

THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
(IRINGA DISTRICT REGISTRY)
AT IRINGA

LAND APPEAL NO. 32 OF 2020
*(Originating from the Ruling of the District Land and
Housing Tribunal for Iringa at Iringa
Land Application No. 34 of 2020 of the)*

GUMBA ADAMU KASOMO (The Administrator of the Estate of the Late
ADAMU SELEMANI KASOMO) **APPELLANT**

VERSUS

LUCKA MLAGALA **RESPONDENT**
16/11 & 23/11/2021

JUDGMENT.

MATOGOLO, J.

This is an appeal filed by the appellant one Gumba Adamu Kasomo (The Administrator of the Estate of the late **ADAMU SELEMANI KASOMO**). The appellant instituted a suit before the District Land and Housing Tribunal for Iringa for a recovery of land from the respondent. Upholding the preliminary objection raised by the respondent at the early stages of the proceedings, the Tribunal chairman found the suit was time barred under section 9(1) of the Law of Limitation Act (Cap. 89 R.E. 2002)

(LLA) and dismissed the suit. The appellant was aggrieved by the decision, he has now come before this court with a memorandum of appeal with three (3) grounds as follows:-

1. That, the Honourable trial District Land and Housing Tribunal Chairman erred both in law and fact by holding that the preliminary objection raised by the Counsel for the Respondent has merit failing to take into account that the cause of action in the impugned matter arose on 31st day of October, 2019 when the Respondent instituted proceedings in Mlenge Ward Tribunal against the Appellant.
2. That, the Honourable trial District Land and Housing Tribunal Chairman erred both in law and fact by upholding the preliminary objection raised by the counsel for the Respondent and dismissing the suit before him without stating who the lawful owner of the suit land is.
3. That, the Honourable trial District Land and Housing Tribunal Chairman erred both in law and fact when he decided the matter before him by being tied up with legal technicalities.

The appellant prays to this Honourable Court that;

- a. The proceedings, Ruling and Orders of the trial District Land and Housing Tribunal be nullified and this appeal be allowed in its entirety with costs.

- b. This Honourable Court be pleased to order that the file in the impugned matter be remitted to the District Land and Housing Tribunal for Iringa for trial on merit before another chairperson.
- c. Any other relief(s) this Honourable Court may deem fit, just and equitable to grant.

At the hearing of this appeal parties were represented by Advocates, the appellant was represented by Mr. Leonard Sweke the learned Advocate while Mr. Jally Mongo represented the respondent.

Mr. Sweke submitted that, this appeal resulted from a ruling in respect to the Preliminary objection raised before the District Land and Housing Tribunal (DLHT) in Land Application No.34 of 2020.

The appellant dissatisfied with the decision of the DLHT. He has filed three grounds of appeal.

With regard to 1st ground of appeal Mr.Sweke submitted that the DLHT Chairman erred to sustain the objection raised by failure to consider that the cause of action arose on 31/10/2019 when the Respondent sued the appellant at Mlenge Ward Tribunal.

The administrator of the estate of his father Adamu Selemani Kasomo died on 20/02/1994.

The appellant was appointed as administrator of the deceased estate on 30/12/2019. Among the deceased properties include the land now in dispute measuring 20 acres located at Kilangililo hamlet Kisanga village Mlenge Ward Pawaga. The land which had been used by the appellant

family since 1994 up to 2019 when the Respondent emerged claiming to be owner of the land as found at para 6 a(2) of the application form before the DLHT.

Mr. Sweke submitted further that, after the Respondent has filed Land Application No. 13 of 2019 at the DLHT as administrator of the estates of his later brother Hussein Mlagala whom he said was the legal owner of that land of size of 20 acres claiming that the same was allocated to him by the village committee at Kisanga village on 25/10/2014. That is found at paragraph 6A (1) of the application before the DLHT.

He went on submitting that, the Ward Tribunal of Mlenge decided in favour of the Respondent. Dissatisfied, on 07/01/2020 he appealed to the DLHT Appeal No. 2 of 2020. In that appeal the Respondent's advocate conceded to what was raised by the appellant's advocate as he has no letters of administration, the DLHT nullified of the proceeding and decision of the Ward Tribunal as can be seen in the proceedings at para 6A (vii and vii), of the DLHT record. But the Respondent forcefully entered into the suit land claiming that he won the appeal. The appellant filed Land Application No. 34 of 2020. The Respondent's advocate raised objection that the suit was time barred. The DLHT sustained the objection.

