

**IN THE COURT OF APPEAL OF TANZANIA**

**AT DAR ES SALAAM**

**(CORAM: MWAMBEGELE, J.A., MAIGE, J.A., And MDEMÜ, J.A.)**

**CIVIL APPEAL NO. 248 OF 2020**

**KABULA AZARIA NG'ONDI**

**ADIEL KUNDASENY MUSHI**

**NEEMA ADIEL MUSHI**

**RENALDA PAUL MEELA (Administratrix of  
the Estate of SIMON PAUL MEELA)**

..... **APPELLANTS**

**VERSUS**

**MARIA FRANCIS ZUMBA**

**MSOLOPA INVESTMENTS LIMITED] ..... RESPONDENT**

**[Appeal from the Ruling of the High Court of Tanzania (Land Division)  
at Dar es Salaam]**

**(Maghimbi, J.)**

**dated the 26<sup>th</sup> day of September, 2018**

**in**

**Miscellaneous Land Application No. 119 of 2018**

.....

**JUDGMENT OF THE COURT**

12<sup>th</sup> February & 15<sup>th</sup> April, 2024

**MWAMBEGELE, J.A.:**

This appeal traces its origin from the Ruling and Order of the High Court of Tanzania, Land Division (Maghimbi, J.) dated 26<sup>th</sup> September, 2018 in Miscellaneous Land Application No. 119 of 2018. We may state a brief background to that application. The first respondent, Maria Francis Zumba,

had successfully instituted Land Case No. 95 of 2012 in the High Court of Tanzania (Land Division) against persons not parties to this appeal, in which she claimed ownership over an unsurveyed parcel of land measuring twenty-five hectares located at Mapinga village, within the Bagamoyo District of Coast Region. The first respondent was declared the lawful owner of the disputed parcel of land and all the defendants in that suit, who appeared to have trespassed into the that land, were ordered to give vacant possession. In execution of that decree, M/S Igalula Auction Mart and Court Broker (Igalula Auction Mart) was appointed to evict the judgment debtors.

The appellants were not judgment debtors but during the execution of the decree, they were served with notices of eviction, anyway. On 15<sup>th</sup> August, 2017, the appellants filed Miscellaneous Land Application No. 696 of 2017 by way of objection proceedings against the first respondent and the said Igalula Auction Mart who was impleaded as second respondent. However, that application was struck out on 20<sup>th</sup> October, 2017 for wrong citation of enabling provisions of the law. Undeterred, the appellants filed another application against the same respondents; Miscellaneous Land Application No. 932 of 2017. That application was also struck out on 19<sup>th</sup> February, 2018 for being time barred.

On 27<sup>th</sup> February, 2018, the second respondent, Msolopa Investment Limited, commenced another execution process. She wrote a notice (which appears at p. 19 through to 20 of the record of appeal) addressed to the first three appellants seeking to evict them from their homes and their buildings were marked to be demolished within a fortnight of the notice. In that process, though not in the notice, the fourth appellant's building was also marked to be demolished. On 9<sup>th</sup> March, 2018, the appellants lodged Miscellaneous Land Application No. 119 of 2018 against the respondents seeking to object the execution process filed by the second respondent. During the hearing of the objection proceedings, the first respondent raised a preliminary objection on points of law, amongst others, that the application was hopelessly time barred. On 26<sup>th</sup> September, 2018, the High Court, sustained the preliminary point of objection observing that the application had been filed beyond the prescribed period of sixty days and thus proceeded to dismiss it with costs. The appellants were aggrieved by the dismissal order. They thus preferred this appeal.

The memorandum of appeal has five grounds. One of the grounds faults the High Court for dismissing the application on the ground that it was time barred while the same was filed within fourteen days of the notice of

execution. The appellants have other grounds of appeal but for reasons that will come to light shortly, we shall not make any determination on them.

At the hearing of the appeal, the appellants were represented by Mr. Francis Stolla, learned advocate. The first respondent had the services of Ms. Regina Herman, also learned advocate. The second respondent was served by publication through the Daily News and Nipashe Newspapers of 23<sup>rd</sup> January, 2024 but defaulted appearance. The appeal was thus ordered to proceed against him in terms of rule 112 (2) of the Tanzania Court of Appeal Rules, 2009.

As already stated above, in the ground above, the High Court is challenged for dismissing Miscellaneous Land Application No. 119 of 2018 on account that it was time-barred while in fact it was filed within fourteen days of the notice on the appellants. Mr. Stolla argued that the appellants were not parties to the suit the subject of eviction and that they heard it from the second respondent. The appellants' counsel challenges the eviction notice that it was invalid because; **first**, the second respondent was never appointed by the court to carry out the eviction process; **secondly**, the appellants are not decree debtors as they were not parties to the suit whose decree was being executed; and, the appellants were not given the right to

be heard; that is, to show cause why the decree should not be executed against them. The appellants' counsel thus submitted that Miscellaneous Land Application No. 119 of 2018 could not be time barred against the invalid notice of execution and therefore the High Court erred in holding so.

