IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND APPEAL NO.16 OF 2021

(Arising from the District Land and Housing Tribunal for Kinondoni at Mwananyamala in Misc. Land Application No. 378 of 2017)

MUGAYA MASUBO MASYAGA ..... APPELLANT

VERSUS

SOPHIA H. MMARY ..... RESPONDENT

JUDGMENT

Date of Last Order: 11.05.2022

Date of Judgment: 17.05.2022

A.Z.MGEYEKWA, J

The appellant has lodged this appeal against the Judgment of the District Land and Housing for Kinondoni at Mwananyamala in Misc. Land Application No. 378 of 2017 dated 19th November, 2020. The material background facts to the dispute are not difficult to comprehend. They go thus: Sophia Mmary, the respondent filed a suit against Mugaya Masubo Masyaga in regard to rent in respect to a building located at Makuburi, Kibangu, Magomeni within

Dar es Salaam Region. The appellant in her plaint claimed that Mugaya Masyaga has breached the contract and sought for the tribunal to order Mugaya Masyaga to perform the contract and pay her Tshs. 5,700,000/=. On his side, Mugaya Masyaga contested the suit by filing a Written Statement of Defence. The tribunal decided the matter and in its final findings, it found that Mugaya Masyaga breached the rental contract and he was ordered to pay Sophia Mmary Tshs. 5,700,000/= the amount which was given to Mugaya Masyaga.

The District Land and Housing Tribunal determined the case and in its findings, the Chairman ruled out that Mugaya Msayaga breached the contract. Therefore, Mugaya Masyaga was ordered to pay Sophia Mmary Tshs. 5,700,000/= and general damage in a tune of Tshs. 2,000,000/=.

Believing the decision of the District Land and Housing Tribunal for Kinondoni at Mwananyamala was incorrect, the appellant lodged an appeal before this court containing five grounds as follows:-

1. *The learned trial chairperson erred in law and facts by deciding that the rented place was replaced by another instead of the respondent herein without evidence, to the fact that the place remained unrented for the whole period.*

2. *The learned trial Chairperson erred in law and fact in holding that, payments made to the Police station to repay the respondent who is also a police officer, used her position contrary to police force laws which entail dealing with criminal matters.*
3. *The leaned trial chairperson erred in law and fact by failing to order that the Respondent is entitled to compensation as a refund, the fact that the said amount was used to refurbish the place in favour of the respondent which she never used for the whole period of the contract.*
4. *The trial Chairperson erred in law and fact by awarding the respondent general damages of 12%, the fact that the place was vacant, remained an opened for the known reasons of the respondent.*
5. *The trial chairperson erred in law and fact by denying my compensation the fact that, it sustained the loss for failing to invest anything since the area was under the care of the respondent.*

When the matter was called for hearing before this court on 12th April, 2022, the appellant and respondent appeared in person. Hearing of the appeal took the form of written submissions, preferred consistent with the schedule drawn by the Court whereas, the appellant filed his submission in

chief on 21st April, 2022 and the respondent filed her reply on 5th May, 2022. The appellant filed his rejoinder on 11th May, 2022. Both parties complied with the court order.

The appellant started his onslaught by seeking to consolidate the third and fourth grounds of appeal because they are intertwined. He opted to argue the first second and fifth grounds separately.

Submitting in support of the appeal, the appellant began by tracing the genesis of the matter which I am not going to produce in this appeal. On the first ground, the appellant contended that the respondent did not adduce evidence to prove her allegations. He claimed that the date of 24th August, 2021 which the tribunal relied upon as proof of breach of contract was completely unreliable. He added that the Chairman relied on the evidence which was not on record and the same is misdirection on facts in the evaluation of evidence. To support his submission the appellant cited the case of **Materu Leioson & J. Foya v R. Sospeter** (1988) TLR 102. The appellant continued to argue that the one-year contract which commenced on 5th January, 2013 ought to be terminated on 4th January, 2014. He added that yet, the respondent did not fulfill a one-year full payment rent, she only paid seven months. It was his submission that the trial Chairperson

erroneously ruled that the breach of contract was instigated by the appellant while in his view, the breach of contract was caused by the respondent.

Arguing for the second ground, the learned counsel for the appellant contended that the respondent is the Police personnel and hence used her position to arrest the appellant. He added that the Police remanded him at Mbezi Police station contrary to the Police Force and Auxiliary Act, Cap. 322 and General Order which order member of the police force not to deal with civil matter unless directed by courts of law to oversee the execution of court order. The appellant buttressed his proposition by referring this court to section 15 (1) of the Law of Contract Cap. 345.

The appellant further contended that the respondent ought to exercise her power with due diligence. He submitted that the respondent misdirected the Chairperson to entertain the evidence as proof of fund. He claimed that the agreement schedule made at the police station cannot be relied upon by the Chairperson thus, he was not required to order him to refund the appellant and pay compensation.

On the third and fourth grounds, the appellant lamented that the compensation was not tenable before the eyes of the law since seven months lapsed. He complained that after elapse of seven months equivalent

to the paid amount, the respondent demanded a rental paid-up refund contrary to the contract. He valiantly submitted that the Chairperson erroneously entitled to the respondent compensation and damages while the whole payment was already used by the appellant to refurbish the area and other business costs for the entire period. It was his submission that the respondent was not entitled to any refund.