Mr. Sweke submitted that, the DLHT erred in its decision for failure to consider that the objection raised was not on pure point of law as it required evidence. It required evidence as it was decided in ***Mukisa Biscuit case.***

Secondly did not consider when the cause of action arose which was on 31/10/2019 as held in the case of ***Barelia Karangirangi vs. Asteria***

Nyalwambwa Civil Appeal No. 237(2019 CAT (unreported) and the case of **Mohamed Bororo vs. Fatuma Rashidi Selemani**, Land Appeal No. 23 of 2019 H/C Iringa.

Mr.Sweke submitted further that, the matter before the DLHT ought to be heard and determined on merit.

With regard to the second ground of appeal that, the DLHT erred to sustain the objection and dismiss the objection without determining issue of ownership over the dispute land, Mr. Sweke contended that, the explanation by the Respondent in the above cited case of Mlenge Ward and his Written Statement of Defence (WSD) in Land Application No. 34 of 2021, at the Ward Tribunal Respondent said was the administrator of the deceased estate Hussein Mlagala who was the owner of the land after it was allocated to him by Kisanga village Land allocating committee on 25/10/2014. The respondent said the land has size of 21 acres not 20 and occupied by six people who were allocated the same by the land allocating committee as shown under para 5 of WSD.

After sustain the Preliminary Objection the DLHT ought to have declared as to who was the legal owner of the disputed land. Before the DLHT, Respondent did not join other five people as co-plaintiffs per O.1 R. 14 (1) of the CPC.

Mr. Sweke submitted that, it is undisputed fact that every judge or magistrate has his own style of judgment writing but important issue must be included as it was decided in the case of **Ameir Mohamed vs. Republic (1994) TLR 138**.

As to the third ground of appeal the complaint is that the DLHT erred to decide the matter for being tied up with technicalities.

Mr. Sweke submitted that, the learned chairman relied more on legal technicalities particularly Sections 3(1), 9 and 35 of the Law of Limitation Act, 1st schedule instead failed to consider as to when the cause of action arose and to consider the facts before him thus arrive at a wrong decision contrary to Article 107A (2)(e) of the 1977 Tanzania Constitution.

For that case the Appellant prayed to this court to nullify the proceedings and decision of the DLHT and allow this appeal with costs. He also prayed for this court be pleased to order for the case to be remitted back to the DLHT where Land Application No. 34 of 2020 can be heard and determined on merit.

On his part Mr. Mongo learned advocate replied according to what was submitted by Mr. Sweke. He resisted the appeal, and thus supported the decision by the DLHT.

He said, the key issue in this case and which was decided by the DLHT and which this court need to resolve is when the cause of action arose.

Mr. Mongo referred to the application by the appellant particularly at paragraph 6(a)(i)(ii) and (iii).

He submitted that, according to the plaint in paragraphs 1, 2 and 3 the appellant claimed that the land belongs to his father Seleman Adamu Kasomo. But he also said he filed the suit as administrator of his late father. And that his father Adamu Seleman Kasomo died 20/02/1994. This matter was filed on 02/04/2020. Para 6A (iii) of the appellant's application

stated that he was appointed as administrator of the deceased estate on 30/12/2019.

He contended that, it is clear that the appellant was suing for the deceased estates according to law once you sue to recover deceased land, time counts from the date of the death of the owner of that land. This is in accordance to s. 9(1) of the LLA.

Mr. Mongo went on contending, that provision is read together with Section 35, S. 35 clearly states that the period of obtaining letters of administration cannot be excluded. The appellant in his plaint stated clearly that he was suing on the deceased estates who died in 1994 and filed the suit in 2020, it was more than 26 years passed. It was therefore against part I item 22 to the schedule of the law of limitation Act which requires suit to recover land to be filed within 12 years. He submitted that, S. 9(1) and S. 35 of the LLA have been discussed in various cases by this court as well as the Court of Appeal. These include ***Ruth Range vs. Samwel Meshack Mollel and 2 Others*** Land Case No. 323 of 2016, H/C Land Division Dar es Salaam (unreported) the case of ***Salum Almas Jaza (Administrator of the Estate of the Late Mlang'amba binti Mwichande) vs. Tatu Omari Kitambo and Another***, Land Appeal No. 82 of 2017 H/C Land Division Dar es Salaam (unreported). ***Aloysius Benedicta Rutahiwa vs. Emmanuel Bakundukize Kendurumo and 9 others***, Land Appeal No. 23 of 2020 H/C Bukoba (unreported).

He submitted that, in the case ***Ruth Range and Salum Jaza***, the court held that as it is on S. 9(1) and S. 35 the period runs from the date of death of the deceased. In all the above cited case it was agreed that if

the suit is filed beyond 12 years after the deceased death must be dismissed under S. 3(1) of the LLA.

