

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

**BUKOKA DISTRICT REGISTRY**

**AT BUKOKA**

**LAND CASE APPEAL NO. 45 OF 2023**

*(From the decision of the DLHT at Muleba in Land Application No.10 of 2020 and High Court Bukoba in Land Appeal No. 01 of 2023)*

**EMMANUEL ELIKANA.....APPELLANT**

**VERSUS**

**DEMUTAN KAHAYA.....RESPONDENT**

**RULING**

*13/12/2023 & 15/12/2023*  
**E. L. NGIGWANA, J**

Being aggrieved by the decision of the District Land and Housing Tribunal (DLHT) for Muleba at Muleba in Land Application No.10 of 2020, handed down on 16/12/2022, declaring the respondent the lawful owner of the Suitland, the appellant herein appealed to this court vide Land case Appeal No. 1 of 2023.

Upon being served with a copy of memorandum of appeal, the respondent herein through his advocate Mr. Fumbuka NgotoIwa; filed a reply thereto together with a notice of preliminary objection on point of law that;

*"The memorandum of appeal has been prepared by a non-practicing advocate making the whole memorandum of appeal unmaintainable".*

When the matter was called for hearing, the respondent conceded to the preliminary objection. Consequently, the appeal was struck out for being incompetent but the appellant was given leave to re-file a competent appeal within 30 days from 24/05/2023.

Thereafter, the appellant lodged the instant appeal on 23/06/2023. In that premise, I invited the parties to address me whether the same is time barred or otherwise.

The appellant quickly argued that this appeal is not time barred because it was electronically filed on 15/06/2023, however on 22/06/2023 when he brought hard copies for him to obtain the control number for payment of the filing fee, he met the Registry Officer who told him that his appeal was not existing in the system, he was advised to re-file his appeal electronically and he did so on 23/06/2023 as reflected in the Memorandum of appeal, and paid the filing fee on 30/06/2023.

He invited this court to invoke Rule 24 (1) of GN 148 of 2018 which provides for exclusion of time from computation of time filing where electronic filing

is delayed due to malfunction of the electronic filing system for any reason. He specifically mentioned the date to be excluded to wit; to 15/06/2023. To support his stance, the appellant referred this court to these cases: **Geita Gold Mining Ltd versus Christina Christopher**, Labour Revision No. 90 of 2020 and **Muhusin Ramadhani Salim versus Hussein Haji and Another**, Misc. Land Application No. 271 of 2021.

He went on arguing that, without prejudice to what he stated earlier, it is apparent that he was given thirty (30) days from 24/05/2023, and according to section 60 (1) (b) of the Interpretations of Laws Act, [Cap 1 R.E 2019] and case law; **Barclays Bank (T) Ltd versus Jacob Muro**, Civil Appeal No. 357 of 2019 CAT (Unreported), **Betty Mbapa versus Dipak Vassa and Another**, Civil Appeal No.48 of 2010 CAT (Unreported) and **Sinani Hussein versus Nazifa Ibrahim**, Land Case Review No. 02 of 2023, the date in which the ruling was delivered that is to say, 24/05/2023 has to be excluded, and if such exclusion is done, it is apparent that this appeal is not out of time.

On his side, Mr. Ngotolwa submitted that, in determining whether this appeal was out of time or not, this court has to be guided by its own order issued

on 24/05/2023 vide Land Appeal No.1 of 2023 in which the appellant was given 30 days' leave to re-file a competent appeal. Mr. Ngotolwa added that, the order speaks for itself that 30 days started to run from the date of the ruling to wit, 24/05/2023 and lapsed on 22/06/2023. According to Mr. Ngotolwa, since the appellant was already out of time, he ought to have sought and obtained enlargement of time before filing this appeal. He added that since the appeal was time barred, the court has no jurisdiction to entertain it.

He conceded that, on 15/06/2023, there was an attempt by the appellant to file his appeal but since the filing was not successful, it cannot be said that the filing was affected on 15/06/2023. He made reference to the case of **Muhusin Ramadhani Salim versus Hussein Haji and Another (Supra)** whereby sustaining the objection which was raised that the application was time barred, the court held that;

*"It can be seen now that a notification of the Registrar is very important to prove not only that document was filed but also that it was accepted. In the circumstances of this matter, it was equally very crucial for the applicant to*

*exhibit such a notification in order to prove that the application was filed on 16/11/2020 and that it was accepted”*

Mr. Ngotolwa further stated that, the rest of cases cited by the appellant are not useful determining whether this matter is time barred or not, the court is bound to confine itself in its order and not any other written law.

I have carefully gone through the submissions from both sides and the court records. It is not disputed that on 24/05/2023, the appellant was given 30 days’ leave from the date of the ruling/order, to file a competent appeal.

