

THE UNITED REPUBLIC OF TANZANIA
JUDICIARY

IN THE HIGH COURT OF TANZANIA
(DISTRICT REGISTRY OF MBEYA)
AT MBEYA

LAND APPEAL NO. 55 OF 2022

(From the District Land and Housing Tribunal for Mbeya at Mbeya in Land
Application No. 120 of 2016)

NATIONAL BANK OF COMMERCE.....APPELLANT

VERSUS

NDIMYAKE MPUNJI.....RESPONDENT

RULING

Date of Last Order: 29/09/2022
Date of Ruling : 02/12/2022

MONGELLA, J.

This Ruling follows a notice of preliminary objection filed by the respondent resisting the appellant's appeal. The preliminary objection contained two points of law, to wit;

- i. *The appeal is incompetent and hopelessly time barred for being filed out of time contrary to the law.*
- ii. *The appeal is incompetent for being filed as (sic) Petition of Appeal instead of Memorandum of Appeal, hence contrary to the law.*



The preliminary objection was argued by written submissions by the learned counsels for both parties. Ms. Joyce Kasebwa, learned advocate, represented the respondent. In her submission she dropped the second point of preliminary objection regarding competence of the appeal for being filed by way of Petition of Appeal instead of Memorandum of Appeal.

Regarding the first point of preliminary objection, Ms. Kasebwa found the appeal incompetent for being filed out of time rendering the Court with no jurisdiction to entertain it. She contended that the impugned decision by the District Land and Housing Tribunal was delivered on 17.11.2020 and certified on 27.07.2021 as being ready for collection. However, she said, the appeal at hand was filed on 30.06.2022 although the receipt of payment reveals that the filing fees were paid on 01.07.2022. Referring to section 41 (2) of the Land Disputes Courts Act, Cap 216 as amended by section 41 (a) & (b) of the Written Laws (Miscellaneous Amendments) Act No. 2 of 2016, she argued that the time limit for lodging an appeal against the decision of the District Land and Housing Tribunal is 45 days from the date of decision or order.

While acknowledging the legal position that the time for waiting for certified copies of the decision is to be excluded from computation of time, she still argued that the appeal at hand was filed in delay of 71 days from the date the copies of the impugned decision were certified, which was on 27.07.2021. In the premises, she had the view that the only remedy is for the appeal to be dismissed for being time barred in accordance with **section 3 (1) of the Law of Limitation Act, Cap 89 R.E. 2019**. In further



support of her stance she referred the case of **MM Worldwide Trading Company Limited & 2 Others vs. National Bank of Commerce Limited**, Civil Appeal No. 258 of 2017 (CAT at DSM, unreported); **Stephen Masatu Wasira vs. Joseph Sinde Warioba & Attorney General** [1999] TLR 334; and that of **Dr. Ally Shabhay vs. Tanga Bohava Jamat** [1997] TLR 305.

The appellant was represented by Advocate Mazoea Africa. He found the preliminary objection misplaced and lacking merit as the appeal was filed within the prescribed 45 days under the law. He argued so counting from the date of receipt of the certified copies of the judgment and decree of the Tribunal. He argued that the appellant would not have been in position to file the appeal at hand if she was not availed the certified copies of the judgment and decree, which are mandatory documents to accompany the appeal as stipulated under **Order XXXIX Rule 1 of the Civil Procedure Code, Cap 33 R.E. 2019**.

He added that the appellant required to be supplied the copy of the judgment so as to compose the appeal. In that respect, he said, the appellant requested for certified copies of the judgment and decree on 30.11.2020. That she was not availed with the copy of decision despite stringent follow-ups whereby she wrote reminders requesting for the copies through letters dated 09th March and 09th June 2021 and was always informed that the case file was with the Chairman. He contended further that the appellant for unknown reasons was not given access to the file and it was until 18.05.2022 that she was availed copy of the judgment and decree and pay the requisite fees promptly.



He argued further that the time for waiting for copies of judgment and decree is to be excluded from computation in terms of **section 19 (1) of the Law of Limitation Act**; thus the time should be counted from 18.05.2022 which is the date of receipt of the copies of decision from the Tribunal. He said that counting from that date the time would expire on 02.07.2022 and the appeal at hand was filed on 30.06.2022 which was within the 45 days limit. Referring to the case of **Ahmed Mohamed Suud & Another** (supra) cited by Ms. Kasebwa, he was of the view that the same is in the appellant's favour as the stamp shows that the appeal was stamped on 30.06.2022. He added that the appellant took all the necessary steps to ensure that she gets all the necessary documents to file the appeal at hand. In support of his contention he cited the case of **Amie Sadick Sanga vs. National Bank of Commerce**, Civil Application No. 105/17 of 2021.

