

IN THE HIGH COURT OF TANZANIA
LAND DIVISION

AT IRINGA

MISCELLANEOUS LAND CASE APPEAL NO. 17 OF 2010

(From the Decision of the District Land and Housing Tribunal
of Iringa District at Iringa in Land Case Appeal No. 3 of 2010
and Original Ward Tribunal of Mkwawa Ward Application

VITUS KASIKE APPELLANT

VERSUS

ELIZABETH NINDI RESPONDENT

(Date of last Order 3.10.2013

Date of Ruling 29.11.2013)

RULING

MADAM SHANGALI, J

The appellant VITUS KASIME has filed this appeal
intending to challenge the decision of the District Land and
Housing Tribunal of Iringa in Misc. Land Application No. 3 of
2010 where his objection to the application for execution of

the decree in favour of the present respondent ELIZABTH NINDI was rejected.

Before the hearing of the appeal Mr. Mkwata, learned advocate for the respondent has filed preliminary objection on two points of law, namely:

- (a) That the appeal is improperly before the court on account of being lodged out of prescribed period and without leave of the court.
- (b) In the alternative the appeal is improperly before the court on account of not been accompanied by a copy of the decree appealed from.

On the request made to the court by both Mr. Mkwata learned advocate for the respondent and Mr. Kingwe, learned advocate for the appellant the court allowed the parties to argue the preliminary objection by way of written submission.

In his written submission, Mr. Mkwata opted to drop the second point of preliminary objection and concentrated on the first point only.

In support of his point, he submitted that, there is no dispute that the matter originates in the Ward Tribunal and therefore it is governed by section 38 of the Land Disputes

Court, Act Chapter 216. That, according to that provision of the law, all appeals of matters originating from the Ward Tribunal to this court has to be filed within sixty (60) days after the date of the decision or order appealed against. That, according to that provision of the law there is no requirement of attaching copies of decree and judgment for such appeal; and that once the petition has been filed in the District Land and Housing Tribunal, the later is required within a period of 14 days to dispatch the petition, together with the record of the proceedings of the Ward Tribunal and District Land and Housing Tribunal to the High Court. Mr. Mkwata submitted that, the computation of the prescribed period of 60 days for such appeals begin to run from the date of the decision and not from the date of obtaining certified copies of the decision because such copies are not necessary for lodging such appeals.

The learned advocate stressed that for the aggrieved party who fails to appeal before the High Court within the prescribed period because he was not supplied with the copy of the decision which he had requested for, the law under the proviso to section 38(1) of the Land Disputes Court Act comes to his aid. The learned advocate submitted that such a party has to move the court to permit him to file his appeal out of the prescribed period. That, it is in that very application where he will have to satisfy the court in first place, that he had requested for a copy of the decision in time but the court

had failed to supply the same in time; and further that he will have to satisfy the court with sufficient reasons as to why he required to obtain a copy of decision before preferring his appeal when the law does not require such a document. Mr. Mkwata emphasized that an aggrieved party who fails to appeal before the High Court within the presented time because he was not supplied with the copy of the judgment has to move the court to permit him to file his appeal out of the prescribed period.

The learned advocate argued further that the canons of interpretation demand that similar provision of two different statutes or more be given similar interpretation to the extent that this court has in a number of cases consistently interpreted the provisions of section 25 of the Magistrate's Court Act (Cap 11 R.E. 2002) which govern appeals to the High Court in relation to matters originating in primary courts, which is in pari-materia with section 38 of the Land Dispute Court Act with exception of the prescribed period. That, the computation of time begins to run from the date of the decision and not from the date of getting a certified copy of the decision because there is no legal requirement that a petition be accompanied by such a document. Mr. Mkwata referred this court to the decision in the cases of **Gregory Raphael Vs. Pastory Rwehabula** (2005) TLR 99 and **Abdallah S. Mkumba Vs. Mohamed Lilame** (2001) TLR 326.

Mr. Mirwata urged this court to accord similar interpretation to section 38 of the Land Dispute Court Act.

