

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)**

AT DAR ES SALAAM

LAND APPEAL NO.141 OF 2015

(Originating from the decision of the District Land and Housing Tribunal for
Kinondoni at Mwananyamala in Land Application No. 126 of 2007)

WAZIRI JUMA MSIGIRI APPELLANT

VERSUS

KISAGE GINGHE MARWA RESPONDENT

RULING

Date of last Order: 29.05.2022

Date of Ruling: 05.05.2022

A.Z.MGEYEKWA, J

At the centre of controversy between the parties to this appeal is a parcel of land Plot No. 15 Block 'B' located in Sinza area. The material background facts to the dispute are briefly as follows; Waziri Juma Msigiri, the appellant lodged a suit before the District Land and Housing Tribunal for Kinondoni at Mwananyamala in Land Application No. 126 of 2007 claiming that the respondent has trespassed into his land. The

appellant prayed for the tribunal to declare him the lawful registered owner of the suit land and the respondent to be ordered to compensate him for loss incurred, damages, and mental anguish suffered by him for unlawful destruction of his structure in the suit land.

In his written statement of defence the respondent disputed all the claims and claimed that he is the lawful owner of the suit land. The District Land and Housing Tribunal for Kinondoni at Mwananyamala determined the matter and ended up deciding in favour of the respondent.

Undeterred, the appellant decided to file the instant appeal which raises three grounds of appeal that constitute the gravamen of this complaint. The appeal has hit a snag. On 25th April, 2022, the respondents, through Rapahel David, learned Advocate for the respondent raised a preliminary objection against the appeal which sought to impugn the decision of the tribunal on one point of preliminary objection which read:-

" The appeal is lodged out of time."

As the practice of the Court, I had to determine the preliminary objection first before going into the merits or demerits of the appeal. That

is the practice of the Court founded upon prudence which I could not overlook.

When the matter was called for hearing on 29th April, 2022, the appellant enjoyed the legal of Mr. Semu, learned counsel while the respondent had the legal service of Mr. Rapahel David, learned counsel.

The learned counsel for the applicant submitted that they noted that this appeal was filed out of time, approximately 14 days lapsed. He submitted that the records reveal that the appellant filed a Misc. Land Application No. 182 of 2015 for extension of time to file an appeal out of time. He added that Hon. Mgeta, J granted the application and gave the appellant 45 days the ruling date which was 28th September, 2015. It was his submission that ordinarily the appeal was required to be filed in this Court on 11th November, 2015, however, the appellant lodged the Memorandum of Appeal on 20th November, 2015.

The learned counsel for the respondent continued to argue that the delay was beyond 45 days. He added that the issue of the time limit is very important to the Court because it goes to the jurisdiction of the Court. He added that the remedy for the matter which is filed out of time as per section 3 of Law of Limitation Act, Cap.89 is to dismiss the appeal. He stressed that the matter was filed out of time, and the court cannot

continue determining it. To fortify his stance, he cited the case of **Said Mohamed Said v Muhusin Amiri & Mharame Juma**, Civil Application No. 110 of 2020 CAT.

On the strength of the above submission, Mr. Raphael insisted that the appeal is out of time, thus, he invited this court to dismiss the appeal.

In reply thereto, the appellant's Advocate claimed that the appeal is not time-barred. Mr. Semu submitted that the date of filing an appeal in Court is counted when the payment is made or exchequer is issued. It was his submission that the appellant made his payment on 12th November, 2015 and the last date to lodge the Memorandum of Appeal was on 13th November, 2015. Mr. Semu contended that it is not known why the court Registry wrote the admission date of 20th November, 2015 instead of 12th November, 2015. He stated that it is out of the control of the appellant.

Mr. Semu went on to submit that the appellant assures that the payments were done within time. To buttress his submission, he cited the cases of **Spencon Services (T) Ltd v Gradiators Investment Company Ltd & another**, Civil Appeal No. 21 of 2018 and **Msasani Peninsula Hotel Ltd and Other Barclays Bank Ltd & two Others**, Civil Application No. 192 of 2006. Stressing on the date of filing the appeal,

Mr. Semu submitted that the proper filing date is the date when the payment was made. He added that the computation of time is stated under section 19 of the Law of Limitation Act, Cap 89. In his view, the computation starts from the day after the Order has been given. Fortifying his submission, he cited the Case of **Ibrahim Haji Charitable Health Centre v Mashaka Kawimba**, Revision 267 of 2017. Based on the cited authorities, Mr. Semu insisted that the appeal be filed within time. To support his submission he referred this court to the exchequer with registration number 8194744.

