warehema Kibaha, also a learned counsel.

Both learned counsel provided concise arguments. Mr. Yona argued that the ward tribunal delivered its decision on the 18th September 2019 in favour of the appellant. This decision made the respondent appeal to the DLHT on 12th November 2019. He asserts that this appeal to the DLHT was filed outside the 45-day timeframe prescribed by Section 20(1) of the Land Disputes Court Act, Cap 216 R.E. 2019. Therefore, Mr. Yona contended that the DLHT ought to have dismissed the said appeal. He supported his stance with the precedent set by the Court of Appeal of **MM Worldwide Trading**

Company Limited and two Others v National Bank of Commerce, Civil Appeal No 258 of 2017 (unreported). He wrapped up his submission by beseeching this court to allow the appeal with costs.

On the opposing side, Mr. Warehema contested the appeal and argued that the appeal filed before the ward tribunal was submitted within the statutory time limit mentioned by his learned brother. He maintained that the ward tribunal's decision, although initially scheduled for delivery on 18th September 2019, was actually delivered on 25th September 2019, due to a seminar that caused a delay. Mr. Warehema supported this argument with the ward tribunal's official letter dated 30th October 2019, confirming the delay in the delivery of the decision. Additionally, he pointed out that the appellant was aware of this fact. Furthermore, the issue was initially raised as a preliminary objection, which the ward tribunal subsequently overruled.

Regarding the second ground, Mr. Warehema contended that the appellant lacked locus standi to sue or be sued over the disputed land. This assertion was based on the appellant's own admission that the contested property did not belong to him but rather was the personal property of his wife. In support of this argument, he referred to the

precedent set in the case of **Lujuna Shubi Balonzi v Registered Trustees of Chama Cha Mapinduzi** [1996] TLR 204. Mr. Warehema urged the court to dismiss the appeal and award costs.

In his rejoinder, Mr. Yona reiterated that the appeal before the ward tribunal was filed beyond the prescribed time limit. He challenged Mr. Warehema's argument regarding the changed date of the delivery of the ward tribunal's decision, stating that this change was not reflected in the ward's decision. He stressed that, the date of the decision is the one contained in the decision and cited the high court decision of **Melchiory Blasius Kamata and another v The Republic**, Criminal Appeal No. 172 of 2013. Mr. Yona argued that if Mr. Warehema was aware of the discrepancy in the date of the decision, he should have taken the appropriate steps to rectify it. He finally reiterated his plea for the appeal to be allowed with costs.

After a thorough review of the records and consideration of the arguments presented by both parties, the central question for determination is whether the appeal before this court has merit.

The crux of the matter before this court revolves around whether the appeal submitted from the ward tribunal was filed within the stipulated timeframe. It is undisputed that the appeal originating from the ward tribunal to the DLHT is required to be filed within 45 days from the date when the ward tribunal issued its decision. Sections 19 and 20(1) of Cap 216 govern this area and provide as follows:

"19. A person aggrieved by an order or decision of the Ward Tribunal may appeal to the District Land and Housing Tribunal.

20. (1) Every appeal to a District Land and Housing Tribunal shall be filed in the District Land and Housing Tribunal within forty-five days after the date of the decision or order against which the appeal is brought".

The decision which the respondent appealed against from the ward tribunal to the DLHT was Case No. 48 of 2019. According to the decision itself, it was rendered on the 18th September 2019. Accordingly, the appeal should have been lodged before the DLHT on or before 2nd November 2019 as the law requires appeals to be filed within 45 days from the date of the ward tribunal's decision. Instead, the appeal was filed on 12th November, 2019.

However, it is important to note that there is a letter from the ward tribunal stating that the decision was not actually delivered on the 18th September 2019 as dated but rather on the 30th September 2019. Mr. Warehema is relying on to this letter to support his claim that the appeal was lodged within time limit as counting from 30th September 2019 to 12th November 2019 when the appeal was lodged, it falls within the 45 days period prescribed by the law. Mr. Yona contests this move saying that, the decision of the ward tribunal was delivered on the 18th September 2019 and the same is reflected on the judgment.

While I have reservations about the validity of the procedure employed by the ward tribunal to rectify the date of the decision, I concur with the decision of the High Court in **Melchior Blasius Kamata and another v The Republic** (supra) that, once a judgment is signed, it should not be supplemented by additional explanations from external materials or documents. Indeed, once the judgment is signed, it should stand on its own and be self-contained without the need for reference to other documents. If there was a need for any correction, the learned counsel should have followed the

proper procedure to request the rectification of the decision. This would have been essential to uphold the accuracy and integrity of the proceedings before the ward tribunal.

Despite that, upon closer examination of the document which purports to rectify the date of the delivery of the decision, it has become evident that the document refers to Case No. 52 of 2016, which does not align with the case number that the respondent was appealing against at the DLHT, which was Case No. 48 of 2019. Consequently, the purported letter attempting to rectify the date of the decision's delivery by the ward tribunal does not appear to have any relevance or connection with the matter that the respondent was appealing against at the DLHT.

In light of what has been stated, it is clear that the Land Appeal No. 71 of 2019, which originated from Case No. 48 of 2019 was indeed filed beyond the stipulated 45-days time limit, contrary to the provisions of Section 20(1) of Cap 216. The DLHT should not have proceeded to consider the appeal due to its untimely filing.

Therefore, the appeal is allowed with costs. As a result, the proceedings and the decision of the DLHT are hereby nullified and set aside.

It is so ordered.

DATED at **TANGA** this 10th day of October 2023




H. P. NDESAMBURO

JUDGE