

**IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA  
MWANZA DISTRICT REGISTRY  
AT MWANZA**

**LAND CASE NO. 27 OF 2021**

**MPONEJA MANYILIZU (As the Administrator of the Estate of the  
Late Manyilizu Mponeja @Mpangala) -----APPELANT  
VERSUS**

- 1. SAGATI JOSEPH----- RESPONDENT**
- 2. VEREDIANA NTUNGWAMINZI----- RESPONDENT**
- 3. JULIUS MATULANYA-----RESPONDENT**
- 4. BANGILI SUNGO-----RESPONDENT**
- 5. MAYILA CHINUNO-----RESPONDENT**
- 6. KWIMBA DISTRICT COUNCIL-----RESPONDENT**
- 7. THE ATTORNEY GENERAL----- RESPONDENT**

**RULING**

*Last Order: 20.04.2022*

*Ruling Date: 21.04.2022*

**M. MNYUKWA, J.**

This is the ruling in respect of the Preliminary Objection raised by Ms. Subira Mwandambo, senior state attorney representing the 6<sup>th</sup> and 7<sup>th</sup> defendants in this suit. Ms. Mwandambo prayed to file and serve the plaintiff with a notice of preliminary objection and asked the court to grant



leave for the preliminary objection be argued in its earliest opportune time. With the consent of the parties and by leave of the court, the preliminary objection was filed, served and argued orally.

On her address to the preliminary objection, Ms. Mwandambo submitted that, the suit before this court is time barred and there is no permission from the minister to allow the plaintiff to file this suit out of the prescribed time provided under the law of limitation. She enlightens that, in accordance with section 3(1) of the Law of Limitation Act, Cap 89 R.E 2019 if the matter is filed out of the prescribed time, the remedy is to dismiss the suit. She support her argument by citing the case of **Stephen Masatu Wasira vs Joseph Sinde Warioba** [1999] TLR 334, she prays this court to dismiss the matter.

Responding, the counsel for the plaintiff was very clear and straight forward as he promptly conceded to the preliminary objection and submitted that indeed the suit is time barred but he prays the court to struck out the suit so that the plaintiff will bring it back after complied with the requirement of the law.

Re-joining, Ms. Subira Mwandambo insisted that since the plaintiff conceded, the only remedy provided by the law is to dismiss the case.



From the submissions of the parties and the position of the law, it is clear that an objection on account of time limit is one of the preliminary objections which courts have held to be based on pure point of law which touches on the jurisdiction of the court and whose determination does not require ascertainment of facts or evidence. To determine such an objection, the court needs only to look into the plaints and its annexures without any further facts or evidence to be ascertained in determining as to whether the suit is time barred. In the case of **Ali Shabani and 48 Others v. Tanzania National Roads Agency and The Attorney General**, Civil Appeal No.261 of 2020 when the Court of Appeal faced with an akin situation, at page 8 of its Judgement it stated that: -

*"It is dear that an objection as it were on account of time bar is one of the preliminary objection which courts have held to be based on pure point of law whose determination does not require ascertainment of facts or evidence. At any rate, we hold the view that no preliminary objection will be taken from abstract without reference to some facts plain on the pleadings which must be looked at without reference examination of any other evidence."*



Similarly, having perused the pleadings, and in accordance with the provision of section 9(1) of the Law of Limitation Act, Cap. 89 RE: 2019 that the accrual of the cause of action to recover land of the deceased was after the death of the deceased. For easy of reference, I find it pertinent to reproduce the section hereunder:

Section 9 (1)

*"Where a person institutes a suit to recover land of a 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 to be in possession of the land, the right of action shall be deemed to have accrued on the date of death."*

Additionally, the same law, that is the Law of Limitation Act, Cap 89 R.E 2019, in its First Schedule requires a claim on a suit to recover land to be brought within twelve (12) years.

Going to the plaint that initiated the case at hand it is indeed that, the matter is time bared as conceded by the plaintiff's counsel since the deceased who is alleged to be in possession of the land in dispute died on 26<sup>th</sup> August 1976. As submitted by Ms Mwandambo, that the plaintiff was required in respect to the law of limitation to seek extension of time from



the Minister. The law is clear under section 44(1) of Cap 89 RE: 2019 that:

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*44(1) "Where the Minister is of the opinion that in view of the circumstances in any case, it is just and equitable so to do, he may, after consultation with the Attorney-General, by order under his hand, extend the period of limitation in respect of any suit by a period not exceeding one-half of the period of limitation prescribed by this Act for such suit."*

In this case, the plaintiff did not abide to the legal requirement to file extension of time if he was of the view that the same might be practicable given the fact that the time limit in recovery of land is twelve years. That being the matter of law, as stated in the case of **Stephen Masatu Wasira** (supra) the remedy available for the matter which is time barred before the court is to be dismissed. (See also the case of **Moto Matiko Mabanga Vs Ophir Energy Plc and 6 Others** Civil Appeal No. 119 Of 2021, and **MM Worldwide trading Company Limited & 2 Others vs National Bank of Commerce Limited** Civil Appeal No. 258 of 2017).

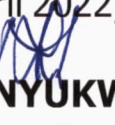


In the upshot, I proceed to uphold the preliminary objection and dismiss the case for being time barred with no order as to costs.



**M. MNYUKWA**  
**JUDGE**  
**21/04/2022**

**Court:** Ruling delivered on 21<sup>st</sup> April 2022, in the presence of both parties.



**M. MNYUKWA**  
**JUDGE**  
**21/04/2022**