On the strength of the above submission, Mr. Semu beckoned upon this court to determine the appeal on merit since the same is pending in court for almost 15 years.

In his rejoinder, Mr. Raphael reiterated his submission in chief. Stressing, he claimed that the appeal is time-barred. He added that he perused the court file and found that the exchequer receipt is dated 18th November, 2015 with a serial number is No. 8194744, thus, still, the matter is out of time. In conclusion, Mr. Raphael urged this court to dismiss the appeal with costs.

I have given careful deliberation to the arguments for and against the preliminary objection herein advanced by both learned counsels. Having

done so, it should be now opportune to determine the preliminary objection raised by the respondent's Advocate and the main issue for determination is ***whether the preliminary objection is meritorious.***

To begin with, from the factual setting, it is beyond question that having heard the respondent's Advocate's submission that the appeal is time-barred, I had to go through the court records to find out whether the appellant lodged the instant appeal within time. The time limit in filing the instant appeal is prescribed under section 41 (2) of the Land Disputes Courts Act, Cap. 216 [R.E 2019]. I wish to reproduce it hereunder for ease of reference:-

" (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." [Emphasis added].

Applying the above provision of law, the prescribed period in filing an appeal or 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 is 45 days. Counting the days from the date when the judgment was delivered on 24th June, 2014 and the appellant applied for

an extension of time this court granted him 45 days from the date of the ruling 29th September, 2015. Counting the 45 days from 29th September, 2015, following day the last date of filing the appeal was 13th November, 2015.

The learned counsel for the appellant's line of argument is basically that the last date of filing the appeal was 13th November, 2015 appeal was filed on 28th August, 2022. The learned counsel for the appellant submitted that the appellant paid his registration payment on 12th November, 2015. I have examined closely the original exchequer receipt the date reads 12th November, 2015. However, the Memorandum of Appeal was admitted and registered on 17th November, 2015 and the court file is dated 18th November, 2015. I am in accord with the learned counsel for the appellant that a document is deemed filed upon payment of court fees.

In the instant case, Mr. Semu claims that the appellant paid the court fees on 12th November, 2015. However, scrutinizing closely the exchequer receipt with a serial number is No. 8194744, I noted that the payment was made on 17th November, 2015, and not 12th November, 2015. There is a specific place of date to validate the payment which reads 17th November, 2015. The 12th November, 2015 is written after the

cheque number which is not proper or valid place to write the date of payment. Thus, 12th November, 2015 cannot be regarded as a valid date of payment. In my respectful opinion, I find that it no possible for an exchequer receipt to bear two dates. Therefore, as long as the date to validate the payment is 17th November, 2015, then it is the accurate date to acknowledge the date when the appellant paid the court fees and the same is regarded as the date when the appellant lodged the appeal before this court not otherwise.

For the sake of clarity, I have read the case of **Spencon Services (T) Ltd** (supra) and **Msasani Peninsular Hotel** (supra) the issue for discussion was the time when the court fees are deemed to be paid, and if there is any error after the party has paid the same due to the fault of the court staff then the party cannot be condemned. In the instant case, unlike the cited cases of **Spencon Services (T) Ltd** (supra) and **Msasani Peninsular Hotel** (supra), the issue for discussion is when the appeal was lodged before this court whereas the exchequer receipt state clearly that the payment was made on 17th November, 2015. Therefore the raised error is out of context.

For reasons canvassed above, I find the appeal before this court was filed out of the prescribed time and in terms of section 3 of the Law of

Limitation Act, Cap. 89 [R.E 2019], the remedy is to dismiss the appeal.

In the case of **John Cornell v A. Grevo Tanzania Ltd**, Civil Case No.

70 of 1998 High Court of Tanzania, held that:-

" However, unfortunate it may be for the plaintiff, the Law of Limitation, on actions knows no sympathy or equity. It is a merciless sword that cuts across and deep into all those who get caught in its web."

In the upshot, I proceed to dismiss the Land Appeal No.141 of 2015 for being time-barred without costs.

Order accordingly.

Dated at Dar es Salaam this date 5th May, 2022.



A. ZIMGEYEKWA

JUDGE

05.05.2022

Ruling delivered on 5th May, 2022 in the presence of Mr. Semu, learned counsel for the appellant, and Mr. Felix Okombo, learned counsel for the respondent.



A. ZIMGEYEKWA

JUDGE

05.05.2022