

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

LAND APPEAL NO.256 OF 2020

(Arising from the judgment and decree of Kilosa District Land and Housing Tribunal
in Land Application No.19 of 2017)

ANTHONY CHIKOTI.....APPELLANT

VERSUS

WILLIAM BEATUS LIMBE (the Administrator of the Estate
of the Late BEATUS SAMWEL LIMBE).....**RESPONDENT**

Date of last Order: 13.07.2021
Date of Ruling: 23.08.2021

RULING

V.L. MAKANI, J

This ruling is in respect of the preliminary objection raised by the respondent that:

"That this appeal is hopelessly incompetent for being time barred."

With leave of the court the objection was argued by way of written submissions. The respondent's submissions were drawn and filed by Mr. Yusuph M. Mkanyali and the appellant personally drew and filed submissions in reply.

Submitting in support of the preliminary objection Mr. Mkanyali stated that the decision of the Kilosa District Land and Housing Tribunal (the **Tribunal**) of which the appellant is challenging was delivered on the 21/09/2020. The petition of appeal challenging the said decision was filed on the 11/12/2020 out of the statutory time limit provided by the law. He said the time limit for the appeals originating from the Tribunals is 45 days according to section 41 (2) of the Land Disputes Courts Act, CAP 216 RE 2019.

He continued to submit that it is undisputed fact that the appeal is time barred and if the appellant intended to challenge the said decision of the Tribunal he was supposed to apply for extension of time, and failure by the appellant to observe the requirement of the law, renders his appeal untenable in law and therefore it should be struck out.

Mr. Mkanyali further submitted that litigation has to come to an end and cannot be open ended otherwise the respondent will be prejudiced as it was held in the case of **Stephen Masato Wasira vs. Joseph Sinde Warioba and the Attorney General [1999]**

TLR 334. He therefore prayed the preliminary objection be sustained and the appeal to be struck out with costs.

In his submissions in reply the appellant said that the judgment of the Tribunal in Land Application No.19 of 2019 though delivered on the 21/09/2020, the copies of the judgment and decree were not ready until on the 02/11/2020. The appellant continued to submit that after the judgment was pronounced, he wrote a letter dated 29/09/2020 and a reminder letter was dated 30/10/2020. But the copies of the judgment were not supplied to him until on 02/11/2020. He said it is true that Section 41(2) of the Land Disputes Courts Act sets the time of 45 days after the decision of the Tribunal for an appeal to be filed, but that Section 19 (2) and (5) of Law of Limitation Act, CAP 89 RE 2019 provides that in computing the period of limitation for any appeal, the period requisite for obtaining the copies of the decree or orders appealed from, be excluded. He finalized his submission by submitting that the preliminary objection is void of any merit therefore it should be overruled and dismissed in its entirety with costs.

I have gone through the rival submissions by the parties. Indeed, an appeal from the Tribunal exercising its original jurisdiction must be filed in the High Court within 45 days. The issue at hand is whether the aggrieved party can file the said appeal automatically and without leave of the court. While Mr. Mkanyali states that leave of the court is necessary, the appellants submit that leave of this court is not necessary.

Section 41 of the Land Dispute Court's Act as amended states:

"41(1) Subject to the provisions of any law for the time being in force, all appeals, revisions and similar proceedings from or in respect of any proceeding in a District Land and Housing Tribunal in the exercise of its original jurisdiction shall be heard by the High Court.

(2) An appeal under subsection (1) may be lodged within forty-five days after the date of the decision or order:

Provided that, the High Court may, for good cause, extend the time for filing an appeal either before or after the expiration of such period of forty-five days."

It is apparent from the above provision of the law that an appeal from the Tribunal must be filed in the High Court within 45 days. Where a party wishes to file the appeal out of time, then an extension of time to file an appeal out of time must be sought upon adducing good cause and/or sufficient reason. This is a very significant prerequisite. Categories of sufficient reasons are not closed, but what the appellant

thus need to prove before the court is that the delay was in fact outside their control so that the court can extend the time. The fact that a party can extend time by adducing sufficient cause to the satisfaction of the court means one must seek leave of the court. In that respect and as correctly argued by Mr. Mkanyali leave of the court is a necessary requirement when an appeal is out of time.

