

**IN THE HIGH COURT OF TANZANIA  
IN THE DISTRICT REGISTRY OF SHINYANGA  
AT SHINYANGA  
LAND APPEAL NO.4 OF 2020**

**MICHAEL KULWA**  
(Administrator of the Estate of the Late  
Magreth Bundala) } .....**APPELLANT**

**VERSUS**

**ARON SHIJA..... RESPONDENT**  
(Appeal from the decision of the District Land and Housing Tribunal Kahama)  
(Lekamoi-Chairman)

Dated the 20<sup>th</sup> of December, 2019

In

Land Application No.84 of 2019

.....

**JUDGMENT**

26<sup>th</sup> July & 6<sup>th</sup> August, 2021

**MDEMU, J.:**

The Appellant Michael Kulwa in the capacity as an administrator of the estate of the late Magreth Bundala, filed a land dispute in the District Land and Housing Tribunal of Kahama following encroachment of the suit premises located in Plot No.88 Block "N" (HD) Nyahanga Area in Kahama against the Respondent. This was on 3<sup>rd</sup> of September, 2019. On receipt the application, the learned trial chairman thought the suit was time barred and

invited parties to address the tribunal on that legal issue. After he had heard them, the following order that the suit was time barred got pronounced:

*I went through the pleadings submitted herein and found form IV ya usimamizi wa mirathi dated 06/05/2019 which indicates that, the late Magreth Bundala passed away on 22/02/1996 (almost 23 years ago) and for the Applicant to file a case in the name of Magreth Bundala is contrary to S.9(1) of the Law of Limitation Act, CAP 89 R.E 2002 which states;*

***S.9 "where a person institutes a suit to recover the land of the deceased person; whether under a 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, the right of action shall be deemed to accrue on the date of death.***

*Hence, in this application, the cause of action started to accrue on the date of the death of the late Magreth Bundala (22/02/1996). Hence, it is sufficing to say that, the Applicant is barred from instituting the suit in the name of the above*

*deceased. From the above findings, this application is hereby dismissed for the above reasons of limitation of time.*

The Appellant was not happy with this decision thus filed an appeal to this court on the following grounds of appeal:

- 1. That, the learned chairman erred in law and fact when held that the Appellant is time barred to file the Land Application No.84 of 2019 while the same filed the land application in the year 2019 and the Respondent trespassed in the land in the year 2014.*
- 2. That, the learned chairman erred in law and fact as he failed to consider that the Appellant could not sue the Respondent in the year 1996 as the Respondent had not yet trespassed into the suit premises.*
- 3. That the learned chairman erred in law and fact when he failed to put into account that the Respondent has not been using the suit premises for not more than twelve years so as the same to be deemed in adversely possession.*
- 4. That, the learned chairman erred in law and fact as he misdirected himself when he failed to consider that section*

*9(1) of the Law of Limitation Act, Cap.89 R.E 2002) applied upon the trespass of the land belonged to the deceased person.*

*5. That, the learned chairman erred in law and fact when he failed to consider that the name of the late Magreth Bundala is still appearing in the title deed in respect of the said suit premises.*

On 26<sup>th</sup> of July, 2021, this appeal came for hearing. The Appellant appeared in person whereas the Respondent had the service of Mr. Bakari Chubwa Muheza, learned Advocate. In support of the appeal the Appellant simply requested this court to adopt his grounds of appeal to form part of his submissions. He then urged his appeal be allowed. In reply, Mr. Bakari Muheza did not resist the appeal.

He replied by conceding to the 4<sup>th</sup> ground of appeal and then submitted together the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> grounds of appeal that, in terms of paragraph 6(a)(v) of the application, as the land was encroached in 2014, an application filed in 3<sup>rd</sup> of September, 2019 was not time barred. In his view, though the deceased died in 1996, yet the Appellant would not have sued because there was no encroachment at that hour.



As to the 5<sup>th</sup> ground, his submissions was that, the same will be determined when the suit is heard on merits. On those premises, he urged me to allow the appeal and return the suit to the DLHT so that it be heard on merits. In rejoinder the Appellant was surprised by the move of the Advocate to state that the suit was not time barred while at the trial tribunal stated to be time barred. He however prayed for costs.

Going by the record, and as submitted by the parties, it is not disputed that the deceased Magreth Bundala died on 22<sup>nd</sup> of February, 1996 and it was until the 6<sup>th</sup> of May, 2019 when the Appellant got to administer her estate. It is equally on record that the instant suit filed by one Michael Kulwa, the administrator of the deceased estate was filed on 3<sup>rd</sup> of September 2019 before he was appointed as an administrator of the said estate.

Was the tribunal justified to dismiss the application under the provisions of section 9 (1) of the Law of Limitation Act, Cap.89 on the footing that, the suit was time barred? As submitted by the learned Counsel for the Respondent, this was the only matter determined by the trial tribunal. Therefore, ground five which appears to raise a complaint on ownership of the land in dispute, won't have a place for determination in this appeal.

On the question of time limitation which is a central issue of this appeal, I entirely agree with Mr. Muheza and the Appellant that as the Respondent trespassed in 2014, the Appellant would have not pursued the matter from the date of the death of the deceased as there was no encroachment or trespass to the suit premises. In other words, the cause of action in the instant land dispute is counted from 2014 when the Appellant realized that there is a trespasser. This fact is also pleaded in paragraph 6 (v) of the application to the DLHT. It was therefore not legally justified for the learned trial chairman to dismiss the suit for being time barred under section 9(1) of the Law of Limitation Act, Cap.89. it was also stated in the case of **Mshamu Saidi (Administrator of the estate of Saidi Mbwana vs. Kisarawe District Council and 4 Others, Land Appeal No. 177 of 2019** (unreported) where Maige J. as he then was at page 5 of the judgment held that:

*Let me start by saying, right away that, section 9(1) of the LLA, is not, as contended for the appellant, related with causes of action that arose before the death of the deceased. It relates to a situation where a dispute had not, at the time of the demise of the deceased, accrued. It provides as follows 9(1) Where a*

*person institutes a suit to recover Land of a deceased person whether under a will or intestacy and a 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 land, the right of action shall be deemed to have accrued on the date of death. In my understanding of the law, where the cause of action accrue.*

The appeal is henceforth allowed. The order of trial tribunal is hereby set aside and the proceedings thereof quashed. The file is remitted to the trial tribunal for full trial. The Appellant prayed for costs, nevertheless, under the circumstances, I refrain from making an order as to costs. It is so ordered.

  
**Gerson J. Mdemu**

**JUDGE**

**06/08/2021**

**DATED** at **SHINYANGA** this 6<sup>th</sup> day of August, 2021.

  
**Gerson J. Mdemu**

**JUDGE**

**06/08/2021**



