

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE DISTRICT REGISTRY OF SHINYANGA  
AT SHINYANGA**

**LAND APPEAL NO. 86 OF 2022**

*(Originating from Land Appeal No. 34/2022 in the District Land and Housing  
Tribunal for Shinyanga and Original Land Case No 03/2021 of Masanga Ward  
Tribunal in Kishapu District)*

**NG'WALU MANDALU.....APPELLANT**

*VERSUS*

**KAMBONA CHANDALUA .....RESPONDENT**

**JUDGMENT**

*Date of last order: 1<sup>st</sup> November, 2023  
Date of Judgement: 14<sup>th</sup> November, 2023*

**MIRINDO, J.:**

Before Masanga Ward Tribunal in Kishapu District was a claim by Kambona Chandalua that Ng'walu Mandalu was interfering with a piece of land which his father was given in 1974 during the *Operation Vijiji*. The Masanga Ward Tribunal held in favour of Kambona. Ng'walu unsuccessfully appealed to Shinyanga District Land and Housing Tribunal.

Ng'walu has appealed to this Court.

At the hearing of the appeal, Ng'walu was represented by Mr. Shaban Mvungi, learned counsel, and Kambona was represented by Mr. Geoffrey Tuli, learned counsel. There was a preliminary objection on the competency of the appeal



but in the interest of justice this Court ordered that the preliminary objection should be heard together with the appeal. In case the preliminary objection is upheld that will be the end of the appeal and if not, the merits of the appeal will be considered.

The preliminary objection was to the effect that the appeal was time barred in terms of subsection (1) of section 38 of the Land Disputes Courts Act [Cap 216 RE 2019]. Mr. Tuli, learned counsel, arguing in respect of the objection pointed out that the appeal to the High Court originating from a Ward Tribunal should be lodged within 60 days. The judgment subject to this appeal was delivered on 8<sup>th</sup> September 2022 but the Petition of Appeal was lodged to the District Land and Housing Tribunal on 9<sup>th</sup> November 2022, some 62 days later. No leave to appeal to appeal out of time has been sought for and granted. As the appeal was lodged out of time, it should be dismissed for being time barred in terms of subsection (1) of section 3 of the Law of Limitation Act [Cap 89 RE 2019].

Mr. Mvungi, learned counsel, opposed the preliminary objection. He pointed out that the appeal was lodged within the prescribed time. Soon after the decision of Shinyanga District Land and Housing Tribunal, Ng'walu applied for copies of proceedings judgment, and decree that were supplied on 5<sup>th</sup> October 2022. The letter applying for these copies was written and delivered to the Tribunal before the expiry of the period prescribed for appealing. The copies were supplied to Ng'walu on 26<sup>th</sup> October 2022. The learned counsel



emphasized that the appeal could not be lodged in the absence of these documents and so the time started to run from 26<sup>th</sup> October 2022.

In reply, Mr. Tuli, argued that there was no proof that Ng'walu received copies of proceedings, judgment and decree on the date mentioned. The copies were neither certified nor rubber stamped as to the date of receipt by N'gwalu. The date of receipt of those documents was not endorsed. There was only a court seal and the date of delivery of the judgment.

It is my considered opinion that these are internal processes of Shinyanga District Land and Housing Tribunal to which N'gwalu had no control. The omission is an impropriety that should not be unfairly imposed on N'gwalu.

Besides Mr. Tuli argued that even if N'gwalu was supplied with copies on 26<sup>th</sup> October 2022, the appeal should have been lodged within the prescribed time and not wait for the time to expire. While the provisions of section 38 of and 41 of the Land Disputes Courts Act [Cap 216 RE 2019] do not expressly provide for exclusion of time spent in obtaining copies of judgment and proceedings, the Court of Appeal has held in **Alex Senkoro and Others vs Eliambuya Lyimo** (Civil Appeal 16 of 2017) [2021] TZCA 104 (13 April 2021), that it is appropriate to exclude the period spent in obtaining those documents and the exclusion is automatic. The Court held that such exclusion is governed by the provisions of section 19(2) and (3) of the Law of Limitation Act [Cap 89 RE 2019]:





