

IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

LAND APPEAL No.30 OF 2019

(Arising from the judgment of the District Land and Housing Tribunal for Mwanza, at Mwanza, in Land Application No.258 of 2018, Phillip D -Chairperson, dated 15/03/2019)

ISAMILO PLAZA CO. LTD & ANOTHER.....APPELLANT

VERSUS

MWAJUMA MUSSA.....RESPONDENT

RULING

26th February, & 18th May, 2020.

TIGANGA, J.

This ruling is in respect of the preliminary objections raised by the counsel for the respondent challenging the competence of this appeal that has been lodged before this honourable court by the appellant. The gist of the preliminary objection is to effect that;

- i) The appeal is bad in law for being time barred,
- ii) The appeal is incompetent for including the appellant who is legally not allowed to appeal unless he takes necessary steps before appealing.

Counsel prayed that this appeal be dismissed with costs.

On the day set for this court to hear parties concerning the raised preliminary objections, the appellants were represented by the learned counsel Mr. Leonard whereas the respondents enjoyed the services of Mr. Edward, learned counsel.

The respondent's counsel, having been invited to submit in support of the preliminary objections that he raised, he contended, with respect to the first limb of objection, that this appeal has been filed out of time. He referred this court to section 41 of the amended Land Disputes Courts Act, Cap 216 R.E 2002; which stipulates the time limit for appeals originating from the District Land and Housing Tribunal to be within 45 days from the date of the judgment of the District Land and Housing Tribunal.

He contended further that, the impugned judgment was delivered on the 15th March, 2019 and the appeal was filed on the 9th May, 2019 which means it was filed after 57 days. Where time has expired the court has powers to extend time where the defaulting party files an application asking for extension of time and upon showing good cause for such delay. He then cited the case of **Eva Enos Magawa versus National Microfinance Bank**, Miscellaneous Civil Application No.1 of 2016 in which it was held that; it is only the court which can extend the time upon application. He prayed that this appeal be dismissed for being time barred.

Regarding the second ground of preliminary objection, in which the counsel's concern is on the competency of this appeal before this honourable court, he contended that it contains a party who is not allowed to appeal unless he takes the necessary action. He claimed that the second appellant was supposed to set aside the *ex parte* judgment passed

against him before he could appeal. He lastly prayed that this appeal be dismissed with costs.

Submitting in reply to the preliminary objections, the counsel for the applicant stated that when computing time, he appreciated the provisions of section 41 of the Land Dispute Courts Act (supra) but that the same has to be read together with section 19 (1) (2) and (3) of the Law of Limitation Act, Cap 89 R.E 2002, which states that when appealing from a judgment, the period of time for obtaining the copy of the decree or judgment shall be excluded.

The counsel stated further that, he applied to be supplied with the copies of judgment and decree on 20th March, 2019 but was supplied with the same on 25th April, 2019. This appeal was then filed on 9th May, 2019 which took him only 14 days from the date he was supplied with the required copies of proceedings, judgment and decree. He therefore concluded that the appeal was filed within time, after the waiting period is excluded.

Submitting in response to the second ground of objection, counsel for the appellants claimed that, this objection does not qualify to be called a preliminary objection. He contended that the way the objection has been raised cannot in any way dispose of the appeal, since no law has been infringed. He concluded by stating that the objection is meant to abuse court process and so has to be dismissed with costs.

In his brief rejoinder, counsel for the respondent submitted that all that has been stated by the counsel for the appellant, about why he was late in filing the appeal, ought to have been stated in the application for extension of time and tested by the court. It was his submission further

that, what he was supposed to do, was to apply for the extension of time for the court could not dream that he failed to get the copies in time. He reiterated his submission that, section 41 provides clearly that the period within which to appeal is 45 days and thus section 19 of the Law of Limitation Act cannot be used as a shield in the circumstances of this case.

The law which is alleged to be violated is section 41(2) of the Land Disputes Courts Act Cap 216 RE 2002 as amended by written laws Misc. Amendment (No.2) Act No.7 of 2016 which provides that,

"(2) An appeal under subsection (1) may be lodged within forty five days after the date of the decision or order: Provided that, the High Court may, for good cause, extend the time for filing an appeal either before or after the expiration of such period of forty five days."

Having heard and considered submissions from counsel for both parties, I think the main issue for determination in the first limb of preliminary objection, is whether this appeal is time barred. There is no dispute that the appeal at hand was filed after 45 days had expired, as that fact has been conceded to by the counsel for the appellants that this appeal was lodged after the expiry of the 45 days as required by the law cited above. However, the counsel for the applicant submitted that although the application was filed out of 45 days, yet still it was filed within time as counting from when the appellant was supplied with the copy of the judgment proceedings and decree, which were supplied on 25th April, 2019 and when he filed the appeal on 9th May 20019 he spent only 14 days to prepare and file the appeal. He asked the invocation of section 19 of the Law of Limitation Act (supra) to exclude all days in which

he was awaiting for the copy of the judgment and proceedings. He prayed the court to find that the appeal was within time. Now having heard and considered the laws cited by the counsel for the parties, I am convinced by the arguments by the respondent that the provision of section 41 is self-explanatory that whoever wants to appeal to the High Court from the decision of the District Land and Housing Tribunal needs to do so within 45 days. If he fails so to do, he must first ask for extension of time which he will be entitled after giving good cause for delay.

This means the reasons of not being supplied with the copies in time are expected to be the reasons for extension of time. Now since the appellant did not first apply for and obtain an order for extension of time, then I remain with no other choice than to join hands with the counsel for the respondent that this appeal is indeed time barred.

The Court of Appeal of Tanzania, in the case of **Bank of Tanzania vs Saida Marinda and 30 others**, Civil Reference No.3 of 2014 (unreported) when faced and considered an application by a party who had not applied for and obtained extension of time, had this to say;

"...because the applicant was late to do so for whatever reasons, she ought to have first applied for extension of time. It is proper that she should tell the court why she delayed in making the application."

Gathering from the above quoted principle that where a party to a suit fails, for whatever reason, to file his/her appeal, revision or review as the case may be, within the prescribed time, then he/she must first apply for and obtain extension of time to do so.

Having said so, I determine the first limb of objection affirmatively, that this appeal before me is time barred. Since the first limb has disposed the appeal, will not deal with the second limb, as dealing with it will be of no value but just an academic exercise which for the interest of time I will not be in the position to endeavour into.

Since the only remedy for any matter which is time barred, as per the provision of section 3 of the Law of Limitation Act (supra), is to dismiss the same, then I dismiss this appeal for being time barred under the above mentioned section. The respondent is entitled to the costs.

It is so ordered.

DATED at MWANZA this 18th day of May, 2020.




J.C. Tiganga

Judge

18/05/2020