

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

LAND APPEAL NO. 383 OF 2023

*(Arising from Land Application No.165 of 2018 of the District Land and
Housing Tribunal for Kinondoni)*

**KHALPHAN ATHUMAN..... 1ST APPELLANT
ZAHRA MALIKY.....2ND APPELLANT
SELEMANI KASSIM.....3RD APPELLANT
MUSA MOHAMED.....4TH APPELLANT
AMINA HUSSEIN.....5TH APPELLANT**

VERSUS

**DOGO HASSAN KAPECHA(As Adminstrator of the Estate of the
late Said Kinyuku).....RESPONDENT**

RULING

Date of Last Order:19.10.2023

Date of Judgment:31.10.2023

T.N.MWENEGOHA, J:

The respondent above named has raised a preliminary objection against the hearing of this Appeal on the ground that the same is time barred. His learned Advocate, one Lugiko John Hindishi, has argued by way of written submissions that, there are 48 days between the date of Judgment and the date when the instant Appeal was filed. This is against the mandatory provisions of **section 41 of the Land Disputes Courts Act, Cap 216, R.E 2019**, which gives 45 days for a person aggrieved by the decision of the District Land and Housing Tribunal, to lodge his Appeal. Therefore,

this Appeal has been filed out of time and without leave of this Court. To cement his arguments, he cited the case of **Star System International Co. Ltd versus Agatha Cyril Nangwe, Civil Appeal No. 10 of 2015, High Court of Tanzania at Tabora (unreported)**.

In reply, Advocate Nko for the appellants, maintained that, the Appeal was filed within time. He insisted that, the copies of the impugned Judgment and Decree were available to the appellants from the trial Tribunal on the 23rd August of 2023. Therefore, the time starts to run from the date, when the copies were supplied to the appellants. As per section **19 of the Law of Limitations Act, Cap 89 R.E 2019**, the time used in obtaining the copies of the impugned Judgment and Decree. He cited the case of **Lucas Philipo versus The Registered Trustees of Kanisa la Pentekoste Tanzania, Land Appeal No. 10 of 2010, High Court of Tanzania, Land Division at Tanga**.

Having considered the submissions of the parties, I have to determine the merit of the preliminary objection. I will go straight and state that on my part, I agree with Mr. Hindishi, this Appeal is time barred. Counting from the date when the impugned Judgment was delivered, on 09/08/2023, 45 days of Appeal expired on the 23rd September, 2023. This Appeal was filed on the 26th September, 2023. As argued by Mr. Hindishi, same came to be filed three days later after the expiry of the period for Appeal.

Either, I understand the position stated under **section 19 of the Law of Limitations Act, Cap 89, R.E 2019**. It requires the exclusion of the time spent by the appellant in obtaining the copies of Judgment or Decree when computing the period set for filing an Appeal. However, the appellant needs to clearly express in his Memorandum of Appeal that

there is a delay in filing his Appeal and the reason of such delay. The appellants cannot leave the Court to assume their reason of delay. There has to be certainty on their reasons of delay where the Court will be able to determine if they are genuine or not and whether they acted diligently or negligently in obtaining the copies of the documents in question.

The fate of this Appeal therefore, is clear as stated in **Star System International Co. Ltd versus Agatha Cyril Nangwe, (supra)**. Hence, I find this objection to be meritorious. The same is sustained.

The Appeal is dismissed with costs.

Ordered accordingly.

A handwritten signature in blue ink, appearing to read 'T.N. Mwenegoha', is written over a horizontal line. The signature is stylized and somewhat illegible.

T.N. MWENEGOHA

JUDGE

31/10/2023