In conclusion the learned advocate emphasized and stressed to the effect that the instant appeal is improperly before the court on account of being lodged out of the prescribed period, and without leave of the court bearing in mind that the appeal was lodged on 27th July 2010 while the decision of the District Land and Housing Tribunal was delivered on 30th April 2010. He finally invited the court to dismiss the appeal with costs.

In response, Mr. Kingwe learned advocate for the appellant conceded that the appeal was indeed filed out of prescribed period of sixty days but qualified his statement to the effect that the so called delay was caused by the fact that the appellant was waiting for a copy of judgment from the District Land and Housing Tribunal. He contended that even though section 38 is silent on whether a petition of appeal should be accompanied by a copy of decree and the judgment, the court should observe the importance of such a document in the exercise of preparing a petition of appeal. The learned advocate drew the attention of this court to Order XXXIX Rule (1) of the Civil Procedure Code which requires an appeal to be accompanied by a copy of the decree appealed from unless the High Court dispenses with it. He cited the case of **Mariki Vs. Ngomio** (1981) TLR 143.

Mr. Kingwe emphasised that the copy of judgment is indispensable in appeal process since a party who is aggrieved by a decision of court and who wishes to appeal against such decision needs a copy of that decision in order to formulate his grounds of appeal. He further submitted that, due to the significance of a copy of a judgment the computation of 60 days of appealing should run from the date a copy of judgment was issued by the lower court. In support of his proposition he cited the case of **Joseph Mniga Vs. Abbas Fadhil and Hassan Khatib Pandu** (2001) TLR 213 which cements the importance of a copy of judgment in appeal process and clearly states that the time requisite for obtaining a copy of decree or Order appealed from or sought to be reviewed shall be excluded in computing the period of Limitations prescribed for an appeal.

Mr. Kingwe also submitted that the preliminary objection raised by the respondent is based on a mere technicality and that dismissing this appeal will result into great injustice to the appellant. He referred this court to the Constitution of the United Republic of Tanzania urging the court not to allow a mere technicality to override the substantial justice.

In rejoinder, Mr. Mkwata argued that Order XXXIX Rule (1) of the Civil Procedure Code cited by the appellant have no application to the instant appeal because the said provisions governs appeals on matters originating in the District Court

in the exercise of its originated jurisdiction while the present appeal originates from the District Land and Housing Tribunal in the exercise of its appellate jurisdiction. He further contended that even if it is assumed that this appeal was covered by the said provision of the law, yet it would be incompetent before this court because the petition of appeal is not accompanied by a copy of the decree appealed from.

On the allegation that the appellant required the copy of judgment in order to formulate his grounds of appeal, Mr. Mkwata responded in two fold. In the first place he submitted that there is no evidence showing that the appellant had requested for a copy of the judgment for that purpose and that the District Land and Housing Tribunal had failed to supply the same in time. Secondly, Mr. Mkwata argued that, where an aggrieved party has requested for a copy of the decision for his use in the appeal, and the District Land and Housing Tribunal has failed to furnish the same in time he has to file an application for leave to lodge his appeal out of time under section 38 and advance such sufficient reasons to convince the court for extension of time.

The crucial issue in this matter is based on the computation of limitation period under section 38 of the Land Disputes court Act, chapter 216 of the Laws Revised Edition, 2002. As rightly submitted by Mr. Mkwata matters originating from the Ward Tribunal to this court has to be filed within sixty (60) days after the date of the decision or

order appealed against. It is unfortunate that section 38 of the Land Disputes Court Act, is silent on how to compute the prescribed period of sixty days. However, it is a well known practice that in the exercise of its jurisdiction on land matters, the High Court and District Land and Housing Tribunal have a mandate to apply both the Civil Procedure Code, 1966, the Evidence Act, 1967 and the Law of Limitation Act, 1971. (See Section 51 and 52 (2) of the Land Disputes Court Act). The Magistrate Court Act Cap 11 R.E. 2002 is not among the list. A living example is found in the case of **Agness Sekeroto Vs Asinati J. Laizer**, Land Appeal No. 18 of 2009, High of Tanzania at Arusha Registry (Unreported) where the court found that the Land Dispute Court Act does not provide for time limit within which an aggrieved party may lodge an appeal to the High Court in matters originating from the District Land and Housing Tribunal in the exercise of its original jurisdiction. In order to fill that *lacuna*, the court resolved for guidance from the Law of Limitation Act and relied on the provision at the second Schedule which provided for an appeal which no provision of limitation is provided by the Act or any other written law.

