

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

**BUKOBA SUB- REGISTRY**

**AT BUKOBA**

**LAND APPEAL NO 6710 OF 2024**

*(Arising from Misc. Application No.83 of 2023 and original Application No.38 of 2025 of the District Land and Housing Tribunal for Karagwe at Kayanga)*

**MARCELINA VENANT KATABAZI (*Adminitratix of the Estate of the Late Salvatory Ruguga*).....APPELLANT**

**VERSUS**

**STIVIN METHOD (*Administrator of the Estates of the Late Method Kanyandeko*).....RESPONDENT**

**RULING**

*23/05/2024 & 07/06/2024*  
**E. L. NGIGWANA, J.**

This ruling is in respect the preliminary objection on point of law raised by the respondent through her advocate Mr. Matete Joseph when replying the petition of appeal filed by the appellant through his advocate Mr. Scarius Bukagile. The preliminary objection is to the effect that this appeal is incompetent for being filed out of time in contravention of section 41 (2) of the Land Disputes Courts Act, [Cap. 216 R.2019].

Before examining the rival submissions of the parties on the PO, it is pertinent to sketch a background of this appeal as per available record. Sometimes in 2015, Salvatory Rugusa now deceased instituted a land suit to wit; Application No. 38 of 2015, against Method Kanyandeko now deceased, for trespassing into his parcel of land that situates in Chanyamisa Village, Nyakasimbi Ward within Karagwe District in Kagera Region. He claimed that he owned the said land under deemed right of occupancy since 1968. He prayed for the following reliefs (i) A declaration that the land in issue belongs to him since 1968, (ii) an order for vacant possession against the respondent, (iii), permanent injunction against the respondent from further trespass onto the land in dispute (iv) Costs of the application, and (v) any other relief the trial tribunal would deem fit and just to grant.

On the other hand, Method Kanyandeko claimed that he inherited the said land from one Kanyandeko Ngera, and had been using it since 1980.

After hearing the parties, the trial tribunal composed the judgment. Part of it read;

*"I concur with the First Assessor who opined in favor of the respondent, that in the end, I proceed to grant the application. No order as to costs. It is so ordered "*

As per the said judgment, the First Assessor opined as follows;

*"Nashauri kuwa utekelezaji wa awali uzingatiwe kwa kuwa ulifanyika kisheria na mipaka iliwekwa na viongozi kwa kuzingatia haki kwa pande zote mbili. Na hii ilifanyika Na 241/2007 tarehe 6/09/2010 na ilizingatia misingi ya haki na mahudhrio yanaonekana kweli. Hivyo Method Kanyandeko aendeleo kumiliki eneo hilo bishaniwa 300 x 300 ukubwa wa eneo"*

The decree that was extracted from the said judgment revealed that the application was granted. The same read;

*"The application is hereby granted. No order as to costs"*

There was no appeal preferred by either party against the said judgment. However, in 2023, stivin Method (Administrator of the Estate of the late Method Kanyandeko) lodged an application for review in the DLHT which was registered as Review No. 83 of 2023, praying to the DLHT to rectify its judgment so that the word "grant" can be substituted with the word

"dismiss". On 16/02/2024, the application was granted; and the DLHT ruled out that the last paragraph of the judgment of DLHT shall now read;

*"I concur with the First Assessor opined in favor of the respondent, that in the end, I proceed to **dismiss** the application. No order as to costs. It is so ordered "*

On 27<sup>th</sup> day of March 2024, the Appellant filed this appeal but encountered a stumbling block from the respondent's advocate hence this ruling.

At the hearing of this application, the respondent was represented by Mr. Peter Matete while the applicant had the legal service of Mr. Scarius Bukagile.

In support of the PO, Mr. Matete made a brief submission that since the judgment in which the appellant is appealing against was delivered on 17/01/2018 but this appeal was filed on 27/03/2024 while section 41(2) of the Land Disputes Act, [Cap.216 R.E 2019] requires the same to be filed within 45 days from the date of the judgment or order, and no extension of time ever sought and obtained before filing this appeal, it goes without saying that this appeal was filed out of time, and the remedy is to strike it out with costs. He cited the case of **Fatuma Mohamed versus Chausiku**

**Seleman**, (Civil Application No.225 of 2017) [2019] TZCA 54 (02 April 2019), to support his argument.

In reply, Mr. Scarius Bukagile conceded that the judgment sought to be challenged was delivered on 17/01/2018. According to him, the appellant had no problem with the order because the matter was decided in her favor that is why she lodged no appeal.

He went on to submit that in 2023, the respondent filed Misc. Application No. 83 of 2023 praying for rectification of judgment and the ruling was delivered on 16/02/2024 before D.S. David, and the judgment was rectified, whereas the word "**grant**" was substituted with "**dismiss**". He further submitted that the present appeal was filed within 45 days from the date of when the ruling for rectification was delivered, therefore it is not time barred.

In his rejoinder submission, Mr. Matete reiterated what he stated in his submission in chief.