Mr. Africa was certain that the appellant has shown diligence and care in following up on the copies of the Tribunal decision, which has also been acknowledged by the respondent's counsel, thus entitled for exclusion of time. He prayed for the preliminary objection to be overruled with costs.

In her brief rejoinder, Ms. Kasebwa found the appellant mainly relied on the case of **Amei Sadick Sanga** (supra). She however, distinguished the said case on the basis that the same centred on the application of Rule 90 (5) of the Court of Appeal Rules, which are not applicable in this Court or other subordinate courts/tribunals. That in the particular Rule, the Registrar is charged with the duty to ensure copies are ready for delivery within time and that a party should take steps to collect the copies after



being informed by the Registrar to do so. She had the view that such obligation is not charged on the Tribunal.

Having considered the arguments by the learned counsels I am of the view that the parties are not in dispute as to the dates the Tribunal judgment was delivered; the copies were certified; and the appeal was filed in this Court. The record as well clearly shows that the judgement was delivered on 17.11.2020. It is the same date the decree was issued as well. The record also shows that the copies of judgment and decree were certified on 27.07.2021. The appeal at hand was filed on 30.06.2022.

The law, as remarked by both counsels, provides for 45 days' time limit in filing appeals from the District Land and Housing Tribunal from the date of the decision appealed against. See: **section 41 (2) of the Land Disputes Courts Act, Cap 216 R.E. 2019**. The appellant's contention is to the effect that he filed the appeal after being supplied the copies of the decision on 18.05.2022. In his view, the computation of time should start on 18.05.2022 when he was availed the copies. His advocate submitted further that the appellant made a follow up on the copies of the decision by writing a letter to the Tribunal requesting for the copies on 09th March and 09th June 2021. It is obvious from the record that when the said letters, if any, were indeed written, the copies were not yet prepared for collection.

The law, under **section 19 (2) of the Law of Limitation Act, Cap 89 R.E. 2019** provides for exclusion of the time spent in waiting the copies of the decision sought to be impugned on appeal. In the circumstances, the contentious issue lies as to the time of reckoning. Mr. Africa contended



that the 45 days' limit should start to count on 18.05.2022 when he was availed the copies of the judgment and decree by the Tribunal. However, the law is settled that the date of reckoning in computation of time is the date the copies of judgment, decree or order were ready for collection. The copies are said to be ready for collection on the date the same are certified by the court/Tribunal and not the date when a party obtained or paid for the said copies. This position was settled by the Court of Appeal in the case of **Samuel Emmanuel Fulgence vs. The Republic**, Criminal Appeal No. 04 of 2018 (CAT at Mtwara, found at Tanzlii).

Considering the holding in the above cited case, I do not agree with Mr. Africa that time should be computed starting from 18.05.2022 when the appellant was availed copies of judgment and decree. The time is computed from 27.07.2021 when the copies of judgment and decree were certified by the Tribunal. Counting from this date, the time for filing the appeal elapsed on 10.09.2021. As said earlier, the appeal at hand was filed on 30.06.2022 whereby the appellant had delayed for 338 days. In my view, in consideration of the settled position in **Samuel Emmanuel Fulgence vs. The Republic** (supra), having noted, upon collection of the copies of the decision, that the same were certified on 27.07.2022, the appellant ought to have first applied for extension of time, explaining the reasons he has put forward in this appeal, to move the Court in granting him extension of time before lodging the appeal.

Given the above observation, I agree with the respondent's counsel that the appeal at hand was filed out of the prescribed time under the law. The question of time limitation touches the jurisdiction of the court

whereby courts are not seized with jurisdiction to entertain suits that are time barred. See: **Tanzania National Road Agency & The Hon. Attorney General vs. Jonas Kinyagula**, Civil Appeal No. 471 of 2020 (CAT at Kigoma, found at Tanzlii). In the premises, in accordance with **section 3 (1) of the Law of Limitation Act**, the appeal is hereby dismissed, with costs.

Dated at Mbeya on this 02nd day of December 2022.



Zellk
L. M. MONGELLA

JUDGE