As to the fifth ground, the appellant was brief and focused. He complained that the trial Chairperson did not consider the fact that the appellant suffered a loss. He claimed that the disputed premises was vacant for more than three years. He added that the respondent restricted them not to rent the place until the dispute is settled.

On the strength of the above submission, the appellant beckoned upon this court to all the appeal and quash the decision of the trial tribunal with costs.

In reply, the learned counsel for the applicant started with a brief background of the facts which led to the instant appeal which I am not going to reproduce in this appeal. The respondent submission was generally. She submitted that she paid the appellant Tshs. 6,700,000/= in installment and the appellant used Tshs. 1,300,000/= to repair the business premises. The

respondent lamented that after renovation the appellant decided to rent the place to another person while knowing that the respondent paid rent on the same place.

In her submission, the respondent raised a point of law claiming that the appellant has lodged this appeal out of time. She submitted that the judgment of the District Land and Housing Tribunal was delivered on 19th November, 2021. Fortifying her submission she cited section 41 (2) of the Land Disputes Courts Act, Cap. 216 and stated that the law requires an aggrieved party to lodge an appeal against an impugned decision within 45 days from the date of the judgment. She submitted that the appellant was required to apply for an extension of time to file an appeal out of time, failure to that his appeal is time-barred. She stressed that an appeal filed out of the prescribed period, the same is incompetent. The respondent buttressed her proposition with unreported decisions of the Court of **HTT Infrastructure t/a Helies Tower v Juliano Charles Mikongoni (as an administrator of the late Charles Mkongoni) & another**, Land Appeal No. 25 of 2020 HC. She repeatedly submitted that the District Land and Housing Tribunal delivered its decision on 19th November, 2021, and the forty-five days ended on 3rd January, 2022 and the appellant lodged the instant appeal on 11th April, 2022. She argued

that the appellant in his submission did not address and indicate the date on which the appeal was lodged before filing the amended petition of appeal.

The respondent further submitted that the appellant has no basis to deny the debt. Stressing, the respondent submitted that there is no dispute that she paid the appellant Tshs. 6,700,000/=; Tshs. 1,000,000/= was paid and the balance was to a tune of Tshs. 5,700,000,000/=. It was her view that the appellant's appeal is a waste of court precious time since in this appeal there are not any sufficient reasons that were adduced by the appellant.

In conclusion, the appellant urged this court to dismiss the appeal with costs.

In his rejoinder, the appellant reiterated his submission in chief. He prayed for this court to reverse the decision of the trial tribunal and grant the appeal.

Having heard the submission of the appellant and respondent for and against the appeal, the issue for determination is *whether the appeal is meritorious.*

Before addressing the appeal on merit, I find it prudence to entertain the preliminary objection raised by the respondent. Although, the respondent was required to follow proper procedure in raising the preliminary objection

before hearing the appeal on merit. Since this court had a duty to take judicial notice of matters relevant to the case even when the matter is not raised in the memorandum of appeal. The Court of Appeal of Tanzanian in the case of **Adelina Koku Anifa & another** v **Byarugaba Alex**, Civil Appeal No. 46 of 2019 (unreported) that:-

> *"... the court cannot justifiably close its eyes on such glaring illegality because it is his duty to ensure proper application of the laws by the subordinate courts and/or tribunals.."*

The facts of the instant suit correspond very well with the authority above. Thus, I find it necessary to entertain the objection raised by the respondent because in case the point of law could not have been raised now, the same could have been raised in a later stage. I have perused the records of the District Land and Housing Tribunal for Kinondoni at Mwanayamala in Application No. 378 of 2017 to find out whether the appeal is lodged within time. Records reveal that the impugned decision of the District Land and Housing Tribunal was delivered on 19th November, 2021 and the appellant lodged this appeal before this court on 17th January, 2022. As rightly pointed out by the respondent as per section 41 (2) of the Land Disputes Courts Act, Cap. 216 [R.E 2019], the appellant was required to file his appeal within forty-

five days after the date of the tribunal's decision. For ease of reference, I reproduce section 41 (2) of the Land Disputes Courts Act, Cap. 216 [R.E 2019] as hereunder:-

" 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."

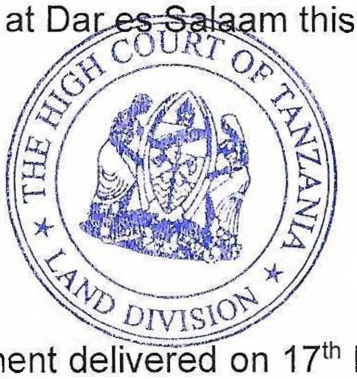
Applying the above provision of law, counting the statutory forty-five days from 19th November, 2021 when the impugned decision was delivered to the date when the appellant lodged the instant appeal before this court on 17th January, 2022, the statutory forty-five period ended on 3rd January, 2022. By the time when the appellant lodged the instant appeal, 14 days elapsed after the last date of filing the appeal. There is no any record to show is the appellant sought and obtained an extension of time to file the instant appeal out of time, the same is certainly improper before this court. 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."

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. Thus, I proceed to dismiss the Land Appeal No.16 of 2022 for being time-barred without costs.

Order accordingly.

Dated at Dar es Salaam this date 17th May, 2022.



A.Z.MGEYEKWA

JUDGE

17.07.2022

Judgment delivered on 17th May, 2022 in the presence of the appellant and the respondent.

A.Z.MGEYEKWA

JUDGE

17.05.2022