Mr. Mongo submitted that in the case of ***Aloysius Tutahiwa case*** the court referred the decision of the Court of Appeal in the case of ***Haji Shomari vs. Zainabu Rajab***, Civil Appeal No. 91 of 2001 at page 15 where the Court of Appeal discussed S. 9(1) of the LLA and resolved that time to recover land starts to run after the death of deceased. Under such circumstances even the decision of the DLHT Chairman was correct that the suit was time barred as from 1994 up to 2020 it was more than 12 years.

Mr. Mongo submitted that, the learned counsel for the appellant referred the decision on ***Karangirangi case*** and ***Mohamed Bororo case***, He contended that, these two cases are distinguishable because in both cases this court as well as the Court of Appeal did not discuss S. 9(1) and S. 35 of the LLA. Instead they discussed on the application of S. 9(1) and S. 9(2) their application is different. S. 9(2) is not on the claim of deceased estates. He prayed for this court not to consider them as they are distinguishable to the present case and he invited this court to rely on S. 9(1) and the decision he has referred and dismiss this ground.

As to second ground of appeal, the learned advocate ought to have pronounced as who was the legal owner of the suit land. Mr. Mongo submitted that, the argument is baseless, if the learned chairman of the DLHT decided that the suit was time barred, already the tribunal was barred from deciding the matter on merit. This ground would have merit if the chairman would have decided that the suit was filed on time.

As to the third ground of appeal the learned advocate argued that in his decision the DLHT chairman was tied up with legal technicalities.

Mr. Mongo submitted that, he had no quarrel with the cited Article of the Constitution Art. 107A(2) (C).

But when you come to time limitation, that is not a legal technicality. The issue of time limitation touches the jurisdiction of the court. What touched jurisdiction of the court it cannot be said legal technicalities.

The DLHT was right to dismiss the plaint as time limitation as pure point of law. He prayed for this ground also be dismissed for lack of merit.

Mr. Mongo concluded by submitting that, the appeal had no merit and should be dismissed and this court up hold decision of the DLHT, and the appeal be dismissed with costs.

In rejoinder Mr. Sweke reiterated to what he submitted in submission in chief and insisted that the decision by the DLHT chairman was not correct as he did not find out the background of cause of action which is a key issue in this case.

He submitted further that, the cause of action accrued on 30/12/2019 when the respondent filed a suit before the Ward tribunal. This point was not addressed by the counsel for the respondent. At this stage we cannot said that the cause of action arose after the appellant file this suit.

He submitted that, the argument that the cause of action arose upon the death of the deceased, this is not applicable in this case as from 1994 when the property owner died there has been no dispute until 2019 when the Respondent filed a suit at the Ward tribunal suing the appellant. Here is where the cause of action. The proper provision to be discussed here is

S. 9(2) of the Law of Limitation and item 22 of the 1st scheduled to the LLA. For that case the appellant was disposed of the Land which was discussed in ***Barelia Karangirangi case*** to be the date when the cause of action accrued.

Regarding all cases cited by Mr. Mongo are distinguishable to the case at hand. On that basis he insisted that the appeal be allowed and the record be sent back to the DLHT where the matter can be determined on merit.

Having read the submissions by the parties and examined the Tribunal record the main issue to be determined here is whether it was proper by the trial Tribunal to dismiss the matter for the reason that, it was time barred.

As the complaint mainly is based on the first ground of appeal which is a point of law, I will dwell more on this ground of appeal without even touching the rest of the grounds of appeal as this ground is capable of disposing of the appeal.

The main complaint in the first ground of appeal is that, the Tribunal chairperson erred to dismiss the application on the ground that, it was time barred without taking into consideration that the cause of action in the impugned matter arose on 31st day of October, 2019 when the Respondent instituted proceedings in Mlenge Ward Tribunal against the Appellant.

The record is quite clear that, the deceased one Adam Seleman Kasomo died on 20th day of February, 1994 and on 30th day of December, 2019 the appellant was appointed as administrator to administer his

estates. It was on 2nd day of April 2020 when Gumba Adamu Kasomo filed the suit before the DLHT as application No.34 of 2020.

Mr. Sweke is of a considered view that, the DLHT erred to dismiss the suit basing on the reason that, the suit was time barred while the cause of action arose on 31/10/2019 when the respondent sued the appellant at Mlenge Ward Tribunal.

