

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(MBEYA SUB – REGISTRY)**

AT MBEYA

MISC. LAND APPEAL NO. 92 OF 2023

(Arising from the decision of the District Land and Housing Tribunal for Songwe at Mbozi in Land Appeal No. 14 of 2021 and Original Land Dispute No. 1 of 2021 Ndalambo Ward Tribunal)

KINISON SINGOI.....APPELLANT

VERSUS

JOHNSON SINGOI.....RESPONDENT

JUDGMENT

28th March & 7th June, 2024

POMO, J

The Appellant, KINISON SINGOI, has filed the instant appeal against the respondent after losing his appeal before the District Land and Housing Tribunal for Songwe at Mbozi (the DLHT) in Land Appeal No. 14 of 2021. In appeal before the DLHT, the appellant herein was the appellant too. On 20th August, 2021 is when the DLHT delivered its judgment, of which he is aggrieved with. The following are the grounds of appeal preferred by him against it before this court, to wit: -

- 1. That, the first appellate tribunal grossly erred in upholding the decision of the trial tribunal without re-*

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analyzing and re-evaluating properly the evidence adduced by the appellant hence reached into wrong decision

- 2. That, the first appellate tribunal grossly erred in law and fact in upholding the decision of the trial tribunal despite the fact that there was sufficient evidence proving the contrary*
- 3. That, the first appellate tribunal grossly erred in law and fact in upholding the decision of the trial tribunal which was tainted with illegality on the composition and non-disclosure of the gender of the members*
- 4. That, the first appellate tribunal grossly erred in law and fact when awarded costs of the matter against the appellant while the parties are blood related*

The facts, albeit briefly, of the matter is as follows. On 13th December, 2020 the respondent found his farm invaded by the Appellant and his fellows by demarcating it with local beacon. The Respondent claims that that farm was given to him as a gift in 1984 by his father one Jelasi Singo and had been using it since then. The suit land is in Ndalambo village in Mbozi District in Songwe region. He filed Land case No.1 of 2021 before Ndalambo ward tribunal against the Appellant and on 17th February, 2021 delivered its judgment in favour of the Respondent herein. The Appellant filed an appeal

to the DLHT the appeal which was registered as Land Appeal No. 14 of 2021. As alluded above, on 20th August, 2021 the DLHT delivered the judgment against him. Still aggrieved, on 5th September, 2023 the Appellant filed the instant appeal fronting the grounds of appeal listed above.

On 28th December, 2023, the respondent filed a reply to the petition of appeal together with the notice of appeal to the effect that **the appeal is hopelessly time-barred**

On 14th February, 2024 I ordered the raised objection as well the appeal be argued all together by way of written submissions. The Appellant had no legal representation while the respondent enjoyed legal service of Ms. Isabela Sojo, a learned advocate.

Arguing the objection, Ms. Isabela submitted that this appeal is hopelessly and bad in law for being filed out of time. She asserted that this matter originated from Ndalambo ward tribunal in Land Case No. 01 of 2021. It was followed by Land Appeal No. 14 of 2021 before the DLHT which handed down its decision on 20th August, 2021 now the subject of the herein appeal. That, this appeal was filed on 5th September, 2023 almost two years after the DLHT decision contrary to section 38(1) and (2) of the Land Disputes Courts Act, [Cap. 216 R.E. 2016] which requires appeal in matters originating

from the ward tribunal be filed within sixty days. Hence, the appeal was filed out of time, and it be struck out with costs, Ms. Isabela stressed.

In reply, the appellant has submitted that his appeal was filed within time. His argument is that, it is until 24th day of August, 2023 when the DLHT for Songwe certified the judgment and not on 20th day of August, 2021 as submitted by the respondent. Further, the Appellant asserts that the proceedings came to be certified on 9th day of October, 2023. Therefore, according to section 19(2) of the Law of Limitation Act, [Cap. 89 R.E.2019] (LLA) which allows exclusion of time spent waiting to be supplied with copies of judgment. Excluding such time, then this appeal was filed in time. he referred this court to the case of **Innocent Kazila versus Jalazi Omrefu** [2007] TLR 286. He admits that section 38(1) of the Land Disputes Courts Act, [Cap. 216 R.E. 2019] has similar wording to those under section 25(1)(b) of the Magistrates Courts Act [Cap. 11 R.E. 2019] however, he is of the contention that, regardless of the matter to be from the ward tribunal, he enjoys exclusion of time as provided under section 19(2) of the LLA. He prayed the objection be overruled for want of merit

