

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

**MOSHI DISTRICT REGISTRY**

**AT MOSHI**

**LAND APPEAL NO. 5 OF 2023**

*(Appeal from the decision of District Land and Housing Tribunal Moshi at Moshi dated 16<sup>th</sup> November 2022 in Application No. 177 of 2010)*

**JOACHIM CHAKI ..... APPELLANT**

***VERSUS***

**SALOME KITUA ..... RESPONDENT**

**RULING**

19<sup>th</sup> Sept. & 16<sup>th</sup> October 2023.

**A.P.KILIMI, J.:**

The appellant filed an appeal basing on the decision of land case from District land and Housing tribunal of Moshi. On reply of the memorandum of appeal the respondent raised a preliminary objection on point of law that the appellant appeal is bad in law and incompetent before this court for being hopelessly and time barred.

The appellant was represented by Faustine Materu, learned advocate and Mr. Kilasara learned advocate appeared for the respondent. The preliminary objection was heard by way of written submission and I applaud them for compliance with the scheduling orders.

Arguing in support of the objection, Mr. Kilasara submitted that the appellant appealed against the decision of Moshi District Land and Housing Tribunal No 117/2010 which was delivered on 11/11/2022 while the appeal before this court was filed on 30/01/2023. He relied his argument on section 41(1) and (2) of the Land Disputes Courts Act, Cap 216 R.E 2019. That the present appeal has been filed after the prescribed period of forty five (45) days, therefore this appeal is hopeless and time barred.

In reply of the above, the Mr. Materu submitted that, the judgment before the Tribunal was delivered on 16/11/2022 and the decree was issued on 20/12/2022. The appellant wrote a letter requesting a copy of judgment on 23/11/2022 whereas the copy of judgment was delivered to him on 23/12/2022. The appellant further filed a memorandum of appeal before this court on 30/01/2023. The counsel cited and relied on section 19(2) of Law of Limitation Act, 1971. He further argued that he is aware that section 42(1) and (2) of Land Disputes Courts Act provides that an appeal be lodged within 45 days but the appellant could not file the appeal without a copy of the judgment and decree and therefore section 19(2) excludes the time sought to obtain the same. To buttress his argument cited the case of **Barenga Mungozi vs May Ntunzwe** (2002) TLR 141.

In his rejoinder Mr. Kilasara submitted that the governing law in land appeals is section 41(1) and (2) of Land disputes Courts Act which requires an appeal be lodged within 45 days after the date of decision or order. He also cited the case of **Lewin Benard Mgala vs Lojasi Mutuka Mkondya And 2 Others**, Land Appeal No. 33 of 2017 High Court of Tanzania at Mbeya. This appeal is filed after prescribed period of 45 days hence it is hopelessly and time barred and ought to be dismissed.

He further added that the appellant has annexed letter requesting the copy of judgment in the reply submission which is totally disputed as the written submission are not evidence, invited me to see the case of **A.S Sajan vs Cooperative and Rural Development Bank** (1991) TLR 44 and the **Bish International B.V and Another vs Charles Yaw Sarkodie and Another**, Land Case No 9 of 2006 High Court of Tanzania at Dar es salaam.

I have gone through the submission of both sides and the records of the trial tribunal and found that the issue to be determined before this court is whether the objection raised has merit.

It is a trite law that once the issue of time limitation is established, it has the effect of causing the jurisdiction of the Court to cease. There are

plethora of authorities which underscored the said position of the law, to mention few are; **Njake Enterprises Ltd v. Blue Rock, Ltd and another**, Civil Appeal No. 69 of 2017, **Mayira B. Mayira and 4 Others v. Kapunga Rice Project**, Civil Appeal No. 359, **Mondorosi Village Council and 2 Others v. Tanzania Breweries Ltd and 4 Others**, Civil Appeal No. 66 of 2017, **Filon Felicion Kwesiga v. Board of Trustees of NSSF**, Civil Appeal No. 136 of 2020, and **Muse Zongori Kisere vs. Richard Kisika Mugendi & Others**, Civil Application No.244/01 of 2019 (all unreported).

The appellant based his submission on section 19(2) of the Law of Limitation Act, Cap 89 R.E 2019, In my view it is true the above provision excludes the period of time requisite for obtaining a copy of the decree or order appealed from or sought to be reviewed. Therefore, the appellant needs to prove the above by evidence that it was not his fault due to that delay. Thus, the next question need to be answered is whether can the same be proved in this objection proceeding.

Mr. Materu submitted that the judgment of the tribunal was delivered on 16/11/2022 and the decree was issued on 20/12/2022 thereto, therefore the appellant was supplied with the copy of judgment and decree on 23/12/2022 and the same filed a memorandum of appeal on 30/01/2023.

I am also in agreement the Appellant that waiting for copies of judgement and decree amounts to sufficient reasons for delay and as per section 19 (2) of the Law of Limitation Act the said time should be excluded, but under the circumstances of this matter where he has already filed an appeal and the same is objected by preliminary objection above, this means only point of law are argued and not facts to ascertain that when he was supplied in order to prove that he delayed not for his own fault.

As rightly pointed out by Mr.Kilasara this is submission from the bar, thus are not evidence. In my opinion the only way of proving the above is for the appellant to file application for extension of time, then by the use of affidavit he can prove his evidence on how the delay affected to file the appeal in time. (See **A.S Sajan vs Cooperative and Rural Development Bank** (supra).

In considering of the above, the case cited **Barenga Mungozi vs May Ntunzwe** [2002] TLR 141 cited by the appellant is distinguishable with the facts of this matter, because cannot prove when the time started to run after he received copy of the judgment.

In view of what I have endeavoured to discuss above, I find the preliminary objection raised by respondent is has merit and is accordingly upheld and sustained. In the premises and from the foregoing reasons, this appeal is hereby dismissed with costs.

It is so ordered.

**DATED at MOSHI** this day of 16<sup>th</sup> October, 2023.



X

JUDGE

Signed by: A. P. KILIMI

**Court:** - Ruling delivered today on 16<sup>th</sup> October, 2023 in the presence of Appellant and Respondent. Mr. Faustine Materu and Mr. Martin Kilasara absent.

**Sgd: A. P. KILIMI**  
**JUDGE**  
**16/10/2023**