

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

LAND APPEAL NO. 56 OF 2021

(Arising from Land Application No. 1 of 2019 before Chato District Land and Housing Tribunal)

LEONARD KULWA *(Administrator of the Late Mahenge Gakuba)*.....**APPELLANT**

VERSUS

CLEMENCE LUKANDA.....**1ST RESPONDENT**

JUMA BUPILIPILI**2ND RESPONDENT**

AMINA MOHAMED**3RD RESPONDENT**

JUDGMENT

23rd February & 22nd April, 2022

Kahyoza, J.

It is the interest of no one for litigations to go on unchecked or for people claiming under the same title to litigate based on similar cause against the same defendant or people defending under the same title. Thus, litigation must end to give parties to litigations time to engage in development activities. I selected to preface the judgment because of the facts of this case.

Leonard Kulwa is the Administrator of the estate of the Late Mahenge Gakuba. The Late Mahenge Gakuba died intestate in 1997. At the time Mahenge Gakuba passed on, the administrator who was 40 years old

in 2020 when he testified before the tribunal, was 17 years. Nevertheless, **Leonard Kulwa** applied and the primary court appointed him to administrate the estate of Late Mahenge Gakuba in 2018. Thus, **Leonard Kulwa** was appointed to administrate the estate of Late Mahenge Gakuba after the expiry of 21. Following his appointment, **Leonard Kulwa** sued Clemence Lukanda, the first Respondent, Juma Bupilipili, the Second Respondent and Amina Mohamed, the third Respondent in 2019 before Chato district Land and Housing Tribunal (the DLHT).

The undisputed facts are that **Leonard Kulwa** claimed 36 acres of land from the respondents contending that the suit land belonged to the late Mahenge Gakuba. Clemence Lukanda's (the first respondent) defence was that he bought the disputed land from the third respondent in 2003, 2004 and 2005. Clemence Lukanda tendered the sale agreements which were admitted as exhibits SU2 collectively. In 2006 one person claimed to own the suit land, trespassed onto and occupied the land. Clemence Lukanda sued the trespassers who were Mathias Kagore and Shija Chat in the ward tribunal. The tribunal declared him to own only 5 acres of land. He appealed to the DLHT vide Land Appeal No. 29/2008, which nullified and quashed the decision of the ward tribunal for want of jurisdiction.

Later, Clement Lukunda instituted application No.33/2008 against Mathias Kagore and Kaliyaya Elias in the DLHT of Chato. He emerged successful. The DLHT declared Clement Lukunda the owner of 30 acres of land, which is subject of dispute. It is clear as daylight that Clemence Lukanda occupied the disputed land before 2006 and was declared the owner in 2008 vide Land Application No. 33/2008. Both tribunal found that

Clement bought the disputed land from the Amina Mohamed, the wife of the late Mohamed. Mohamed was alleged owner of part of the suit land. According to Yombo (Pw2) Mohamed and Amina occupied the disputed land before Clement Lukunda occupied it. He could not tell whether Mohamed bought the disputed land from the appellant's family or otherwise.

The appellant told the DLHT during cross-examination that Mathias Kagore is his relative but not the administrator of the deceased' estate. I find it settled or proved that the dispute of ownership between Clement Lukunda and the relatives of the late Mahege commenced in 2006 when Mathias Kagore sought to deprive Clement the disputed land. The same year Clement Lukunda sued Mathias Kagore.

I will now consider facts regarding the dispute between **Leonard Kulwa**, the Administrator of the estate of the Late Mahenge Gakuba and Amina Mohamed. It is obvious from the record that **Leonard Kulwa**, sued Amina because it was alleged that the latter sold the disputed land to Clement Lukunda. **Leonard Kulwa**, deposed that the late Mahenge's family did not trace any document to prove that the late Mahenge sold the disputed land to Amina Mohamed's husband. He testified further, that even if, the late Mahenge sold the disputed land, did so without obtaining consent from his family members. For those reasons, the alleged sale is illegal. Thus, the cause of action against Amina Mohamed started to run on the same date as against Clement Lukunda.

