

UNITED REPUBLIC OF TANZANIA

JUDICIARY

THE HIGH COURT OF TANZANIA

MOROGORO DISTRICT REGISTRY

AT MOROGORO

LAND APPEAL NO. 66 OF 2023

*(Originating from land application no 24 of 2022, DLHT Morogoro)*

**USENI CHARLES KIJA (Donee of power of attorney for Elikunda John**

**Masham Administration of the estate of the late**

**JOHN ELIKUNDA MSHAM ..... APPELLANT**

**VERSUS**

**EXPORT TRADING CO. LTD ..... 1<sup>ST</sup> RESPONDENT**

**ZAKARIA WILSON GINILAH ..... 2<sup>ND</sup> RESPONDENT**

**ADAM MRISHO ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

**Date of last order: 13/07/2023**

**Date of Ruling: 11/08/2023**

**BEFORE: G. P. MALATA, J**

This is the ruling in respect of the preliminary objection raised by the respondent that, this appeal is hopelessly time barred. Briefly the facts leading to this appeal are;

At the District Land and Housing Tribunal, the appellant sued the respondent claiming for land. It was alleged that, the land in dispute formed part of the estate of late John Elikunda Masham who died interstate on 13/07/2016. The appellant who is the administrator of the deceased's estate owned the suit premises without any interference until 10/04/2022 when the first respondent trespassed the suit premises by uprooting the poles and trees and pronounced that, the suit premises belonged him.

The appellant being aggrieved such acts of the appellant filed land application no.24 of 2022 at the DLHT praying for orders that; suit premises be declared that, is belongs to the applicant, restraint order and payment of compensation to tune of TZS 390,000 for uprooting the poles and trees and costs of the suit.

On 21/03/2023 the DLHT entered judgement in favour of the first respondent by declaring him, lawful owner of the premises, and the appellant was permanently restrained from interfering with the respondent's rights.

Aggrieved by the decision of DLHT the appellant filed this appeal which was attacked by preliminary objection by the respondent that the appeal was incompetent for being filed outside the time limit prescribed by law.

The preliminary objection was argued orally. On the hearing date parties appeared represented by their counsels, Mr. Vicent Derick learned counsel appeared for the appellant while Mr. Ignas Punge learned counsel appeared for the respondent.

Submitting in support of the preliminary objection Mr. Punge, learned counsel for the respondent stated that, the decision sought to be appealed was delivered by the DLHT on 21/03/2023. This appeal was filed on 09/05/2023 being 49 days from the date of the delivery of the judgement.

The appeal was preferred under section 41(2) of the Land Dispute Court Act (LDCA) Cap. 216, R.E 2019 which provides that such kind of appeal to be filed within 45 days from the date of decision or order. The present appeal is out of time for four days and the appellant did not seek extension of time within which to file this appeal out of time.

As result Mr. Punge opined that since the appeal is out of time then it should suffer dismissal under section 3(1) (2) (b) of the Law of Limitation Act, Cap 89 R.E 2019. Additionally, he prayed for dismissal with costs.

In opposition Mr. Derick Vicent learned counsel for the appellant was of the view that, the appeal was filed on 02/05/2023 electronically and that it was admitted and given control number on the same day. However, the prescribed fee was paid on 09/05/2023, the filing of the document is complete when it is electronically filed not upon payment of prescribed

fees, thus counting from 21/03/2023 to 02/05/2023 is 42 days thus the appeal is filed within time. He thus asked the Court to dismiss the preliminary objection with cost.

By way of rejoinder, Mr. Punge submitted that the document is said to have been legally filed upon payment of prescribed fees not on transmitting electronically to the court. In the present appeal, the filing fees was paid on 09/05/2023 and that is when the document was legally and officially filed.

Having considered the arguments by the learned counsels, this court proceed to determine on whether the appeal was time barred. This is the central issue for consideration because the question of time limit touches jurisdiction of the court to determine the matter before it.

It is trite law that a preliminary objection is gathered from the pleadings. It is a stand-alone point of law which need no production of evidence to ascertain it but only pleaded facts and law. Anything raised which need to be ascertained by evidence do not qualify to be a point of law in law. Usually, the preliminary objection touches, time limit, jurisdiction issues res judicata and locus standi. In the case of **Soitsambu Village Council vs. Tanzania Breweries LTD and another**, Civil Appeal no. 105 of 2011, unreported the court commented that, issue of jurisdiction is so basic as it goes to the root of the matter, courts and tribunals are enjoined

not to entertain a matter which is time barred and in any event they did so, the court unsparingly declare the proceedings and the consequential orders a nullity, see **Swilla Secondary vs. Japhet Petro**, Civil Appeal no. 362 of 2019, unreported.

