

TANZANIA / JUDGMENT

secilia vs timorh

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA THE SUB- REGISTRY OF
MWANZA AT MWANZA LAND APPEAL NO. 3450 OF 2024 (Originating from Land Case No. 19 of
2023) SECILIA MARTIN ----- APPLICANT VERSUS TIMOTHY M.
MTHIGA -----RESPONDENT

JUDGEMENT

6th and 21st May 2024. CHUMA, J. Aggrieved by the decision of the District Land and Housing Tribunal of Mwanza (hereinafter the DLHT) in Land Appeal No.19 of 2023 dated 24 January 2024 the appellant preferred this appeal. In this appeal, she advanced only one ground of appeal that the DLHT erred in law to hold that the Land Appeal No. 19/2023 was filed out of time. Briefly, the respondent through Land Case No. 3 of 2019, sued the appellant before the Bulemeji Ward Tribunal for recovery of land located at Ngudama village of Bulemeji Ward, Misungwi District. It was alleged that the respondent herein bought the land from the appellant worth Tshs 1,800,000/- and paid a down payment of Tshs 1,650,000/- when he was 1 on a move to pay the outstanding balance of Tshs. 150,000/= he realized that the Appellant had sold the land to another person. The respondent then asked the Appellant to return his money at the meeting held before the Village Chairman of Ngudama. The appellant promised to repay the money in three installments and that by 2018 the money ought to have been completely repaid. The appellant failed to honor his promise hence the respondent sued for recovery of land. The ward tribunal ruled in favor of the respondent. The respondent further applied for execution of the ward tribunal judgment before the DLHT (Misc. Application No. 154 of 2020). On his path respondent applied for an extension of time to file an appeal against the judgment of the ward tribunal through Misc. Application No. 32 of 2021. He was extended with a time to file an appeal within 14 days from 26/05/2023. By the order of the DLHT then the appellant amended her petition of appeal and filed on 19/7/2023. The DLHT dismissed the appeal for being filed out of time hence this appeal. Before me for hearing, the appellant was represented by Mr. Steven Makwega while the respondent fended for himself. It was the submission of Mr. Makwega that, according to the record of DLHT dated 13/7/2023, advocate Kundi for the appellant prayed to amend the petition of appeal and 2 was allowed. The amended petition was filed on 19/7/2023 and served to the adverse party on 20/7/2023. Therefore the appeal was filed within time. He said further that, the trial DLHT records indicate that the appeal was out of time for 27 days. But on their side, the appeal was within the prescribed time as the appellant was allowed to amend his petition. Therefore, he prayed for the appeal to be

allowed with no order as to cost because it was the fault of DLHT. In reply, the respondent contested the appeal on the ground that the decision of DLHT was right in holding that the appeal was out of time because the decision of the Bulemeji Ward Tribunal was delivered on 6/3/2020 followed by the application for execution on 8/11/2020. He further said that the ward tribunal decided the matter on 16/2/2021 and the appellant filed an application for extension of time which was allowed on 26/5/2023 however no appeal was lodged promptly rather than filed on 23/6/2023 which was out of time. He accordingly urged for this appeal to be dismissed for want of merit. I have given due consideration to submissions by both parties for and against this appeal and the issue before this court for determination is 3 whether the appeal has merit basing on two sub issues one whether court's order issued on 26/5/2023 was complied with by the appellant, If not what are the consequences. Starting with the first issue on whether the court's order was adhered to by the appellant it is on record that parties are all in agreement that the DLHT ordered the appellant to file his appeal within 14 days from 26/5/2023. It is also not in dispute that the appellant filed his appeal on 23/6/2023 which was 27 days thereafter. According to Mr. Makwega learned counsel, the matter was filed within the time for the sole reason that Advocate Kundi for the appellant was allowed to amend the filed petition. With due respect, I disassociate with that reasoning because in my view allowing amendment does not do away with the obligation to adhere with court order and is not a shield to pleadings filed out of time without the leave of the court. The amendment cannot change the fact that the appeal was filed on 23/6/2023. It is settled legal position that, a party who knows existence of an order of the Court is duty bound to obey it. This position was decided in the case of 4 John Mwansasu v Republic, Criminal Review Case No. 8 of 2000, where the court stated that: "A courts order is lawful unless it is invalidated by another superior order, and therefore it must be obeyed. Contrary view will have the undesired effect of creating an impasse in the conduct of the t r i a l s" This legal position was as well stated in the case of Micky Gilead Ndetura vs. Exim Bank (T) Limited, Commercial Case No. 04 of 2014 (unreported) the court held on page 4 that; "court orders must be respected and complied with and the court should always exercise firm control over proceedings and not condone failures by a party to respect and comply with courts orders otherwise it will invite chaos in the court administration of justice. From the above analysis the court's order issued on 26/5/2023 was not complied by the appellant without the leave of the court. Having found so what are the quencequences for non compliance to a court order? In the case of Tanzania Harbours Authority Vs. Mohamed R. Mohamed

(2002) TLR 76 the court held that: 5 The court is duty bound to make sure that the rules of court are observed strictly and cannot aid any party who deliberately commits lapses" Like wise in the case of P3525 Lt Col. Idahya Maganga Gregory Versus The Judge Advocate General Court Martial CRIMINAL Appeal No. 4 of 2002 the court had the following to say: "Court orders are binding and are meant to be implemented. They must be obeyed, if such orders are disrespected the system of justice wiii be rendered useless and it will create chaotic that everyone will decide to do anything that is convenient to him." Under section 3 of the Law of Limitation Act Cap 89 R.E 2019 matters filed out of time shall be dismissed. Further reference is made to the case of Hashim Madongo & 2 Others vs. Minister for Industry and

Trade & 2 Others, Civil Appeal No. 27 of 2003; and Camel Oil (T) LTD Vs Bahati Moshi Masabile & Another, Civil Appeal No. 46/2020 (both unreported) “...The Court has pronounced itself in numerous cases involving time bar. For instance, in the case of Hezron M. Nyachiya v. Tanzania Union of 6 Industrial and Commercial Workers and Another, Civil Appeal No. 79 of 2001 (unreported), the Court emphasized that under section 3 (1) of the Law of Limitation Act, the consequences for any proceedings instituted out of time without leave of the court is dismissal whether or not limitation has been set up as a defence. Having said so and guided by the the above highlighted principles and case laws I agree with the stance of the respondent that this appeal was correctly dismissed by the DLHT for being filed out of time without court leave. The appeal therefore devoid of merit, I dismiss it with costs. DATED at MWANZA this 21st day of May, 2024 W.M.Chuma Judge Judgment delivered before Mr.Y Michael for the appellant Secilia Martin and the respondent Mr.Timoth Mtinga this 21st /05/2024. W.M.Chuma Judge 7

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