

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

LAND APPEAL NO 35 OF 2022

*(From the Decision of District of Land and Housing Tribunal of ILALA District at ILALA in
Land Application No. 54 of 2021)*

FATUMA S. MOHAMEDAPPELLANT

VERSUS

MZEE SELEMANI SOKONI.....RESPONDENT

Date of last Order: 21/09/2022
Date of Ruling:30/09/2022

RULING

OMARI, J.:

The Appellant herein, Fatuma S. Mohamed was the unsuccessful party in Appeal No. 54 of 2021 before the District Land and Housing Tribunal of Ilala at Mwalimu House (the DLHT). The matter emanates from a sale of two 20x20 pieces of land which Fatuma S. Mohammed (on behalf of her husband) sold to one Mzee Selemani Sokoni. Controversy ensued after the husband one Abdalah Masauni alleged that Mzee Selemani Sokoni bought only one 20x20 piece of land, therefore he was trespassing on the second piece. This is how the matter ended up in the Ward Tribunal for Zingiwa, where the then Applicant; Mzee Selemani Sokoni won.

Aggrieved, Fatuma S. Mohammed did not give up, she appealed to the DLHT seeking to have the decision and orders of the Ward Tribunal for Zingizwa quashed. She also prayed for a declaration that; the land belongs to her (the Appellant) as well as an order for costs. The Chairperson of the DLHT in the judgment delivered on 21 October, 2021 stated that there was no evidence on record of what the Appellant was alleging; that is, she is the owner of the suit land (two 20x20 pieces of land) and yet none of the grounds for appeal were proven. It was ordered that the appeal be dismissed with costs and the decision of the Ward Tribunal for Zingizwa be upheld. Aggrieved with the decision, she filed this current appeal that is; Land Appeal 35 of 2022 wherein she preferred 7 grounds of appeal through her Memorandum of Appeal.

On the date of the hearing both parties were present. However, they were represented by counsel; the Appellant had the services of Mr. Malindi Said while the Respondent enjoyed the services of Mr. Ashiru Lugwisa (holding brief for Mr. Faraji Ahmed) both learned advocates.

Before hearing could proceed the Respondent's advocate brought forward a Preliminary Point of Objection that the appeal was filed out of time stating

that they are ready to continue with the hearing, however, they thought it prudent to raise this issue so that it be addressed before the court and a ruling made. It was mutually agreed that the raised preliminary objection be argued orally.

The Respondent's advocate commenced by submitting that the appeal was presented for filing on 16 February, 2022 as shown in the exchequer receipt that bears the stated date. The document that had been corrected by ink pen by a registry officer in fact bears the date 16 February, 2021 as the officer crossed out December and wrote February but left the year as is. Thus, making it safe to rely on the date on the exchequer receipt on the document.

Mr. Lugwisa went on to say that if the date of filing was 16 February, 2022 as indicated on the exchequer receipt; then the appeal is time barred as per section 38 of the Land Disputes Courts Act, CAP 216 [RE 2019] (the LDCA) which provides for an appeal from the DLHT to be filed within 60 days of judgment.

In reply the advocate for the Appellant informed the court that the corrections on the Memorandum of Appeal were made by a registry officer and not his client. He went on to submit that the judgment of the DLHT was

only obtained by the Appellant on 10 December, 2021 and this be the date that the court considers when computing the time. Mr. Said went on to tell the court that had the matter been rejected at the time of filing they would have filed an Application for extension of time and they are ready to do so now. He finished his submission by stating that it was in fact his client that did the filing and not himself. He also asserted that there were many authorities to the effect that computation of time starts at the point when the Appellant got the judgment; he was however unable to produce any off the cuff since he had not prepared for the objection and offered to supply the same if he was given time. He conceded that there was no point in arguing about the 60 days and begged for the court's leniency so that the computation of time for his client's appeal starts to count on 10 December, 2021 so that they can be in a position to file an Application for extension of time.

In his rejoinder Mr. Lugwisa pointed out that even if the court starts computing time from 10 December, 2021 the appeal would still be out of time as it was filed on 16 February, 2022 and that they should have made an Application for leave to appeal out of time as per section 14 of the Law of Limitation Act, CAP 2 [RE 2019] (the LLA). Moreover, they should have

been the ones to come forward with these facts and pray for a withdrawal with leave to refile the appeal as a depiction of good faith and not wait for the Respondents to bring up the issue then; seek leniency of the court. He finished off by saying that, because, the Appellant through their advocate conceded that their appeal was in fact filed out of time the court should dismiss it with costs as per the provisions of section 3 (1) of the LLA.

The crux of the preliminary objection is that the appeal was filed out of time that is; 16 February, 2022. From the above submissions; issues in need of my determination are basically two, the first being when does time start to run for one to file an appeal from the DLHT (where the DLHT was exercising appellate jurisdiction) and the second is whether the appeal before this court was filed within time.