In rejoinder, Ms. Isabela submitted that under section 38(2) of the Land Disputes Courts Act, [Cap. 216 R.E. 2019] copies of judgment and

decree are not required to accompany the petition of appeal. That, it suffices to lodge a petition of appeal before the DLHT which has to forward it together with the case file to the High Court within fourteen days of lodging it. In support, she cited the case of **Leonard Ntogwa versus Enock Mabagala**, Misc. Land Case Appeal No. 13 of 2008 High Court (Land Division) at Mwanza (unreported). She then reiterated the prayer that the objection be upheld with costs.

I have given due consideration of the objection as well the submissions by both sides. The issue for determination is whether this appeal is time barred. It is common ground that this is an appeal on a matter originating from the ward tribunal and the appeal of which has to be governed by section 38(1) of the Land disputes Court Act, [Cap. 216 R.E. 2019]. This section provides thus: -

*"S.38- (1) Any party who is aggrieved by a decision or order of the District Land and Housing Tribunal in the exercise of its appellate or revisional jurisdiction, **may within sixty days after the date of the decision or order, appeal to the High Court.**"*

And under section 38(2) of the same Act, it is provided thus: -

*"S.38- (1) Upon receipt of a petition under this section, the District Land and Housing Tribunal **shall within fourteen days dispatch the petition together with the record of the proceedings in the Ward Tribunal and the District Land and Housing Tribunal to the High Court**".*

This court had time to interpret section 38 of the Land Disputes Courts Act, [Cap. 216 of 2019] in the case of **Leonard Ntogwa versus Enock Mabagala**, Misc. Land Case Appeal No. 13 of 2008 High Court (Land Division) at Mwanza (unreported), where at page 4, this court had this to state: -

"In appeals under this section, time starts to run against an aggrieved party on the date on which the judgment appealed against is pronounced. Unlike in appeals under the Civil Procedure Code, Cap. 33 of the Laws of Tanzania, section 38 (1) of Cap. 216 does not put as mandatory any document to accompany it (the petition) at the time of filing."

Under the same page, this court went on stating thus: -

"... a copy of judgment or ruling or order appealed against must not necessarily be accompanied by a petition of appeal at the

time of filing. Actually, the way subsection (2) and (3) of section 38 of Cap, 216 (as amended) are couched, it suffices if only a Petition of Appeal is filed in the District Land and Housing tribunal and the requisite fees paid."

[Also see: **Fadhila Ally versus Alex Holela**, Misc. Land Case Appeal No.5 of 2011 High Court at Dar es Salaam (unreported)]

Applying section 38 of the Land disputes Courts Act, Cap. 216 R.E. 2019], as well the interpretation of it as per the above courts decisions, there is no gainsaying that section 19(2) of the Law of limitation Act, [Cap. 89 R.E. 2019] from which the appellant seeks refuge in excluding time to give a breath his appeal is an inapplicable provision on land matters originating from the ward tribunal. Therefore, time started running against the Appellant on 20th August, 2021 when the DLHT pronounced its judgment in Land Appeal No. 14 of 2021 and sixty days within which to appeal against it to this court ended on 19th October, 2021. Thus, the herein appellant's appeal filed on 5th September, 2023 was so filed more than eleven months out of time. In my considered view, as correctly raised by respondent, this appeal is hopelessly time barred. I uphold the objection.

This objection suffices to dispose of this appeal, and my hands are closed to determine the grounds of appeal in the time barred petition of appeal. There is only one remedy for a time barred appeal which is to dismiss it. consequently, I hereby dismiss this appeal for being time barred. The Respondent shall have his costs.

It is so ordered

Right of Appeal explained

DATED at **MBEYA** this **7th day of June, 2024**



M.K.P.
MUSA K. POMO

JUDGE

07/06/2024

Judgment delivered in chamber in presence of the Appellant and Ms. Neema Siwingwa, learned advocate for the Respondent.

M.K.P.
MUSA K. POMO

JUDGE

07/06/2024