

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM**

MISC. LAND APPEAL NO. 72 OF 2013

*(From the Decision of the District Land and Housing Tribunal of Morogoro District
at Morogoro in Land Case Appeal No. 61 of 2011)*

DAUDI GIBSON MWAKAPUMBE.....APPELLANT

VERSUS

BRYSON GIBSON MWAKAPUMBE.....RESPONDENT

Date of the Last Order: 26/3/2014

Date of the Judgment: 30/5/2014

JUDGMENT

B.R. MUTUNGI, J.

The Appellant Daudi Gibson Mwakapumbe has filed two grounds of appeal but in fact the only ground worth consideration is as follows:-

1. That, the honourable chairman erred in law in dismiss the appeal on the ground that it was time barred when he himself admits that the ruling was certified on 16/5/2011 such that the appeal could not have been filed before the date of its being certified as such was filed in time on 30/5/2011 which is only 14 days after

certification showing that it was in time and not time barred.

His prayers are such that the court to allow this appeal and order the lower tribunal's appeal be restored.

In arguing his appeal the appellant explained that after their case was heard and determined in the trial tribunal he had preferred an appeal in the District Land and Housing Tribunal. During the hearing of the said appeal it was realized that the appeal was improperly filed and dismissed but parties advised to re-file a proper appeal having cured the defects. The Appellant waited for the ruling and upon receipt of the same he lodged yet another appeal which upon a preliminary objection, was declared to have been filed out of time and accordingly dismissed the core of this appeal. The Appellant prayed to find that any delay occasioned was not caused by him but the delay in getting the ruling and the proceedings.

The Respondent Bryson Gibson Mkwakapuma in response submitted that indeed there was an appeal at the

District Land and Housing Tribunal but this had been dismissed. The Appellant after the decision decided to appeal but this time he did so out of time. The chairman having realized this went ahead and dismissed the same on the ground of being out of time. The Respondent prayed to the court that it should not allow for one to suit on his rights and at his own good time decide to surface as the Appellant did in the District Land and Housing Tribunal.

Having gone through the above scenerio I have endeavoured to peruse through the lower tribunal's record. In doing so indeed I find there was an appeal No. 23/2010 between Daudi Gibson as the Appellant and..Brayson Gibson as the Respondent. I further find that the appellate tribunal in the course of hearing the appeal discovered that the case before the trial ward tribunal of Kinondoni had different parties as the names had changed. It is upon this finding the appellate tribunal on 24/5/2010 dismissed the appeal and adviced the parties to file their appeal using the proper names as they appeared in the Kidodi Ward Tribunal but subject to the law of limitation.

It is on record that the Appellant did lodge his appeal with the same tribunal on 30/5/2011. The Appellant being Daudi Gibson Mwakapuma and Bryson Gibson Mwakihaba (appeal No. 61/2011) which appeal was dismissed for being time barred. This is the reason we find the Appellant knocking at the doors of this court.

Having studied the foregoing scenario I find as did the second appellate chairman that indeed counting from the 24/5/2010 to 30/5/2011 this is approximately a lapse of one year. The Appellant has tried to shift the blame of the delay on the appellate tribunal that he was late in getting the copy of the ruling. In my settled opinion this is one of the very reasons that would have paved his way for an application seeking for extension of time to file his appeal. There is no evidence at all that he did approach the appellate tribunal first by applying out of time to move the same as the first dismissal order was very explicit that the lodging of yet another appeal should be subject to the limitation time.

Having so observed I find indeed the appellate chairman on 8/4/2013 was justified to order for the dismissal of the appeal that had been filed out of time. I thus proceed to find the appeal before this honourable court as having no merits and proceed to dismiss the same with costs.

Right of Appeal Explained.

B.R. MUTUNGI

JUDGE

30/5/2014

Read this day of 30/5/2014 in presence of both the Appellant and Respondent.

B.R. MUTUNGI

JUDGE

30/5/2014