Back to our instant matter, according to the record of proceedings of the District Land and Housing Tribunal, the ruling was delivered on 10/4/2010. It further indicated that on 6/5/2010 the appellant applied for a copy of ruling. That application was followed by another request dated 15/6/2010.

On 25/6/2010 the said copy of the ruling was certified and ready for collection. Incidentally the appellant collected his copy on the same day. Nevertheless, at that period the prescribed period of 60 days had already expired. The petition of appeal was filed on 27th July 2010.

So far as Section 38 of the Land Dispute Court Act is silent on how to compute the limitation period of Sixty days, guidance must be sought from the Law of Limitation Act, (Cap. 89 R.E. 2002).

Section 19(2) of the Law of Limitation Act States:

*“In computing the period of Limitation prescribed for an appeal, 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” (Emphasis added)*

That is the position of the law, I am also aware that the above section refers to decree or order appealed from, but in my understanding that cover also a judgment or decision. Therefore taking into consideration the requirements of the law that the appeal must be filed by using a petition of appeal, and considering the efforts made by the appellant to secure a copy of judgment in order to prepare his petition of appeal, it is obvious that the period of time requisite for obtaining a copy of judgment must be excluded. The

importance of a copy of Judgement in preparation of such appeals has been louded in numerous cases by this court. Among them is the cases of **Joseph Mniga (supra)** and the case of **Mary Kimaro Vs. Khalfan Mohamed** (1995) TLR 202 where it was held that:

“A copy of proceedings and a copy of judgment are necessary for the purposes of framing a sound memorandum of appeal. It is from the time of supply of both such documents that the limitation of time for appeal begins to run”

On the other side I do admit that the arguments advanced by the respondents advocate are very attractive but I can not vitualise a situation where the law gives a right of appeal against a decision and yet create a situation aimed to frustrate that right or withhold that decision to the detriment of the appellant. In order the appellant to exercise his right of appeal the first stage is to obtain a copy of judgment in order to prepare his petition of appeal; especially where the notice of appeal is not prerequisite.

Furthermore, the issue of expiry of the prescribed period of sixty days arises only after a lawful computation of prescribed period as provided under the Law of Limitation Act. In other words section 38 of the Land Dispute Court, Act comes to play or to the aid of the belated appeal after a genuine computation of the prescribed period. Again, there is

nowhere in the record of proceedings suggesting that the appellant was seeking the copy of judgment or decree in order to be accompanied in his appeal or petition. The appellant was simply asking for a copy of judgment in order to prepare his grounds of appeal hence to exercise his right of appeal.

I entirely agree with the decision in the case of **Usharika wa Misiwa-DKK/DKKKT Vs. Cosmas Mwanguila**, Misc. Land Case Appeal No. 28 of 2010, High Court of Tanzania, Iringa Registry (unreported) where in departing from the decision in the case of **Gregory Raphael Vs Pastory Rwehabula** (Supra) my Learned brother Hon. Kihio, J, observed;

*"No doubt this court is not bound by the decision in the case of **Gregory Raphael Vs Pastory Rwehabula**. In my view, the decision in the case of **Mary Kimaro Vs Khalfan** is more sound than that in the case of **Gregory Raphael Vs. Pastory Rwehabula**."*

I am also convinced to the same view. In the circumstances of this case, equity, justice and the law requires computation of period of Limitation for an appeal to exclude period of time spent by the appellant in diligently pursuing

his copy of judgment. In the upshot, the preliminary objection raised by the respondent is hereby dismissed with costs.

M.S.SHANGALI

JUDGE

29/11/2013

Ruling delivered todate 29/11/2013 in the presence of both parties in person and in the absence of their advocates.

M.S.SHANGALI

JUDGE

29/11/2013