

**IN THE HIGH COURT OF TANZANIA**

**(DODOMA SUB REGISTRY)**

**AT DODOMA**

**LAND APPEAL NO. 60 OF 2023**

*(Arising from the Ruling of the District Land and Housing Tribunal of Dodoma at Dodoma, Land Appeal No. 315 of 2017 dated 28/03/2023)*

**DAVID MALOGO.....APPELLANT**

**Versus**

**MILKA MACHITE.....RESPONDENT**

**RULING**

*Date of last order: 03<sup>rd</sup> April, 2024.*

*Date of Ruling: 03<sup>rd</sup> May, 2024.*

**E.E. KAKOLAKI, J.**

In this appeal the appellant who presented his memorandum of Appeal for filing on 22/05/2023 is challenging the decision of the District Land and Housing Tribunal for Dodoma in Land Appeal No. 315 of 2023 handed down on 28/03/2023, striking out his appeal against the respondent from Mtumba Ward Tribunal decision dated 03/11/2017, on the ground that, the land subject of appeal before it was already handed to the respondent.

When the memorandum of appeal was served to the respondent, the appeal was strenuously resisted as the respondent filed a Notice of preliminary objection to the effect that, *Appellant's memorandum of appeal is defective*

*before the eyes of law since it is time barred, hence the appeal is out of time.*

It is the above referred preliminary objection which this ruling seeks to address and determine given the long standing practice of t Court to dispose off first the preliminary objection when raised. See the case of **Shahida Abdul Hassanali Kasam Vs. Mahed Mohamed Gulamali Kanji**, Civil Application No. 42 of 1999 (CAT-unreported). Hearing of the said ground of objection proceeded in written form as the appellant and respondent were represented by Mr. Sostenes Peter Mselingwa and Mr. Charles Mabula Charles respectively, both learned advocates who filed their respective submission in accordance with the filing schedule orders.

In support of the ground of objection Mr. Charles informed the Court that, the appeal is incompetent before the Court for contravening the provisions of section 41(1) of the Land Disputes Courts Act, [Cap. 216 R.E 2019], which provides that unless extension of time is sought and granted either before or after expiration of the period prescribed by the law, the appeal has to be filed within forty five (45) days after the date of decision or order sought to be impugned. In this appeal he argued, the memorandum of appeal challenging the District Land and Housing Tribunal's decision of 28/03/2023,

was filed in Court on 22/05/2023 which is 11 days passed after expiry of 45 days within which the appeal would be preferred. Relying on the case of **John Cornel Vs. Grevo (T) Ltd**, Civil Case No. 70 of 1998, he argued the law of actions knows no sympathy or equity as it is a merciless sword that cuts across and deep into all those who get caught in its web, thus prayed the Court to strike out the memorandum of appeal for being filed out of prescribed time. He supported his prayer with the Court of Appeal decision in **Burhan Abdul Karim T/A E.A.K Enterprises Vs. NBC Branch Bukoba**, Civil Application No. 7 of 1966 (unreported), which he failed to supply its copy while quite aware of the rule of practice to supply to the Court all unreported references or cases.

In response Mr. Mselingwa resisted the respondent's submission contending that, since filing of appeal undergoes a number of procedures including filing first of the documents through electronic filing system, the hard copies of memorandum of appeal in this matter were filed in court on 11/03/2023 which is well within 45 days as the deadline was on 13/05/2023. He urged the Court to disregard the misleading submission by the respondent that, the appeal was filed after 56 days from the date of decision sought to be impugned and refrain from being swayed with technicalities as provided

under Article 13(6)(a) of the Constitution of the URT, 1977 rather seek to do justice to both parties by resolving their dispute permanently. In summing up the Court was called to dismiss the preliminary objection with costs and allow the appeal to be heard on merit. The respondent could not file a rejoinder submission in time on the reason that, the appellant had failed to serve him with the reply submission up to the date when this court scheduled the matter for ruling.

Having considered both parties' submission and glanced at the impugned decision, the pending issue for determination is whether this appeal is time barred as alleged by the respondent. The law is very clear as set out under section 41(2) of the Land Disputes Courts Act, [Cap. 216 R.E 2019] that, an appeal to this Court has to be filed within 45 days after the decision sought to be challenged is issued, unless otherwise an extension of time is sought.

The said section 41(2) of the Act reads:

*(2) An appeal under subsection (1) may be lodged within forty five days after the date of the decision or order: Provided that, the High Court may, for the good cause, extend the time for filing an appeal either before or after the expiration of such period of forty five days. (Emphasis supplied)*

In this matter glancing at the hard copy of memorandum of appeal filed in Court by the appellant there is no dispute that it was filed on 22/05/2023 as ably submitted by Mr. Charles and not on 11/05/2023 as Mr. Mselingwa would like this Court to believe. I do not find any evidence advanced by Mr. Mselingwa proving that the memorandum of appeal underwent electronic filing procedures that delayed the filing process of the hard copies. In absence of such evidence this Court is forced to believe and therefore make a finding that the memorandum of appeal was presented for filing in court on 22/05/2023 and not otherwise. As the same ought to have been filed on 13/05/2023 which is 45 days of the delivery of the decision sought to be challenged that was rendered on 28/03/2023, I have no difficulties in concluding that the appeal was filed nine (9) days outside the prescribed time limitation of 45 days order. Thus the appeal is time barred.

Next question for determination is what will befall the appeal filed outside the prescribed time limitation. Mr. Charles is suggesting that the same has to be struck out for being incompetent before the Court. It is true and I agree with him that the appeal filed outside the prescribed time limitation becomes incompetent before the Court. A matter which is incompetent before the court deserves to be struck out as it was demonstrated in the

case of **Cyprian Mamboleo Hizza Vs. Eva Kiosso and Another**, Civil Application No. 3 of 2010 when citing the decision of the defunct Court of Appeal for Eastern Africa in the celebrated case of **Ngoni- Matengo Cooperative Marketing Union Ltd Vs. Ali Mohamed Osman** (1959) EA 577 where at page 580 the Court had this to say:

*"...This court, accordingly, had no jurisdiction to entertain it, what was before the court being abortive, and not a properly constituted appeal at all. What this court ought strictly to have done in each case was to "strike out" the appeal as being incompetent, rather than to have "dismissed" it: for the latter phrase implies that a competent appeal has been disposed of, while the former phrase implies there was no proper appeal capable of being disposed of."*

All said and done, the preliminary objection by the respondent is sustained.

The appeal is hereby struck out with costs.

Order accordingly.

Dated at Dodoma this 03<sup>rd</sup> May, 2024.



E. E. KAKOLAKI  
**JUGDE**  
03/05/2024.

The Ruling has been delivered at Dodoma today on 03<sup>rd</sup> day of May, 2024, in the presence of Mr. Sostenes Peter Mselingwa Adv advocate for the Appellant who is also holding brief for advocate Charles Mabula Charles for the Respondent with instruction to proceed and Ms. Veradina Matikila, Court clerk.

Right of appeal explained.



E. E. KAKOLAKI  
**JUGDE**  
03/05/2024.

