

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

TABORA SUB REGISTRY

AT TABORA

LAND APPEAL NO. 28014 OF 2023

(Originating from the decision of the District Land and Housing Tribunal for Tabora in Land Application No. 28 of 2019)

FESTO IBRAHIMAPPELLANT

VERSUS

DOTTO HASSAN 1ST RESPONDENT

MOHAMED SHABANI 2ND RESPONDENT

MAGAYANE WILA 3RD RESPONDENT

MIRAJI KAGOMA 4TH RESPONDENT

RULING

Date of Last Order: 06/03/2024

Date of Delivery: 06/06/2024

MANGO, J.

The Appellant Festo Ibrahim filed this appeal before this Court against the decision of the District Land and Housing Tribunal for Tabora in Land Application No. 28 of 2023. I find it apt to narrate briefly, the relevant factual background of the dispute leading to the present appeal.

Mohamed Shabani, the 2nd Appellant successfully instituted a land Application No.28 of 2019 in the District Land and Housing Tribunal for Tabora against the 1st, 3rd, 4th Respondents and the Appellant. The trial

tribunal declared the 2nd Respondent a lawful owner of a disputed parcel of land. The trial tribunal further ordered the 4th appellant Miraji Kagoma to pay back the purchase price to the Appellant also, the Appellant was ordered to compensate the 1st respondent, Dotto Hassan for the improvements he made to the disputed land.

The 1st, 3rd, 4th Respondents and the Appellant being dissatisfied with the trial tribunal's decision lodged an application for extension of time to file an appeal before this Court. The application was registered as Misc. Land Application No. 35 of 2022 and was heard in absence of the 1st, 3rd, 4th respondents. On 28th June 2023, this Court granted the application and gave the Applicants therein, 30 days to lodge their intended appeal.

The appeal was filed within time and registered as Land Appeal No. 23 of 2023. On 16th November 2023 the appeal was struck out for being incompetent. Still desirous in pursuit of his rights, the Appellant filed the current appeal. The 2nd Respondent raised a preliminary objection that, the appeal is time barred.

On 6th March 2024, the Court granted uncontested prayer by the 2nd Respondent to have the preliminary objected heard by way of written submission and issued a schedule of submissions for the parties. According to the schedule, the 2nd Respondent was to file his submission by 20th March 2024, the Appellant by 03rd April 2024 and rejoinder if any ought to have been filed by 10th April 2024. The matter was then scheduled for mention to check compliance with a view of setting ruling date on 7th May 2024. Unfortunately, until on 07th May 2024, the 2nd Respondent has not yet filed

The learned counsel, went on to submit that, the appeal was filed in time because the ruling of this court which struck out the first appeal dates 16th November 2023 and this appeal was filed on 19th December 2023 which is within 45 days as required by law.

Court record as well submission by the Appellant indicates that, the decision of the District Land and Housing Tribunal was delivered on 18th February 2022. The Appellant did not lodge his appeal within time, so he filed an application for extension of time through which he was granted 30 days from 26th June 2023. He filed his appeal, Land Appeal No. 23 of 2023 within the granted 30 days, unfortunately, the same was struck out. When the appeal was struck out, the Court did not grant leave to refile. Thereafter, the Appellant filed the appeal at hand on 19th December 2023 almost five months after he was granted 30 days to file his intended appeal.

The main issue is whether the appeal filed immediately after the struck out of the appeal which was filed within the period extended by the Court, may be considered to have been filed within time. With due respect to the learned counsel for the Appellant, when the appeal is struck out it is considered as if no appeal has been filed. Thus, the parties assumes the position they were before filing the appeal that was struck out. In respect of this matter, the struck out of Land Appeal No.23 of 2023 returned the position of the parties to 28th June 2023 when the Court granted the Appellant extension of time to file his intended appeal within 30 days. Given the fact that 30 days has already lapsed, the Appellant ought to have applied for enlargement of time under section 93 of the Civil Procedure Code [Cap 33 R.E 2022]. The section provides that:

"Where any period is fixed or granted by the court for the doing of any act prescribed or allowed by this Code, the court may, in its discretion, from time to time, enlarge such period, even though the period originally fixed or granted may have expired."

Court record establishes clearly that, the Appellant filed this appeal after the expiry of 30 days that were granted to him via Misc. Land Application 35 of 2022 without seeking enlargement of time from the Court. In such circumstances, I hasten to hold that this appeal has been filed out of time.

In upshot, the preliminary objection is sustained and the appeal is hereby dismissed for being filed out of time. Given the fact that the second Respondent did not prosecute the preliminary objection as ordered by the Court, I award no costs.

Dated at Tabora this 6th day of June 2024



A handwritten signature in blue ink, appearing to read "Z.D. Mango", is written over a faint circular stamp.

Z.D. MANGO
JUDGE