

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

LAND APPEAL No.224 OF 2020

MUSTAFA KIMARO.....APPELLANT

VERSUS

MARIAM HAMIS MAFTAHA.....RESPONDENT

Date of last Order: 01.07.2021
Date of Ruling: 02.08.2021

RULING

V.L. MAKANI, J

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

"The memorandum/petition of appeal is hopelessly time barred."

The court ordered that the application be argued by way of written submissions. Mr. Said El-Maamry, Advocate drew and filed submissions on behalf of the respondent and Mr. Ambrose Malamsha, Advocate drew and filed submissions in reply on behalf of the applicant.

Submitting in support of the application Mr. El-Maamary opined that the judgement in Land Application No.243/2011 at Kinondoni District Land and Housing Tribunal (**the District Tribunal**) was delivered on 28/08/2018 in favour of the respondent. That the appellant filed Misc. Application No.581/2018 in the High Court, Land Division for extension of time to file appeal out of time. That on 30/09/2019 the appellant was ordered to file his appeal within 30 days from the 30/09/2019. He said that appellant filed Land Appeal No.223/2019 which was withdrawn on 21/10/2020 with leave to refile subject to the Law of Limitation. That appellant filed this appeal on 17/11/2020. He said that since it was ordered that the appeal be filed subject to rules of limitation, the appellant was required to pray for leave to appeal out of time. He said that the appellant having utilized leave to appeal and filed Land Appeal No.223/2019 therefore he cannot use the same leave to file the appeal at hand Land Appeal No.224/2020. He insisted that the right to appeal in Land Appeal No.224/2020 was not automatically given but subject to the laws of limitation and that the appellant has faulted with the rules and procedures required under the Law of Limitation. He prayed for the appeal to be dismissed with costs.

In reply, Mr. Malamsha for the appellant said that this appeal was instituted on 17/11/2020 and the respondent was served with the petition of appeal on 11/12/2020 and on 16/12/2020 respondent filed reply to the petition of Appeal with a notice of preliminary objection that the petition of appeal is hopelessly time barred. He said that respondent has not cited any provision of the law or case law to support his contention. That the appellant having been aggrieved by the decision of the District Tribunal he applied vide Land Application No.581/2018 for extension of time within which to file appeal. Prayers was granted for the appellant to file his appeal within 30 days from 30/09/2019 and on 29/10/2019 the appellant lodged appeal No.161/2019 which was withdrawn on 21/10/2020 with leave to refile subject to rules of limitation. He insisted that this instant appeal is not time barred since the court on its own motion on 21/10/2020 brought the issue that parties who were not in the application for extension of time be joined. That on the said point and moment, the Counsel for the appellant conceded on the anomaly and prayed to withdraw the appeal with leave to refile. That the appeal was later refiled on 17/11/2020 vide Land Appeal No.224/2020 within 30 days from the date of Court's Order. He insisted that there is no breach of the law as alleged. He prayed for the preliminary objection to be dismissed.

In rejoinder, Mr. El-Maamry reiterated his main submissions and added that on 20/05/2021 the court, among other things ordered that the reply to the main submission be filed on or before 17/06/2021 but the appellant filed his reply on 18/06/2021 hence out of time. He therefore argued the court to expunge the appellants reply to the main submission. He said that there are circumstances where there is a developed new school of thought or matters arise for the first instances under which it is difficult to cite provision of the law or case law and that is why in his main submission, he did not cite any provision of the law nor case law.

Before considering the merit of the preliminary objection, I wish to address the issue raised by Mr. El-Maamry in his rejoinder that the reply by the appellant was filed out of time. It is on the record that on 20/05/2021 this Court, among others ordered that a reply be filed on or before 17/06/2021. Exchequer receipt No.25016605 shows that the reply was filed by the appellant on 18/06/2021, one day out of time. There is nothing on record to show that the appellant was granted extension of time to file his reply. Accordingly, the reply by

the appellant is hereby expunged from the records for being filed out of time without leave of the court.

Back to the merit of the preliminary objection raised. Mr. El-Maamry for the respondent opined that the instant appeal is time barred since Appeal No.223 of 2019 was struck out on 21/10/2020 with leave to refile subject to the rules of limitation and therefore 30 days granted in Application No.581 of 2018 does not cover the instant appeal. It is undisputed that on 30/09/2019 the appellant was granted 30 days within which to file his appeal. He filed appeal No.223 of 2019 which was withdrawn on 21/10/2020 with leave to refile subject to rules of limitation. Now, 30 days granted in Application No.581 of 2018 covers only from 30/09/2019 (the date of ruling) to 30/10/2020 and any appeal filed out of that specified period of time is deemed to be time barred unless extension of time is granted. It thus goes without saying that the instant application which was filed on 17/11/2020 (exchequer receipt No.24956019) is hopelessly time barred.

Now, what are the consequences where a matter is time barred? The Court of Appeal of Tanzania in the case of **Hashimu Madongo & 2**

Others vs. Minister for Industry and Trade & 2 Others, Civil

Appeal No.27 of 2003 (CAT-DSM) (unreported) had this to say:

"Under section 3 of the Law of Limitation Act, a proceeding which is instituted after the prescribed period has to be dismissed..."

In view of the above findings, the appeal is hereby dismissed with costs for being out of time.

It is so ordered.


V.L. MAKANI
JUDGE
02/08/2021



The seal of the High Court of Tanzania, Land Division, is circular with a blue border. The outer ring contains the text "THE HIGH COURT OF TANZANIA" at the top and "LAND DIVISION" at the bottom, separated by two stars. The center of the seal features the national coat of arms of Tanzania, which depicts a lion and a zebra flanking a shield, with a sun rising over a landscape.