

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
MOSHI DISTRICT REGISTRY
AT MOSHI
LAND APPEAL NO. 27 OF 2019**

(Originating from Application No. 128 of 2018 at District Land & Housing Tribunal for
Moshi at Moshi)

RICHARD PETER TARIMO	} APPELLANTS
VERONICA PETER TARIMO		
PETER ANTON TARIMO		
SHUFAA DAUDI TARIMO		
ODILIA ANTON TARIMO		

Versus

FINAN PETER RITE.....RESPONDENT

JUDGMENT

Last Order: 19th May, 2020

Date of Judgment: 1st July, 2020

MWENEMPAZI, J.

The appellants in this case are appealing against the ruling of the District Land and Housing Tribunal of Moshi in Application No. 128 of 2018 dated 8th October 2019. At the trial tribunal the appellants were claiming against the respondent as an administrator of the estate of the late Peter Caranti Rite a suit land measuring 9 acres worthy Tshs. 40,000,000/- located at Kware village. In their pleadings the respondent raised a preliminary objection containing three points, one that the application was *res judicata*,

two that the application was time bared and three that the application was bad in law for abuse of court process. After the hearing of the preliminary objection the tribunal ruled in favour of the respondent by sustaining the preliminary objection and dismissing the application with cost. Aggrieved the appellants preferred this appeal on the following three grounds:

1. That, the learned chairman misdirected himself in ruling that the application is *res judicata* because the appellants were not parties in Shauri la Madai 17/2000 of Bomang'ombe Primary Court, Civil Case Appeal No. 22/2000 of Hai District Court or High Court Civil Appeal No. 6/2001 of the High Court of Moshi.
2. That, the learned chairman misdirected himself in ruling that the application is time barred disregarding the fact that the cause of action arose after the death of the Peter Karanti Ritte who died on 1st May 2017.
3. That had the Chairman properly evaluated the pleadings and the appellants' submission he would have ruled in favour of the appellants.

It was agreed that the appeal be disposed of by filing written submissions. I have carefully gone through the submissions. In summary, the appellant through Mr. Faustin Materu learned advocate challenged the tribunal chairman's holding that the application was *res judicata*. He argued that the appellants were not parties to any of the suits cited above which the late Peter Karanti was either the plaintiff or the respondent against other people. Therefore, the application cannot be said to be between the same parties or between parties under whom they or any of them claim under

the same title in court of competent jurisdiction as provided for under section 9 of the Civil Procedure Code, Cap 33 R.E 2002. The learned counsel submitted further that since the appellants were not parties in the former suits the question of ownership of the property between them and the late Peter Caranti Rite could not have been directly and substantially in issue in the former suits as it was neither alleged by one party nor denied or admitted either expressly or by necessary implication between them and the late Peter Caranti Rite.

According to the appellants the land in dispute was entrusted to the respondent's father one Peter Caranti Rite to take care of it for the appellants who were minors when their parents died. For that reason, he argued that the appellant's rights to the suit land has not been decided to date. He further referred this Court to the case of the **Registered Trustees of Chama Cha Mapinduzi vs. Versi and Sons and another** **EALR 2009 at page 415** to support the claim.

As regards the second objection that the application was time barred, the learned counsel submitted that the ground lacks merit because time starts to run from the time cause of action accrues which was after the death of the late Peter Caranti Rite on 1st May 2017 and not in the year 2000 when Shauri la Madai was determined because the appellants were still minors.

Responding to the appeal Mr. Charles Mwanganyi, learned counsel for the respondent submitted that the application which is subject of this appeal is a replica of Shauri la Madai No. 17/2000 at Bomang'ombe Primary Court which was later on appealed in the Hai District Court *vide* Civil Appeal No.

22/2000 and High Court of Tanzania Moshi *vide* Pc Civil Appeal No.6 of 2001 between Mariam Omary and Peter Karanti. The learned counsel argued that the appellants being grandchildren of Daudi and Anton have no rights over the suit land because the High court *vides* Pc Civil Appeal No. 6 of 2001 declared that the suit land is no longer the estate of Daudi or Anthony.

