

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND APPEAL NO. 20 OF 2022

(Originating from the decision of the District Land and Housing Tribunal for Kinondoni at Mwananyamala in Land Application No. 416 of 2009, dated 8th November 2021 Hon. L. R. Rugarabamu –Chairperson)

JUMA ISEMA..... APPELLANT

VERSUS

STEPHEN S. MLEO.....RESPONDENT

Date of last order: 29/9/2022

Date of ruling: 17/11/2022

RULING

I. ARUFANI, J.

This ruling is for preliminary objection on point of law raised by the counsel for the respondent against the appeal at hand that;

- 1. This honourable court has no jurisdiction to entertain this appeal since it is hopelessly out of time.*

When the appeal came for hearing the raised point of preliminary objection, the appellant was represented by Mr. Samson Joseph Nnko, learned advocate and the respondent was represented by Mr. Richard Mburi, learned advocate. The court ordered the counsel for the parties to

argue the stated point of preliminary objection by way of written submissions and they complied with the order of the court.

The counsel for the respondent stated that, while the impugned judgment was delivered on 8th November, 2021 but the appeal at hand was filed in the court on 25th January, 2022. He argued that, section 41 (1) of the Land Disputes Courts Act, Cap 216 R.E 2019 (hereinafter referred as the LDCA) requires appeal from the District Land and Housing Tribunal (hereinafter referred as the DLHT) in the exercise of its original jurisdiction to be preferred within 45 days after the date of the impugned decision. He submitted that, the appeal at hand was filed in the court beyond the stated period of time and urged the court to dismiss the appeal with costs.

In reply the counsel for the appellant argued that, the impugned judgment was delivered on 8th November, 2021 and on 9th November, 2021 the appellant wrote a letter to the tribunal praying to be supplied with certified copies of the judgment and decree of the tribunal. He stated the decree of the matter was extracted on 13th December, 2021 and the sought documents were supplied to the appellant on 27th December, 2021. He stated the appellant managed to lodge his appeal in the court on 25th January, 2022 when it was well within the time.

The counsel for the appellant submitted that, the time within which the appellant was waiting for the certified copies of judgment and decree is required to be excluded under section 19 (2) of the Law of Limitation Act, CAP 89 R.E 2019 (hereinafter referred in short as the LLA). He therefore prayed the preliminary objection be overruled with costs.

In rejoinder the counsel for the respondent submitted that the counsel for the appellant has misconceived the requirement of section 19 (2) of the LLA. He submitted that, by the time when the impugned judgment was certified the appellant was still within the time to lodge his appeal in the court as he had 10 days to file his appeal. He stated under that circumstances section 19 (2) of the LLA cannot apply in the appeal at hand.

He went on arguing that, exclusion of time provided under section 19 (2) of the LLA is not automatic and there should be an application for extension of time. To fortify his argument, he referred the court to the case of **Stanley Julius Mbaga V. Nestory Omary Diwan** Civil Case No. 65 of 2016 (unreported) where the court cited with approval the case of **Headmaster Forest Hill Secondary V. Robert K. Mluge**, (unreported) where it was stated that, exclusion of time provided under section 19 (2) of

the LLA is not that automatic. It was stated extension of time was supposed to be applied for pursuant to section 14 (1) of the LLA and prayed the appeal to be dismissed with costs.

Having gone through the parties' rival submissions in relation to the point of preliminary objection raised by the counsel for the respondent, the court has found the sole issue for determination here is whether the present appeal is time barred.

It is not in dispute that the appeal at hand originates from the decision of the DLHT delivered in Application No. 416 of 2009 dated on 8th November, 2021. As rightly submitted by the counsel for the respondent, the fact which was admitted by the appellant, an appeal from the decision of the DLHT in the exercise of its original jurisdiction has to be filed in the court within 45 days after the date of delivery of the impugned decision.

As the decision of the DLHT was delivered on 8th November, 2021 an appeal against such decision ought to be lodged in the court on or before 23rd December, 2021. The court has found the counsel for the appellant argued that, the appellant could not file the appeal in the court within the

stated period of time because he was not supplied with the certified copies of judgment and decree in time.

He argued that, although the appellant requested for the certified copies of the judgment and decree on 9th November, 2021 but the same were supplied to him on 27th December, 2021. He submitted that, the period the appellant was waiting for the certified copies of the judgment and decree is required to be excluded from the period of appeal pursuant to section 19 (2) of the LLA.

That being the position of the matter the court has found the issue to determine here is whether there is an automatic exclusion of period of time envisaged under section 19 (2) of the LLA. The respondent has cited to this court the decision of this court delivered in the case of **Stanley Julius Mbaga** (supra) where it was stated there is no automatic exclusion of time under section 19 (2) of the LLA as an appellant is required to file a formal application in the court for extension of time under section 14 (1) of the LLA.

