

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)**

LAND APPEAL NO 141 OF 2016

HALIMA S. SUKUZI.....APPELLANT

VERSUS

SIHABA NASSORO.....RESPONDENT

R U L I N G

3/5/2018 & 8/6/2018

MZUNA, J.:

Sihaba Nassoro successfully sued the **Halima S. Sukuzi** at the District Land and Housing Tribunal of Ilala, at Ilala on a claim of house /land. Halima decided to file this appeal against Sihaba.

Before hearing could proceed Sihaba, the respondent herein raised a preliminary point of law to the effect that the appeal is time barred.

It was mutually agreed that the raised preliminary objection be argued by way of written submissions. The main issue is whether the appeal is time barred?

The respondent's submission is that the present appeal was filed contrary to the provisions of Section 41(2) of the Land Disputes Courts Act, Cap 216 as amended by the Written Laws Miscellaneous Amendment Act No. 2 of 2016 in that it was filed beyond 45 days from the date of the decision as prescribed by the law.

That Judgment or decision of District Land and Housing Tribunal sought to be challenged was delivered on 13th June, 2016 while the appeal was filed on 7th September, 2016. It is submitted that the appeal was filed after 84 days from the date of decision sought to be appealed against and therefore out of time.

The respondent referred this court to the case of **Hezron M. Nyachiya v. Tanzania Union of Industrial and Commercial Workers and Another**, Civil Appeal No. 79 of 2001, CAT, unreported.

In the circumstance, the respondent prayed for the appeal to be dismissed with costs as provided under section 3(1) of the Law of Limitation Act, Cap 89 RE 2002.

In response, the appellant through the services of the Legal Assistance and Social Welfare conceded with the time of filing an appeal from the District Land and Housing Tribunal to the High Court of Tanzania as stipulated under Section 41(2) Supra. However she says there was a delay to obtain copies of the judgment and decree appealed against.

That although judgment was delivered on 13th June 2016, however copies were certified on 29th July, 2016. It is submitted that the appellant could not have been able to file appeal without accompanying certified copies of judgment and decree. In support of her submission, she made reference to the case of **Kotak Ltd v. Kooverji** (1967) I EA 348.

In view of the above, the court was invited to count the time of filing appeal from the date of extracted copies of judgment and decree (ie July 29th 2016) to the date of filing the appeal. It was therefore her view that the appeal is within time. In the premise, the appellant urged

the court to dismiss the preliminary objection and proceed to determine the appeal on merits.

The question to ask, was the appeal filed on time? In other words, is the appeal time barred?

It is not in dispute that the judgment subject of the present appeal was delivered on 13th June, 2016 and the present appeal was lodged on 7th September, 2016.

Section 41 (2) of the Land Disputes Courts Act as amended by section 40 of the Written laws Miscellaneous Amendment Act, Act No. 2 of 2016, clearly stipulates “appeal may be lodged within **forty five days** from the date of the decision”. The argument by the appellant that she was late to receive copies of judgment and decree that would have enabled her process the appeal is without merit.

Similarly, Section 19(2) of the Law of Limitation Act, Cap 89 RE 2002 which provides that computation “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” cannot be a rescue.

Further, even Order XXXIX Rule 1 (1) of the Civil Procedure Code, Cap 33 RE 2002 that the memorandum of appeal must be accompanied by “copy of the decree appealed from” cannot be applied otherwise there could be no logic for the cited provision under the Land Disputes Courts Act to have a proviso that “**High court may for good cause extend the time**”.


Upon noticing that the appeal was out of time ought to have applied for leave to file it out of time. Delay in obtaining copies of judgment and decree thereof would constitute reasons for such delay in the application. The cited case of **Kotak Ltd v Kooverji** (supra) emphasize the need to attach copy of the decree and therefore does not bless filing the appeal out of time without leave of the court.

I would agree with the respondent as it was held in the case of **Hezron M. Nyachiya v. Tanzania Union of Industrial and Commercial Workers and Another**, Supra that:-

"Generally speaking, the Law of Limitation plays many roles including the following: **One, to set time limit within which to institute proceedings in a Court of Law. Two, to prescribe the consequences where proceedings are instituted out of time without leave of the court.** Where a period of limitation for any proceeding is prescribed by any other written law, the provisions of the Law of Limitation apply as if such period of limitation had been prescribed by the Law of Limitation Act." (Emphasis mine).

Accordingly, I find and hold that the appeal is time barred. I proceed to dismiss it with costs. The raised preliminary objection is upheld.




M. G. MZUNA,
JUDGE. 8/5/2018

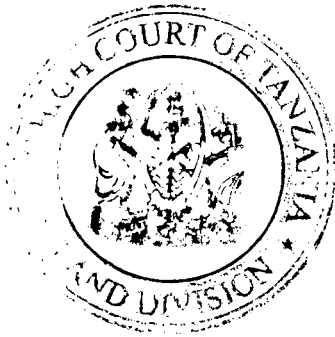
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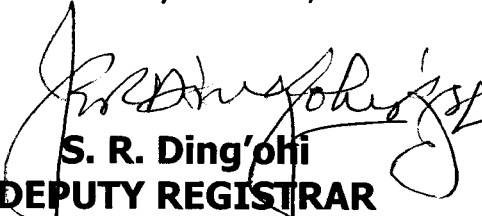
Coram: S. R. Ding'ohi DR

For appellant: present in person

For respondent:

COURT: Ruling delivered this 8th day of June, 2018.




S. R. Ding'ohi
DEPUTY REGISTRAR
08/06/2018