

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

**AT DAR ES SALAAM**

**LAND APPEAL NO.75 OF 2015**

(Originating from the decision of the District Land and Housing Tribunal for  
Kinondoni at Mwananyamala in Land Application No. 370 of 2021)

**SAIDI MSTAFA LWAVU ..... APPELLANT**

**VERSUS**

**EQUITY BANK TANZANIA LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**ADILI AUCTION MART LIMITED ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

*Date of last Order: 15.06.2022*

*Date of Ruling: 17.06.2022*

**A.Z.MGEYEKWA, J**

This is an appeal brought by the appellant trying to challenge the decision of the District Land and Housing Tribunal for Kinondoni at Mwananyamala. The facts of the case are as follows; the appellant lodged an application before the tribunal and before hearing the matter on merit. The respondent objected that the application was incompetent before the tribunal. In his written submission the respondent claimed that

the appellant lodged an Application No. 24 of 2020 before the District Land and Housing Tribunal but his application was dismissed due to want of prosecution. Then the appellant lodged two applications; Application No. 920 of 2021 and Application No. 284 of 2021 before the same District Land and Housing Tribunal, the said applications were dismissed for being res judicata. Hence the appellant lodged the Misc. Application No. 370 of 2021 which is the subject of this appeal. The same was dismissed by the Chairman.

Undeterred, the appellant decided to file the instant appeal which raises four grounds of appeal that constitute the gravamen of this complaint. The appeal has hit a snag. On 25<sup>th</sup> May, 2022, the respondents, filed a joint preliminary objection against the appeal which sought to impugn the decision of the tribunal. The objections are as follows:-

1. *That the Memorandum of Appeal is hopeless time-barred.*
2. *That the grounds raised in the Memorandum of Appeal are irregular and error contrary to section 75 of the Civil Procedure Code.*
3. *That the Memorandum of Appeal is incompetent.*

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 2<sup>nd</sup> June, 2022, the appellant enjoyed the legal of Eugenia Shayo, learned counsel for the respondent also holding brief for Mr. John Seka, learned counsel for the appellant. Ms. Eugeni urged this court to argue the objections by way of written submissions. By the court consent, the respondents' counsel filed their joint written submission on 6<sup>th</sup> June, 2022. The appellant filed a reply on 10<sup>th</sup> June, 2022 and the respondents file a rejoinder on 15<sup>th</sup> June, 2022.

The learned counsel for the respondents opted to abandon the third limb of objection. On the first limb of the objection, Ms. Eugenia submitted that the appeal is lodged out of time. To buttress his submission he referred this court to section 41 of the Land Disputes Courts Act Cap. 216 and the case of **Anthony Chikpti v Wiliam Beatus Limbe (the Administrator of the Estate of the late Beatus Samwel Umbe)** Land Appeal No. 256 of 2020. Ms. Eugenia submitted that the law requires an aggrieved party to file an appeal within 45 days from the date when the impugned decision was delivered. She added that in case the aggrieved party is out of time thus the court can extend the time when there are

sufficient reasons. She went on to submit that the appellant was required to apply for an extension of time before filing the instant appeal.

On the second limb of the objection, Ms. Eugenia contended that the grounds raised in the Memorandum of Appeal are irregular and contrary to section 75 of the Civil Procedure Code Cap.33. The learned counsel for the respondents argued that the appeal was filed against an Order emanated from Application No. 370 of 2021 in accordance with section 75 of the Civil Procedure Code Cap. 33, an appeal shall not lie from any order made by a court.

In reply thereto, the appellant's Advocate claimed that the appeal is not time-barred. Mr. Seka submitted that the time taken to be supplied with copies of the ruling or judgment is automatically excluded and the applicant is not required to file an application for an extension of time. Supporting his submission he cited the case of **Alex Senkoro & Others v Eliambuya Lyimu and another v Republic** [2022] TZCA 50. Mr. Seka went on to submit that the principle of automatic exclusion has been propounded by the Court of Appeal and the same was considered by this court in several cases. Such as **Godwin Lyaki and Another v Ardhi University** [2021] TZHC 6495. He claimed that the cited case of Anthony Chikoti is distinguishable. He submitted that the ruling was delivered on 9<sup>th</sup> February, 2020 then the appellant immediately applied for copies and

the same were ready for collection on 15<sup>th</sup> March, 2020 and he filed the instant appeal online on 15<sup>th</sup> April, 2020. He added that the time taken from the date of collection of the ruling on 15<sup>th</sup> March, 2022 to the date of filing the matter online on 15<sup>th</sup> April, 2022 was only 30 days. Thus, in his view the appeal was lodged within time.

Submitting on the second limb of objection. Mr. Seka submitted that the grounds of appeal are correct before this court and thus this objection is not a fit point of objection. To support his submission he cited the case of **Mukisa Biscuits Manufacturing Co. Ltd v West End Distributors Ltd** [1969] EA 696.

On the strength of the above submission, Mr. Seka beckoned upon this court to disregard the objections raised by the respondents' advocate with costs.

In his rejoinder, Ms. Eugenia reiterated his submission in chief. Stressing, she insisted that the appellant delayed to file his appeal even after obtaining the copies of the ruling he delayed for 30 days without stating any sufficient reasons. She 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.***

Concerning the first limb of the objection, the respondents' advocate is complaining that the appeal is lodged out of time. I had to go through the court records to find out *whether or not 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 9<sup>th</sup> February, 2021 to the date when the appellant lodged the instant appeal on 08<sup>th</sup> 21<sup>st</sup> April, 2022. The appellant was required to file his appeal before 23<sup>rd</sup> April, 2022.

The learned counsel for the appellant's line of argument is basically that the days of obtaining copies are automatically excluded. He tried to

convince this court that the appeal was lodged within time. But unfortunately, the learned counsel for the appellant had no any proof that the appellant collected the certified copies on 15<sup>th</sup> March, 2022. Considering the fact that the District Land and Housing Tribunal. The issue of online filing is not proved by any documentary evidence. In my considered view, the reasons stated by Mr. Seka are good grounds for extension of time.

For the sake of clarity, I have read the case of **Alex Senkoro** (supra) the issue for discussion was based time spend awaiting a copy of the judgment is automatically excluded without the need to file a formal application. In the instant case, the issue for discussion is an appeal which is lodged out of time and there is no proof of time spend awaiting for a copy of judgment and there is no proof of collection of the certified copies.

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 Land Appeal No.75 of 2022 for being time-barred without costs.

Order accordingly.

Dated at Dar es Salaam this date 17<sup>th</sup> June, 2022.



  
**A.Z.MGEYEKWA**  
**JUDGE**  
17.06.2022

Ruling delivered on 17<sup>th</sup> June, 2022 in the presence of Ms. Anna Stella, learned counsel for the respondent.



  
**A.Z.MGEYEKWA**  
**JUDGE**  
17.06.2022