

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND APPEAL NO. 182 OF 2022

(Originating from the decision of the District Land and Housing Tribunal for Kibaha in Land Application No. 21 of 2015, dated 2nd February 2018)

KHALFAN NASSORO RUHOMBO..... APPELLANT

VERSUS

MTONGANI VILLAGE COUNCIL.....1ST RESPONDENT

SELEMAN PAZI.....2ND RESPONDENT

YASIN MWANGA.....3RD RESPONDENT

KASULE AMBOGO.....4TH RESPONDENT

ELIBARIKI LYAMUYA.....5TH RESPONDENT

MOHAMED MUHID JUMAA.....6TH RESPONDENT

IDDY LIMBOKA7TH RESPONDENT

RASHID LIMBOKA.....8TH RESPONDENT

Date of last order: 3/11/2022

Date of ruling: 17/11/2022

RULING

A. MSAFIRI, J.

This is a ruling on preliminary objection raised by the 1st respondent against the appeal to the effect that;

1. *The appeal is incompetent for being time barred.*

Adls

On 10th October 2022, I ordered the above preliminary objection be disposed of by way of written submissions. Messrs Frank Mposso, Emmanuel Mkwe and Hussein Msekwa learned advocates appeared for the appellant, 1st respondent and 2nd-8th respondents respectively.

Mr. Mkwe submitted that the present appeal has been filed out of time as the decision of the trial Tribunal in Land Application No. 21 of 2015 was delivered on 2nd February 2018 while the present appeal was lodged in Court on September 2022 after expiry of four (4) years and seven months.

On further submission the learned advocate for the 1st respondent contended that appeals from the District Tribunals to this Court are governed by Section 41 of the Land Disputes Courts Act [CAP 216 R.E 2019], (the Act) which requires appeals from the District Tribunals exercising original jurisdiction be filed within 45 days.

Hence going by the above provision, Mr. Mkwe was of the view that the present appeal has been filed out of time and the remedy is to have same dismissed under Section 3 of the Law of Limitation Act [CAP 89 R.E 2019].

Alls.

On reply Mr. Mposso learned advocate contended that the present appeal is within time as the appellant was granted an extension through Misc. Land Application No. 286 of 2021 in which the appellant was granted 30 days within which to file the appeal hence it was filed in time and it is therefore not time barred. Mr. Mposso supplied the Court with the copy of the said ruling.

Hence the learned advocate for the appellant prayed the preliminary objection be overruled.

On rejoinder Mr. Mkwe contended that the appellant was duty bound to state in his memorandum of appeal that he was granted an extension of time. The learned state attorney contended that he was never served with the copy of the said ruling. He therefore prayed for judicial consideration.

Having gone through the parties' submissions rival and in support of the preliminary objection, I think the same should not detain us longer than it is necessary. The appellant supplied the copy of ruling in Land Application No. 286 of 2021 in which the appellant was granted 30 days to file the appeal. The said ruling was delivered on 1/8/2022 hence as the

Alls.

present appeal was lodged in Court on 30th August 2022 the same is within time.

On failure to attach the copy of ruling on the memorandum of appeal as suggested by the learned stated attorney, I am of the settled view that it did not cause any injustice to the 1st respondent. However I am of the considered opinion that had the appellant attached the said copy to the memorandum of appeal or had the appellant stated that he was granted an extension of time in his memorandum of appeal, the 1st respondent would have not raised the preliminary objection.

Consequently I hereby overrule the preliminary objection raised by the 1st respondent but I will not award the appellant costs for the reason I have stated on the above paragraph.

It is so ordered.



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**A. MSAFIRI,
JUDGE**

17/11/2022