

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND APPEAL NO. 241 OF 2023

(Arising from the Land Application No. 172 of 2016)

MOHAMED BAREKI SALUM APPELLANT

VERSUS

HAMIDU KAMUGISHA 1ST RESPONDENT

MARIAM HAMISI (Administrator of the Estate

of the Late Said Elizeus Rugangule) 2ND RESPONDENT

NATIONAL MICROFINANCE BANK PLC 3RD RESPONDENT

BANI INVESTMENT LIMITED 4TH RESPONDENT

Date of last order: 25/10/2023

Date of Ruling: 16/10/2023

RULING.

I. ARUFANI, J

This ruling is in respect of a preliminary objection on point of law raised in the present appeal by third respondent that the appeal is hopelessly time barred. During hearing the stated point of preliminary objection, the appellant was represented by Mr, Samuel Shadrack Ntabaliba, learned advocate and while the first and second respondents were represented by Ms. Mariam Shelimo, learned advocate the third respondent was represented by Ms. Miriam Moses Mwinzya, learned

advocate. The court ordered hearing of the appeal to proceed ex parte against the fourth respondent as there was a proof that she was duly served but failed to appear in the court.

The court directed the raised point of preliminary objection be argued by way of written submissions and I commend the counsel for the parties to abide to the schedule given to them for filing their submissions in the court. The counsel for the third respondent stated in her written submission that, the appeal is time barred and it is contravening section 41 (2) of the Land Dispute Court Act, Cap 216 R.E 2019. She stated that, the impugned judgment of the District Land and Housing Tribunal (hereinafter referred as the tribunal) in land Application No. 172 of 2016 was delivered on 25th April 2023 and the Memorandum of appeal was lodged in the court on 20th June 2023 while 45 days provided in the above cited provisions of the law had already elapsed.

She submitted that, counting from when the impugned judgment was delivered on 25th April, 2023 to when the appeal was lodged in the court on 20th June, 2023 it will be seeing the appellant was delayed for twelve days as he ought to lodge the appeal in the court within 45 days after the date of the impugned judgment. She referred the court to the cases of **District Executive Director Kilwa District Council V.**

Bogeta Engineering Ltd, Civil Appeal No. 37 of 2017 CAT at Mtwara (unreported) which was cited in the case of **Juma Lupoli V. Charles Ngobetse**, Civil Appeal No. 487 of 2022. CAT at Kigoma (unreported) where it was held that, court cannot have jurisdiction to entertain an appeal which is time barred and no extension of time has been sought.

She went on arguing that, the certified copy of the judgment of the tribunal was extracted on 24th day of May 2023 whereby the appellant was within the time to lodge the appeal in the court but he waited until 20th June 2023 without any justifiable reasons to lodge the present appeal in the court. She submitted that, failure of the appellant to lodge appeal in the court within the prescribed time should be taken as in activeness and deliberate will to sleep on his right, thus the appeal deserves nothing rather than to be struck out.

She added that they are aware of section 19 (2) of the law of limitation act Cap 89 R.E 2019 which provides that in computing for the period of limitation prescribed for an appeal, the period of time requisite for obtaining copy of judgment and decree or order appealed from shall be excluded. She however argued that, the stated exclusion cannot be automatically assumed by parties but the parties are required to lodge an

application to seek for enlargement of time to appeal out of time and avail sufficient reason for the delay.

To support her submission, she referred the court to the case of **HTT Infranco t/a Helios Towers Tanzania V. Juliano Charles Mikongomi** (As an Administrator of the estate of the late **Charles Mikongomi**), Land Appeal No. 25 of 2010, HC at Iringa (unreported). She argued that, regardless of the provision of section 19 (2) of the Law of Limitation Act allows period of time spent in awaiting for the copy of the decree or order appealed from to be excluded, the exclusion is not automatic. The applicant is required to lodge in the court an application for extension of time and give reason he has for the delay. At the end she prayed the appeal be struck out.

