

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

**AT DAR ES SALAAM**

**MISC. LAND APPEAL NO. 138 OF 2020**

**INOSENSIA ISDORY NGAJUMA ..... APPELLANT**

**VERSUS**

**MATHIASI WILLIAMU DARAJA ..... RESPONDENT**

**(Arising from the decision of The District Land and Housing Tribunal  
for Ulanga in Appeal No. 03 of 2020, originated from the  
Decision of Mtimbira Ward Tribunal in  
Land Case No. 141 of 2019)**

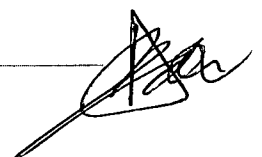
**JUDGMENT**

**Date of last order: 9/8/2021**

**Date of ruling: 31/08/2021**

**T.N. MWENEGOHA, J.:**

The appeal traces its origin from a land action that was filed by the appellant against the respondent at the trial Ward Tribunal of Mtimbira, Mahenge via **Land Case No.141 of 2019**. The essence of the claim was that, the applicant claimed he was the lawful owner of the disputed land which has been trespassed by the respondent. The Ward Tribunal favoured the respondent. The appellant appealed to the District Land and Housing Tribunal for Ulanga in **Land Appeal No. 03 of 2020**. The District Tribunal was against the appellant's expectations and the respondent was declared to be a lawful owner for possessing a good title for being allocated the suit property on year 2001 by the Madibira Village government earlier than the appellant.

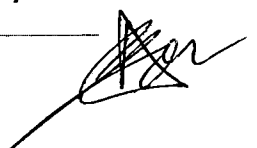


Now the appellant approached this Court as her second appeal so as to overturn the decisions of Ward and District Tribunal by filing six grounds of appeal on the petition of appeal. In response to petition of appeal, the respondent raised a point of preliminary objection that the appeal is time barred.

The merit of the legal point of preliminary objection raised was argued by way of written submissions. Mr. Albert Mulokozi Mukoyogo, learned advocate, presented the submissions for the respondent whereas the applicant drew and file reply to preliminary objection in person. I thank both parties for their very instructive submissions. They have been given due consideration in this Ruling.

In his submission in support of the preliminary objection raised, Mr. Mukoyogo stated, that, the current appeal is time barred as it was required to be filed on 25<sup>th</sup> July 2020, the date which marked the end of 60 days according to the law, if the appellant had intention to file it against the Judgement and Decree of the District Tribunal, that is according to Section 38 (1) of the Land Disputes Courts Act Cap. 216 R.E 2019. It was his further submissions that since 25<sup>th</sup> July was Saturday the applicant could have filed the same on 24<sup>th</sup> July 2020 or 27<sup>th</sup> July 2020. Unfortunately, he did not do so and he was out of time to file the current appeal without filing application of extension of time. He cited the case of Isamilo Plaza Co. Another Vs. Mwajuma Mussa Land Appeal No. 30 of 2019 High court of Tanzania at Mwanza to support this argument.

In reply the applicant submitted that, the respondent's is counsel is misleading the Court since the matter was filed at the District Tribunal within 31 days before the expiration of 60 days in the sense that the decision was extracted on 15<sup>th</sup> day of October 2020 and the matter was admitted by District Chairman on 16/11/2020. That even so the delay was



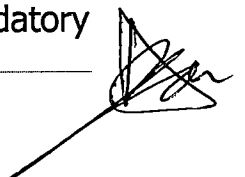
caused by the Court for failure to extract the Judgment / Decree within time.

In Rejoinder the respondent's counsel insisted that, time on appeal start to count after the pronouncement of the Judgment and not otherwise.

I have considered the rival submissions and reviewed the law and the cited authorities in line with the affidavit and counter affidavit. I am in agreement with the counsel for the respondent that, the intended appeal being a second appeal it fall within the requirement of section 38 (1) of the Land Disputes Courts Act, Cap. 216 R.E 2019 and it goes without saying the exclusion of the period within which the applicants were waiting for a copy of judgment is not a defence.

***"38.-(1) Any party who is aggrieved by a decision or order of the District Land and Housing Tribunal in the exercise of its appellate or revisional jurisdiction, may within sixty days after the date of the decision or order, appeal to the High Court:  
Provided that, the High Court may for good and sufficient cause extend the time for filing an appeal either before or after such period of sixty days has expired."***

In this matter, the provision of section 38(1) of the LDCA (supra) upon which the intended appeal is preferred, does not impose such a requirement. Therefore, I borrowed wisdom of my fellow Judge on what he said in the ***Case of Msafiri Idd Dilunaa vs. Mariam Idd Dilunga and Others. Land Appeal No. 38***, (High Court, Land Division-unreported) it was held that, the automatic exclusion of the days in which the appellant was awaiting for a copy of a judgment in counting the period of limitation is only available where a copy of judgment is a mandatory



requirement in the respective appeal. Section 38 (1) supra doesn't impose the mandatory requirement for a petition of appeal to be accompanied by the certified copy of the Judgement and Decree.

In the instant matter the Judgement of the District Tribunal subject to this appeal was delivered on 27<sup>th</sup> day of May 2020 and the petition of appeal was filed before District Tribunal by the appellant on 16<sup>th</sup> day of November 2020 almost about (120 days) four months lapsed before the present appeal came to existence. Therefore, the sixty (60) days has no doubt expired, and no justification was advanced on the expiry of the said period.

I agree with the respondent that extraction dates cannot be relied for appeals but rather for extension of times.

It goes without saying that truly this appeal is time bared for being brought after the expiration of 60 days from the date of the delivery of the Judgement by the District Tribunal in Appeal No. 03 of 2020.

In upshot the present appeal is devoid for being brought out of time, the Court is hereby dismissing it accordingly.

It is so ordered.

**DATED at DAR ES SALAAM this 31<sup>st</sup> day of August, 2021.**



  
**MWENEGOHA**  
**JUDGE**