Mr. Mongo on the other hand has a different view, he contended that, it is clear that the appellant was suing for the deceased estates according to law once you sue to recover deceased land, time counts from the date of the death of the owner of that land. To support his stance he cited S. 9(1) of the LLA, the provision which is to be read together with Section 35. Section 35 clearly states that the period of obtaining letters of administration cannot be excluded. He submitted further that, the appellant in his plaint stated clearly that he was suing on the deceased estates who died in 1994 and filed the suit in 2020, which is more than 26 years passed. It was therefore against part I item 22 to the schedule of the Law of limitation Act which requires suit to recover land should be filed within 12 years. Mr. Mongo submitted that, S. 9(1) and S. 35 of the LLA have been discussed in various cases by this court as well as the Court of Appeal as cited above. The records reveal that, the late Adamu Selemani Kasomo was utilizing the suit land since 1980 to 1994 undisturbed, and his family after the demise of the late Adamu Selemani Kasomo used the disputed land since 1994 up to 2015, when the Kisanga village Chairman unsuccessfully instituted a suit a criminal case No. 126 in Kimande Primary

Court against Gumba Adamu Kasomo and 11 Others excluding his late brother one Hussein Rashidi Mlagala alleging that they encroached on the Kisanga Village Land.

On 31st day of October, 2019 the respondent herein instituted a proceeding in Mlenge Ward Tribunal against Gumba Adamu Kasomo in application No. 13 of 2019 alleging to be the Administrator of the estates of his late brother one Hussein Rashidi Mlagala being the lawful owner for the reason that, he was allocated by the Kisanga village land allocation committee way back on 25th October, 2014. The case was decided in favour of Lucka Mlagala. The appellant after being aggrieved by the decision of the Ward Tribunal he appealed to the DLHT, whereby the case was dismissed as the appellant herein had no *locus standi*. After being appointed as an administrator he filed the present case in the DLHT, the same was dismissed for the reason that, it was time barred.

Section 9 (1) provides that:-

"where a person institutes a suit to recover land of a deceased person, whether under the 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 of action shall be deemed to have accrued on the date of his death"

Therefore, in terms of section 9(1) of the Act, the right of action accrued on the date of death of the appellant's father on 20/02/1994. And under item 22 part 1 of the 1st schedule of the LLA, the period of Limitation prescribed for a suit to recover land is twelve (12) years.

I am of the settled view that, the cause of action arose from the date of the death of the deceased on 20/2/1994. I agree with Mr. Mongo that, in recovering the deceased land the cause of action accrues after the demise of the deceased. Section 9(1) of the LLA is very clear on situations like the present one. Understandably, sometimes the Court can depart from this position depending on the circumstances of the case. For instance in the case of ***Haji Shomari versus Zainabu Rajabu***, Civil Appeal No. 91 of 2001 Court of Appeal at Dar es Salaam (unreported). In that case the Court discussed section 9(1) of The LLA, but the Court allowed the appeal on the ground that, at the time when the deceased died the appellant was a minor of nine years old not attained the age of majority to have capacity of suing, for that reason the period of Limitation started to run after the appellant attained the age of majority.

In our instant case the appellant was an adult at the time the deceased met his death. He cannot be heard arguing that at that time he could not institute a case for recovery of the deceased land while there was no one who trespassed on it. The law above cited particularly section 9(1), given that the land to be recovered was of the deceased person at the time of his death regardless that there has been no encroachment to that land soon thereafter, the cause of action is deemed to have accrued

from the date of his death. Section 9(1) was discussed in the case ***Yusuf Same and Another vs. Hadija Yusuf [1996] TLR 347***, where it was held:-

"The limitation period in respect of land, irrespective of when letters of administration had been granted is 12 years as from the date of death of deceased".

It should be noted that Section 9(1) does not relate to the cause of action which arose before the deceased death, it relates to a situation where a dispute had not arose at the time of the demise of the deceased.


It appears the appellant was faced with difficulty after find him time barred. The appellant was likely to be faced with such time limitation because even before the alleged encroachment by the present respondent, still he had no *locus standi* immediately after the deceased death as he obtained letters of administration late on 30/12/2019, three months before he instituted this suit while deceased died on 20/2/ 1994. Perhaps the best way appellant could do before instituting the suit was for him to apply for extension of time. I have read the cases cited by the parties, the cases Mr. Sweke cited to support his arguments are inapplicable as were given in circumstances different to the circumstances of the case at hand but those cited by Mr. Mongo are to the issue involved in this matter. For that reason, I am of the view that it was proper for the DLHT Chairman to dismiss the case for being time barred under section 3 (1) of the Law of Limitation Act. It was correctly submitted by Mr. Mongo learned advocate, that the issue time limitation goes to the jurisdiction of the court. The

Tribunal could not have jurisdiction to entertain the matter which is barred by law for being lodged out of time. Equally this court cannot entertain it on the same reason.

This appeal lacks merit, the same is dismissed with costs.

DATED at IRINGA this 23rd day of November, 2021.




F.N. MATOGOLO
JUDGE.