

TANZANIA / JUDGMENT

KAWAWA MLONGA

COURT
TANZLIIDECIDED
31 October 2024

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IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA DODOMA DISTRICT REGISTRY AT
DODOMA LAND APPEAL NO. 14931 OF 2024 KAWAWA MLONGA.....
APPELLANT VERSUS MOSEDESTA ROBERT SAMBAI.....
RESPONDENT

RULING

Last Order: 31st October 2024. Date of Ruling: 22nd November 2024. MASABO, J:- This is an appeal from Land Application No. 120 of 2022. Briefly, the background of the appeal is as follows. The respondent filed an application against the applicant before the District Land and Housing Tribunal of Dodoma (the trial tribunal) praying for: a declaratory order that he is the legal owner of the suit land located at Nzuguni "A" street, Nzuguni Ward within the City Council of Dodoma; an order for demolition of a building unlawfully constructed by the appellant in the suit land; general damages to the tune of Tshs. 5,000,000/=; a permanent injunction against the appellant, his agents or other persons acting on his behalf; costs of the suit and any other reliefs that the tribunal could have found fit and just to grant. The respondent emerged successful after the trial tribunal found him to be the lawful owner of the suit land. Aggrieved by that decision, the appellants decided to file the instant appeal on six grounds of appeal. On 7th August 2024, the respondent lodged a notice of preliminary objection to the effect that the appeal is time barred. The objection was heard by way of written Page 1 of 5 submissions. The submission by the respondent was drawn and filed by Mr. Ayubu Sudayi, learned Advocate whereas the reply submission was filed by Ms. Jane Nkya, learned Advocate as well. Supporting the preliminary objection, Mr. Sudayi submitted that, as per section 41(2) of the Land Disputes Courts Act, Cap 216 R.E 2019, the appellant being aggrieved by the decision of the trial tribunal had forty-five

(45) days within which to lodge his appeal to this court. The impugned decision was delivered on 6th May 2024 but the instant appeal was filed electronically on 25th June 2024. Counting the time interval between these two dates, it is crystal clear that the present appeal was filed after 50 days had lapsed and it is, therefore, time barred. In reply, Ms. Nkya submitted that the appeal is well in time. It was filed electronically on 20th June 2024 which is within the prescribed time of forty- five days and not on 25th June 2024. She added that the appeal was manually filed in the court registry on 18th June 2024 but due to technological problems, the same was filed electronically on 20th June 2024 which was still well within the time limit set

out under section 41(2) of the Land Disputes Courts Act, Cap 216 R. E 2019. In the alternative, it was argued that the delay if any, was not caused by the appellant but rather the system. Hence excusable as it was held in the case of MW Miller Ltd vs. Mwasa Security Limited Civil Appeal No. 10 of 2022 [2022]TZHC 12118 TanzLII and the case of Maselino B. Mbipi vs Ostina Hyera Misc. Civil Application No. 08 of 2022 [2022] TZHC 14256 TanzLII, Josia Zephania Warioba vs Bouygues Energies & Services Miscellaneous Labour Application No. 28 Page 2 of 5 of 2021 [2022] TZHC 24 TanzLII and the case of Mohamed Hashil vs National Microfinance Bank Ltd (NMB) Revision No. 106 of 2020 [2020] TZHCLD 3789 TanzLII. It was submitted in further alternative that the appellant was supplied with a copy of the judgment on 9th May 2024 and as per section 19(1) (2) of the Law of Limitation Act Cap. 89, R.E. 2019 such time is excusable as it provides for the exclusion of the days spent in obtaining a copy of judgment and decree. Therefore, the time limitation should be counted from 9th May 2024 when the appellant was supplied with copies of the judgment and decree. It was argued further that, 17th June 2014 be excluded from the computation as it was a public holiday (Eid Al Adha). Moreover, it was submitted that section 41(2) of the Land Disputes Courts Act does not mandatorily require the appellant to file the appeal within 45 days as the word used in that section is "may" which as per section 53(1) of the Laws Interpretation of Laws Act means optional. The learned counsel also cited section 60(1) of the Laws of Interpretation Act in fortification of her alternative argument that in computing the time for delay, the day on which the decision or order was delivered should be excluded. In conclusion, it was submitted that and prayed the preliminary objection has no merit and should be overruled. That is all from the parties. On my side, I have carefully read and considered the arguments for and against the preliminary objection as advanced by the respective parties. The issue for determination is whether the appeal is time barred. This being a Page 3 of 5 land matter, it is subject to the limitation periods stipulated under the Land Courts Disputes Act, Cap 216 RE 2019. As per section 41 (1) and (2) of this Act, the time limitation for appealing from the District Land and Housing Tribunal to the High Court is 45 days after the date of the judgment. According to the record, the impugned judgment was delivered on 6th May

2024. Undisputedly, the time limitation reckoned from 7th May 2024 lapsed on 20th June 2024. The appellant has contended that the appeal was filed electronically on 20th June 2024. As per rules 21 and 22 of Judicature and Application of Laws (Electronic Filing) Rules, 2018 which govern electronic filing:- "21 (1) A document shall be considered to have been filed if it is submitted through the electronic filing system before midnight, east Africa time, on the date it is submitted, unless specific time is set by the Court or it is rejected". "22 (a) where a document is filed with, serve on, delivered or otherwise conveyed to the Registrar or Magistrate in charge using the electronic filing service and is subsequently accepted by the Registrar or Magistrate in charge, it shall be deemed to be filed, served delivered or conveyed". Since the parties were at loggerheads on the date of filing, I had time to go through the Judiciary's Electronic Case Management System (eCMS) to ascertain the actual date of filing. The system shows that the appeal was submitted on 20th June 2024 and it was

admitted on the same date. Hence not time-barred. Page 4 of 5 Accordingly, the preliminary objection fails and it is overruled with costs. DATED and DELIVERED at Dodoma this 22nd day of November 2024 J. L. MASABO JUDGE Page 5 of 5

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