Responding, Ms. Herman submitted that since the appellants were served with the notice of eviction on 27<sup>th</sup> February, 2018, the appellants filed the application on 16<sup>th</sup> March, 2018 which was beyond sixty days prescribed by the law. The High Court, she argued, did not err in holding that the application was filed hopelessly out of the prescribed period of limitation. She implored us to dismiss this ground of appeal.

Rejoining, Mr. Stolla argued that it was Igalula Auction Mart who was in charge of the execution process. The second respondent came in later and without any power from the court. He contended that, it is surprising where did the second respondent get the powers and the names of the appellants but all the same, she issued the notice of eviction afresh. If anything, he argued, the appellants spent twenty-seven days only in filing the application less than the prescribed sixty days.

After hearing rival arguments from counsel for the parties, it is not disputed that the notice of eviction by the second respondent was served on

the first three appellants on 27<sup>th</sup> February, 2018 requiring them to vacate within a fortnight, after which their buildings would be demolished and the buildings were accordingly so marked. It is also not disputed that the fourth appellant's resident was included in the threat for such demolition and was also so marked. The record also bears out that the application subject of this appeal was lodged on 9<sup>th</sup> March, 2018. It is equally undisputed that the appellants were aware of the previous order against them through Igalula Auction Mart who served them with the Eviction Notice on 7<sup>th</sup> August, 2017. Furthermore, there is no dispute that the appellants lodged two objection proceedings applications against the first respondent and the said Igalula Auction Mart which collapsed on technical grounds. After some time after the collapse, the record shows that nothing went on until the second respondent resurfaced with the notice the subject of the objection proceedings from which this appeal stems. For easy reference, we reproduce the notice by the second respondent which appears at p. 19 of the record:

"27/02/2018

**EXECUTION NO. 1 OF 2017**

**(ORIGINATING IN LAND CASE NO. 95 OF 2012)**

**MARIA FRANCIS ZUMBA .....MDAI**

**DHIDI YA**

**KABULA AZARIA NG'ONDI .....1 MDAIWA**

**ADIEL KUNDASENYI MUSHI .....2 MDAIWA**

**NEEMA ADIEL MUSHI .....3 MDAIWA**

**YAH: KUKUONDOA KATIKA SHAMBA LILIPO KIJIKI CHA KIMERE**

**KATA YA MAPINGA WILAYA YA BAGAMOYO MKOA WA PWANI**

Husika na kichwa cha habari hapo juu.

Tarehe 19/07/2017 Mahakama Kuu ya Tanzania, Divisheni ya Ardhi iliniamuru kukuondoa katika Shamba lililopo Kijiki cha Kimere Kata ya Mapinga Wilaya ya Bagamoyo Mkoa Pwani.

Hivyo kwa taarifa (notisi) hii nakupa siku kumi na nne (14) uwe umetoka katika Shamba hilo pamoja na yeyote aliyomo kwenye Shamba tajwa hapo juu toka siku upatapo taarifa (notisi) hii.

Usipotoka ndani na siku hizo kumi na nne (14) hatua za kisheria zitachukuliwa dhidi yako ikiwa pamoja na kutolewa kwa nguvu kwenye Shamba hilo.

Naambatanisha nakala ya amri ya Mahakama Kuu ya Tanzania, Divisheni ya Ardhi (eviction order).

Sgd:

**I. M. MSOLOPA**

**DALALI WA MAHAKAMA"**

The Notice is in Kiswahili language but for the benefit of those who do not understand the language, it is authored by the Court Broker and simply cites the first respondent as the Decree Holder and the first, second and third respondent as the Judgment Debtors in Execution No. 1 of 2017 and notified the latter that they should vacate the disputed land situate at Kimere Village, Mapinga Ward in Bagamoyo District, Coast Region. The Notice gives the Judgment Debtor fourteen days within which to comply with the court order short of which they would be forcibly evicted.

The eviction order under reference appears at p. 33 of the record of appeal. It reads:

**"IN THE HIGH COURT OF TANZANIA  
(LAND DIVISION)  
AT DAR ES SALAAM  
EXECUTION NO. 1 OF 2017  
(ORIGINATING IN LAND CASE NO. 95 OF 2012)  
MARIA FRANCIS ZUMBA ... APPLICANT/DECREE HOLDER  
VERSUS  
ABDALLAH MAGANGA ..... 1<sup>ST</sup> RESPONDENT/J/DEBTOR  
SARAH TODOLI ..... 2<sup>ND</sup> RESPONDENT/J/DEBTOR  
MIRAJI NASORO ..... 3<sup>RD</sup> RESPONDENT/J/ DEBTOR  
HAMIS KIDOGOLI ..... 4<sup>TH</sup> RESPONDENT/J/DEBTOR  
ALHAJI MSHANA ..... 5<sup>TH</sup> RESPONDENT/J/DEBTOR**

To: MWAMVUA KIGULU t/a,  
Igalula Auction Mart and Court Broker,  
**DAR ES SALAAM.**

**EVICTON ORDER**

As per this Court's Decree dated 23<sup>rd</sup> day of September, 2016 (Hon. S. A. N. Wambura, J.), the Decree Holder won the case against the above listed Judgement Debtors in respect of the land particulars of which are herein below.