Now, how will this court assess that an aggrieved party has advanced good and sufficient reasons to warrant the extension of time? The proper forum for the assessment by the court is by way of an application (Chamber Summons) supported by an affidavit, of which the said affidavit would contain the reasons sufficient for convincing the court that in fact extension of time is necessary. After being satisfied of the reasons advanced, the court would then grant leave for an extension of time within which to file the appeal. It is clear therefore that after good and sufficient reason being adduced then it is the court's discretion to grant extension of time to file the appeal.

In view of the above reasoning, it is obvious that a party who delays in the filing of an appeal, is not entitled to exclude the period of time requisite for obtaining copies of judgement or decree as was the case in the present appeal, unless such exclusion of time was indeed

necessary in the eyes of the law and not according to the appellant's views. The intended appellant must in fact prove to the court that the time was necessary, and he must prove this to the court and not to himself. In other words, the appellant was not entitled to automatically extend time, he had to seek for leave of the court to file the appeal after adducing sufficient reasons to the satisfaction of the court. As said hereinabove, the proper medium for providing such proof is in an application supported by an affidavit (see the case of **Star System International Co. Limited vs. Agatha Cyril Nangawe, Civil Appeal No. 10 of 2015 (HC-Tabora)** (unreported) where my brother Hon. Utamwa, J quoted several cases supporting this argument namely, **MIS Concrete Structure v. Simon Matafu, Civil Case No. 12 of 1995 HC-Mbeya** (Lukelelwa, J (as he then was), **Elly Ngole & Others vs. Jactan Sigala, Misc.Civil Appeal No. 14 of 2004 (HC-Mbeya)** (Hon. Othman, J (as he then was) and **NBC vs. Pima Phares, Civil Appeal No. 33 of 1997(HC-Mwanza)**(Hon. Mrema, J (as he then was).

Hon. Utamwa, J in the case of **Star System International Co. Limited** (supra) that:

"It must also be born in mind that what has been made by the appellant's counsel before me are mere submissions (as opposed to affidavits) to the effect that the time was necessary for the appellant to obtain the copy of decree, but such submissions do not suffice for the purposes of a legal proof. Our law is clear that mere submissions in court are not evidence hence they are incapable of proving any fact for the court to rely in making its decision, see the Court of Appeal of Tanzania decision in the case of The Assistant Imports Controller

(B.O.T) Mwanza v. Magnum Agencies Co. Ltd. Civ. Appeal No. 20 of 1990 At Mwanza."

In a similar view, the argument in the written submissions by the appellant stating that there was a delay in obtaining copy of the ruling and drawn order are not evidence suffice to convince this court to extend time. These facts were supposed to be in the affidavit supporting the application for extension of time.

In my considered view, it was the duty of the appellant to file the appeal in time according to the applicable provision of the law, that is, section 41(1) and (2) of the Land Dispute Courts Act. Or otherwise, upon the appellant finding himself out of time he had the duty to apply for leave to extend time to file the appeal to exclude the period of time requisite for obtaining the copy of the judgment and decree upon adducing sufficient cause. The envisioned application had to be supported by affidavit, since affidavits, unlike submissions, take place of oral evidence in law. This is the import of section 41(1) and (2) of the Land Dispute Courts Act. Since no leave to extend time was sought, then the appeal was filed out of time and I hold as such.

As regards section 19(2) and 52(2) of the Law of Limitation Act, I am of the view that the applicability of these provisions is only where there is a lacuna in the Land Disputes Courts Act. However, since the amendment of section 41 by the Written Laws (Miscellaneous Amendment) (No.2) Act, 2016 the provision is now self-sustainable as it deals with appeals from matters originating from the Tribunal and the said section is explicit that time to file an appeal originating from the Tribunal is 45 days and an intended appellant may before or after the lapse of the 45 days apply to extend the time as long as there are sufficient reasons to satisfy the court.

In view of the above thereof, I am in agreement with Mr. Mkanyali that the appeal is improperly before the court as it was filed out of time and without leave of the court. The preliminary objection therefore has merit, and it is upheld. Subsequently the appeal is hereby struck out with costs.

It is so ordered.


V.L. MAKANI
JUDGE
23/08/2021

