

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND APPEAL NO. 46 OF 2023

(Arising from the District Land and Housing Tribunal for Kinondoni in Land
Application No.63 of 2020)

BIBI KASHFA RAMADHANI APPELLANT

VERSUS

ABDULMAJID NCHIMBI RESPONDENT

JUDGMENT

Date of last Order: 20.03.2023

Date of Judgment: 22.03.2023

A.Z.MGEYEKWA, J

This appeal stems from the decision of the District Land and Housing Tribunal for Kinondoni in Land Application No.63 of 2020. In order to have a clear picture of the background to the case, I deem it appropriate to closely give a historical account of this matter, which is, ostensibly, not very difficult to comprehend. They go thus: Bibi Kashfa Ramadhani, the appellant instituted a case at the District Land and Housing Tribunal for Kinondoni claiming that she is the lawful owner of the suit land which she

occupied since 2011. The appellant alleged that the respondent has constructed a house and toilet in her piece of land, the respondent on his side denied the allegations.

When the matter was called for hearing on 7th March 2023, the appellant and respondent appeared in person, unrepresented, the appellant prayed to argue the appeal orally but the respondent preferred to argue the appeal by way of written submission. The appellant submitted orally and the respondent was given seven days to file a reply and he complied with the Court. On 17th March 2023, the appellant had a chance to rejoin.

In her oral submission, the appellant was brief. The appellant argued that she was not pleased with the decision of the District Land and Housing Tribunal for Kinondoni because the Chairman stated that each party should take possession of his piece of land while she is dwelling in there. She claimed that she occupied the suit land since 2011. The appellant valiantly argued that the respondent has constructed a house and lavatory on her piece of land. She contended that the tribunal judgment was incorrect she forcefully argued the respondent refused to demolish his building, thus, she decided to lodge a case at the tribunal.

In conclusion, he urged this Court to order the respondent to demolish his house and lavatory.

In his written submission, the respondent started to narrate the genesis of this matter which I am not going to reproduce in this appeal. The respondent raised a point of law that the appeal before this Court is time-barred. He referred this Court to section 41 (2) of the Land Disputes Courts Act, Cap. 216 [R.E 2019]. He went on to submit that the impugned Judgment was delivered on 16th December 2022 and the appellant filed the instant appeal on 14th February 2023 a lapse of 15 days.

Reverting to the merit of the case, the respondent contended that the tribunal's decision did not amuse the appellant and that the main reason for her appeal is wrong. He insisted that the appellant is the one who invaded the respondent's piece of land and constructed her house while the respondent was in the process of executing the Judgment of Kimara Primary Court.

The respondent forcefully argued that the appellant's grounds for appeal are demerit and misleading this Court. Ending, he prayed this Court to dismiss the appeal for lack of merit.

In her rejoinder, the appellant insisted that the respondent be ordered to demolish his lavatory. Regarding, the issue of time-barred; she admitted that the instant appeal is out of time. She added that she lodged several cases at Ruguluni and Kibamba. Ending, the appellant stated that the

decision of the District Land and Housing Tribunal was delivered on 18th December 2022, she did not remember the exact date of filing this appeal.

Before I get to the substance of the appeal, it is apposite that I should address the issue raised by the respondent in his reply to the appeal. The respondent complained that the matter before this court is time-barred. I understand that the issue of point of law was supposed to be raised before hearing an appeal on merit. However, as long as the same is a point of law, then, it can be raised at any time even during an appeal. In the case of **Adelina Koku Anifa & Another v Byarugaba Alex**, Civil Appeal No. 46 of 2019 (unreported). This court could even in the absence of the grounds of appeal be obliged to address the point of law on jurisdiction. 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.

Equally, in the case of **Marwa Mahende v Republic** (1998) TLR 249, the court is reminded to ensure proper application of the laws by the courts below. The Court of Appeal of Tanzania in the case of **Adelina Koku Anifa** (supra) went on to state 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.."

Guided by the above authorities of the law, and as the practice of the Court, it was forethought for this court to address and determine the issue of preliminary objection first before embarking on the grounds for execution.

I had to go through the court records to find out *whether or not the instant appeal is time-barred*. The time limit for 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 a such period of forty-five days.” [Emphasis added].

Applying the above provision of law, the prescribed period for 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 16th December 2022 to the date when the appellant lodged the instant appeal on 14th February 2023 is a lapse of 16 days. The statutory period to file an appeal ended on 30th January 2023.

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.46 of 2023 for being time-barred without costs.

Order accordingly.

Dated at Dar es Salaam this date 22nd March 2023.

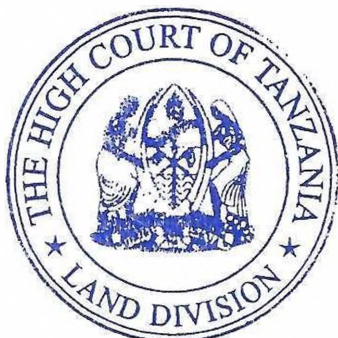



A.Z.MGEYEKWA

JUDGE

22.03.2023

Ruling delivered on 22nd March 2023 in the presence of the appellant and the respondent.




A.Z.MGEYEKWA

JUDGE

22.03.2023