Responding to the second ground the counsel for the respondent submitted that since the appellants claim to have inherited the suit land either from Anton or Daudi and the High Court decided that Daudi and Anton own nothing since 2002, more than 18 years have passed and therefore the allegation that time starts to run from 2017 after the death of Pedter Caranti Rite is purely misconceived. The counsel explained further that under the law of Limitation Act, Cap 89 R.E 2002 item 22 part 1 time limitation for recovery of land is 12 years therefore the appellants' application was time bared and the effect for it being time bared was to dismiss the application, he was of the view therefore that the trial chairman properly decided.

Concluding his submission, the counsel for the respondent submitted that the applicants being grandsons and granddaughters of Antony and Daudi cannot by any way turn back and file application which was already decided by proper authority. He termed that as an abuse of the court procedure aimed at filing multiple suits which cannot come to an end.

I have thoroughly gone through the records of trial tribunal, grounds of appeal and the submissions for and against the appeal; and now in

determining whether this appeal has merit or not the issues for determination are on two folds. First is whether there was a proof of *res – judicata* worthy to dismiss Application No. 128/2018. Second is whether the Chairman was right in ruling that the application was time bared.

The rule of *res judicata* is provided for under section 9 of the Civil Procedure Code Cap 33 R.E 2002 which states,

"No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties or between parties under whom they or any of them claim litigating under the same title in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised and has been heard and finally decided by such court"

Guided by the above principle, I shall now get on determining the merits and demerits of this appeal. In the 1st ground of appeal the appellant argued that the application before the District Land and Housing Tribunal was not *res judicata* as the parties in the application were not the same in the other cases the respondent referred to. Looking at the referred previous cases of Madai No. 17/200 at Bomang'ombe Primary Court and the subsequent appeals in the District Court and later High Court none of the appellants are mentioned as parties. A party is a person who is involved in a case either by alleging something against another person or they can be involved because the allegation is against them. One can also be a party to a suit by reason of being a representative e.g. executors of

an estate, administrators, heirs, assignees and successors in title. Since the appellants are not mentioned in the referred previous cases the respondent ought to have proved how the appellants were related with any of the parties in the mentioned cases. Thus, although the cause of action may appear to be the same such as trespass over the same suit land but parties are completely different, hence the principle of *res judicata* cannot stand.

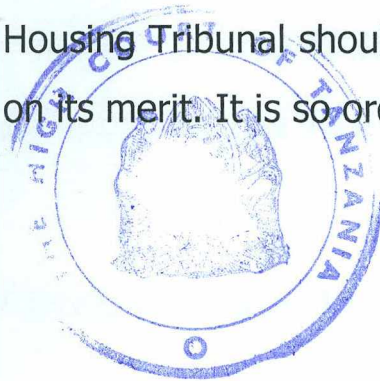
At this point I subscribe to the holding in the case of **Registered Trustees of Chama Cha Mapinduzi vs. Versi and Sons and Another** EALR 2009 as earlier cited by the learned counsel for the appellants, and the argument by the counsel of the appellants that that the fact that the property involved is one and the same does not necessarily render the cause of action identical since the appellants were not parties in the former suits. the question of ownership of the property between them and the late Peter Karanti Rite could not have been directly and substantially in issue in the former suits.

Turning to the 2nd issue of time limitation, the same is also answered in negative. In **Yusufu Same and Another V Hadija Yusuph** [1996] TLR 347 it was held that;

"...where a person institutes a suit to recover land of a deceased person whether under will or intestacy and the deceased person was on the date of his death in possession of the land and was the last person entitled to the land to be in possession of the land, the right action shall be deemed to have accrued on the date of death"

Having said so, it could only be an abuse of court process if *res judicata* was so proved by the respondent however since the same was not proved the counsel for the appellants was right when stated that the appellants were simply fighting for their rights against the respondent.

In light of the above, I conclude that this appeal is with merits. I thus proceed to quash the ruling of the District Land & Housing Tribunal in Application No. 128 of 2018 and set aside an order dismissing the applicant with cost. I further order that the application in the District Land and Housing Tribunal should proceed to hearing and determination of the same on its merit. It is so ordered.




T. MWENEMPAZI

JUDGE

1ST JULY, 2020