

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**  
**IRINGA SUB-REGISTRY**  
**AT IRINGA**  
**LAND APPEAL CASE NO.4220 OF 2024**

(Originating from the decision of the District Land and Housing Tribunal  
for Iringa in Land Application No.85 of 2021.)

**FINCA (T) LTD.....APPELLANT**

**VERSUS**

**MECHANT KISUNDA.....RESPONDENT**

**RULING**

*Last date of Order: 11/06/2024*  
*Date of Judgement: 27/06/2024*

**LALTAIKA, J.**

No sooner had the Respondent received copies of relevant documents pertaining to this appeal than he raised a preliminary objection to the effect that the appeal was hopelessly time-barred and should be dismissed with costs. Apparently, the Appellant herein FINCA (T) LTD is dissatisfied with the decision of the of the District Land and Housing Tribunal for Iringa in Land Application No.85 of 2021. She has appealed to this Court by way of a Memorandum of Appeal containing the five grounds that I consider unnecessary to reproduce at this stage. This is

because, procedure obtained in our jurisdiction requires that when a preliminary objection is raised, the same shall be dealt with first.

When the appeal was called on for mention on the 7<sup>th</sup> day of May 2024, parties opted to dispose of the preliminary objection by way of written submissions. Consequently, the following schedule was ordered: (i) Filing of Appellant's written submissions 21/05/2024 (ii) Filing of Respondents' reply 4/6/2024 (iii) Filing of Appellant's rejoinder if any 11/06/2024 (iv) Mention for necessary orders to ascertain compliance with this order and schedule the date of hearing 11/06/2024. I hereby register my commendations to both parties for spotless compliance with the court order. The next part of this judgement is a summary of submissions by both parties.

The Respondent submitted in support of the preliminary objection that the appeal was hopelessly time-barred, contrary to section 41(2) of the **Land Disputes Courts Act [CAP 216 R.E. 2019]**, and that the appellant should have sought an extension of time within which to file their appeal instead of filing the memorandum of appeal directly.

The Respondent highlighted that section 41(2) of the Land Disputes Courts Act (Supra) clearly stipulates that an appeal may be lodged within forty-five days after the date of the decision or order, and that the High

Court may extend the time for filing an appeal for good cause, either before or after the expiration of the forty-five-day period.

The Respondent argued that the calculation of the time to appeal is within forty-five days from the day the judgment is delivered. In this matter, respondent reasoned, the judgment was delivered on **December 15, 2023**, making the forty-five-day time frame end **on January 29, 2024**. However, the appellant did not appeal within this time frame as required by law.

The Respondent further pointed out that the appellant, without leave of the court, **decided to appeal on March 1, 2024**, which was out of time. The material date could be clearly traced from the case reference number, which generates automatically during the time when the document is filed.

Therefore, Respondent insisted, the appellant should have advanced good cause for the delay under an application to the court before filing the appeal. Only after the court was satisfied with the reasons for the delay could leave be granted.

The Respondent emphasized further that it was fatal to continue with the appeal as it had been brought before the Honourable Court without adherence to the law. Even though the appellant was dissatisfied and aggrieved by the lower Tribunal's decision, she was still obliged to

approach the Court properly to ensure the ends of justice were not defeated. The Respondent concluded by praying that the appeal be dismissed with costs.

The documents I have indicate that submissions by the Respondent were penned down by M/s Makingwe and Company Advocates. No name of the specific counsel is mentioned though. This is an oversight I choose to cure by referring the drafter as Mr. Makingwe.

Mr. Makingwe, Counsel for the Appellant, submitted that upon reviewing the respondent's submission, he was fortified that the preliminary objection was vexatious and misconceived, deserving to be overruled in its entirety with costs.

Counsel contended that the preliminary objection was misconceived as it failed to meet the criteria of a pure point of law, as defined in **Mukisa Biscuit Manufacturing Co. Ltd v. West End Distributors Ltd** (1969) E.A 696. He explained that a preliminary objection, akin to a demurrer, should raise a pure point of law without requiring the ascertainment of any facts. He pointed out that the respondent's objection required evidence, such as when the appellant requested the copy of the judgment and proceedings for appeal purposes and when the trial tribunal issued these documents.

He noted that it was undisputed that the appellant requested the copy of the judgment and proceedings on December 19, 2023, and January 26, 2024, respectively, and received them on January 30, 2024. Consequently, the appellant filed the appeal on March 1, 2024, well within the required timeframe.

Counsel for the Appellant emphasized that the preliminary objection was legally untenable because it mixed facts and law. He argued that the time spent procuring a copy of the judgment and decree should be excluded in computing the limitation period, as established in **Alex Senkoro & 3 Others v. Eliambuya Lyimo**, Civil Appeal No. 16 of 2017 (unreported). He maintained that the appeal was properly before the court since the time for obtaining the judgment copy was automatically excluded, starting the limitation period from the certification date of January 30, 2024.

He further referenced section 19(2), (3), and (5) of **the Law of Limitation Act, Cap 89 R.E 2019**, which mandates excluding the time required for obtaining copies of proceedings, judgment, and decree when computing the limitation period. He cited several cases, including **Mohamed Salimini v. Jumanne Omary Mapesa**, Civil Appeal No. 345 of 2018 and **Director of Public Prosecutions v. Mawazo Saliboko @ Shagi & Fifteen others**, Criminal Appeal No. 384 of 2017, reinforcing

that the exclusion is automatic with proof of the critical dates for reckoning the limitation period.