With regard to the first issue; the judgment of the DLHT was delivered on 21 October, 2021 and the same and decree were certified and by necessary implication ready to be collected on 10 December, 2021. If the exchequer receipt (bearing No. 24951159) is to be relied on then, the Memorandum of Appeal was filed on 16 February, 2022. Unfortunately, the registry official who did the inked corrections on the Memorandum of Appeal did not change

the year from 2021 to 2022 nor did they initial the said corrections. As there is nothing on the record to show any other date (s) nor is there anything on the record to depict the date which the Appellant wrote to request for the said judgment one is left with no choice but rely on the date the judgment was certified as submitted by both counsels. Since the time to file an appeal of this nature is clearly stipulated in section 38 of the LDCA; that is, one is to file a petition within 60 days from the date of judgment. It is important to also direct my mind to the provisions of section 19 (2) of the LLA so as to establish when the time starts to run. The section is reproduced hereunder for emphasis:

'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'(emphasis supplied)

This was also the thinking of the Court of Appeal of Tanzania (CAT) in **Valerie McGivern vs. Salim Farkudin Balal**, Civil Appeal No. 386 of 2019,

Court of Appeal of Tanzania at Tanga, (Unreported) where it held that section 19 (2) of the LLA reinforces the principle that computation of period of limitation prescribed for an appeal, is reckoned from the day on which the impugned judgment is pronounced the Appellant obtains a copy of the decree or order to be appealed by excluding the time spent in obtaining such decree or order. In the above case the CAT made reference to their earlier decision in the **Registered Trustees of Marian Faith Healing Centre @ Mwanamaombi vs. The Registered Trustees of the Catholic Church Sumbawanga Diocese**, Civil Appeal No. 64 of 2007 (Unreported) in which it was held that:

'... the period between 2/05/2003 and 15/12/2003 when the Appellants eventually obtained a copy of the decree ought to have been excluded in computing time'

This, as was asserted by the CAT in the **Valerie McGivern vs. Salim Farkudin Balal case** (*supra*) reinforces exclusion of the period of waiting for copy of the judgment and decree from the cut off point for computation of time. However, I am mindful of the fact that the CAT in the **Valerie**

McGivern vs. Salim Farkudin Balal (*supra*) went on to explain that section 19(2) of the LLA is only applicable if the intended Appellant made a written request for the supply of the requisite copies. I bring this up because, while the Appellant's counsel did not cite this section or its contents, in his reply he averred that the computation of time should start when his clients were availed of with a copy of the judgment and decree. He pleaded for this court to start computation from 10 December, 2021 when the judgment was certified. I have already stated elsewhere in this ruling that there is nothing on record to show the Appellants did actually make a written request (and when such request was made) to the DLHT for a copy of the judgment and I now add that the written request needed to have been done within time. All the same, if 10 December, 2021 is the date to be relied upon as agreed by counsel and assuming that if there was a written request for the judgment it was made within time and the same was ready for collection on 10 December, 2021; the computation has to be pegged on this date. The Appellant's time began running on 10 December, 2021. Accordingly, I dispose of the first issue.

As regards the second issue, that is whether the appeal before this court was filed within time. Let me start by noting that the right to appeal is usually

conditional to the appeal being lodged within time as prescribed by the requisite law. In this particular instance the law is section 38 of the LDCA. Since we have already established that the time began running on 10 December, 2021 when the Appellant is alleged to have received copies of the judgment and decree and upon thorough scrutiny of the record, I am satisfied that the Memorandum of Appeal was filed on 16 February, 2022. As submitted by the learned counsel for the Respondent, the appeal is still filed out of time even if the computation were to begin on 10 December, 2021 as the learned counsel for the Appellant has asked us to do. This is further aggravated by the fact that as observed elsewhere in this ruling there is nothing on record to demonstrate when the Appellant made a written request to the DLHT to obtain the judgment and decree and if this was actually done within time. Even if the one is to assume that the request was done and this is what resulted into the 10 December, 2021 certified judgment, still the appeal should have been filed latest 8 February, 2022 which would have been the 60th day since 10 December, 2021. The consequences of filing an appeal out of time are expressly provided for in section 3 (1) of the LLA which we produce hereunder:

'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. [emphasis supplied].

Regarding the lapse of limitation period, the CAT in the case of **NBC Limited and IMMA Advocate vs. Bruno Vitus Swalo**, Civil Appeal No. 331 of 2019 (unreported) had this to say:

'It is that courts are enjoined not to entertain matters which are time barred. Limitation period has an impact on jurisdiction. Courts lack jurisdiction to entertain matters for which limitation has expired'[emphasis supplied]

My hands are tied, this appeal was filed out of time, I have no jurisdiction to entertain it. Upon noticing that they were out of time the Appellant ought to have invoked the provisions of Section 14(1) of the LLA; therefore, apply for leave to file their appeal out of time. Delay (if any) in obtaining the copies

of judgment and decree thereof would constitute reasons for delay in such an Application. In this manner I dispose of the second issue.

Accordingly, I find and hold that the appeal is time barred. I proceed to dismiss it with costs. The raised preliminary objection is upheld.

It is so ordered.



Dated at Dar es Salaam on this 30th Day of September, 2022.

A.A. OMARI
JUDGE
30/09/2022