

**IN THE HIGH COURT OF TANZANIA**

**DODOMA SUB-REGISTRY**

**AT DODOMA**

**LAND APPEAL NO. 30 OF 2023**

*(Originating from Land Application No. 78 of 2020 of the District Land and Housing Tribunal for Singida at Singida)*

**PATRICK YUNDE KIMU** *(Administrator of the*

*Estate of The Late Yunde Kimu Mlade)*.....**APPELLANT**

**VERSUS**

**JAMES MPINDA KIMU** *(Administrator of the*

*Estate of The Late Mpinda Kimu Mlade)*.....**RESPONDENT**

**RULING**

*14<sup>th</sup> November, 2023*

**HASSAN, J.**

The appellant unsuccessfully sued the respondent in the District Land and Housing Tribunal for Singida. Pained by the trial tribunal's decision, the appellant lodged this appeal with the following grounds of appeal;

- 1. That, the learned trial chairperson erred in law and in fact in entering judgment in favour of the Respondent rely on weak*

- evidence delivered by the respondent and his witnesses at the trial tribunal which is based on hearsay.*
- 2. That, the learned trial chairperson misinterpreted the Appellant's evidence with his witness which proved on balance of probability that the suit land was divided by parties long time ago before their death and what was done in the meeting held on 26/06/2017 was just recording the said division as a memory for incoming generation.*
  - 3. That, the learned trial chairperson erred in law and in fact in failing to consider and evaluate the evidence tendered by the Appellant and his witness which proved on balance of probability the suit land to be the property of the parties herein upon inheriting the same from their deceased fathers ( Yunde Kimu Mlade and Mpinda Kimu Mlade).*

Before hearing of the appeal commenced, the respondent raised a preliminary objection on points of law to be determined by the court at the earliest as hereunder:-

*"The appeal is out of time."*

When the preliminary objection came for hearing on the 25<sup>th</sup> day of September, 2023 the appellant was represented by Mr. Isaya Nchimbi,

learned counsel whereas the respondent had the service of Ms. Maria Ntui, learned Counsel.

The respondent submitted in support of the preliminary objection that this appeal was filed out of time since judgment from DLHT was delivered on the 17<sup>th</sup> day of January, 2023 and as per section 41 (2) of the Land Disputes Courts Act, this appeal was supposed to be filed within 45 days from the date of judgment. However, looking on the memorandum of appeal, it was prepared on the 6<sup>th</sup> day of March, 2023 where it was already delayed for 3 days, since its limitation was on the 3<sup>rd</sup> day of March, 2023. But it was lodged in the court on the 11<sup>th</sup> day of March, 2023 which is 8 days in excess.

The respondent went on submitting that, the decree shows that it was delivered on the 27<sup>th</sup> day of January, 2023, thus there is difference on the dates between judgment and decree. The learned counsel added that, the law is clear that the day will be counted from the date judgment has been delivered. Thus, if judgment was delivered on the 27<sup>th</sup> day of March, 2023 they could not have filed an objection. That, in **Kabula Ng'ondi & 2 others v Maria Francis Zumba & another**, Civil Appeal No. 474 of 2020 (unreported) it was held that the decree should bear the date of the day the judgment was read. Thus, the date shown under the

decree is a key board error but the proper date should be the one reflected in the content of the decree and in the judgment. That, in **Harram Singh Bliogal T/A Harram Singh & Company JAVDA KARSAN** (1953) 20 EACA 17 cited in **Rodvick K. Mbona v NBC (1997) TLR 96** the court of appeal held that

*"it is a well settled law that a right to appeal can only be found on statute and thus any party who seek to avail himself of the right must strictly comply with the condition prescribed with the statute."*

The respondent finalized her submission by praying the court to struck out the appeal for being filed out of time.

