

TANZANIA / JUDGMENT

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THE UNITED REPUBLIC OF TANZANIA (JUDICIARY) THE HIGH COURT (MUSOMA SUB
REGISTRY AT MUSOMA) LAND APPEAL No. 18778 of 2024 (Arising from the District Land and
Housing Tribunal for Mara at Musoma in Land Application No. 69 of 2023) JOHN ONDIEK
NYAKUYA..... APPELLANT Versus TUMAINI STANSLAUS
SANGO.....RESPONDENT

RULING

07.10.2024 & 07.10.2024 Mtulya, J.: This appeal was scheduled today for necessary orders. However, before any order was issued, Mr. Dioniz Lubango, learned counsel for Mr. Tumaini Stanslaus Sango (the respondent) had raised up and registered three (3) points of law in protest of hearing of the appeal. In his opinion, the points must be resolved before further proceedings could be recorded. The points, in brief show that: first, the appeal is fatally defective for offending the provisions of Order XXXIX Rule 9 of the Civil Procedure Code [Cap. 33 R.E. 2019] (the Civil Code); second, the appeal is time barred; and finally, the appeal introduces new issues at the appellate level. In his five (5) minutes brief submission in favor of the points, Mr. Lubango submitted that i he noted the legal faults which go to the root of the matter which render the appeal to be incompetent. Regarding the first protest, Mr. Lubango submitted that he has perused the memorandum of appeal and found four (4) issues which violate the provisions of Order XXXIX Rule 1 and 9 of the Civil Procedure Code. Mr. Lubango then cited want of proper officer of this court to: sign memorandum of appeal; stamp court seal in the memorandum of appeal; indicate date of receipt of the memorandum of appeal; and indicate appeal case number in the memorandum of appeal. However, in his opinion, the current electronic memorandum of appeal lacks all the cited necessary prerequisites of a proper memorandum of appeal. According to him, the newly introduced electronic filing system in the Judiciary has not waived the requirements of the law in Civil Procedure Code. Mr. Lubango contended further that the documents as they are on the record cannot assist this court to ascertain exactly filing date of the memorandum of appeal hence the appeal may be assumed to have been filed out of the statutory time. In his view, if this practice is allowed by this court, it may lead to parties in disputes to serve and receive other documents than court documents. In the last point of protest, Mr. Lubango has decided to 2 decline the same for want of determination during the hearing of the main appeal, if the points of objection are overruled. According to him, the last point invites scrutiny of the record of appeal, which is substantive part of the appeal. In replying the dual

protests, the appellant, who had appeared himself without any legal representation, submitted that the memorandum of appeal had complied with all the requirements of the cited laws, including signature of the court official, court seal, date of receipt of the memorandum of appeal and case number. The appellant submitted further that he did not commit any wrong in filing the documents electronically, and if there is any wrong, it may be attributed by court officials and their forgeries. On the second protest, the appellant submitted that he filed the present appeal in electronic case filing system in July 2024 immediately after delivery of the decision of the district tribunal in June 2024 hence he is within time of filing appeals in this court, and in any case, court officials had remained mute to signify that the memorandum of appeal was properly lodged in this court. I have gone through the electronic record of the instant appeal, enactment Order XXXIX Rule 9 of the Civil Code, section 41

- (2) of the Land Disputes Courts Act [Cap. 216 R.E.2019] (the Act) and Rule 21 (1) of the Judicature and Application of Laws 3 (Electronic Filing) Rules, 2018 GN. No. 148 of 2018 (the Rules), and noted a bundle of legal issues and their associated replies. The record shows that the District Land and Housing Tribunal for Mara at Tarime (the district tribunal) in Land Application No. 69 of 2023 (the application) had issued its decision on 12th June 2024, certified its necessary documents of the application for collection on 26th June 2024 and the appellant had submitted his memorandum of appeal in this court on 26th July 2024. In brief, the applicant had lodged the instant appeal in this court within forty-four (44) days from when the decision of the district tribunal was issued, hence the applicant is saved by the provisions of section 41 (2) of the Act, which provides for forty-five
- (45) days of preferring appeals from the decision of the district court to this court. In such circumstances, the appellant cannot be said he filed the present appeal out of time. Similarly, I have read the provisions of Rule 21 (1) of the Rules. The indicated rule reads/ a document shall be considered to have been filed if it is submitted through the electronic system. In brief, the rule recognizes submitting documents in electronic filing system of the Judiciary and considers the document to have been properly lodged in court. The Rule is silent on the status of Order XXXIX Rule 9 of the Civil Code. However, rule 3 and 22 of the Rules 4 replies some issues raised by Mr. Lubango. They provide for the meaning of electronic filing and computation of time. In my considered opinion, I think, we are in an era where sciences are taking their courses, at a very high speed. Any person who is lagging behind in sciences or cites traditional laws may be at detrimental. The indicated Rule 9 of Order XXXIX of the Civil Code is not yet amended, but captured by rule 21 of the Rules. In any case, Rule 9 of Order XXXIX is not favorable at the moment, and learned minds may be aligned to the newly introduced sciences in the Judiciary. Having said so, and considering interest of justice, speed trials and want for substantive justice, I decline arguments produced by Mr. Lubango in favor of the appeal hearing. In the end, I overrule the two (2) registered protests and order the appeal to proceed for hearing. I do so without costs as the appeal is still on the course to resolve the rights of the parties. 07.10.2024 5 This Ruling was delivered in Chambers under the Seal of this court in the presence of the appellant, Mr. John Ondiek Nyakuya and Mr. Dioniz Lubango, learned counsel for the respondent. — — ; f F 's

■=- F.H. Mtulya Judge 07.10.2024. 6

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