

**IN THE HIGH COURT OF TANZANIA**

**(LAND DIVISION)**

**AT DAR ES SALAAM**

**LAND APPEAL NO. 287 OF 2021**

*(Originating from Ruling in Misc. Land Application No. 553 of 2020, District Land and Housing Tribunal for Temeke at Temeke dated 15<sup>th</sup> October 2021 Hon. Bigambo – Chairperson)*

**MBAWALA SIMON JOHN..... APPELLANT**

**VERSUS**

**ACCESS BANK (T) LTD.....1<sup>ST</sup> RESPONDENT**

**ALOYCE PAUL MSECHU.....2<sup>ND</sup> RESPONDENT**

*Date of last order: 18/8/2022*

*Date of ruling: 30/8/2022*

**RULING**

**A. MSAFIRI, J.**

This is a ruling on point of law raised by the Court *suo motu* against the present appeal which was filed in Court on 16<sup>th</sup> December 2021. It is on record that, in the instant appeal, the appellant intended to challenge the decision of the District Land and Housing Tribunal for Temeke at Temeke (DHLT) in Land Application No. 533 of 2021. In the said application the appellant was seeking for order to set aside dismissal order in respect of Application No. 240 of 2017. *Allo*

Ruling in respect of Application No. 533 of 2021 was delivered on 15<sup>th</sup> October 2021, in which the Tribunal dismissed it for want of sufficient reasons hence the appellant was aggrieved with the said decision hence he preferred the present appeal with three (3) grounds of appeal which I need not reproduce them here.

The present appeal was lodged in Court on 16<sup>th</sup> December 2021 while as pointed earlier, the impugned decision was delivered on 15<sup>th</sup> October 2021 so the appeal was lodged out of mandatory 45 days. It is for that reason I invited the parties to address the Court on the competency of the present appeal, specifically whether it was filed in time. Ms. Hamida Mkali, Messrs Amon Meja, Yohana Michael being assisted by Ally Jumanne learned advocates appeared for the appellant, first and second appellants respectively.

Ms. Hamida for the appellant contended that this appeal was lodged in Court after expiry of 44 days hence it was filed within time as the copies of the ruling and drawn order were supplied to the appellant on 2<sup>nd</sup> December 2021. Section 41 (1) and (2) of the Land Disputes Courts Act [CAP 216 R.E 2019], (hereinafter referred to as the Act) requires an appeal from DLHT to be preferred within 45 days, Ms. Hamida contended. *Alle*

On reply Mr. Meja opposed the submission by the appellant and contended that this appeal has been preferred out of time. The decision sought to be appealed against was delivered on 15<sup>th</sup> October 2021 hence the present appeal was lodged after expiry of 59 days. Mr. Meja contended further that the appellant had no automatic exclusion of time hence he was required to seek an extension of time within which to lodge an appeal against the impugned decision.

On his party Mr. Kibindu concurred with the submissions by Mr. Meja learned advocate and prayed that the appeal be dismissed.

On rejoinder, Ms. Hamida learned advocate for the appellant contended that the impugned decision was availed to the appellant on 2/11/2021 hence the delay was not caused by him rather for reason beyond his control. Ms. Hamida referred to me the decision of the Court of Appeal in the case of **Alex Sonkoro & 3 others v Elia Mbuya Lyimo** Civil Appeal No. 16 of 2017 in which it was held that time starts to run from the date the party was availed with certified copies of the impugned decision. *Adelle*

Having gone through the parties' submission on the competence of the appeal at hand, it is not in dispute that the impugned decision was delivered on 15<sup>th</sup> October 2021. The present appeal was lodged on 16<sup>th</sup> December 2021 well after expiry of 60 days. The law governing appeals from the District Land and Housing Tribunal in the exercise of the respective original jurisdiction as rightly pointed out by Ms. Hamida is Section 41 (1) and (2) of the Act. The said provision reads;

*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:*

The question which needs an answer is whether a party has an automatic exclusion of time where he/she was waiting to be supplied with copies of judgment and decree. Section 19 (2) of the Law of Limitation Act [CAP 89 R.E 2019] provides for exclusion of time a party applied to be

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supplied with copies of judgment and decree or order appealed against.

The said provision reads;

*(2) In computing the period of limitation prescribed for an appeal, an application for leave to appeal, or an application for review of judgment, the day on which the judgment complained of was delivered, and the period of time requisite for obtaining a copy of the decree or order appealed from or sought to be reviewed, shall be excluded.*

In the decision of this Court in **Hitt Infranco Limited t/a Helios Towers Tanzania v Juliano Charles Mikongomi (as administrator of the estate of the late Charles Mikongomi & another**, Land Appeal No. 25 of 2020 (unreported), the decision cited and a copy supplied to me by Mr. Meja, it was observed that;

*"It is trite law that the time one spent in procuring the copy of judgment and decree **may be excluded** in computing the limitation period **but the same cannot be automatically** be assumed by parties **unless one can lodge an application to seek enlargement** and*

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*avail reasonable or sufficient cause for the delay."*

[Emphasis added].

From the foregoing referred authority it is apparently clear that there is no automatic exclusion of time for the period by which copies of judgment, decree or proceedings were being awaited for as one has to seek for an extension of time. However Ms. Hamida referred to me the decision of the Court of Appeal in **Alex Senkoro & 3 others v Eliambuka Lyimo (as administrator of the estate of Fredrick Lyimo deceased)** [Supra].

In that decision the Court of Appeal took a contrary view and held that an exclusion of time within which a party was waiting for the certified copies of judgment, decree or order appealed against is automatic. However the Court went on to state at page 12 where the Court in no ambiguous terms stated thus;

*"We need to stress what we stated in the above case that*  
***the exclusion is automatic as long as there is proof***  
***on the record of the dates of the critical events for***  
***the reckoning of the prescribed limitation period.***

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*For the purpose of Section 19 (2) and (3) of **LLA these dates are the date of the impugned decision, the date on which a copy of the decree or judgment was requested** and the date of the supply of the requested document. [Emphasis added].*

Going by that decision of the Court of Appeal, the time for waiting of the copies of the judgment and decree or order appealed against is automatic but there must be proof on the record on when the said decision was delivered, when the same was requested for and when the same was supplied. In the instant appeal the impugned decision was delivered on 15<sup>th</sup> October 2021 and not on 2<sup>nd</sup> November 2021 as suggested by the appellant on his memorandum of appeal. It was contended that the said decision was availed to the appellant on 2<sup>nd</sup> November 2021, but there is no proof to the effect that the appellant was availed the said decision on 2<sup>nd</sup> November 2021 bearing in mind that copies of decisions in Tribunals are obtainable after paying requisite fee hence the appellant should have provided receipt to the effect.

Similarly there is no proof on the record that the appellant had requested for the said copy of the ruling and when he did he do so. This

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should be proved by attaching a letter showing that the appellant had requested for the said copy and such letter must be served to the other parties. I must add it must be proved that the said copy was requested within time prescribed for appealing. Failure to do so one cannot claim for such automatic exclusion of time envisaged under Section 19 (2) of the Law of Limitation Act.

Hence in the present appeal the appellant cannot benefit for such exclusion as there is no proof on record that he requested for the said copy and when did he do so.

Consequently the appeal is time barred and it is hereby struck out with no order as to costs, as the point was raised by the Court *suo motu*.

It is so ordered.



**A. MSAFIRI,  
JUDGE**

**30/8/2022**