

**IN THE HIGH COURT OF TANZANIA  
TANGA SUB-REGISTRY  
AT TANGA**

**LAND APPEAL NO. 1548 OF 2024**

*(Originating from Land Case No. 34 of 2015 of the of the District Land and Housing Tribunal for Tanga at Tanga)*

**HALIMA MOHAMED JEMBE**

(As administratrix of the estate of the late **MOHAMED JUMA JEMBE...APPELANT**

**VERSUS**

**SAUMU JUMA JEMBE.....1<sup>ST</sup> RESPONDENT**

**SAUMU JUMA JEMBE** (As administratrix of the estate of the late

**MOHAMED JUMAA JEMBE.....2<sup>ND</sup> RESPONDENT**

**RULING**

**7/5/2024 & 18/6/2024**

**Katarina Mteule, J.**

Being aggrieved by the decision of the District Land and Housing Tribunal for Tanga at Tanga, Ms. Halima Juma Jembe is appealing before this Court vide a Memorandum of Appeal containing five grounds which are challenging the decision of the DLHT. In response thereto, the Respondents filed a Reply to the Memorandum of Appeal accompanied by a notice of preliminary objection with two points to wit;

- 1. That the appeal is time barred.*
- 2. That the appeal is incompetent and unmaintainable for bearing a non-existing Court - Registry.*

The Preliminary Objection was determined by a way of Written Submissions. The Appellant was not under legal representation whereas the Respondents were represented by Ms. Ernesta Chuwa Advocate.

Arguing the first limb of the objection concerning timeliness of the appeal, Ms. Chuwa referred to **Section 41(1) and (2) of the Land Disputes Courts Act [Cap 216 RE 2019]**, which requires an appeal originating from the District Land and Housing Tribunal (DLHT) to be filed in the High Court within 45 days from the date of the decision. It is her submission that, the issue of time limitation is vital, thus the Court has to consider it at the earliest time. She referred to the case of **Tanzania Fish Processors Ltd vs Christopher Luhangula**, Civil Appeal No.161 of 1994, CAT at Mwanza(unreported) where it was held that;

*"....the question of limitation of time is fundamental issue involving jurisdiction.....it goes to the very root of dealing with civil claims, limitation is a material point in the speedy administration of justice. Limitation is there to ensure that a party does not come to Court as and when he wishes."*

In the same vein, the counsel further referred to the cases of **Dr. Ally Shabhay vs Tanga Bohora Jammāt** [1997] TLR 305 and the case of **John Cornel vs A. Grevo (T) Ltd**, High Court Civil Case No. 70 of 1998

(unreported) as referred to in the case of **Nile Healthcare Ltd t/a Uhuru vs Filbert John Mpogoro**, Labour Revision No. 07 of 2022, High Court of Tanzania at Mwanza.

Ms. Chuwa Adv. consulted the record of the trial DLHT which according to her, shows that the judgment was delivered on **8<sup>th</sup> December 2023**. In her view, time limitation began to run on the **9<sup>th</sup> December 2023** and that counting from **9<sup>th</sup> December 2023**, the 45 days lapsed on **22<sup>nd</sup> January 2024** which is the last date the Appellant ought to have lodged her appeal, She stated that instead, the Appellant filed her appeal on **29<sup>th</sup> January 2024**, which is 7 days out of time.

Citing the case of **Mukisa Biscuits Manufacturing Co. Ltd vs West End Distributors Ltd** [1969] E.A. 696, the counsel argued that since the matter is time barred, the Court has no jurisdiction to determine it. She suggested that the only remedy available is to dismiss it as required by **Section 3 (1) of the Law of Limitation Act [Cap 89 RE 2019]**. The counsel also referred to the cases of **Stephen Masatu Wasira vs John Sinde Warioba & Mwanasheria Mkuu wa Serikali** [1999] TLR 334 and **Sarbjit Singh Bharya & Another vs NIC Bank Tanzania Ltd & Another**, Civil Appeal No. 94 of 2017 at page 13.



Regarding the second point of preliminary objection, Ms. Chuwa argued that the appeal is incompetent and unmaintainable for bearing a non-existing Court registry. The counsel submitted that according to the **High Court Registries (Amendment) Rules, 2024, GN. No. 61A** published on **29<sup>th</sup> January 2024**, District Registries no longer exist. She stated that the **GN No. 61A of 2024** amended **Rule 5 of the High Court Registries Rules, GN. No. 96 of 2005** by deleting the words "District Registry" and substituting the word "Sub Registry."

The counsel argued that the Appellant's Memorandum of Appeal is fatal as it bears the District Registry of the High Court of Tanga which it is non-existent, contravening the **High Court Registries (Amendment) Rules, 2024, GN. No. 61A published on 29<sup>th</sup> January 2024**.

