

**IN THE HIGH COURT OF TANZANIA  
(LAND DIVISION)**

**AT DAR ES SALAAM**

**LAND APPEAL NO. 26247 OF 2023**

**BETWEEN**

**IBRAHIM AYOUB MACHINGA** (*Administrator of the Estate of  
the late Athumani Bakari Mzenga*) ..... **1<sup>st</sup> APPELLANT**  
**SELEMANI BAKARI MZENGA** ..... **2<sup>nd</sup> APPELLANT**  
**ABDALLAH SAIDI MATUMBO** ..... **3<sup>rd</sup> APPELLANT**  
**SALUM SAID KAMENYA** ..... **4<sup>th</sup> APPELLANT**  
**MOHAMED TONONDO** ..... **5<sup>th</sup> APPELLANT**  
**SAIDI MKWENGO** ..... **6<sup>th</sup> APPELLANT**

**VERSUS**


**MUHARAMI ABDALLA MZENGA** (*as Administrator of the late  
Abdallah Mwinshehe Mzenga*) ..... **RESPONDENT**

**RULING**

*26/02/2024 & 18/3/2024*

**A. MSAFIRI, J.**

This appeal was filed by the herein above six (6) appellants having been aggrieved by the judgment of the District Land and Housing Tribunal for Mkuranga District at Mkuranga (herein District Tribunal) in Application No. 13 of 2016 which was delivered in 25/8/2023.

They filed a total of three grounds of appeal as reflected in their Memorandum of Appeal. 

The respondent through her advocate Ms. Nyasebwa, filed a reply to the Memorandum of Appeal within which she raised one preliminary point of objection to the effect that this appeal is time barred.

As it is the requirement of the law, the preliminary objection was set to be heard first before proceeding with the main appeal.

The preliminary objection was set to be argued orally and the respondent was represented by Ms. Loveness Ngowi, learned advocate. She submitted before the Court that any appeal against the decision of the District Land and Housing Tribunal should be filed within 45 days from the date of judgment delivery as per Section 41 of the Land Disputes Courts Act, Cap, 216. She said that the decision of the District Tribunal was delivered on 25/8/2023 and this appeal was filed on 27/11/2023 which is more than 45 days prescribed by the law.

She submitted further that the appellants may file for an extension of time if they so wish, as provided under Section 41(2) of the Land Disputes Courts Act, and under Section 14 of the Law of Limitation Act.

The counsel said that, the respondent admit that the appellants filed a first appeal i.e. Land Appeal No. 370 of 2023 which was before Hon. Hemed, J. That the said Appeal was withdrawn with leave to refile whereby the Court ordered the appellants to refile the appeal within 14

*Alle.*

days. The former Appeal was withdrawn on 16/11/2023. Ms. Ngowi argued that this order of the Court is not a defence that the appeal is within the time. That, since the withdrawn case is non - existent, the appellants ought to start afresh by filing the application for extension of time to file an appeal.

To cement her points, the counsel cited the case of **Philemon Mang'ehe vs. Gess Herbon Bajuta**, Civil Application No. 34/02 of 2022. She prayed for the dismissal of the appeal with costs.

Mr. Respicius Mkandala, learned advocate was representing the appellants. He argued vehemently and submitted that the appeal was filed within time.

He said that after the decision of the District Tribunal of 25/8/2023, the appellants filed an Appeal No. 370 of 2023 in this Court and it was placed before Hon. Hemed, J. That the appeal was withdrawn on erroneous reasons, with leave to refile. That this Court ordered the appeal to be refiled within 14 days despite the fact that the appeal was already out of time.

That the appellants have complied with the Courts order dated 16/11/2023 by Hon. Hemed, J and refiled this current appeal. Mr. Mkandala averred that they believe that the appeal is within 14 days which


*Adls.*

were ordered by this Court, and there is no need to seek for another extension of time. He prayed for the dismissal of the preliminary objection.

On rejoinder, Ms. Ngowi reiterated her submissions in chief. She added that the order of Hon. Hemed, J was for the proper appeal to be refiled.

Having gone through the submission by parties, the issue in controversy is whether this appeal is time barred or not.

This instant appeal was filed in Court on 27/11/2023. The impugned Judgment at the District Tribunal was delivered on 25/8/2023. However, initially the appellants have filed the first appeal. The date of filing was not revealed by either party although the respondent submitted that it was out of time.

Nevertheless, the appeal was placed before Hon. Hemed, J for hearing and determination but before the said appeal was set for hearing on 16/11/2023, the Court *suo motu* moved the parties to address it on some defects which was detected by the Court in the Memorandum of Appeal. Following that, the appellants admitting on the defectiveness, they prayed to withdraw the appeal with leave to refile. The Court granted the appellants' prayer and ordered the proper appeal to be filed within 14 days. 

The counsel for the appellants have argued that they have complied with the Court order and filed the instant appeal within 14 days, hence the appeal is within time. I totally agree with the arguments of the counsel for the appellants that this appeal is within time as it has been filed within 14 days as per the order of this Court of 16/11/2023.

The counsel for the respondent states that the appellants need to seek for an extension of time first before filing for this appeal. However, it should be noted that there is already an order of this Court prescribing the time limit of 14 days within which to file the appeal, the order which the appellants have complied with.

The respondent is moving this Court to declare this appeal to be out of time, while there is an order of this very Court which has set the time limit to be 14 days, and it has been complied by the appellant. This Court hands are tied and cannot vacate its own order and declare now that the appeal is time barred while it was filed within the time ordered by this Court.

The issue of time limit on whether the appeal was filed within 45 days from the date of delivery of impugned judgment could have been dealt with during the first appeal which was placed before Hon. Hemed, J. As of now, since there is an order prescribing the time within which

*Alle.*

the appeal has to be filed, as said earlier, this Court is functus officio to determine the issue of time limit.

For this reason, I hereby overrule the preliminary objection and order the appeal to be heard on merit.

I issue no order as to the costs.



*A. Msafiri*  
A. MSAFIRI  
JUDGE  
18/3/2024