*We entertain no doubt that the above sub-sections expressly allow automatic exclusion of the period of time requisite for obtaining a copy of the decree or judgment appealed from the computation of the prescribed limitation period. Such an exclusion need not be made upon an order of the court in a formal application for extension of time. Indeed, that stance was taken recently in **Mohamed Salimini v. Jumanne Omary Mapesa**, Civil Appeal No. 345 of 2018 (unreported) where the Court affirmed that section 19 (2) of the...[Law of Limitation Act] obliges courts to exclude the period of time requisite for obtaining a copy of the decree appealed from.*

.....

*We need to stress ... that the exclusion is automatic as long as there is proof on the record of the dates of the critical events for the reckoning of the prescribed limitation period. 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 period spent by Ng'walu in obtaining the document must be excluded in computing the period for appealing. The objection has no merit.

After overruling the preliminary objection, I now proceed to deal with the grounds of appeal. After consultation with both counsel there remained only one ground of appeal touching the composition of the Masanga Ward Tribunal. Mr. Mvungi, learned counsel, argued that the Tribunal was not duly constituted at the time of determining the land dispute involving the parties to this appeal. The learned counsel observed that the judgment of the Tribunal was signed by four persons including the Secretary. The Secretary is not a



member of the Tribunal and so, the judgment was a result of three members contrary to the requirements of the law.

It is clear from the record that this is a new ground of appeal as it was not raised in the first appeal before Shinyanga District Land and Housing Tribunal. Given that this is a serious question of law which this Court has jurisdiction to consider. The appellate power to consider serious new points of law was addressed by the Court of Appeal in **B. 9532 Cpl Edward Malima v R**, Criminal Appeal 15 of 1989, Court of Appeal of Tanzania at Mwanza (1989) (unreported); In the context of land appeals, the appellate determination of serious new points of law was reaffirmed by the Court of Appeal in **Adelina Koku Anifa and Another v Byarugaba Alex** (Civil Appeal 46 of 2019) [2019] TZCA 416 (4 December 2019)

Section 11 of the Land Disputes Courts Act [Cap 216 RE 2019] directs that that the minimum number of members in the Ward Tribunal is four including both men and women. In **Adelina Koku Anifa and Another v Byarugaba Alex**, the Court of Appeal held that the Secretary of a Ward Tribunal does not form part of its composition and a Tribunal composed of three members is not properly constituted. Proceedings emanating from a Ward Tribunal that was not duly constituted have been declared a nullity: **Edward Kubingwa vs Matrida A. Pima (Civil Appeal 107 of 2018) [2021] TZCA 662 (5 November 2021); Adelina Koku Anifa and Another v Byarugaba Alex.**



I declare that the judgment of Masanga Ward Tribunal was marred with material irregularity and cannot be allowed to stand. Were it not for the Written Laws (Miscellaneous Amendment) (No. 3) Act, 2021 stripping the Ward Tribunals jurisdiction to determine land disputes, this Court would have ordered a trial *de novo*. Subsequent to these legal changes, it is inappropriate to order a trial *de novo* before Masanga Ward Tribunal: **Edward Kubingwa v Matrida A. Pima** (Civil Appeal 107 of 2018) [2021] TZCA 662 (5 November 2021). Kambona is at liberty to re-institute the claim in terms of recent legal developments.

For the above reasons, I allow the appeal. Each party to bear its own costs.

  
**F.M. MIRINDO**  
**JUDGE**  
**14/11/2023**

**Court:** Delivered in Chambers this 14<sup>th</sup> November, 2023 in the presence of Ms Elizabeth Luhigo, learned advocate, for the Appellant and Respondent in person. B/C Miss Sumaiya Hussein – (RMA) present.

Right of appeal explained.



  
**F.M. MIRINDO**  
**JUDGE**  
**14/11/2023**