

IN THE HIGH COURT OF TANZANIA

AT BUKOBA

LAND CASE APPEAL NO. 60 OF 2020

GOZBERT CLEOPHACE..... 1ST APPELLANT
BAPTIST CONVENTION OF TANZANIA..... 2ND APPELLANT
VERSUS

VALERIAN MOSES BANDUNGI.....RESPONDENT

**(Appeal from the decision of the District Land and Housing
Tribunal of Muleba in Application No. 80 of 2017)**

JUDGMENT

26 & 30 July, 2021

MGETTA, J:

The appellants namely Gozbert Ngaiza Cleophace and Baptist Convention of Tanzania (henceforth the 1st and 2nd appellant respectively) are appealing against the decision delivered on 21/4/2020 by the District Land and Housing Tribunal at Muleba (henceforth the trial tribunal) complaining that;

1. The trial tribunal grossly erred in law to preside over the matter without being clothed with jurisdiction as the matter was statutory time barred.
2. The trial tribunal misdirected itself in law to entertain the suit emanating from Probate Cause instituted after 45 years without any explanation of such delay.

3. The trial tribunal chairman grossly misdirected himself in law and in fact to entertain and preside over the suit which did not disclose when the cause of action arose as required by law.
4. The trial tribunal chairman grossly erred in law and in fact to determine the suit in favour of the respondent who had no proof of ownership of the suit land to be part of the estate of Abel Bandungi and in total disregard of cogent, coherent, consistent and comprehensive evidence of the appellants who proved ownership of the suit land since 1979 on the standard required by law.

On 22/7/2021 when the appeal was set for hearing, the respondent Valerian Moses Bandungi, who was duly served and also as per proceedings dated 24/5/2021, he was present when the matter was fixed for hearing on 21/7/2021, did not show up. Yes, on 21/7/2021 was a Public holding but he ought to make follow up of his case on the following day ie 22/7/2021 the day I adjourned the matter again up to 26/7/2021

Efforts to trace his where about were embarked into but in vain. On 26/7/2021 when the appeal was called on for hearing, without any

justification again did not appear, or to send a person to explain his whereabouts.

However the record shows that he was well informed of and was aware of the existence of his case as he previously filed a reply to memorandum of appeal as well notice of preliminary objection which I have considered in this judgment.

At the hearing, Mr. Aaron Kabunga assisted by Mr. Frank John Kalory, both the learned advocates, appeared representing the appellants. They were ready for hearing of the appeal. The respondent did not show up again. I glanced at his preliminary objections and found them unmeritorious as submitted by Mr. Kabunga. Notwithstanding I found the appeal was filed within time. I thus dismissed them and proceeded with the appeal on merit.

In this judgment I straight away determined the grounds of appeal as submitted by Mr. Kabunga.

In respect of the 1st 2nd and 3rd grounds of appeal, Mr. Kabunga submitted them together that the respondent instituted the suit at the trial tribunal as his own but not as administrator of the estate of his grandfather, Abel Bandungi who passed away in 1972. He was granted a

letter of administration in 2017. It is on the record that the respondent's father also passed away in 1994. This meant that when he got a letter of administration and instituted the suit in 2017, both his grandfather and father had already expired long time ago. While it is on evident that the church 2nd appellant had already in existence on the suit land which was allocated by Bureza village on 15/1/1979.

The Muleba Urban primary court which granted him letter of administration was supposed to use its wisdom that to apply for letter of administration should be within a reasonable time. The respondent was also duty bound to explain why he did not apply for letter of administration within a reasonable time. In **Methodius Malisel v. Radslaus Leonsi**; Probate and Administration Cause Appeal No. 10 of 2017 (HC) (Bukoba) (unreported) this court found that 23 years was unreasonable time within which a party could apply for letter of administration. It was observed in that case and I quote that:

"In my view, in absence of any reasonable grounds of delay twenty three (23) years period of time is not reasonable time to apply for letter of administration of the properties of deceased persons. I therefore, hold

that application for letter of administration of estates of a deceased person cannot be applied at any point in time, without any justifiable cause”

As regards to the question of ownership, it is on the record that the 2nd appellant, the church was there since 1981. Onesmo Rweyemamu Samwel of Kanone Baptists church situated at Kasheno village Gwansell Ward produced allocation letter with Kumb. No. KIJ/183 as exhibit RE2 proving that the church was allocated the suit land on 15/1/21979. He described the suit land as bordering Moris Bandungi on the west, Christian Kanantuki on the east; Julius Tiluganya on the south and on the north, there are Felisiana Banoba and Julius Tilunganya again. Mathias Rwamaloma (Rw3) revealed that the 2nd appellant was allocated the suit land by Bureza village. He was chairman of Bureza village between the years 1985 and 1992, while the church was already there. The late Moris Bandungi (respondent's father) was bordering the church and had no complaint against the church; and there was no any claims whatsoever against the 2nd appellant, until he died. He was surprised to see the respondent coming now claimed for the land.