In the case of **John Barnabas vs. Hadija Shomari**, Civil Appeal no. 195 of 2013 (unreported) the court pronounced that;

*Consequently, in fine, what we have endeavoured to traverse above, we hold that the Ward Tribunal of Kinyangiri lacked jurisdiction to entertain the land dispute which was lodged by the respondent because **it was time barred**. As a result, the **proceedings before the Ward Tribunal and those subsequent thereto, were nullity and we nullify them.***

Having perused the pleadings and specifically appellant's pleadings, it is undisputed that, the impugned decision which is subject of this appeal was delivered on 21/03/2023 and the appeal was filed on 02/05/2023 followed by payment of prescribed fees on 09/05/2023. The chronology of event shows that, until the date of electronic filing the appellant spent 42 days, thus within 45 days prescribed by law for filing an appeal under section 41(2) of the LDCA. I am aware of the provision of rule 8 and rule 21 of the Judicature and Application of Law (Electronic filing) Rules, 2018

Rule 8 provides that;

*"All pleadings, petitions, applications, appeals and such other documents shall be filed electronically in accordance with these Rules"*

And rule 21 (1) provides;

*"A document shall be considered to have been filed if it is submitted through the **electronic filing system before midnight, East African time, on the date it is submitted, unless a specific time is set by the court or it is rejected.**"*

However, the parties to this appeal lock horns as to when is the document said to have been legally filed in court, is it on submission electronically or payment of prescribed fees.

Mr. Derick Vicent Learned counsel for the appellant is of the firm view that the day the document is filed through electronic filing system is the date of filing, and Mr. Punge doesn't subscribe to it and took the firm stand that filing is complete upon payment of the prescribed filing fees.

Having in mind the position of rule 21, it should be noted that, submission of document through electronic filing system does not do away with requirement for payment of filing fees. It is a cardinal principle of law that,

the date of payment of filing fee is the date of filing of the document, see.

**John Chuwa vs. Anthony Ciza [1992] TLR 233**, the court held that,

*"The date of filing is the date of payment of fees and not that of receipt of relevant document at the registry."*

Payment of subscribed or necessary fees for filing a document in court is a mandatory requirement provided for under rule 3 of the Court fees rule, G.N NO. 247 OF 2018 which provides;

*"The fees for any matter **shall**, unless expressly provided, be paid in accordance with these rules."*

The two-subsidary legislation, the Electronic Filing Rules and the Court Fees Rules should be read together to complement each other and bring clear intention of having the online filing system in fulfilling its major judicial reforms by simplifying filing system via technology thus resulting expeditious disposition of the matters. To substantiate the above position, in the case of **Maliselino B. Mbipi vs. Ostina Martine Hyera**, Misc. Civil Application no.8 of 2022, High Court, Songea where **Hon. Mlyambina, J** stated that;

*"The major reasons are inter alia that the electronic rules did not revoke Court fees rules. **It just provides for the procedure***

***to be followed when the document is filed electronically."***

It is therefore safe to say that, if filing fees is required to be paid, then the date of filing is the date of paying the required fee. It is not enough for an advocate or a party to the case to submit the document electronically and relax without taking necessary action of complying with other necessary mandatory legal requirement including paying prescribed legal fees.

In the present case, the appellant, after filing the appeal electronically on 02/05/2023 paid the necessary filing fees on 09/05/2023 vide the receipt attached herein. The appeal was therefore duly filed on 09/05/2023 when the prescribed fee was accordingly paid. The court is very much alive to the long set of position of law that, the date of payment of prescribed legal filing fee takes precedence in so far as determination of the day of filing is concerned.

That being the position, this appeal was filed outside the time limine prescribed by section 41 (2) LDCA as it was filed after the lapse of 49 days instead of being filed within 45 days, thus late for four clear days. Owing to what I have stated above, I find the present appeal to be hopelessly time barred.



The question now is, what is the fate of the appeal which is found to be time barred? The answer to the question is provided under section 3 (1) and (2) (b) of the Law of Limitation Act which provides that;

*(1) Subject to the provisions of this Act, **every proceeding** described in the first column of the Schedule to this Act and which is instituted after the period of limitation prescribed therefore opposite thereto in the second column, **shall be dismissed whether or not limitation has been set up as a defence.***

*(2) For the purposes of this section **a proceeding** is instituted-*

*(a) in the case of a suit, when the plaint is presented to the court having jurisdiction to entertain the suit, or in the case of a suit before a primary court, when the complaint is made or such other action is taken as is prescribed by any written law for the commencement of a suit in a primary court;*

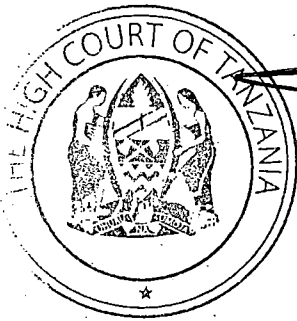
*(b) **in the case of an appeal**, when the appeal is preferred either by filing a memorandum of appeal or in such other manner as may be prescribed by any written law;*

*(c) in the case of an application, when the application is made.*

Based on the above legal position, this court therefore hereby dismissed this appeal for being time barred. Cost to follow the event.

**IT IS SO ORDERED**

**DATED** at **MOROGORO** this 11<sup>th</sup> August, 2023.

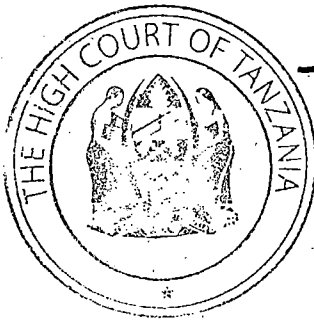


G. P. MALATA

**JUDGE**

11/08/2023

**RULING** delivered at **MOROGORO** in chambers this 11<sup>th</sup> August, 2023 in the presence of Ms. Charity Mzinga, Advocate holding brief of Mr. Ignatus Punge for the respondent and in the absence of the appellant.



G. P. MALATA

**JUDGE**

11/08/2023