

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM**

LAND APPEAL NO. 59 OF 2022

*(Arising from Land Application No. 294 of 2017 of the District Land and Housing
Tribunal for Ilala)*

MOHAMED ISSA MOHAMED (Administrator of the Estate of the Late
MWARANI NGIDO).....**APPELLANT**

VERSUS

ZENA JUMA NGIDO (Administratrix of the Estate of the late
JUMA S. NGIDO)**1ST RESPONDENT**

MWANAHERI ATHUMANI KULUBUKU.....**2ND RESPONDENT**

ATWANGILA ABDUL MAHIMBALI.....**3RD RESPONDENT**

R U L I N G

Date of Last Order: 06.07.2022

Date of Ruling: 20.07.2022

T. N. MWENEGOHA, J.

This appeal was based on three grounds as follows:-

- 1. That, the trial tribunal erred in law and fact by delivering a decision which does not clearly state what was opined by assessors.**
- 2. That, the trial tribunal erred in law and facts by delivering a judgment without proper evaluation of the evidence.**
- 3. The trial tribunal erred in law and facts for determining a dispute which it has no jurisdiction.**

When the respondents presented their joint reply to the petition of appeal, they raised preliminary objection on point of law that, the instant appeal is time barred. Advocate Stephene Noe Kimaro who appeared for the respondent maintained in his written submissions in support of the objection that, the impugned decision was delivered on the 6th January 2022, but the appeal at hand was filed on the 05th of April 2022. This shows clearly that, this appeal was filed after the expiry of the 45 days' period provided under Section 41(1) (2) of the Land Courts Disputes Act, Cap 216, R. E. 2019. In his submissions, he referred the court to the cases of **Mukisa Biscuit Co. Ltd vs. West End Distributors Ltd (1969) and Cotwo (T) Otu Union & Another vs. Hon. Iddi Simba, Minister of Industries and Trade and Others, (2002) TLR 88.**

On the other hand, Mr. Abel Ngallaba Magendo, Advocate for the appellant replied that, the appeal is within time. That, the judgment was supplied to the appellant by the trial tribunal on the 25th February, 2022. Therefore, if the time is computed from that date, the 45 days expired on the 10th of April, 2022. This appeal was filed on the 5th of April, 2022. He insisted that, the court should compute the time in exclusion of the period which was used in obtaining the copies of the judgment, proceedings and decree, as stated in **Lawrence Mateso vs. Simon Mwakitenga, P.C Civil Appeal No. 43 of 2001, High Court of Tanzania at Dar es Salaam, (unreported).**

Having gone through the petition of appeal and the submissions of the counsels for the parties I'm of the view that the objection at hand has merits. The instant appeal is time barred. It has been instituted in

contravention of the mandatory provisions of section 41 (1) and (2) of the Land Courts Disputes Act, Cap 216, R.E 2019. The same states as follows;-

41.-(1) Subject to the provisions of any law for the time being in force, all appeals, 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 shall be heard by the High Court.

(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."

I appreciate the arguments by Advocate for the appellant that, in computing the time for this appeal, the court ought to exclude the period used by the said appellant in obtaining the copies of judgment, proceedings and decree, see also **Lawrence Mateso, (supra)**. However, in my opinion, this argument is highly misplaced. It could hold water if this case was an application for a leave to extend the time for this appeal. Otherwise, the jurisprudence contained in the case of **Lawrence Mateso (supra)** is distinguishable under the circumstances at hand.

In the event, the objection is sustained and this appeal is struck out with costs.

It is so ordered.



T. N. MWENEGOHA

JUDGE

20/07/2022