On his part, the appellant submitted against the preliminary objection that, this appeal is within time that the judgment was delivered on the 17<sup>th</sup> day of January, 2023 and decree was issued on the 27<sup>th</sup> day of January, 2023 as it appears on the last copy of the decree. That, since the decree was issued on the 27<sup>th</sup> day of January, 2023 then until the 11<sup>th</sup> day of March, 2023 it is about 44 days. Therefore, the appeal was filed within time. That, the appellant was served with judgment and decree on the 27<sup>th</sup> day of January, 2023 therefore computation of time should start from the 27<sup>th</sup> day of January, 2023. The appellant went on submitting that

the word of law is that appeal should be accompanied by a decree. Thus, case laws cited by the respondent are irrelevant. That Order XXXIX of the Civil Procedure Code provides that the memorandum should be accompanied by a decree. Therefore, this appeal is within time and to that end the preliminary objection has to be overruled with costs.

Based on the parties' submissions, the question to be resolved by the court is whether or not this appeal is out of time as alleged. Indeed, as well submitted by the parties, there is no dispute that the trial Tribunal's judgment was delivered on the 17<sup>th</sup> day of January, 2023 and the decree was issued on the 27<sup>th</sup> day of January, 2023 as it can clearly be seen on copy of the decree, thus *"imeandaliwa 27/01/2023 Na kutolewa 27/01/2023"*.

Time limit for filing appeals from the DLHT when exercising its original jurisdiction is provided under section 41 of the Land Disputes Courts' Act, Cap 216 to be 45 days after the pronouncement of judgment. And the procedures for filing an appeal to the court is guided by Order XXXIX Rule 1 of the Civil Procedure Code, Cap 33 setting a mandatory requirement of the memorandum of appeal to be accompanied with a decree and judgment appealed against. See also **Mariam Abdallah Fundi vs Kassim Abdallah Farsi [1991], TLR 196** Thus, it

is a requirement of the law that for a party to file his memorandum of appeal then he should attach the said documents.

I am well aware of the settled jurisprudence in law that, time starts to run after parties are availed with the copy of judgment and decree. See section 19 (2) of the Law of Limitation Act, Cap 89 which provides;

*"19. (2) In computing the period of limitation prescribed for an appeal, an application for leave to appeal, or an application for review of 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."*

However, in my view this relief is not automatic but for a party who wants to rely on it needs to initiate by taking a move in requesting the copies of judgment and decree by writing a letter for the same if ordinary time limit is ending. Thus, after the attempt time will start running from the date the copies are supplied by the court to the parties. In the case of **Mohamed Salimini vs Jumanne Omary Mapesa**, Civil Appeal 345 of 2019 (unreported) the court had this to say;

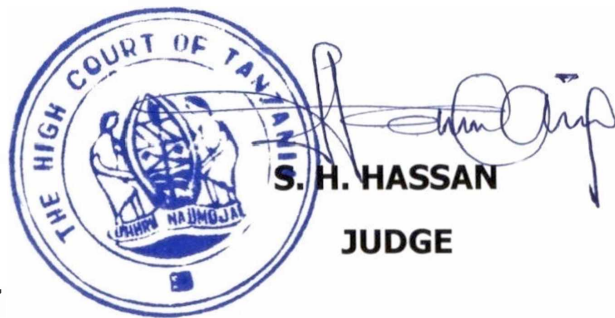
*"Suffice to state, having in mind the duty to ensure there is a decree and judgment attached to the record of appeal as stated in section 19(2) of the LLA falls on the appellant, there is also a duty to apply for a decree within the time prescribed for appeal."*

In the instant case, the appellant filed this appeal 8 days out of time. There is no evidence, if any, of him requesting for the copy of judgment and decree from the trial tribunal before time limit imposed by law elapsed hence he cannot rely on the position of law under section 19 (2) of the Law of Limitation Act and neither he can use the same as an excuse to cover the anomaly. He ought to have acted diligently by writing a formal letter requesting for the copy of judgment and decree while was still ticking.

That said, the respondent's preliminary point of law has merit and is hereby sustained. The appeal is struck out for want of time limit with costs.

It is ordered.

**DATED at DODOMA** this 14<sup>th</sup> day of November, 2023.



**COURT**

Ruling read over in the presence of the counsel for both parties whereby advocate Maria Ntui was linked with Court through Video conferencing from IJC-Dodoma to Kondoa District Court.

