

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

LAND APPEAL NO. 273 OF 2023

*(Arising from Land Application No.581 of 2018, by the District Land and
Housing Tribunal for Kinondoni)*

ARSON J MONGI..... APPELLANT

VERSUS

GLAD GUREN MKENI.....1ST RESPONDENT
NAVO GUREN MKENI.....2ND RESPONDENT
JANET MUSHI.....3RD RESPONDENT

RULING

Date of Last Order: 12.09.2023

Date of Ruling: 25.10.2023

T.N.MWENEGOHA, J:

This appeal is based on the following grounds; -

1. That, the Chairperson grossly erred in law and fact by entering judgment in favour of the 1st and 2nd respondents while there is no proof to support the sale of the disputed land to the 1st and 2nd respondents.
2. That, the Chairperson grossly erred in law and fact for failing to analyze the evidence in record which shows that the appellant proved his case on balance of probability that he is the owner of the

disputed land and the said land was not disposed to the 1st and 2nd defendants.

3. That, the Chairperson grossly misdirected herself in applicability of the principle laid down in *Berelia Karangirangi versus Asteria Nyalwambwa*, Civil Application Appeal, hence led to erroneous findings, in favour of the 1st and 2nd respondents.
4. That, the trial Chairperson grossly erred in law and by deciding the matter in favour of the 1st and 2nd respondents basing on weak and biased evidence.
5. That, the trial Chairperson grossly erred in law and in fact by deciding the matter in favour of the 1st and 2nd respondent by wrongly applying the principle of buyer be aware.

When the respondents were served with the Memorandum of Appeal, they jointly raised a preliminary objection on point of law that, the Appeal is time barred. In their joint written submissions, the respondents maintained that, the present appeal was filed after the expiry of 45 days required under the mandatory provisions of **section 41(2) of the Land Disputes Courts Act, Cap 216 R.E 2019**. That, the impugned Decision was delivered on the 29/4/2023 and the instant Appeal was lodged in this Court on the 11/7/2023. Therefore, the appeal at hand was filed after the expiry of 74 days and without leave. That, the same should be dismissed as provided under **section 3(1) of the Law of Limitations Act, Cap 89, R.E 2019**. They also referred the Court to the case of **District Executive Director of Kilwa District Council versus Bogeta Engineering Ltd(2019) TLR 271 (CA)**.

In reply, Advocate Mary Masumbuko Lamwai for the appellant, maintained that, the appeal was lodged within time. That, the time for this Appeal

started to run on the 31st May, 2023 when the copies of Judgment and Decree were made ready to the appellant and not on the 28th April 2023 when the impugned Decision was delivered. She referred the Court to the case of **The Registered Trustees of the Marian Faith Healing Center @ Wanamaombi versus The Registered Trustees of the Catholic Church Sumbawanga Diocese, Civil Appeal No. 64 of 2006, Court of Appeal of Tanzania at Dar es Salaam(unreported).**

Having considered the all records and submissions of the parties, I now have to determine whether the objection at hand has merits or not

I went through the Memorandum of Appeal before me. In the presented paragraphs, there is nowhere where the appellant has stated that he has filed the Appeal out of time because he was not availed with copies of Judgment in time.

It is because undoubted that the days used in obtaining the copies of the Judgment and Decree are excluded in computing the time for Appeal, as provided for under **section 19(2) of the Law of Limitations Act, Cap 89 R.E 2019.** For quick reference, I will reproduce the said provision as here under;-

“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.”

As per the above quoted provision, the exclusion of the time used in obtaining the copies of the Judgment and Decree is excluded. Further, there is no leave of this Court that is required to be sought by the appellant. This position was cemented in the case of **The Registered Trustees of the Marian Faith Healing Center @ Wanamaombi versus The Registered Trustees of the Catholic Church Sumbawanga Diocese**, (supra).

However, a party is required to inform the Court of such delay. 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 appellant cannot leave the Court to assume his reason of delay. There has to be certainty on his reasons of delay where the Court will be able to determine if they are genuine or not and whether he acted diligently or negligently in obtaining the copies of the documents in question.

For the reasons I have wondered to give here in above, I find the objection raised by the respondents to be to have of merits. The same is upheld accordingly. This Appeal is hereby dismissed, with costs.

Ordered accordingly.



T.N. MWENEGOHA

JUDGE

25/10/2023