Part of the ruling reads:

***“I hereby give the Appellant leave to re – file a competent appeal within 30 days from the date of this ruling”.***

It is also not in dispute that on 15/06/2023, the appellant unsuccessfully filed his appeal electronically. The print out retrived from the electronic filing system indicates that the memorandum of appeal was returned to the appellant, meaning it was not accepted.

Moreover, there is nothing indicating that on the material date, there was malfunction of the electronic filing system. In that a premise, Rule 24 (1) the

Judicature and Application of Laws (Electronic Filing) Rules, 2018, cannot apply.

The records establishes further that the filing fee was paid via control number **991400912034** with a bill reference number **923177185981269** and receipt number **EC 101880619514** was issued by the court to acknowledge the payment of the filing fee on 26/06/2023 at 07:56:13, and not on 30/06/2023. Even if we assume for the sake of argument that the filing date was the date of paying the filing fee to wit; 26/06/2023, still the matter is out of time.

According to the appellant, this appeal was successfully filed on 23/06/2023 upon acting on the advice given to him on 22/06/2023 by the Registry Officer of the High Court. According to him, the same was filed within time because as per section 60(1) (b) of the Interpretations of Laws, the date of the ruling giving leave has to be excluded.

Now, the major question here is whether section 60 (1) (b) of the Interpretation of Laws Act, [Cap 1 R.E 2019] can be used to interpret court orders?

The answer to this question is no because the Interpretation of Laws Act is there for purposes of written Laws, and the days to be exclude have been duly defined under sub-section 2. Section 60 (1) and (2) of the Act, provides as follows;

***“60 (1):- In computing time for the purposes of a written law-***

*(a) where a period of time is expressed to be at, on, or with a specified day, that day shall be included in the period;*

*(b) where a period of time is expressed to be reckoned from, or after, a specified day, that day shall not be included in the period;*

*(c) where anything is to be done within a time before a specified day, the time shall not include that day;*

*(d) where a period of time is expressed to end at, on, or with a specified day or to continue to or until a specified day, that day shall be included in the period;*

*(e) where the time limited for the doing of a thing expires or falls upon an excluded day, the thing may be done on the next day that is not an excluded day;*

*(f) where there is a reference to a number of clear days or "at least" or "not less than" a number of days between two events, in calculating the number of days there shall be excluded the days on which the events happen;*

*(g) where there is a reference to a number of days not expressed to be clear days or "at least" or "not less than" a number of days between two events, in calculating the number of days there shall be excluded the day on which the first event happens and there shall be included the day on which the second event happens;*

*(h) where an act or proceeding is directed or allowed to be done or taken on a certain day, or on or before a certain day, then, if that day is an excluded day, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day that is not an excluded day.*

*60 (2):- For the purposes of this section, "excluded day" means **Saturday, Sunday or public holiday** throughout or in that part of which is relevant to the event, act, thing or proceeding concerned.*

In that premise, the herein above provision of the law has nothing to do with orders of the court which are given in the absolute discretion of the court.



Orders of the court need no law to interpret them, they should themselves be clear and open to be understood by the parties. See **Musa Mustapha versus Halid Ahamadi**, Misc. Civil Application No.12 of 2020 HC Kigoma Registry (unreported)

However, through case law, it is trite that, where the last filing date prescribed in the court order fall into Public holiday, Saturday or Sunday; the filing has to be made in the next working day. I am alive that currently, filing of documents in court is done electronically, but public holidays, Saturday and Sunday and have been considered. Rule 21 (2) of the Judicature and Application of Laws (Electronic Filing) Rules, 2018 provides that;

*"A document submitted at or after mid night or on **Saturday, Sunday, or Public holiday shall**, unless rejected by the court, be considered filed in the next working date"*

As far as the case at hand is concerned, the phrase **within 30 days from the date of this ruling**" is an express phrase that 30 days so given started to count from the date of the order to wit; 24/05/2023 and lapsed on Thursday 22/06/2023, meaning, it was not Saturday or Sunday or Public holiday but a normal working day.

In the upshot, considering the fact that this appeal was filed on 23/06/2023, which is beyond the time prescribed not by a specific written law but by this court through its ruling in Land Appeal No.1 of 2023 dated 24/05/2023, and without first seeking and obtaining enlargement of time; it is the finding of this court that this appeal is incompetent for being out of the time. Consequently, the same is hereby struck out. Since the matter was raised by the court *suomotu*, I enter no order as to costs. It is so ordered.

Dated at Bukoba this 15<sup>th</sup> day of December 2023.



E. L. NGIGWANA

JUDGE

15/12/2023.

**Court:** Ruling delivered this 15<sup>th</sup> day of December 2023, in the presence of both parties in person and Ms. Queen Koba, B/C



E. L. NGIGWANA

JUDGE

15/12/2023.