After carefully considering the arguments presented by both learned advocates regarding the preliminary objection on a point of law, it is now my task to determine whether the PO is meritorious or not.

The petition of appeal lodged by the Appellant on 27/03/2024 read;

*" The appellant having been dissatisfied by the proceedings, finding and the judgment of the District Land and Housing Tribunal for Karagwe at Kayanga delivered on 17<sup>th</sup> January 2018 before R.E. Assey, Chairman appeals to this court Hon court under the following grounds;*

- 1. That, the trial tribunal grossly erred in law and facts by delivering the decision in favour of the Respondent without giving out reasons for the decision.*
- 2. That, the trial tribunal grossly erred in law and facts by delivering the judgment which does not reflect the proceedings thereto.*
- 3. That, the trial tribunal grossly erred in law and facts by delivering the judgment basing on assessor's opinions which were different and not concerning the matter at hand thereto.*
- 4. That, the trial tribunal grossly erred in law and facts by delivering the judgment in the absence of assessor's opinions in its records. .*
- 5. That, the trial tribunal grossly erred in law and facts by delivering the judgment without evaluation of the evidence adduced by the parties thereto.*

*6. That, the trial tribunal grossly erred in law and facts by determining the matter against the weight of evidence.*

Reading the petition of appeal and the herein above grounds of appeal, it is apparent that there is nothing to show that the appellant was aggrieved by trial tribunal order in Application No.83 of 2023 delivered on 16/02/2024 and that he is appealing against the same. Section 41 (1) and (2) of the Land Disputes Courts Act, [216 R.2019] provide that;

*“ 41.-(1) Subject to the provisions of any law for the time being in force, all appeals, revisions and similar proceeding from or in respect of any proceeding in a District Land and Housing Tribunal in the exercise of its original jurisdiction shall be heard by the High Court.*

*(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”*

Since the appellant is appealing against the judgment of the DLHT delivered on 17/01/2018, and he did so before seeking and obtaining extension of

time, I shake hands with Mr. Matete that this appeal is time barred. With due respect to the learned counsel for the appellant, the argument that the appellant is appealing against the order of the trial tribunal delivered on 16/02/2024 is an argument intended to mislead the court. The petition of appeal speaks for itself and the submission by the learned counsel cannot be a substitute of it.

Lodging an appeal before any court within the period of limitation prescribed by the law is imperative because the issue of limitation goes to the root of the jurisdiction of the court. This was stressed by the Apex Court of this Land in **District Executive Director Kilwa District Council versus Bogeta Engineering Limited**, Civil Appeal No. 37 of 2017 (unreported) The Court had this to say;

*"On our part, we think that in the circumstances of this appeal in which the issue of limitation touches on the jurisdiction of the Court, insisting on the compliance of mandatory requirement of lodging an appeal within the prescribed time goes in tandem with facilitating the just determination of the matter before us in accordance with the law. The Court cannot have jurisdiction to entertain an appeal which is time barred and no extension of time has been sought and granted. We think the issue of time limit is not a*



*technicality which goes against the just determination of the case or undermines the application of the overriding objectives principle contained in section 3A (1) and (2) and 3B (1) (a) of Act No. 8 of 2018".*

Similarly, In **Juma Lupoli versus Charles Ngobetse**, Civil Appeal No. 487 of 2022 CAT at Kigoma, the Court was confronted with an appeal which was filed out of time, and the court had this to say;

*"... we unhesitatingly find that the respondent's appeal to the High Court, that is, Land Appeal No. 18 of 2021, was filed out of time. The High Court ought to have dismissed it under section 3 of the Law of Limitation Act [Cap 89 R.E. 2019] for being time barred. That being the case, bearing in mind that the appeal was time barred and as the High Court had no jurisdiction to entertain it, we invoke our revisional jurisdiction under section 4 (2) of the Appellate Jurisdiction Act [Cap. 141 R.E. 2019] and nullify the entire proceedings of the said appeal before the High Court and quash the resultant judgment"*

Guided by the herein above decision of the Apex Court of this land, and considering the fact that this appeal was filed after the lapse of say six (6) years from the date of the decision which the appellant is appealing against,

and no extension of time ever sought and obtained before the filing of this appeal, the respondent's preliminary objection that this appeal is time barred is sustained. The appeal is thus dismissed with costs under section 3 (1) of the Law of Limitation Act, [Cap 89 R.E 2019]. It is so ordered.

Dated at Bukoba this 6<sup>th</sup> day of June 2024.



E.L. NGIGWANA

JUDGE

07/06/2024

Ruling delivered this 7<sup>th</sup> day of June, 2024 in the presence of the appellant and her advocate Mr. Scarius Bukagile, Mr. Ibrahim Mswadick learned advocate holding brief for Mr. Peter Matete, advocate for the respondent, Hon A.A. Madulu - JLA, and Ms. Queen Koba, B/C.



E. L. NGIGWANA

JUDGE

07/06/2024