

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

LAND APPEAL NO. 24 OF 2021

(Arising from the judgment of the District Land and Housing Tribunal of Temeke at Temeke in Land Application No. 91 of 2014 delivered on 15th December, 2020)

GILLIAN TEGISA 1ST APPELLANT

SINA SALEHE 2ND APPELLANT

ROZI MURO 3RD APPELLANT

VERSUS

MGENI SAID NGURUNGU RESPONDENT

Date of last Order: 26/06/2022

Date of Judgment: 05/08/2022

RULING

I. ARUFANI, J

This ruling is in respect of preliminary objection on point of law raised by the advocate for the respondent that the appeal filed in this court by the appellants is time barred. While during hearing of the stated point of preliminary objection the appellants were represented by Mr. William Yohana Fungo, learned advocate, the respondent was represented by Dr. Lucas Kamanija, learned advocate.

The counsel for the respondent told the court that, the decision of the tribunal which the appellant is challenging in the present appeal was delivered on 15th December, 2020 but the memorandum of appeal was filed in the court on 10th February, 2021. He stated that is after the elapse

of 56 days contrary to what is provided under section 41 (2) of the Land Disputes Courts Act, Cap 216 R.E 2019. He stated that, under the cited provision of the law the memorandum of appeal was supposed to be filed in the court within 45 days after the date of delivery of the impugned decision. He submitted that means the appeal was filed in the court out of time without leave of the court.

He argued that, as provided under section 3 (1) of the Law of Limitation Act, Cap 89 R.E 2019 the appeal is supposed to be dismissed with costs. To support his argument, he referred the court to the case of **Steven Masato Wasira V. Joseph Sinda Warioba & Another**, [1999] TLR 291 and **Tanzania Diaries Limited V. Chairman Arusha Conciliation Board & Another**, [1994] TLR 37. He based on the above cited cases to pray the court to dismiss the appeal with costs.

In his reply the counsel for the appellant told the court that, the position of the law stated by the counsel for the appellant was the position before 2018 when the Judicature and Application of Laws (Electronic Filing Rules), GN No. 148 of 2018 (hereinafter referred as the Electronic Filing Rules) was enacted. He stated that, after enactment of the cited law all documents to be filed in courts are supposed to be filed electronically. He argued that, Rule 21 of the cited law states a document shall be considered to have been filed in court if it is submitted through electronic

filing system before midnight of the day it is submitted for filing unless the document is rejected. He added that, the cited rule is applicable in all courts in Tanzania save for Primary Courts.

He stated it was wrong for the counsel for the respondent to count the period of limitation from when the hard copy of the memorandum of appeal was received by the court. He submitted that the appellant's appeal was filed in the court electronically on 29th January, 2021 at 12:39 PM. He stated that, counting from 15th December, 2020 when the impugned decision of the tribunal was delivered to the date of lodging the memorandum of appeal in the court electronically you will find it was only 45 days which had passed.

He submitted that, the aim of enacting the Electronic Filing Rules as provided under Rule 8 of the said Rules was to replace the system of filing documents in the court manually. He stated that, if the counsel for the respondent wanted to know the date of filing the appeal in the court, he was supposed to apply for official record of the court from the Deputy Registrar of the Court where documents are filed. He stated that is as per Rule 24 of the Rules which states all information are found in the office of the Registrar of the court.

He argued that, as to prove the appeal was filed in the court within or out of time evidence is required to be sought from the Deputy Registrar

of the court or bring a print out from Electronic Filing System which caused the point of preliminary objection raised by the advocate for the respondent to be not a preliminary objection. To support his argument, he referred the court to the case of **Shose Sinare V. Stanbic Bank (T) Limited**, Civil Appeal No. 89 of 2020, CAT at DSM (unreported) where it was stated that, in order for a preliminary objection to stand it should not need evidence to be brought to the court to support it.

He told the court that, as the practice of the court is for the payment of court fees to be made after filing a hard copy of a document in court it would have not been possible for the court fees to be paid on the same date when the appeal was filed in the court electronically. He however argued that, to prove the appeal was filed in the court within the time electronically he has a copy of print out from the Electronic Filing system through which the appeal was filed in the court.

His prayer to produce to the court the print out from Electronic Filing System faced a strong objection from the counsel for the respondent who stated the stated print out should not be received by the court as it will defeat the preliminary objection he has raised. To support his objection, he referred the court to the case of **Almas Iddie Mwinyi V. NBC**, [2001] TLR 83 and **Standard Chartered Bank & Another V. VIP**

Engineering and Marketing Limited & Others, Civil Application No. 222 of 2016, CAT at DSM (unreported).

He stated it was held in the above cited cases that, where a party in a matter has raised a point of preliminary objection the other party cannot be allowed to rectify the defect revealed by the party raising the preliminary objection before the point of preliminary objection raised is determined. He argued that, to do so will amount to pre-empting the preliminary objection raised. The counsel for the respondent argued that, the stated print out from the Electronic Filing System was supposed to be filed in the court before the preliminary objection is raised. He prayed the court to refuse to receive the said print out.