In response to the 1<sup>st</sup> point of preliminary objection, the Appellant argued that the limitation period started to run when the Appellant became aware of the judgment and decree as well as when he was served with the certified copy thereof. He referred to the case of **Peter Ng'homango vs Gerson M. K. Mwangwa and the Attorney General**, Civil Application No. 33 of 2002, CAT at Dar es Salaam, at page 4 and 5. According to the Appellant, she was served with the Judgment and Decree on 15<sup>th</sup> January 2024 and it is so indicated at page 15 of the Judgment which is written;

**"Nimepokea nakala ya hukumu hii leo tarehe 15/01/2024**

**H. MOHAMED**

**HALIMA MOHAMED JEMBE."**

In her view, she was not late in filing the appeal.

Regarding the second point of objection, the Respondent argued that the irregularity in the citation of the court registry cannot legally affect the competence of the Court to determine the matter as it is not fatal to the extent of dismissing the appeal. In his view, the defect is curable vide the Overriding objective principle under Sections 3A and 3B of the Civil Procedure Code [Cap 33 RE 2019] which reads:-

*"A.-(1) The overriding objective of this Act shall be to facilitate the just, expeditious, proportionate and affordable resolution of civil disputes governed by this Act.*

*(2) The Court shall, in the exercise of its powers under this Act or the interpretation of any of its provisions, seek to give effect to the overriding objective specified in subsection (1).*

*3B.-(1). For the purpose of furthering the overriding objective specified in section 3A, the Court shall handle all matters presented before it with a view to attaining the following-*

*(a) just determination of the proceedings;*



*(b) efficient use of the available judicial and administrative resources including the use of suitable technology; and*

*(c) timely disposal of the proceedings at a cost affordable by the respective parties.”*

Basing on the above submissions, he prayed for the objection to be dismissed.

In rejoinder for the first point of objection, Ms. Chuwa submitted that the Judgment was delivered on **8/12/2023** and was ready for collection before **January 2024** and the Respondent obtained the same before 2024. The counsel further argued that there is no proof from the District Land and Housing Tribunal on the delay to provide the judgment and decree to the Appellant through a Certified Stamp disclosing the date that the Appellant obtained the Judgment. The Respondent pleaded to this Court not to condone the Appellant's act of writing in the Judgment the alleged date of receiving the copy of the Judgment. He therefore argued that the Appellant ought to file an application for extension of time to establish that she was not timely served with the copy of the Judgment.

The counsel distinguished the case of **Peter Ng'homango (supra)** arguing that circumstances of the two cases do not tally since in that case the issue was at what time the period of limitation starts to run, whether when the Judgment was signed by the Judges or when it was delivered to

the parties whereby the Judgment was signed by the Judge on 27/12/2001 and was delivered before the parties on 14/02/2002. She contrasts it from the instant matter, where the Judgment was delivered before the parties on 08/12/2023 and the same was signed by the trial Chairperson on the same date of delivery.

Rejoining for the second point of objection, Ms Chuwa maintained the position in her submission in chief that the Memorandum of Appeal bears the name District Registry of the High Court of Tanga which is non-existent pursuant the High Court Registries (Amendment) Rules, 2024, GN. No. 61A published on 29<sup>th</sup> day of January 2024 which is a mandatory provisions of the procedural law which goes to the root of the case. Referring to the cases of **Njake Enterprises Limited vs Tanzania sewing Machine Co. Ltd**, Civil Appeal No. of 2017 CAT at Arusha at page 11 and **Mondorosi Village Council and Two Others v. Tanzania Breweries Limited and Four Others**, CAT at Arusha, Civil Appeal No. 66 of 2017 at page 14 and 15, she countered the Appellant's suggestion to invoke the principle of overriding objective. Expounding on the latter case law, the counsel quoted thus;

*"Regarding the overriding objective principle, we are of the considered view that, the same cannot be applied blindly against the mandatory provisions of the procedural law which go to the*



*very root of the foundation of the case. This can be gleaned from the objects and reasons of introducing the principle under section 3 of the Appellate Jurisdiction Act [CAP 141 R.E. 2002] as amended by the Written Laws (Miscellaneous Amendments) (No.3) Act No. 8 of 2018, which enjoins the courts to do away with technicalities and instead, should determine cases justly. According to the Bill to the amending Act, it was said thus;*

*"The proposed amendments are not designed to blindly disregard the rules of procedure that are couched in mandatory terms.... "*

In determining this Preliminary Objection beginning with the first point asserting the appeal to be time barred, I would point out that it is not disputed that this is an appeal emanating from the decision of the DLHT. It is further not disputed that **Section 41 of the Land Disputes Courts Act [Cap 216 RE 2019]** sets 45 days as time within which an appeal from the DLHT can be lodged. It provides:-

*"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."*

No dispute on the fact that the Judgment of the DLHT as per the records was delivered on **08/12/2023** from which, 45 days were to lapse on **22<sup>nd</sup> day of January 2024**, while the Appeal was filed on **29<sup>th</sup> January 2024**. According to the Respondent, there is 7 days excess of time.

The Appellant claims the 7 days seen as delayed time, to be justifiable pursuant to the point that the law allows exclusion of the time spent to obtain copies of decree or order appealed from or sought to be reviewed.