Counsel concluded by asserting that the preliminary objection raised by the respondent was vexatious and misconceived, warranting its dismissal with costs.

The respondent, in his rejoinder submission, stated that the appellant alleged the objection was not fit to move the Court as it was not on a point of law, citing the case of *Mukisa Biscuit (supra)*. However, he argued that this case was improperly used as the preliminary objection was purely on a point of law, specifically that the appeal was hopelessly time-barred contrary to section 41(2) of the **Land Disputes Courts Act** (Supra)

The respondent emphasized that section 41(2) clearly stipulates that an appeal may be lodged within forty-five days after the decision or order, with the High Court having the discretion to extend the time for filing an appeal for good cause either before or after the expiration of this period. Therefore, he argued, the proper approach for the memorandum of appeal should have been to seek an extension of time from the appellate court.

The appellant contended further that the Law of Limitation Act (supra) provides that the computation of time to appeal starts from the date the judgment is signed as a true copy of the original, excluding all time before

this act under section 19 of Cap 89. The respondent countered that this interpretation was a misdirection, asserting that the time exclusion prescribed does not grant an automatic leave to appeal out of time. He explained that section 41(2) of Cap 216 directs a party wishing to appeal to do so within the prescribed time, while section 19 of Cap 89 applies when the copy of the judgment is certified past the appeal time.

Therefore, Respondent concluded, before lodging her appeal, the appellant should have sought leave of the Court while advancing good cause for the delay and accounting for each day's delay through an application before filing the memorandum of appeal past the prescribed time.

**I have dispassionately considered the rival submissions in the light of the preliminary objection raised.** The Respondent contends that the appeal is time-barred pursuant to section 41(2) of the Land Disputes Courts Act [CAP 216 R.E. 2019], which stipulates that an appeal must be lodged within forty-five days after the date of the decision or order. The Respondent asserts that the judgment was delivered on 15th December 2023, and the forty-five-day period expired on 29th January 2024. The Appellant, however, Respondent contended, filed the appeal on 1st March 2024 without seeking an extension of time from the court, thereby rendering the appeal fatally defective.

The Appellant, on the other hand, argues that the preliminary objection is not a pure point of law as defined in the case of **Mukisa Biscuit Manufacturing Co. Ltd v. West End Distributors Ltd** (1969) E.A. 696. The Appellant contends that the time spent obtaining the necessary documents, such as the judgment and proceedings, should be excluded from the computation of the limitation period as provided by section 19(2), (3), and (5) of the **Law of Limitation Act** [CAP 89 R.E. 2019].

I subscribe to the argument by Counsel for the Appellant as the correct position of our law that a preliminary objection must raise a pure point of law, which does not require the examination of evidence, as elucidated in **Mukisa Biscuit Manufacturing Co. Ltd v. West End Distributors Ltd** (supra). The objection raised by the Respondent is based on the alleged non-compliance with the statutory time limit for filing an appeal, which is indeed a point of law.

Section 41(2) of the Land Disputes Courts Act [CAP 216 R.E. 2019] mandates that an appeal must be lodged within forty-five days from the date of the decision. However, the proviso to this section allows the High Court to extend the time for filing an appeal for good cause.

Section 19(2) and (3) of the **Law of Limitation Act** [CAP 89 R.E. 2019] provides that the period requisite for obtaining a copy of the judgment or decree is to be excluded from the computation of the



limitation period. This provision is intended to ensure that appellants are not prejudiced by delays in obtaining essential documents for their appeals.

The judgment in the present case was delivered on 15th December 2023. The Appellant requested a copy of the judgment and proceedings on 19th December 2023 and 26th January 2024. The certified copies were issued on 30th January 2024, and the appeal was subsequently filed on 1st March 2024.

Based on the provisions of section 19(2) and (3) of the Law of Limitation Act, the time taken to obtain the certified copies should be excluded from the computation of the limitation period. Thus, the period from 19th December 2023 to 30th January 2024 is excluded from the forty-five-day limitation period. Therefore, the filing of the appeal on 1st March 2024 **falls within the permissible timeframe** when the exclusion period is considered.

In the upshot, the preliminary objection is hereby overruled. The appeal shall proceed to be heard on its merits. The same is scheduled for mention in this Chamber on **11<sup>th</sup> of July 2024**. For obvious reasons at this stage, I make no orders as to costs.

It is so ordered.



*E.I. Laltaika*

**E.I. LALTAIKA  
JUDGE  
27.06.2024**

**Court**

This judgement is delivered under my hand and the seal of this court this 30<sup>th</sup> day of May 2024 in the presence of Mr. Lazaro Hukumu holding brief for Mr. Joel Kimomwe Counsel for the Appellant and the Respondent who has appeared in person.



*E.I. Laltaika*

**E.I. LALTAIKA  
JUDGE  
27.06.2024**

**Court**

The right to appeal to the Court of Appeal of Tanzania is fully explained.



*E.I. Laltaika*

**E.I. LALTAIKA  
JUDGE  
27.06.2024**