

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

LAND APPEAL NO. 132 OF 2021

*(Arising from Land Application No. 02 of 2018, in the District Land and Housing
Tribunal for Kilosa, at Kilosa)*

HAMIS KIZENGA APPELANT

VERSUS

LITHAR KANYANGA 1ST RESPONDENT

MANENO MASHAKA.....2ND RESPONDENT

LEKANI KONDOWE.....3RD RESPONDENT

R U L I N G

31st August, 2022

CHABA, J.

This ruling is in respect of a preliminary objection raised by the first respondent, LITHAR KANYANGA through the legal service of Ms. Bernedetha Charles Iteba, learned advocate to the effect that, I quote:

1. That, the suit before the court is not maintainable for being time barred from 19th April, 2021 the date of delivering the Judgement to 12th July, 2021 the date of filing this appeal.

At the hearing of the application in respect of preliminary objection on a point of law, Ms. Bernadetha Charles Iteba, learned advocate appeared for the first respondent while Mr. Cleophas Manyangu, learned advocate entered appearance for the appellant. However, the second and third

respondents for reasons better known by themselves, did not file their written submissions as ordered by this court. Therefore, the matter proceeded ex-parte on their parts.

Arguing in support of the raised preliminary objection on a point of law, Ms. Iteba submitted that this appeal was lodged in this court on 12th July, 2021 which is 84 days from the date of the judgment being appealed against. She accentuated that according to the court record, the impugned decision was delivered on 19th April, 2021 and the law requires that appeals from the District Land and Housing Tribunal (the DLHT) to the High Court (Land Division) must be filed within forty-five (45) days from the date of judgment. To reinforce her argument, the learned advocate cited section 41 (1) and (2) of the Land Disputes Courts Act [Cap. 216 R.E. 2019] where the law provides that:

"Section 41 (1) - Subject to the provisions of any law for the time being in force, all appeals, revisions and similar proceeding from or in respect of any proceedings 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 the good cause, extend the time for filing an appeal either before or after the expiration of such period of forty-five days".

She highlighted that, as the law stands this is a mandatory requirement and it must be complied with by every person and in

absence of any excuse. She emphasized that since the appellant violated the above provisions of the law, the only option available to him was to apply for extension of time within which to file his appeal instead of lodging direct his appeal before this court. The learned advocate cited the cases of **Registered Trustees of Chama Cha Mapinduzi v. Anasa Ramadhani Minja**, Land Appeal No. 121 of 2016 and **Hezron M. Nyanchiya v. Tanzania Commercial Bank & Another**, Civil Appeal No. 71 of 2001 (All unreported) to strengthen her contention. She continued that once an appeal is filed out of time, the time of appeal is extinguished and as a consequence, such an appeal must be dismissed. She underlined that section 3 of the Law of Limitation Act [Cap. 89 R.E. 2019] is relevant. For ease of reference the law provides that:

"Section 3 - (1) Subject to the provisions of this Act, every proceeding described in the first column of the Schedule to this Act and which is instituted after the period of limitation prescribed therefore opposite thereto in the second column, shall be dismissed whether or not limitation has been set up as a defence".

To buttress her argument, the learned advocate referred this court to the case of **Hezron M. Nyanchiya v. Tanzania Commercial Bank & Another**, Civil Appeal No 71/2001. She concluded by asking the court to dismiss the appellant's appeal with costs.

In reply, Mr. Cleophas Manyangu, learned advocate for the appellant did not dispute the fact that the decision of the DLHT was delivered on 19th April, 2021. He submitted that, the appellant expressed his intention

to appeal before this court by requesting for the certified copies of the judgment and decree on the same day on 19th April, 2021. He highlighted that in-terms of Order XXXIX, Rule 1 (1) of the Civil Procedure Code [Cap. 33 R.E. 2019] (the CPC) the law requires that the memorandum of appeal must be annexed by copies of judgement and decree when a party lodging his/her appeal before this court. The law provides that:

"Order XXXIX, Rule 1 (1) - Every appeal shall be preferred in the form of a memorandum signed by the appellant or his advocate and presented to the High Court (hereinafter in this Order referred to as "the Court") or to such officer as it appoints in this behalf and the memorandum shall be accompanied by a copy of the decree appealed from and (unless the Court dispenses therewith) of the judgment on which it is founded".

He continued to highlight that although section 41 (1) of the Land Disputes Courts Act [Cap. 216 R.E. 2019] stipulates for the timelines for an appeal originating from the DLHT to be filed in this court within forty-five 45 days from the date of judgment or order, but still it cannot be read in isolation of other laws such as the Law of Limitation Act [Cap. 89 R.E. 2019], the CPC (Supra) and case laws as well. Expounding his argument, the leaned advocate referred this court to the provisions of the law under section 19 (2) of the Law of Limitation Act (Supra) which provides that:

"Section 19 (2) - In computing the period of limitation prescribed for an appeal, an application for leave to appeal, or an application for review of judgment, 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".