Furthermore, Mr. Kabunga submitted that, the respondent did not bring any document to prove ownership or how the suit land came into his possession. There was no WILL of his father or his grandfather. In his evidence, the respondent complained that the 1st appellant sold the suit land to the church, 2nd appellant.

In his testimony, the 1st appellant, Gozbert, said he is a pastor and he supervises development in the church. He said he found the church already built. This assertion corroborate the evidence of pastor Onesmo as per allocation letter he tendered as exhibit and said he found the church already built. Rw3 Mathias said that when he became village chairman, the church was already there. The respondent's father was there as neighbour to the church without any complaint. He died without any complaint. The complaint is brought now by the respondent claiming for the suit land where the church is built that it is his own property. The law says who he alleges must prove. Vide **section 110 of Evidence Act, Cap 6** which provides that burden of proof lies upon the respondent.

At the trial tribunal he sued on his own, and not as administrator of the deceased grandfather. That's mean he claimed the suit land be

declared as his own property. If I may be excused I may say and I am saying that he lacked *locus standi* to sue in his own names. He ought to sue under the umbrella of being administrator of the deceased grandfather.

On the question of non-disclosure of when the cause of action arose, Mr. Kabunga submitted that the respondent did not disclose cause of action as required by law: **Order VII rule 1 (e) of Cap 33** which law is also applicable to the trial tribunal. He did not disclose when the cause of action arose If the cause of action is not disclosed, the trial proceedings became a nullity. Mr. Kabunga referred me to the case of **Stanbic Finance (TZ) LTD V. Giuseppe Trupia and chiaramalavasi** [2002] TLR 217; **COTWO (T) OTTU Union and Another v. Iddi Simba Minister of industries and Trade & others** [2002] TLR P. 88; **Bi Kubwa Issa V. Sultan Mohamed** [1997] TLR 295, and **Juma B. Kadalala v. Laurent Mkandye** [1983] TLR 103 which say if one fails to disclose when the cause of action arose, the proceedings became a nullity.


In **stanbic finance** case (supra) it was held *inter alia* and I quote that:

"A cause of action arises when facts exist which give rise or occasion to a party to make a demand or seek redress, all depending on the kind of claim; a cause of action arises when facts on which liability is founded to exist and its disclosure is reflected in the claims as presented in the plaint and not as weighted against the defence statement."

I painstakingly went through the pleadings to wit the application at the trial tribunal, I completely failed to see any paragraph providing when the cause of action arose. As stated in the cited cases and as the law Order VII provides failure to disclose cause of action vitiates the entire proceedings of trial tribunal.

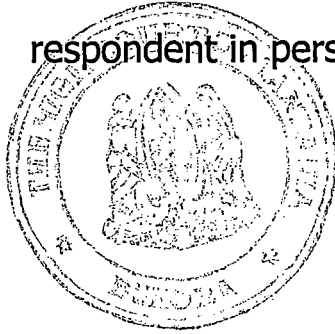
Having said so and for reasons given herein above, I find this appeal with merit. The appeal is accordingly allowed. The trial tribunal decision is quashed and set aside. The respondent is condemned to pay costs to the appellants.

Accordingly ordered.



J. S. MGETTA
JUDGE
30/7/2021

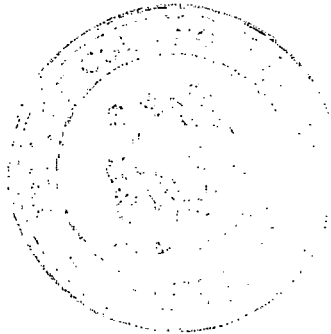
COURT: This judgment is delivered today 30th July 2021, in the presence of the appellants and in the presence of the respondent in person.



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**J. S. MGETTA
JUDGE
30/7/2021**

COURT: Right of appeal to the Court of Appeal is fully explained.



A handwritten signature in black ink, appearing to read 'J. S. MGETTA'.

**J. S. MGETTA
JUDGE
30/7/2021**