In his reply, the counsel for the appellant argued in his written submission that, the preliminary objection is misplaced, hence with no merit and it is supposed to be dismissed. He went on arguing that, although the impugned judgment was delivered on 25th April, 2023 but the judgment read it was certified on 24th May, 2023 and it was supplied to the appellant on 1st June, 2023. He submitted the appellant could not have filed the appeal in the court without being supplied with the copy of the stated document.

He stated that, going through section 19 (2) of the Law of Limitation Act it can be noted that in computing the period of limitation of time prescribed by the law, time to obtain copies of judgment and decree is supposed to be excluded. He stated that, the time prescribed under section 41 (1) and (2) of the Land Disputes Courts Act is forty-five days. He submitted that, as the appellant was supplied with the copy of the judgment on 1st June, 2023 the time to lodge appeal in the court had already expired. He went on submitting that, under section 19 (2) of the Law of Limitation Act, the period of time for obtaining copies of the documents required for appeal from the tribunal is supposed to be excluded.

He argued that, the submission by the counsel for the third respondent that the appellant was enjoined to seek for extension of time is misplaced because section 19 (2) of the Law of Limitation Act states clearly that time for obtaining documents for appeal purposes should be excluded. He based on the above submission to urge the court to find the appeal has been lodged in the court well within the time and the court has jurisdiction to entertain the appeal. Finally, he prayed the court to overrule the preliminary objection raised by the third respondent.

In her rejoinder the counsel for the third respondent reiterated what she argued in her submission in chief and added that, as the counsel for the applicant submitted the appellant was supplied with the copies of the judgment and decree on 1st June, 2023, the appellant was still within the time to lodge his appeal in the court until to 8th June 2023 when the mandatory period of 45 days expired. She went on arguing that, the argument by the counsel for the appellant that, the appellant was supplied with the copy of judgment on 1st June, 2023 is not supported by any proof or evidence.

She insisted that exclusion of time spent when waiting for the copies of decree and order appealed from is not automatic. He cited in her submission the case of **The Headmaster of Forest Hill Secondary School V. Robert R Mluge**, Land Appeal Land Appeal No.52 of 2010 (unreported) which was cited in the case of **Clement Musa Nsiyantem V. Rashid Sadick Kuhanzibwa** Civil Appeal No 73 of 2021, HC at Mwanza (unreported). The court held in the above cases that, the application of section 19 (2) of the law of Limitation Act is not that automatic. It was stated the same has to be applied through formal application to be brought to the court under section 14 (1) of the Law of Limitation Act. It was further stated that, had things go that automatic

there would have been no need to have Law of Limitation Act to regulate times for actions required to be done by parties in a suit.

The counsel for the third respondent argued further that, although the counsel for the applicant submitted section 19 (2) of the Law of Limitation Act allows period within which to obtain copy of judgment and decree to be excluded from the time prescribed for an appeal but the law of Limitation Act does not apply where the period of limitation is prescribed by another law. To support her argument, she referred the court to the case of **Yahaya Mzee Kapera V. National Microfinance Bank (NMB) PLC**, Misc Civil Application No. 10 of 2019, HC at Iringa which was cited in the case of **HTT Infanco Limited** (supra) where it was stated that, the Law of Limitation Act cannot apply to any proceedings for which a period of limitation is prescribed by any other law. She argued the stated position of the law was emphasized in the case of **Kisoki Emmanuel V. Zakaria Emmanuel**, Civil Appeal No. 140 of 2016 cited in the latter case. In fine, she prayed the appeal be struck out with costs.

Having carefully considered the rival submissions from the counsel for the parties and after going through the memorandum of appeal filed in the court by the parties the court has found there are facts which are not in dispute in the matter. The court has found it is undisputed fact that

the judgment the appellant is challenging in the appeal he has filed in this court was delivered on 25th April, 2023, the stated judgment was certified on 24th May, 2023 and the appeal at hand was filed in the court on 20th June, 2023. The fact in dispute is whether the preliminary objection raised by the third respondent that the appeal is hopelessly time barred is meritorious and deserve to be sustained.

