

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

**LAND APPEAL NO. 27 OF 2022**

(Arising from the decision of Kinondoni District Land & Housing Tribunal at  
Mwananyamala in Application No. 18 of 2020)

**JANE MWAKATUMA** (Administratrix of the Estate of the late  
EMMANUEL EPHRAIM MWAKATUMA).....**APPELLANT**

**VERSUS**

**ALLY KIBILITI**.....**RESPONDENT**

Date of Last Order: 30.09.2022  
Date of Ruling: 28.10.2022

**RULING**

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

This ruling is in respect of the preliminary objections that were raised  
by the respondent herein as follows:

- 1. That the appellant's appeal has contravened section 38(1) of the Land Disputes Courts Act CAP 216 RE 2019 as it was filed on 07/02/2022 after sixty (60) days have lapsed from 24/11/2021 which is the date of judgment of the District Land and Housing Tribunal without seeking extension of time and granted by this honourable court.*
- 2. That the appellant filed a memorandum of appeal instead of the petition of appeal as required by the law under section 38(2) of the Land and Disputes Court Act CAP 216 RE 2019.*

The respondent prayed for the appeal to be dismissed with costs.

With leave of the court the objections were argued by way of written submissions and Mr. Musabila M.M Ntimizi filed submissions on behalf of the respondent. In his submissions Mr. Ntimizi prayed to correct an error in that the intended provision in the preliminary objection was meant to be section 41(1)(2) of the Land and Disputes Court Act instead of the mentioned provision of section of 38(1)(2) of the Land and Disputes Court Act. He said section 41(1)(2) of the Land and Disputes Court Act provides for an appeal from the Tribunal to the High Court to be filed within 45 days. He said from the date of the judgment on 24/11/2021 to when the appeal was filed on 07/02/2022 is well beyond the time. The appeal was supposed to be filed on 08/01/2022. He thus said in view of the cited provision of the law the appeal filed is time barred. Mr. Ntimizi supported his argument with the case of **Mechanical Installation and Engineering Co. Limited vs. Abubakar Ndenza Maporor & Another (1987) TLR 44** and Mrs. **Kermal vs. Registrar of Buildings (1988) TLR 199**. He said the appellant filed the appeal out of time without seeking extension of time, so he prayed for the appeal to be dismissed with costs. Mr. Ntimizi abandoned the second point of objection.

Mr. Eliezer Kileo filed submissions in reply on behalf of the appellant. He said Counsel for the respondent has argued a different provision of the law other than what was raised in the notice of objection without seeking for an amendment or seeking the leave of the court. He therefore prayed for this court not to entertain the objection raised.

Without prejudice, Mr. Kileo went on arguing the point of objection raised that the appeal was filed in time as on 05/01/2022 the appellant lodged her appeal online as it is now mandatory to do so before lodging the documents physically. He said after the filing of the appeal online the court then admitted and received the said documents physically on 07/02/2022. He prayed for the court to invoke section 3A and 3B of the Appellate Jurisdiction Act CAP 141 RE 2019. He further said the documents were filed online on time but were physically received late because the court was on vacation. He cited section 21(6) of the Law of Limitation Act CAP 89 RE 2019. He prayed for the objection to be overruled because the appeal was filed online timely but was physically admitted late.

In rejoinder Mr. Ntimizi said according to the appellant she prepared and filed the Memorandum of Appeal on 05/01/2022. The printout of online filing shows the application was only under scrutiny before admission for filing. That is why it is categorically indicated that it was presented for filing on 07/02/2022 and not 05/01/2022. He said the appellant was informed that the appeal would be admitted in February, 2022 so she had the onus to lodge an application for extension of time but she did not do so. In that respect the appeal was filed 74 days after the delivery of the judgment on 24/11/2022. He went on to say that the mention of section 38(1) instead of 41(2) of the Land and Disputes Court Act does not require any leave as it is within the powers of the court on its own motion to do so. He said the application of section 3A and 3B of the Appellate Jurisdiction Act and section 26(6) of the Limitation Act cannot come to the rescue of the appellant considering that the delay was for 74 days and so she cannot avoid the requirement for applying for extension of time. He reiterated his prayer for dismissal of the application.

I have gone through the submissions by Counsel and the main issue for consideration is whether the objection has merit. Indeed, it is true that the appellant erred in citing section 38(1)(2) instead of 41(1)(2)

of the Land and Disputes Court Act, but he has pointed out the error and the correct solution by pointing out the proper provision and arguing it despite that there is no indication of prayer for leave. The matter raised goes to the root of the application and the appellant has had an opportunity to respond to the objection raised. On exceptional basis, I will grant leave for correction of the error for the provision to read as section 41(1)(2) instead of 38(1)(2) of the Land and Disputes Court Act and proceed accordingly.

Section 41(1) and 2 of the Land and Disputes Court Act states:

*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 proceeding 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.*

It is quite clear from the provision above that an appeal has to be filed within 45 days after the date of the decision. In the present case it is not in dispute that the date of the judgment was 24/11/2022 and the appeal was filed on 08/02/2022. As said by Mr. Ntimizi it was filed

74 days out of time. I have noted the online printout (**Annexure JM1**). The said merely shows that the appeal was submitted for admission on 05/01/2022, but the admission itself was made on 09/02/2022. I am aware that electronically a document is said to have been filed online when it hits the system, but in my view if it has not been admitted and given a Control Number and payment is effected, then the filing is yet to be complete. It is as if the document is still lying on the reception desk unattended. If the appeal were admitted on 05/01/2022 as alleged, then the appellant would have received a Control Number and made payments immediately and this would not have taken until February, 2022. The appellant said she was told that the appeal would be filed in February, 2022 but as said, the practice is that once a document is filed online and admitted and a control number is given, it is expected that payment would be made within a reasonable time not a month as is the case in the present instance. If parties are allowed to register documents online and pay when they feel like, then this would erase the spirit of speedy filing as envisaged by the law. As it is now, what have been alleged by the appellant is not supported by any evidence as such the appeal is therefore out of time.

Mr. Kileo prayed for the court to invoke the overriding principle so that the appellant should proceed with the appeal. However, this is not a minor error it goes to the root of the matter because in essence the appeal is out of time and no leave for extension of time has been sought. In the case of **Mondorosi Village Council & 2 Others vs. Tanzania Breweries Limited. 66 of 2017 & 4 Others, Civil Appeal No. 66 of 2017 (CAT-Arusha)** (unreported), the Court of Appeal was of the view that overriding objective principle cannot be applied blindly against mandatory provisions of the procedural law which goes to the foundation of the case. Similarly, as the appeal has been filed out of time, then it is impossible to invoke the said principle. Mr. Kileo's suggestion is therefore not workable.

Mr. Kileo also pointed out that the court was on vacation and so the appeal was filed after the vacation in terms of section 26(1) of the Limitation Act. With due respect to Counsel, when the court retires for vacation, the registry is always operative and all emergency cases are attended to, so the cited provision of the law relied upon is not applicable in the circumstances herein.

For the reasons I have endeavoured to explain above, the preliminary objection is sustained. The appeal is time barred and it is hereby dismissed with costs.

It is so ordered.



*V.L. Makani*  
**V.L. MAKANI**  
**JUDGE**  
**28/10/2022**