He accentuated further that it is apparent that the appellant requested for the certified copies of judgement and decree on the same day when it was delivered on 19th April, 2021 but he obtained the same on 9th June, 2021. He then filed the present appeal on 12th July, 2021 which is 33 days from when the certified true copies of judgment and decree were ready for collection. He stressed that this is where section 19 (2) of the Law of Limitation Act (Supra) comes into play. He said, the appellant filed the appeal within the prescribed period of time. To cement his argument, he referred this court to the cases of **Registered Trustees of Marian Faith Healing Centre @ Wanamaombi v. The Registered Trustees of the Catholic Church Sumbawanga Diocese**, Civil Appeal No. 64 of 2007 and **Dyana Mwanangwa v. Mandela Samsoni & 2 Others**, Misc. Land Application No. 44 of 2020, at the High Court Mbeya (All unreported) to fortify his contention.

As regards to the cases cited by the learned advocate for the first respondent insisting that this appeal is time barred, Mr. Manyangu had the view that the case of **Registered Trustees of Chama cha Mapinduzi** and **Hezron M. Nyanchiya** (Supra) are irrelevant and distinguishable in the circumstance of this case. He further averred that in **Hezron's case** the court expounded the consequences of limitation

of time, which do not apply in this case because the appeal was filed within the timeframe as provided by the law.

From the foregoing submission, Mr. Manyangu prayed this court to overrule the preliminary objection on a point of law with costs.

I have keenly gone through the rival submissions advanced by parties and the court records, and I am of the view that the controlling issue for consideration, determination and decision thereon is whether the raised preliminary objection on a point of law is meritorious.

As alluded to above, the provisions of the law governing all appeals, revisions and similar proceedings from or in respect of any proceedings in a DLHT in the exercise of its original jurisdiction is section 41 (1) and (2) of the Land Disputes Courts Act (Supra). The law says; 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 DLHT in the exercise of its original jurisdiction shall be heard by the High Court of Tanzania and such an appeal may be lodged within forty-five (45) days after the date of the decision or order. However, the High Court may, for the good cause, extend the time for filing an appeal either before or after the expiration of such period of forty-five (45) days. As correctly submitted by Mr. Manyangu, section 51 (1) and (2) of the Land Disputes Courts Act (Supra) states clearly that in the exercise of its jurisdictions, the High Court shall apply the CPC and the Evidence Act and may, regardless of any other laws governing production and admissibility of evidence, accept such evidence and proof which appears to be worthy of belief.

From the above position of the law, it follows therefore that, whenever there is lacuna in this Act (the Land Disputes Courts Act), the CPC automatically comes into play. As hinted above, Order XXXIX, Rule 1 (1) of the CPC is clear on this point because it states that every appeal shall be preferred in the form of a memorandum signed by the appellant or his advocate and presented to the High Court and the memorandum shall be accompanied by a copy of the decree appealed from and of the judgment on which it is founded.

Now, reverting to the first respondent's submission, it is apparent that the decision of the DLHT was delivered on 19/4/2021 and the appellant filed the present appeal on 12/7/2021 which is, according to Advocate Iteba, the appeal was filed 84 days from the date of delivery of the impugned decision or judgment. However, the record is clear that the judgment and decree was certified on 9/6/2021 and soon upon received these documents the appellant filed his appeal on 12/7/2021. Therefore, calculating from 9/6/2021 to 12/7/2021 only 33 days was elapsed and still it was within the time prescribed for lodging the present appeal and not 84 days as the learned advocate, Ms. Iteba tried to persuade this court to believe through her written submission in chief. As noted above, section 19 (2) of the Law of Limitation Act (Supra) is also clear that in computing the period of limitation prescribed for an appeal of judgment, 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.

Besides from the foregoing, I had an ample time to read the cases referred by the learned advocates for the first respondent and I found out that these cases, i.e., **Registered Trustees of Chama cha Mapinduzi** and **Hezron M. Nyanchiya** (Supra) are inapplicable in the circumstance of this case. But the precedents cited by Mr. Manyangu, learned advocate for the appellant including the cases of the **Registered Trustees of the Marian Faith Healing Center @ Wanamaombi v. The Registered Trustees of the Catholic Church Sumbawanga Diocese** and **Dyana Mwanangwa v. Mandela Samsoni & 2 Others** are of paramount importance in as much as the circumstance of this case is concerned.

In my considered opinion, and to the extent of my observations herein above, it is important to note that exclusion of time for requesting copies of judgement and decree from 19th April, 2021 up to 9th June, 2021 was vital. As the appellant was supplied with the copies of judgment and decree on 9th June, 2021 and immediately filed his appeal on 12th July, 2021 it is obvious that he filed the present appeal in time. Counting from 9th June, 2021 to 12th July, 2021 only 33 days had expired and still the appellant had into his hands another 12 days to accomplish 45 days. By calculation 45 days expired 24th July, 2021. Hence, as precisely submitted by the learned advocate for the appellant, I am also in agreement with him that the appellant filed his appeal within the prescribed period of time. In that view, there was no need to apply for the extension of time within which to file the instant appeal.

In the final analysis, the preliminary objection raised by the learned advocate for the first respondent is devoid of merit and it is hereby dismissed with costs. The matter to proceed on merits.

It is so ordered.

DATED at MOROGORO this 31st day of August, 2022.




M. J. Chaba

Judge

31/08/2022