Lastly, facts relating to the dispute between **Leonard Kulwa**, the Administrator of the estate of the late Mahenge Gakuba and Juma Bupilipili, the second respondent, are that; Juma Bupilipili's father purchased a piece of land from late Mahenge. Juma Bupilipili expanded the boundaries of the land his father purchased, invading the late Mahenge's land. One of **Leonard Kulwa's** witness, James Mlyakanga (Pw4) told the DLHT that he witnessed the sale of the land between "Mama Matama Mahenge" and Bupilipili Lushinde in 1999. "Mama Matama Mahenge" is the appellant's grandmother. He deposed that the land was 200 paces width and the length was not measured but marked as a stream bordering Katale village and Nyabilezi village. He added that the buyer paid the purchase price, which was Tzs. 20,000 and two herd of cows. He wondered why there was dispute involving the shamba. He deposed *"Nimeishi Katale toka mwaka 1984 mpaka 2018, na shangaa kusikia shamba lina mgogoro."*

James Mlyakanga (Pw4) deposed that Juma Bupilipili invaded the late Mahenge's land from the width of 200 paces to 290 paces in 2017.

Juma Bupilipili confirmed that the evidence that his father bought the land from the appellant's family in 1998 and that the seller and buyer executed a contract. He tendered a photocopy of the sale agreement which specified the measurements of the sold land. He contended that the border of the land in disputed is identified by trees which include sisal plants, "miboyo" and "cinderala" trees. Juma Bupilipili deposed that the dispute commenced in 2007, three years after his father's death. Juma Bupilipili deposed during cross –examination that in 2007 the appellant's family invaded part of his land and sold it. He sued and won the case. Later the

same year, Shija Mwalukila complained to the Ward tribunal and lost the battle.

The evidence on record proves the fact that Juma Bupilipili's father purchased land from the late Mahenge's clan in 1998. The sale agreement tendered and admitted as exhibit SU3 shows was 295 paces (hatua za mbugani ni hatua 295) to 290 paces (hatua za shamba 290). There is no evidence from the record to establish that there was any cause of action in 2017.

It is on the above evidence on record, the DLHT decided the application **Leonard Kulwa**, the Administrator of the Late Mahenge Gakuba's estate instituted against Clemence Lukanda, Juma Bupilipili, and Amina Mohamed is time barred. Hence the current appeal.

When does time start running against the administrator of the deceased's estate?

The appellant's advocate argued the DLHT erred to hold that the claims were time barred while the cause of action began in 2018 after the administrator was appointed. To buttress his position, he cited the provisions of section 24(2) of the **Law of Limitation Act**, [Cap. 89 R.E. 2019] (the **LLA**). The appellant's advocate contended strongly that the DLHT erred to argued that the dispute ensued in 2007 when the dispute commenced instead of 2018 when the appellant was appointed to administrate the deceased's estate.

The respondent's advocate replied that once the owner of the disputed land dies, the law provides two different situations for accrual of the cause of action. He submitted that the determining factor is at what time the cause of action arose, that is whether the cause action accrued before or after the owner's demise. In the present case, he was of the view that time commenced running on the date the dispute arose as the cause of action arose after demise of owner of the disputed land.

He contended that owner of the disputed land died in 1997. He argued that the appellant did not state when the dispute occurred. However, the respondents' evidence showed that the cause of action arose when the third respondent sold the disputed land to the first respondent in 2003, 2004 and 2005. He argued that the cause of action against the second respondent arose in 2007 when the appellant's family alleged for the first time that the second respondent had trespassed by extending the boundaries of the land sold to him. He concluded that the DLHT had justification to hold that the suit was time barred.

The law, item 22 of part I of the Schedule to the the **LLA**, provides in no uncertain terms that a period of limitation for suit to recover land is 12 years only. The cause of action in suits involving land accrue on the date of dispossession or discontinuation as provided by section 9 of the **LLA**. Section 9 (2) of the **LLA**, provides thus-

"Where the person who institutes a suit to recover land, or some person through whom he claims, has been in possession of and has, while entitled to the land, been dispossessed or has

discontinued his possession, the right of action shall be deemed to have accrued on the date of the dispossession or discontinuance.”