The counsel for the appellant told the court that, the two cases cited by the counsel for the respondent to support his argument in respect of objection he has raised for the court to receive the copy of print out were decided before the Electronic Filing Rules being enacted. He stated further that the Electronic Filing Rules do not provide for how proof of filing a document in court electronically can be proved before the court. He went on arguing that, his intention to produce to the court the said copy of print out is not intended to rectify anything in the appeal before the court. He submitted that the appeal should not be dismissed as prayed by the counsel for the respondent because as provided under section 43 of the

Law of Limitation Act the cited law does not apply where there is any other law governing a matter.

In his rejoinder the counsel for the respondent stated the perusal he made to the file of the case on 3rd May, 2021 did not show anywhere that the present appeal was filed in the court electronically but the record shows the appeal was filed in the court manually on 10th February, 2021. He argued that, it is not provided anywhere in the Electronic Filing Rules that all cases must be filed in the court electronically. He stated that, to the contrary Rule 20 of the Rules allows oral application to be made by a party which shows some of documents can be filed in the court manually. He insisted that the appeal of the appellant was filed in the court manually and not electronically.

He argued that, the position of the law that the case filed in the court out of time should be struck out and not dismissed that is a position of the Court of Appeal where the Law of Limitation Act does not apply. He submitted that, the issue of limitation of time is a pure point of law and the court is governed by the record. He stated the case of **Shose Sinare** (supra) is not applicable in the matter at hand and submitted that, section 3 (1) of the Law of Limitation Act is applicable in the matter at hand and prayed the appeal be dismissed with costs.

Having keenly considered the submissions made to the court by the counsel for the parties the court has found that, as the present appeal is originating from District Land and Housing Tribunal (hereinafter referred as the tribunal) its filing in the court is governed by section 41 of the Land Disputes Courts Act which its subsection 2 states an appeal of that nature is supposed to be filed in the High Court within 45 days after the delivery of the decision of the tribunal. That being the position of the law the central issue to be determined in the matter is whether the appeal was filed in the court within or out of the stated period of time.

The court has found while the counsel for the respondent argued the appeal was filed in the court manually and out of time the counsel for the appellant argued the appeal was filed in the court within the time as it was filed in the court electronically. The court has found as rightly argued by the counsel for the appellant, the position of the law after enactment of the Electronic Filing Rules is that, filing of all matters in courts are supposed to be made electronically. That is as per Rule 8 which states as follows: -

"All pleadings, petitions, applications, appeals and such other documents shall be filed electronically in accordance with these Rules."

Since the period of time to appeal to this court against the decision of the tribunal as provided under section 41 (2) of the Land Disputes Courts Act is 45 days after the date of the decision or order of the tribunal the court has found that, as the impugned decision of the tribunal was delivered on 15th December, 2020 the last day for filing appeal in the court to challenge the same was 29th January, 2021. The court has found that, while the counsel for the respondent argued the present appeal was filed in the court on 10th February, 2021 which is out of time prescribed by the law the counsel for the appellant argued the appeal was filed in the court electronically on 29th January, 2021 at 12:39 PM which was well within the time.

The court has also found that, although the counsel for the appellant argued the appeal was filed in the court on the above stated date via electronic filing system but as rightly argued by the counsel for the respondent there is nowhere in the record of the appeal at hand indicates the appeal was filed in the court electronically on the mentioned date. To the contrary the court has found as rightly argued by the counsel for the respondent the record of the appeal shows the appeal was presented to the court for filing on 10th February, 2021 and the court fees was paid on the same date.

As stated earlier in this ruling the counsel for the appellant prayed to produce to the court the copy of print out made from the electronic filing system to show the appeal was filed in the court on the afore mentioned date through electronic filing system but his prayer was vehemently objected by the counsel for the respondent on the ground that it will pre-empt the preliminary objection raised in the matter. The court is in agreement with the counsel for the respondent that, to bring evidence to prove the appeal was filed in the court within or out of time when preliminary objection has already been filed in the court will have the effect of pre-empting the preliminary objection raised by the advocate for the respondent.

It is the view of this court that, as the counsel for the appellant stated the appeal was filed in the court electronically before hard copy of the appeal being filed in the court, the appellant was supposed to attach the said copy of print out from electronic filing system to the memorandum of appeal to show when the appeal was filed in the court. That would have assisted to show the appeal was filed in the court electronically and not wait until the time of hearing the preliminary objection relating to limitation of time for filing appeal in the court to come to pray to tender the copy of the print out in the court.

While considering whether the copy of print out from Electronic Filing System should be received to prove when the appeal was filed in the court, the court has found under the circumstances of the present appeal there is no need for the said copy to be received for the purpose of disproving the preliminary objection raised by the advocate for the respondent. To the contrary the court has been of the view that, in determining the stated preliminary objection it is required to base on the materials available in the appeal without receiving any other evidence out of the record of the present appeal.