The court has found the counsel for the third respondent argues the appeal is hopelessly time as it was lodged in the court after the elapse of forty-five days period provided under section 41 (2) of the Land Disputes Courts Act for the appeal to be lodged in the court. On the other side the counsel for the appellant contended that, the appeal is not time barred because the appellant was supplied with the copy of the impugned judgment on 1st June, 2023. His submission is that, if the time within which the appellant was waiting to be supplied with the copy of the judgment is excluded as provided under section 19 (2) of the Law of Limitation Act, it will be found the appeal which was lodged in the court on 20th June, 2023 is well within forty-five days prescribed by the law.

The court has found it is true as argued by the counsel for the appellant that section 19 (2) of the Law of Limitation Act provides that, in computation of time prescribed by the law for filing appeal in the court,

the time spent in awaiting to be supplied with the copies of judgment and decree is supposed to be excluded from the period of time prescribed for filing appeal in the court. For clarity purpose the above cited provision of the law states as follows: -

"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

The above cited provision of the law has been considered by our courts in number of cases including the cases cited in the submission of the counsel for the third respondent. The court has found when the Court of Appeal was considering exemption of time spent in awaiting to be supplied with copies of documents required for appeal stated in the cited provision of the law in the case of **The Registered Trustees of Marian Faith Healing Centre @ Wanamaombi V. the Registered Trustees of the Catholic Church Sumbawanga Diocese**, Civil Appeal No. 64 of 2007, CAT (Unreported) it was held the stated period of time is required to be excluded from the period of lodging appeal in the court.

However, the position of the law stated in the above cited case was qualified by the Court of Appeal in the case of **Valerie Mcgivern V. Salim Farkrudin Balal**, Civil Appeal No. 386 of 2019 CAT at (unreported) where the Court of Appeal stated that: -

*"Suffice to say, section 19 (2) of LLA and the holding in the decision cited above (**Wanamaombi's case**) reinforce the principle that, computation of the period of limitation prescribed for an appeal, is reckoned from the day on which the impugned judgment is pronounced and the appellant obtains a copy of the decree or order appealed by excluding the time spent in obtaining such a decree or order. **However, it must be understood that section 19 (2) of LLA can only apply if the intended appellant made a written request for the supply of the requisite copies for the purpose of appeal.**"*

[Emphasis added].

From the wording of the above quoted excerpt and specifically the bolded part it is crystal clear that, the time spent in awaiting to be supplied with the copy of the impugned decision is supposed to be excluded from the period of time of lodging appeal in the court and the time is counted to have reckoned from the date of being supplied with the copy of the impugned decision. However, the appellant in the present appeal cannot benefit from the stated exclusion. The court has come to the stated view after seeing it is not demonstrated anywhere in the present appeal that

the appellant applied for the copy of the judgment and decree appealed from so that it can be said the appellant was awaiting to be supplied with the copies of the judgment and decree he is appealing against in the present appeal.

Having found the present appeal was filed in the court after the elapse of the period of time prescribed for lodging appeal of this nature in the court, and after seeing the appellant is not entitled to the exclusion of time of awaiting to be supplied with the copies of judgment and decree provided under section 19 (2) of the Law of Limitation Act, the court has found the stated finding is sufficient enough to find the preliminary objection raised by the third respondent is meritorious and deserve to be sustained.

After seeing the position of the law stated hereinabove has managed to establish the preliminary objection raised by the third respondent that the appeal is hopelessly time barred the court has found the order which can be made in the appeal which was filed in the court out of time is to dismiss the appeal and not to strike it out as prayed by the counsel for the third respondent. It is because of the above stated reasons the the preliminary objection raised by the third respondent is upheld and the appeal is dismissed for being filed in the court out of time

and without leave of the court to file the same out of time and the costs to follow the event. It is so ordered.

Dated at Dar es Salaam this 16th day of November, 2023.



Jace
I. Arufani
JUDGE
16/11/2023

Court:

Ruling delivered today 16th day of November, 2023 in the presence of the appellant in person, in the presence of Ms. Mariam Shelimo, learned advocate for the first and second respondents and in the presence of Ms. Haika Mrango, learned advocate for the third respondent and in the absence of the fourth respondent. Right of appeal to the Court of Appeal is fully explained.



Jace
I. Arufani
JUDGE
16/11/2023