

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF KIGOMA

(LAND DIVISION)

AT KIGOMA

APPELLATE JURISDICTION

LAND APPEAL NO. 20 OF 2020

(Originating from DLHT Kigoma, Land Application No. 99/2019 Before: F. Chinuku,
Chairperson).

REGISTERED BOARD OF TRUSTEE

OF PENTECOST EVANGELISTIC FELLOWSHIP OF

AFRICA.....APPELLANT

VERSUS

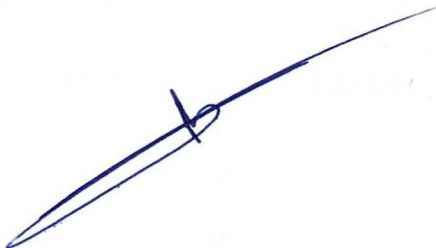
ABAS HASSAN NYAMKUNGA NAD 39 OTHERS.....RESPONDENT

JUDGMENT

10/02/2021 & 10/02/2021

A. MATUMA, J

The appellant sued the respondent for trespass in land claiming that the respondents trespassed into her land since the year 2000 which she was dully allocated way back in 1988.



The respondents raised preliminary objection on point of law that the suit was time barred. The trial tribunal upheld the Preliminary objection which aggrieved the appellant hence this appeal.

In this appeal the appellant is complaining that the PO raised did not qualify to be a PO because it needed evidence.

Mr. Joseph Mathias learned advocate representing the appellant submitted that it was wrong for the trial tribunal to rule out that the suit was time barred.

When I asked him, what was the cause of action and when did it arose he replied that the cause of action was a trespass in land and it arose in the year 2000.

Mr. Thomas Msasa learned advocate for the respondents on his party submitted that the PO was raised from the pleadings of the appellant herself who disclosed in the Application that the alleged trespass occurred in 2000 and that from such year to 2019 when the suit was instituted, the 12 years had elapsed.

Without much ado, this appeal is devoid of any merit.



It was the appellant herself who disclosed that the respondents trespassed into the dispute plot way back in 2000.

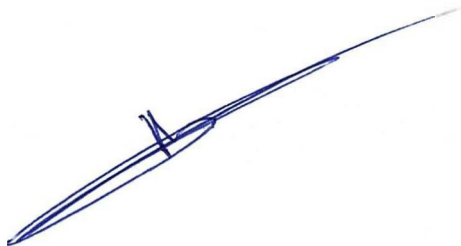
From that year to 2019 when she filed a suit, it is obvious, the 12 years prescribed period for recovery of possession had elapsed. The trial tribunal thus properly dismissed the Application for being out of time.

In the premises, this appeal has been brought without sufficient cause and it is hereby dismissed in its entirety with costs.

I should also raise a concern here, that in the course of hearing, it transpired that some of the respondents were sued while not in existence.

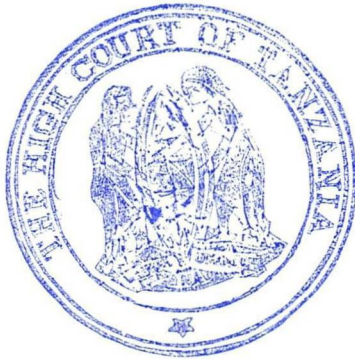
A good example is the 19th respondent Idrisa Ramadhan who is reported dead since 2001. Some others have sold their respective shares in the dispute plot but those who purchased them and who are in actual possession are not part of the suit. A good example is the 29th respondent Rashidi Mgarura who sold to Tatu Ramadhani. He sold before the suit was instituted.

Tatu Ramadhani is the one in actual possession and she is the one in Court but was not sued.



The appellant should; seek for extension of time to sue and identify her real respondents before commencing the suit. Right of appeal explained.

It is so ordered.



A handwritten signature in blue ink, appearing to be "A. MATUMA", is written over the printed name.

A. MATUMA

JUDGE

10/2/2021

Court: Judgment delivered in chambers this 10th day of February, 2021 in the presence of Mr. Joseph Mathias learned advocate for the Appellant and Mr. Thomas Msasa learned advocate for the Respondents.

Sgd. A. MATUMA

JUDGE

10/2/2021