**AND WHEREAS**, this court on 19<sup>th</sup> July, 2017 ordered that execution process should proceed as decreed by the court.

**NOW THEREFORE**, you, the said MWAMVUA KIGULU t/a Igalula Auction Mart and Court Broker, are directed to proceed with execution of the decree by:

- (i) Evicting the Defendants/Judgment debtors listed above by force forthwith from the suit premises below:
  - Property: A ten acres farm located at Kimere Village, Mapinga ward within Bagamoyo District, in Coast Region.



And over the said farm to the Decree Holder: MARIA FRANCIS ZUMBA.

You are further commanded to return this warrant on or before 30<sup>th</sup> August, 2017 showing the manner in which this order has been executed or failed to be executed.

GIVEN under my hand and the seal of this court this 19<sup>th</sup> day of July, 2017.

**Sgd:**

**J. C. Tiganga**

**DEPUTY REGISTRAR**

**HIGH COURT OF TANZANIA - LAND"**

What we note from the above is that; **one**, the second appellant was not ordered to vacate the respondents but one Mwamvua Kigulu t/a Igalula Auction Mart and Court Brokers; **two**, the appellants were not judgment debtors in that decree; **three**, the judgment debtors were ordered to vacate from "A ten acre farm located at Kimere village, Mapinga Ward within Bagamoyo District, in Coast Region". It is not clear if the land under reference in the eviction order at p. 33 of the record of appeal is the same land under reference in the eviction notice by the second respondent.

Be it as it may, the High Court, at p. 104 of the record of appeal, was of the view that time started to run against the appellants when they filed Miscellaneous Land Application No. 696 of 2017. With unfeigned respect, we do not share that view. This is so because, in terms of the provisions of section 4 the Law of Limitation Act, Cap. 89 of the Laws of Tanzania

(henceforth the Law of Limitation Act), the period of limitation in relation to any proceeding commences from the date on which the right of action for such proceeding accrues. Likewise, by virtue of section 5 of the same Act, the right of action in respect of any proceeding, accrues on the date on which the cause of action arises. The question that pops up at this juncture is; when did the right to sue the respondents accrue? We are afraid we are hesitant to go along with the High Court that it accrued when Miscellaneous Land Application No. 696 of 2017 was filed. If anything, we respectfully think, such right accrued against the first respondent and Igalula Auction Mart when they were served with the notice to vacate by the said Igalula Auction Mart in respect the cause of action against the first respondent and Igalula Auction Mart. However, for reasons stated above that after the objection proceedings against the first respondent and Igalula Auction Mart ended on technicalities and the process seemed to halt, and consequently, the second respondent commenced the execution process afresh while she was not directed to so execute as claimed, coupled with the fact that the appellants were not judgment debtors in the eviction order sought to be executed, and also that it is not clear if the land in the decree sought to be executed is the same land occupied by the appellants, we are doubtful if time would, in the circumstances, be reckoned from when the appellants

were served with the notice to vacate by Igalula Auction Mart. On the contrary, it is our view that, in respect of the cause of action as against the respondents herein, time started to run against them when they were served with a notice to vacate and given a dateline by the second respondent. In the circumstances, pegging the limitation period on the previous service by Igalula Auction Mart, who is not a party to this application, will leave justice with a gloomy face.

Flowing from the above, as the appellants were served with the notice by the second respondent on 27<sup>th</sup> February, 2018 and filed the application subject of this appeal on 9<sup>th</sup> March, 2018, they were within the time prescribed by item 21 to Part III of the schedule to the Law of Limitation Act, given that Order XXI rule 57 of the CPC which governs objection proceedings does not prescribe any time limit within which to file such applications.

The upshot of the above is that we find merit in the third ground of appeal and hold that the appellants were not time barred when they lodged the objection proceedings which were dismissed by the High Court. The High Court therefore slipped into error in so holding. In the premises, we vacate the order of the High Court dated 26<sup>th</sup> day of September, 2018

dismissing Miscellaneous Land Application No. 119 of 2018. This ground alone suffices to dispose of this appeal. The matter shall be remitted to the High Court for continuation of hearing on its merits.

The appeal is allowed with costs.

**DATED at DAR ES SALAAM this 9<sup>th</sup> day of April, 2024.**

J. C. M. MWAMBEGELE  
**JUSTICE OF APPEAL**

I. J. MAIGE  
**JUSTICE OF APPEAL**

G. J. MDEMU  
**JUSTICE OF APPEAL**

The Judgment delivered this 15<sup>th</sup> day of April, 2024 in the presence of Mr. Peter Nyangi, learned counsel for the Appellants also holding brief for Ms. Regina Helman, learned counsel for the 1<sup>st</sup> Respondent and in the absence of 2<sup>nd</sup> Respondent is hereby certified as a true copy of the original.



  
J. J. KAMALA  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**