

FIMBO GUGA APPLICANT

VERSUS

FIMBO KANUDA RESPONDENT

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misunderstandings, and that the appellant did not know the properties of the estate which he was applying to administer. The applicant did not know the properties of the deceased at Ng'alita and Dutwa villages.

The trial Court further observed that the clan members were fueling the disputes between the sons of the deceased.

In the final analysis the trial court upheld the objection raised by the respondent Fimbo Kanuda.

On the other hand Bariadi District Court on first appeal, the learned Resident Magistrate on first appeal observed that according to the minutes of the clan baraza, it was Mhela Kanuda a young brother of the respondent who was the complainant, they are sons of Kanuda Fimbo.

The learned Resident Magistrate went on to state that since 1975 when the father of the respondent died, the appellant did not more the court for him to be given letters of administration until 2011.

The learned Resident Magistrate concluded that Mhela Kanuda and the Respondent Fimbo Kanuda are competent persons to apply for letter of administration of the estate of their

late father better than the appellant, who had failed to do that work since 1975.

The appellant Fimbo Guga is undaunted and has come to this court in a second appeal.

With due respect to Mr. Fimbo Guga, this being a second appellate court the law and practice requires that a second appellate court be slow to overturn concurrent judgments of two courts below in particular on factual issues.

It is more so like in this case where there was an unanimous verdict of Somanda Primary Court in a trial aided by honourable assessor.

A second appellate court shall only interfere when it is shown that some principles of law were not adhered to, or the judgment was so repugnant that it might have resulted from non-observation of the basic principles of law any procedure.

In the case at hand, I find nothing to fault the concurrent judgments of the two courts below. In fact the action is clearly time barred. The deceased died in 1975. Thirty eight years have elapsed ever since. The dispute is over land, that shambas and houses. The Limitation period for recovery of Land is twelve years. The Limitation period started to run in 1975 when the

deceased died, it accrued in 1988. Even if the deceased had been survived by a child aged one year, who in law suffered incapacity, he could have come of age by attaining the age of eighteen years in 1993. Limitation period for the said child could have accrued by year 2007.

It is follows therefore the applicant's application to the Primary Court was hopelessly time-barred. I hereby dismiss the appeal with costs.

Order accordingly.


S. B. LUKELELWA,
JUDGE.

7th June, 2013

Date: 07/06/2013

Coram: Hon S. B. Lukelelwa, J.

Appellant: Present

Respondent: Present

B/c: Mary Mpululu

Order: Judgment delivered in court this 7th day of June, 2013.

Right of Appeal explained.


S. B. LUKELELWA,
JUDGE.

7th June, 2013