According to her submission, the Appellant was supplied with the copy of the Judgment on **15/01/2024**. She identified the indication of this date appearing handwritten in the copy of the Judgment. The Respondent did not submit anything in respect of the application of law which allows exclusion of time spent to obtain copies of decree sought to be challenged in the appeal but rather countered the appellant's claim of late supply of

the judgment and decree. He raised the assertion in the rejoinder that the Appellant's just wrote on the copy of the Judgment the date he allegedly received the copy thereof. In her view, the justification is unfounded in law and simply it is impossible for the Court to rely on the statement annotated on the copy of the Judgment to justify a certain conduct or transaction that occurred in the Court.

I agree with the Appellant that the law allows exclusion of the time spent to obtain the impugned decree from the computation of time. This is pursuant to **Section 19 (2) of the Law of Limitation Act [Cap 89 RE 2019]**. The provision states;

*"(2) In computing the period of limitation prescribed for an appeal, an application for leave to appeal, or an application for review of judgment, the day on which the judgment complained of was delivered, and the period of time requisite for obtaining a copy of the decree or order appealed from or sought to be reviewed, shall be excluded."*

Court of Appeal has interpreted Section 19 (1) of Cap 89 supra with the same effect. (See **Methusela Enoka vs National Microfinance Bank Ltd**, Civil Appeal No. 266 of 2019, CAT at Mwanza at page 10)



I have taken note that the Respondent did not address this legal position in the submission in chief. It is the Respondent who is challenging the timeliness of the appeal. She has a duty to establish in her submission every legal aspect which involve timeliness and the computation of time limitation. Apart from challenging the appellants claims of having been served with the copies of judgment and decree on **15<sup>th</sup> January 2024**, the Respondent has not provided any details to establish whether the Appellant was timely supplied with the copy of the Decree. In her rejoinder submissions the Respondent stated that the judgment of the trial Tribunal does not indicate the reason for the delay. This still works against the respondent as it raises a question at to how could she allege delay in filing the appeal while she is unaware of the date that the copy of the Judgment was supplied to the Appellant? In the absence of any submission by the Respondent disclosing the date on which the Appellant was supplied with the copies of judgment and decree, then it was sufficient for the appellant to just state the date the said documents were supplies as the submissions in chief did not leave any dispute on this. I disagree with Ms Chuwa Adv that the Appellant had a duty to bring more evidence on the date she was supplied with the documents apart from what she stated in her reply submission to arguments which posed no dispute.

Since the Respondent did not state the basis under which she computed that time limitation in taking into account the significant provision of **Section 19 (2) of Cap 89**, then it remains that what the Appellant stated in her submission that he was supplied with the same on 15<sup>th</sup> January 2024 means she was stating what was not in dispute so he needed no further proof other than the explanation she gave.

Since the legal validity of the exclusion of the days spent to obtain the necessary documents is not disputed by the Respondent, then the computation of time needed to start from the date the Appellant claimed to have been supplied with those documents which is **15<sup>th</sup> Day of January 2024**. Counting from this **15<sup>th</sup> Day of January 2024**, this appeal having been filed on **29<sup>th</sup> day of January 2024**, it was not time barred pursuant to **section 19 (2) of Cap 89 of 2019 RE** of the Laws. At this juncture, the first point of preliminary objection is overruled.

Regarding the second point of preliminary objection, the issue is whether the filing of the Appeal at the District Registry of the High Court of Tanga constitutes a fatal irregularity.

The **High Court Registries (Amendment) Rules 2024, GN. No. 61A** was published on the 29<sup>th</sup> day of January 2024 and gave a new name to



the District Registries of the High Court. The name is Sub-registries". The Rule provides;

*"1. These Rules may be cited as the High Court Registries (Amendment) Rules, 2024 and shall be read as one with the High Court Registries Rules, hereinafter referred to as the "principal Rules" and shall come into force on the 30<sup>th</sup> day of January, 2024.*

*2. The principal Rules are amended by deleting the words "district registry" wherever they appear in the principal Rules and substituting for them the word "sub registry".*

Rule 1 above clearly provides that the Rules shall come into force on **30<sup>th</sup> day of January 2024**. This Appeal was lodged on the **29<sup>th</sup> day of January 2024**, when the Rules were not yet in force. That means the Appeal was properly lodged before the Court. Thus, the second point of preliminary objection is as well overruled for being misconceived.

In finality therefore, I find the two points of preliminary objection lacking legal basis. The entire preliminary objection is overruled. It is so ordered.

**Dated at Tanga this 18<sup>th</sup> day of June 2024.**



**KATARNA REVOCATI MTEULE**

**JUDGE**

**18<sup>th</sup> day of June 2024**

**Court**

Ruling delivered this **18<sup>th</sup>** day of **June 2024** in the presence of Ms Ernesta Chuwat Ady for the Respondent and in the absence of the Appellant.



A handwritten signature in blue ink, appearing to read "KRM", is positioned above the printed name of the judge.

**KATARNA REVOCATI MTEULE**

**JUDGE**

**18<sup>th</sup>** day of **June 2024**