

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(DODOMA DISTRICT REGISTRY)

AT DODOMA

MISC. LAND APPEAL NO. 23 OF 2022

(Arising from the Judgement and Decree in Land Appeal Case No.08 of 2019 before the District Land and Housing Tribunal for Iramba at Kiomboi, Original Land Case No.07 of 2018 before Kaselya Ward Tribunal)

**SHABAN JUMA KISONGA (As a Legal Representative of
the Estates of the Late PILI SELEMANI KIULA)APPELLANT**

VERSUS

**JUMANNE OMARY (As a Legal Representative of the
Estates of the Late OMARY MJANGE DUDU).....RESPONDENT**

RULING

15/11/2022 & 27/12/2022

MASAJU, J.

The Appellant, Shaban Juma Kisonga (the Administrator of the Estate of the late Pili Selemani Kiula), filed an appeal against the decision of the District Land and Housing Tribunal for Iramba at Kiomboi in Land Appeal No.08 of 2019 which was decided in favour of the Respondent, Jumanne Omary (the Administrator of the Estate of the late Omary Mjange Dudu).

In reply, the Respondent filed Reply to the Memorandum of Appeal against the appeal along with a notice of preliminary objection on two points of law, that;

i. The Appellant's appeal is hopelessly time barred.

ii. The Appellant's appeal is bad in law as it is not dated.

The preliminary points of law were heard in Court on the 18th day of October 2022 whereby both parties were unrepresented.

Submitting on the first point of law, the Respondent stated that the ruling by the Court (Kagomba, J.) gave 60 days for the Appellant to file his appeal counting from 28/03/2022. Instead, the Appellant filed the appeal on 27/05/2022 which is beyond 60 days. The Respondent, further contended that he was supplied with the ruling on the exact date. As regards the second point of law, the Respondent submitted in clarification, that the Memorandum of Appeal was not dated hence the appeal is bad in law. Lastly, he prayed that the Court be pleased to dismiss the appeal with costs because it is vexatious.

The Appellant disputed all the two preliminary points of law. Regarding the first point of law, he stated that they were not supplied with the copy of the ruling on the date the ruling was delivered (on 28/02/2022). He further alleged that he has not been served with the

said ruling until recently. On the second point of law, the Respondent admitted that his Memorandum of Appeal is not dated however he argued that such omission by him was triggered by the Chairman of trial Tribunal who was not cooperative and had in one way or the other frustrated his efforts of trying to pursue the appeal. Eventually, he requested the Court to dismiss the two points of law with costs as they are baseless.

In rejoinder, the Respondent briefly maintained his submissions in chief.

Apparently, the relevant record in Misc. Land Application No. 38 of 2020 depicts that on 28/03/2022 ruling was delivered in the absence of the Applicant (the Appellant herein). The said ruling granted the Appellant 60 days' time to lodge the appeal. Counting 60 days from 28/03/2022, the Appellant was obliged to file his appeal latest by 27/05/2022. Thus, reverting to the instant case, it is undisputed that the Appellant filed the appeal on 27/05/2022. In the premises, the first preliminary point of law that the appeal is hopelessly time barred is superfluous. At any rate, the timeline for the Appellant's filing the appeal is calculated from the day he was served or supplied with a copy of judgment and record of proceedings of the decision he seeks to appeal

against. Since the Appellant was lately supplied with the said legal documents, by the time he filed his Memorandum of Appeal before the Court, he was still within the timeline of lodging the appeal. This is so provided in section 19 of the Law of Limitation Act, [Cap 89 RE 2019].

The gist of the second preliminary point of objection by the Respondent is that the Memorandum of Appeal is not dated thus contrary to the law. Indeed, the Appellant did not insert the date he signed his Memorandum of Appeal but the said Memorandum of Appeal was filed, and signed by the trial tribunal registry officer on the 27th day of May, 2022 within the timeline of filing the appeal. Since the Memorandum of Appeal was signed by the Appellant and the same was duly filed in the trial tribunal within the timeline, the appeal is competent before the Court.

That said, the two preliminary points of objection raised by the Respondent are hereby overruled accordingly in their totality for want of merit. The Appellant is hereby allowed to insert a similar date as the one appearing in the Memorandum of Appeal as so filed. The parties shall bear their own costs.



GEORGE M. MASAJU

JUDGE

27/12/2022