I agree that, in suits involving the deceased’s estate, time starts ticking differently depending on whether the cause of action arose before or after death of the land owner. I will add that If the land owner dies before the cause of action accrues the period of limitation starts to run on different dates or time depending on whether the administrator is suing or defending the suit. If the legal representative or the administrator is suing time starts **to run one year from the date of the landed owner’s death or from the date when the right to sue accrues to the estate of the deceased, whichever is the later date.** This is the position provided under section 24 (1) of the **LLA**. I wish to reproduce it here as follows-

*24.-(1) **Where a person who would, if he were living, have a right of action in respect of any proceeding, dies before the right of action accrues, the period of limitation shall be computed from the first anniversary of the date of the death of the deceased or from the date when the right to sue accrues to the estate of the deceased, whichever is the later date. (Emphasis is added)***

In a situation where the owner of the landed property dies before the cause of action arose, time starts to tick against a person who intends to sue an administrator the deceased’s estate, **the date when there is a legal representative of the deceased against whom such proceeding may be instituted or from the date when the right of action accrues against the estate of the deceased, whichever date last occurs.** This is what section 24 (2) of the **LLA**. It reads-

(2) Where a person against whom, if he were living, a right of action would have accrued, dies before the right accrues, the period of limitation shall be computed from the date when there is a legal representative of the deceased against whom such proceeding may be instituted or from the date when the right of action accrues against the estate of the deceased, whichever date last occurs.

The two subsections of section 24 are distinguished by the following catching phrases; in sub section (1), "***Where a person who would, if he were living, have a right of action in respect of any proceeding***" which implies that the deceased would have been a Plaintiff if he was living; and in sub section (2), "***Where a person against whom, if he were living, a right of action would have accrued***" which shows that the deceased would have been a defendant if he was living. I find logic in the subsection (2) applying to situations where the deceased would have been a defendant as the law prohibits intituling a suit or an appeal in the name of the deceased person. (See rule 1 of Order XXX of the CPC and sections 99 and 100 of the Probate Act, [Cap 352 R.E. 2002]). Thus, time ticks after the administrator is appointed or from the date when the right of action accrues against the estate of the deceased, whichever date last occurs.

The present case, the deceased would have sued if he were living. Thus, the cause of action arose after Mahenge, the alleged owner of the deceased's estate died. The cause of action arose in respect of the first and third defendant accrued in 2003, 2004 and 2005 when the third respondent sold the disputed land to the first respondent. It is on record that in 2006 one of the Late Mahenge's family members ordered the first

respondent to refrain the trespassing the suit land. The first respondent sued that person in 2006 and 2008 and emerged the winner. If the deceased's family members sought that the estate of the late Mahenge was invaded they ought to have sued at that time. They should have appointed an administrator and instituted a suit. They should not have waited until after the expiry of more than 12 years to sue.

It is not in dispute that the second respondent bought the suit land in 1999 from the deceased's clan members. That is a year after Mahenge's death. It is on record that the dispute over the suit commenced in 2007, when one the deceased's family member confronted the second respondent for trespass. I take it proved that the dispute commenced in 2007. The appellant did not adduce any evidence to prove the time the dispute between Mahenge's family and the second respondent ensued in 2018. The second respondent deposed that after the dispute arose in 2007 he sued a trouble maker successfully.

It is undisputed that the appellant, the administrator of Mahenge's estate, instituted a suit for cause action which accrued after the demise of Mahenge. I therefore, find the provisions of section 24(1) of the Law of Limitation Act to apply. Thus, time started to tick against the appellant, the administrator **from the date when the right to sue accrues to the estate of the deceased, whichever is the later date.** In case of the dispute against the first and third defendant, time started running in 2003, 2004, and 2005, when Amina sold the disputed land to the first respondent or in 2006 when one of the family members commenced a land dispute against the first respondent.

Regarding the second respondent, time started running against the administrator of the estate of late Mahenge in 1999 when the clan members of the late Mahenge disposed land to the second respondent or from 2007 when one of the members of the late Mahenge found out that the second respondent had trespassed onto their land.

It is undisputed that, whether cause of action commenced in 2005 or 2006 in respect of the first and third respondents or in 2007 regarding the dispute against the second respondent, the suit was time barred in 2019, when the appellant instituted it in the DLHT. Consequently, I uphold the DLHT's finding that the suit or application was time barred. I find that the appeal is meritless. I dismiss it with costs.

It is ordered accordingly.



J. R. Kahyoza

JUDGE

22/4/2022

Court: Judgment delivered in the presence of the appellant and in the absence of the respondents. B/C Ms. Martina (RMA) Present.



J. R. Kahyoza

JUDGE

22/4/2022

