

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

**LAND APPEAL NO. 77 OF 2021**

(Arising From Ilala District Land and Housing Tribunal at Mwalimu House in Land Appeal No. 60 of 2020)

**ASHURA MWINYIMVUA.....1<sup>ST</sup> APPELLANT  
AMZA A. MSHINDO.....2<sup>ND</sup> APPELLANT  
RAMADHANI MSHINDO AMBARI.....3<sup>RD</sup> APPELLANT  
ASIA ABDALLAH AMABARI.....4<sup>TH</sup> APPELLANT  
TWAHA ABDALLAH MSHINDO.....5<sup>TH</sup> APPELLANT  
ZANA MSHINDO ABDALLAH.....6<sup>TH</sup> APPELLANT**

**VERSUS**

**YAHAYA SAID HINCHA.....RESPONDENT**

Date of Last Order: 12.08.2022  
Date of Ruling: 02.09.2022

**RULING**

**V.L. MAKANI, J.**

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

- (i) *The appeal is time barred.*
- (ii) *The appeal is incompetent as the appellants did not file the notice of intention to appeal.*

On the date fixed for hearing on 12/08/2022, the respondent prayed to add a third point of preliminary objection that:

- (iii) *That this appeal was wrongly filed at the High Court instead of District Tribunal.*

The matter proceeded by way of written submissions. Mr. Philemon Mujumba, Advocate drew and filed submissions on behalf of the

respondent. In opposing the objection, Mr. Michael Mantawellah Lucas, Advocate drew and filed submissions in reply on behalf of the appellants.

In his submission Mr. Mujumba abandoned the second and third points of objection and argued the first point only. He said that this appeal was filed out of time without leave of the Court. That the judgment was delivered by Ilala District Land and Housing Tribunal (the **District Tribunal**) on 19/01/2021. That the petition of appeal was filed in this court on 20/05/2021, four months later. He said this is contrary to section 38 (1) of the Land Disputes Courts Act, CAP 216 RE 2019 which provides that a petition of appeal should be filed within 60 days after then date of decision or order. He said there is no valid appeal in this court due to appellants failure to seek extension of time to file the appeal at hand. He prayed for this appeal to be dismissed with costs.

In reply, Mr. Lucas said Part III Paragraph 21 of the Schedule to the Law of Limitation Act, Cap 89 RE 2019 (the **Limitation Act**) provide 60 days to appeal from the date of delivery of the judgment. And that section 19 (2) of the same Act provides that the period of time

requisite for obtaining a copy or order appealed against shall be excluded. He insisted that the judgment was delivered on 19/01/2021 and the copies were supplied on 06/04/2021 and therefore time started to run from 06/04/2021. He also relied on the case of **Asunta Litali vs. Filomena Mjengo, Misc. Application No.316/2021 (HC-Land Division)** (unreported). He prayed for the preliminary objection to be overruled with costs.

In rejoinder, Mr. Mujumba reiterated his main submission. He distinguished the cited case of **Asunta Litali** (supra) in that the said case was an application for extension of time.

The main issue for consideration is whether this appeal is time barred. The court will confine itself to this one objection only because the other two were abandoned.

It is without any dispute the matter at hand has its origin from Gongola Ward Tribunal (the **Ward Tribunal**) and then to the District Tribunal and now to this Court. Therefore, the proper provision to move this court is section 38 (1) of Land Disputes Courts Act, which provides 60 days within which the aggrieved party at the District

Tribunal may appeal to the High Court. Now, the records are clear that the decision of the District Tribunal was delivered on 19/01/2021. The copies were certified ready for collection on 06/04/2021. According to section 19 (2) of the Limitation Act, time against the appellants started to run on the day the copies were certified because the days for follow-up of the copies are excluded. (see the case of **Alex Senkoro & 3 Others vs. Eliambuya Lyimo, Civil Appeal No. 16 pf 2017 (CAT-DSM)** (unreported). According to Exchequer Receipt No.24704084, this appeal at hand was filed on 20/05/2021, counting from 06/04/2021 to 20/05/2021 it is 45 days from the date when the copies of the impugned decision were certified and ready for collection. The 45 days are therefore within 60 days prescribed in section 38 (1) Land Disputes Courts Act.

In that regard the preliminary objection raised by the respondent on time limitation is devoid of merit and the same is hereby dismissed with costs. It is so ordered.



*V.L. Makani*  
**V.L. MAKANI**  
**JUDGE**  
**02/09/2022**