The afore stated view of the court is basing on the principle of law stated in the case of **Mukisa Biscuit Manufacturing Co. Ltd V. West End Distributors Ltd**, [1969] EA 696 that, preliminary objection cannot be raised and entertained if some facts have to be ascertained. Notwithstanding the position of the law stated hereinabove the court has been of the view that, if it will be taken the appeal was filed in the court electronically as argued by the counsel for the appellant, the question to determine here will be whether the appeal was filed in the court within or out of time. To determine the above issue the court is required to look into what is provided under the Electronic Filing Rules which is governing filing of documents in the court electronically. The court has found Rule

21 (1) of the Electronic filing Rules cited to the court by the counsel for the appellant states that: -

"A document shall be considered to have been filed if it is submitted through the electronic filing system before midnight, East African Time, on the date it is submitted, unless a specific time is set by the court or it is rejected."

The court has also found that, in order to get proper interpretation of what is provided in the above quoted provision of the law it is proper for the court to read the above quoted provision of the law together with Rule 22 of the same Rules which read as follows: -

"Where a document is filed with, served on delivery or otherwise conveyed to the Registrar or Magistrate In-charge using the electronic filing service and is subsequently accepted by the Registrar or Magistrate In-charge, it shall be deemed to be filed, served, delivered or conveyed."

The court has found the position of the law as to how the above quoted Rules are supposed to be used in relation to the procedure of filing a document in the court was made by this court in the case of **Mwaija Omary Mkamba V. Mohamed Said Msuya**, Land Appeal No. 142 of 2020. HC Land Division at DSM (unreported) where it was stated that, the Rules are guiding procedures for filing documents in court electronically and does not remove the position of the law that, where court fees is

required to be paid for a document to be filed in the court a document is deemed to have been filed when court fees is paid.

The issue as to when a document is filed in court was considered in the case of **Adamson Mkondaya & Another V. Angelika Kokutona Wanga** (As an Administratrix of the estate of the late **Stephen Angelo Rumanyika**), Misc Land Application No. 521 of 2018, HC at Bukoba (unreported) where it was held that: -

"The date of presentation of the application for filing cannot be treated as the date of filing the appeal because the Court of Appeal has held from time to time that, it is the date of payment of filing fees and not of lodging a document, which amount to the date of filing an action."

From the interpretation given hereinabove, it is crystal clear that a document is deemed to have been filed in the court when the court fee is paid if the same is payable and not when the document are being submitted electronically. The court has found that, as stated in the case of **Stephano Mollel & Fourt Others V. A1 Hotel and Resort Ltd**, Revision Application No. 90 of 2020, HC at Arusha (unreported) submission of document through electronic filing does not do away with the requirement for payment of filing fees. If filing of a document through electronic filing system does not do away with the requirement of filing

fees, then as held in the case of John **Chug V. Anthony Sizya** [1992] TLR the date of filing a document in a court is a day of paying court fees and not a day of receiving the documents.

That, being the position of the law the court has found that, although Rule 21 (1) states a document is deemed to have been filed in court when is submitted through electronic filing system but as the filing process is said to be complete when the court fees is paid it cannot be said the appeal which its fees was paid on 10th February, 2021 while the last date for filing the appeal in the court was 29th January, 2021 as the impugned decision was delivered on 15th December, 2021 was filed in the court within the time prescribed by the law. In the premises the court has found the point of preliminary objection raised by the counsel for the respondent that the appeal is time barred is meritorious.

Another question to determine here is whether the appeal should be dismissed under section 3 (1) of the Law of Limitation Act, Cap 89 R.E 2019 as prayed by the counsel for the respondent or the appeal should be struck out as prayed by the counsel for the appellant. The court has gone through section 43 of the Law of Limitation Act which states where there is any other law providing for limitation of time the law of Limitation Act it does apply in other matters.

The court has read section 43 (f) together with section 46 of the Law of Limitation Act and find the Land Disputes Courts Act is providing for limitation of time to appeal only. It is not providing for remedy to a matter filed in the court out of time. Under those circumstances, section 3 (1) of the Law of Limitation Act is applicable in the matter at hand and as provided thereof the matter filed in the court out of time and without leave of the court is required to be dismissed.

In the premises the court has come to the conclusion that, as it has already been found the appeal was filed in the court out of time prescribed by the law, the remedy available for the appeal at hand is for the appeal to be dismissed for being filed in the court out of time and without leave of the court and the costs to follow the event. It is so ordered.

Dated at Dar es Salaam this 5th day of August, 2022



I. Arufani

I. Arufani

JUDGE

05/08/2022

Court:

Ruling delivered today 05th day of August, 2022 in the absence of the appellant and her advocate and in the presence of Dr. Lucas Kamanija, Advocate for the respondent. Right of appeal to the Court of Appeal is fully explained.



I. Arufani

I. Arufani

JUDGE

05/08/2022