

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

LAND APPEAL NO. 121 OF 2016

***(From the Decision of the District Land and Housing
Tribunal of ILALA District at ILALA in Land Case No.266 of 2009)***

**THE REGISTERED TRUSTEES OF CHAMA CHA MAPINDUZI.....APPELLANT
VERSUS
ANASA RAMADHANI MINJA.....RESPONDENT**

RULING

**Date of last order 18/9/2018
Date of Ruling & 19/9/2018**

A. Mohamed, J

On 18/9/2018, this Court asked the parties to address it on whether the appeal was lodged in time.

Mr. Fabian Donatus, for the appellants asserted the appellant was represented by Mr. Mmanda, learned counsel at the trial tribunal. In June of 2017, he was appointed as the District Commissioner for Mtwara District and gave over conduct of the case to Mr. Mnzava, learned counsel who was not properly appraised of the records. Consequently, he applied the trial tribunal to be furnished with copies of judgment and decree in preparation of an appeal. The counsel submitted a copy of judgment was extracted on 13/6/2016. The

counsel further submitted, as it was a new matter to him, he wanted to peruse the record and documents.

Lastly, the counsel conceded that the appeal was filed out time but argued the delay was not intentional but was rather attributed to the circumstances he had elaborated. He prayed this Court to extend the time to file an appeal in the interest of justice under section 41 (2) of the Land Disputes Courts Act.

In reply, Mr. Komeye David for the respondent, remarked that since appellant's counsel has conceded the appeal has indeed been filed out of time, his prayer for extension of time to file an appeal cannot be granted. He submitted according to section 41(2) the Land Disputes Courts Act (Cap 216 RE 2002), an appeal from the District Land and Housing Tribunal has to be filed within 45 days. And that the only remedy is to dismiss the appeal as it is already in court. He then urged this Court to dismiss the appeal with costs. In rejoinder, Mr. Fabian simply reiterated his arguments.

Having heard the parties, there are two questions for this Court's consideration. One; whether to dismiss the appeal or not, and two;

whether this Court can grant an extension of time for the appellant to file its appeal out of time at this juncture.

I will commence with the first question. It is undisputed by the parties that section 42 (1) of the Land Disputes Courts Act provides that where a party is aggrieved by the decision of the District Land and Housing Tribunal, it can within 45 days from the date of the decision lodge an appeal. In this case, the appellant filed his appeal 54 days after the decision.

The position in the circumstances of the instant case was summarized in the unreported case of **Hezron M. Nyachiya v. Tanzania Commercial Bank & Another**, Civil Appeal No. 71/2001 where at page 9 the Court had this to say;

"The law of limitation has a provision for the consequence where the proceeding is instituted out of time with or without leave of the court. It is section 3. Under that provision, that is, section 3, the consequence is, such proceedings shall be dismissed whether or not limitation has been set out as a defence."

At page 10, the court further said;

***"Thus the Appellant's application which was
instituted out of time without leave of the Court
deserved to be dismissed."***

Applying the above proposition of the law to the instant case, I think it would be proper to dismiss the appeal that was filed out of time without an extension of time to lodge it.

Regarding the issue whether this Court can at this point grant the appellant's prayer to extend the time for filing an appeal out of time, I think Mr. Komeye David has correctly responded it cannot. The appellant, under the proviso to section 41 (2) of the Land Disputes Courts Act, could have had applied for such extension before lodging the appeal. He cannot do so now before this Court.

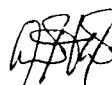
For the above reasons, I dismiss the appeal with costs.

It is so ordered.



**A. MOHAMED
JUDGE
19/9/2018**

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



**A. MOHAMED
JUDGE
19/9/2018**