I am very much aware that in the previous time there were two school of thought whereby one school of thought was stating exclusion of

time to appeal spent in waiting to be supplied with copies of impugned judgment and decree provided under section 19 (2) of the LLA is not automatic and another school of thought which was stating exclusion of the time is automatic. One of the cases where the first school of thought was stated by this court is the case of **Stanley Julius Mbaga** (supra) cited to the court by the counsel for the respondent. Another case where the stated stance was followed is the case of **Hitt Infranco Limited t/a Helios Towers Tanzania V. Juliano Charles Mikongomi (as administrator of the estate of the late Charles Mikongomi & another**, Land Appeal No. 25 of 2020, HC at Iringa (unreported), where it was stated that: -

*It is trite law that the time one spent in procuring the copy of judgment and decree **may be excluded** in computing the limitation period **but the same cannot be automatically** be assumed by parties **unless one can lodge an application to seek enlargement** and avail reasonable or sufficient cause for the delay.*

[Emphasis added].

From the wording of the above quoted case law, it is apparently clear that the stance of the first school of thought was that there is no automatic exclusion of period of time when a party was waiting to be supplied with certified copies of judgment, decree or proceedings for the purpose of lodging his appeal in the court. The stance taken by the first school of thought in the above quoted case has now been changed by the Court of Appeal of Tanzania in the case of **Alex Senkoro & 3 others V. Eliambuka Lyimo (as administrator of the estate of Fredrick Lyimo deceased)**, Civil Appeal No 16 of 2017 (unreported) where the Court of Appeal observed that: -

*We need to stress what we stated in the above case that **the exclusion is automatic as long as there is proof on the record of the dates of the critical events for the reckoning of the prescribed limitation period. For the purpose of Section 19 (2) and (3) of LLA these dates are the date of the impugned decision, the date on which a copy of the decree or judgment was requested and the date of the supply of the requested document.** [Emphasis added].*

The position of the law stated in the above cited case was affirmed by the Court of Appeal in the case of **Bukoba Municipal Council V. New Metro Merchandise**, Civil Appeal No. 374 of 2021, CAT at Bukoba (unreported). As this court is bound to follow the position of the law as stated by the Court of Appeal the court has found the period of time the appellant was waiting to be supplied with certified copies of the judgment and decree by the DLHT is supposed to be excluded automatically.

However, as stated in the case of **Alex Senkoro** (supra) the appellant was required to show by supplying proof on when he requested for the copies of the impugned decision and when the same were supplied to him so that he can benefit with stated exclusion of time of waiting to be supplied with the stated documents. The court has found the counsel for the appellant argued that, after the DLHT delivered its decision on 8th November, 2021, they wrote a letter to the DLHT on 9th November 2021 seeking to be supplied with certified copies of the judgment and the decree of the DLHT for appeal purposes and the copies were supplied to them on 27th December 2022.

The court has found there is no doubt that the appellant sought for the stated documents on the stated date and he was supplied with the

sought documents on the mentioned dates as there is a copy of the letter of seeking for the stated documents dated 9th November, 2021 and the exchequer receipt evidencing payment of the sought copies of the record of the matter. That being the position of the matter the court has found the appellant is entitled to an exclusion of the time he was waiting to be supplied with the documents he sought from the DLHT pursuant to section 19 (2) of the LLA.

Therefore, the appellant had 45 days to lodge his appeal in the court from 27th December 2021 when he was supplied with the certified copies of the judgment and decree of the DLHT. Now, counting from 27th December, 2021 when the appellant was supplied with the copies of the judgment and decree until 25th January, 2022 when the present appeal was filed in the court it is only 29 days which had passed. That shows the appeal was filed in the court well within the time prescribed by the law.

In the premises the court has found the point of preliminary objection that the court has no jurisdiction to entertain this appeal as it was filed in the court out of time is misplaced as the appeal was filed in the court well within the time prescribed by the law. Consequently, the point of preliminary objection raised by the counsel for the respondent is hereby

overruled in its entirety for being devoid of merit and the costs to follow the event. It is so ordered.

Dated at Dar es Salaam this 17th day of November, 2022.



A handwritten signature in blue ink, appearing to read "I. Arufani".

I. Arufani

JUDGE

17/11/2022

Court:

Ruling delivered today 17th day of November, 2022 in the absence of the appellant and his counsel but in the presence of the respondent in person. Right of appeal to the Court of Appeal is fully explained.



A handwritten signature in blue ink, appearing to read "I. Arufani".

I. Arufani

JUDGE

17/11/2022