

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(SUMBAWANGA DISTRICT REGISTRY)

AT SUMBAWANGA

PC. CIVIL APPEAL NO. 7 OF 2022

WILBROAD KAPUFI APPELLANT

VERSUS

CAROLINA GEORGE HOPKIN RESPONDENT

(Appeal from the Judgment and Decree of the District Court of Sumbawanga at
Sumbawanga)

(G. J. William, RM)

Dated 10th day of January 2022

In

(Civil/Probate Appeal No. 6 of 2021)

JUDGMENT

Date: 17 & 17/10/2022

NKWABI, J.:

The respondent sued the appellant in the trial court for two houses currently under plot No. 117 and plot No. 119 respectively both at *Kitalu* (D) Mazwi area within Sumbawanga Municipality. The two houses allegedly were the property of Stella Lukonde Ngalawa who passed away on 26/10/1996. On 29/12/2010 the trial court appointed Christoph George Hopkin administrator of the estate of the late Stella Lukonde Ngalawa. Three houses at Mazwi area were mentioned as the properties of the deceased.

It is unclear whether Christoph George Hopkin was able to distribute the estate of the deceased. He, however, also passed away. I have seen nothing in the Court record that suggests that the respondent was appointed administratrix of the estate of Stella Lukonde Ngalawa. The only document I see in the trial Court's file in respect of the respondent is the summons which indicates that the respondent was applying to be appointed administratrix of the estate of the late Christoph George Hopkin. There is no letters of administration of the estate of the late Stella Lukonde Ngalawa issued to the respondent if at all she applied for one. I wonder if the respondent had pleaded the document that enables her to sue as administratrix of the estate of the late Stella Lukonde Ngalawa. But the learned Resident Magistrate who presided over the first appeal observed in respect of Christopher George Hopkin:

"His death necessitated the appointment of a newly administratrix to step into his shoes who is coralline Hopkin, the present."

Even so, the first question I am asked to determine in this appeal is that the first appellate court erred in law and facts for failure to consider that the claim is time barred which is found on the 5th ground of appeal in this Court.

The trial magistrate, while analyzing the above complaint concluded that:

"Upande wa utetezi umedai kuwa marehemu Anatory Kapufi alinunua nyumba namba 33 mwaka 1992 na nyumba namba 35 kabla ya mwaka 1995 na kwamba Christopher na Carolina wameanza kudai nyumba hizo mwaka 2010 kipindi cha miaka 18 baadaye. Carolina Hoplin ameeleza kwamba yeye alipata taarifa za wakina Kapufi kudai wamenunua nyumba hizo mwaka 1996. ... Ameeleza kuwa mwaka 2010 ndipo kaka yake (Christopher) aliamua kufungua mirathi na kuanza kudai nyumba hizo. ... Kwa Ushahidi uliopo ndugu hao hawakuchukua hatua zozote za kisheria mpaka mwaka 2010 ... Mahakama hii inaona kuwa ... wasimamizi wa mirathi hii waliwasilisha madai haya ya kudai umiliki wa aridhi nje ya muda wa miaka 12 uliowekwa."

Unfortunately, the trial court instead of dismissing the claim for being time barred it went on to determine it on its merits as to ownership of the houses.

The complaint about the suit was time barred reached the jurisdiction of the 1st appellate court which decided as follows:

"It is beyond doubt and evidence on records speaks loudly to the effect that, the alleged fraud was not discovered on 1996, following the demise of Stella Ngalawa, but ... fraud was discovered after the appointment of the administrator. ... That being the case, counting from the time which fraud was discovered, the matter is within time. ..."

The above view of the first appellate court prompted this appeal which was disposed of by way of written submissions. Ms. Tunu Mahundi, learned counsel, represented the appellant while the respondent was duly represented by Mr. Mathias Budodi, also learned counsel.

Submitting on that ground of appeal, the counsel for the respondent said that the evidence of the respondent was clear at page 13 of the trial court proceedings that she became aware of the alleged fraudulent documents after her lawyer requested them from the land office and she came to know about the purported deed of gift. That ground, he insisted, is as well devoid in merits and prayed the same be rejected. He backed his submission on this point by the decision in **Calico Textile Industries Ltd. v. Tanzania Finance Development Co. Ltd** [1996] T.L.R. 257.

In rejoinder submission, Ms. Mahundi contended that the respondent stated that they noticed the presence of Kapufi family on the burial ceremony of the late Stella Ngalawa which is 16 years ago.

The above rival submissions from both counsel forced me to revisit the trial court's evidence. There I found that when the respondent was cross-examined by the appellant, she replied:

"Sijui wakina Kapufi walikaa humo kuanzia mwaka gani ila niliwaona humo mwaka 1996 nilipokuja kwenye msiba wa bibi. ... Mimi nimeanza kuzifuatilia mwaka 2017 ila hapo kabla alikuwepo Christopher Hopkin. Christopher alianza kufuatilia. Christopher alianza mwaka 2010 tangu tulipojua mwaka 1996. ..."

Because of the above quoted piece of evidence of the respondent, I agree with the appellant that the respondent and her late brother are/were time barred to claim for the two houses. In the first place, the deceased who is alleged to be the owner of the houses died in the year 1996. The probate and administration cause in respect of her estate was opened in the year 2010. It is clear that the late Anatory Kapufi was in possession of the houses earlier than the year 1996. The year 1996 is when the cause of action backed

by the allegedly discovery of the alleged fraud would start to run whereas if any, it came to an end in the year 2008. With respect, the claim by Mr. Budodi that the alleged fraud was discovered in the year 2010 is not supported by the evidence on record. But it is clear that the respondent and her late brother Christopher slept on their right, if any, and cannot be heard to come to Court of law to claim for any right over the two houses because any claim, that claim is time barred and cannot be entertained by a Court of law.

The above disposes of the appeal. But before I conclude, I take the opportunity to remind the lower courts as well as the parties and their counsel to indicate properly the parties in the suit. For instance, the respondent in this Court, from the District Court was indicated as Karolina Hopkin without indicating that she was an administratrix of an estate of any of any deceased. That may lead to injustice or confusion. If one is suing or being sued as an administrator of the estate of any deceased, the pleadings should indicate as such.

That said and done, I allow the appeal with cost. The judgment of the District Court is quashed and its decree and orders are set aside. The decision of the trial Court is restored as far as its decision that the claim is time barred.

It is so ordered.



J. F. NKWABI

JUDGE

17/10/2022

Date - 17/10/2022
Coram - Hon. M.S. Kasonde – DR
Appellant - Ms. Tunu Mahundi – Advocate
Respondent - Mr. Deogratius Sanga – Advocate
B/C - A.K. Sichilima – PRMA

Ms. Tunu Mahundi – Advocate: This matter is scheduled for judgment and we are ready.

Mr. Deogratius Sanga – Advocate: I am prepared too.

Court: Judgment delivered this 17th day of October, 2022 in the presence of Ms. Tunu Mahundi, Learned Advocate for the appellant and Mr. Deogratius Sanga, Learned Counsel for the Respondent.

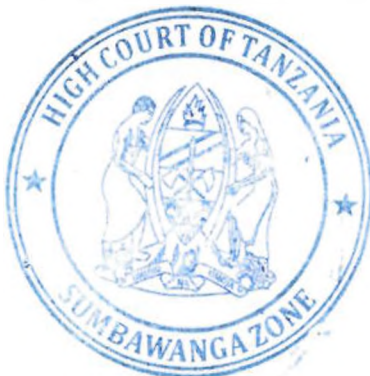



M.S. KASONDE

DEPUTY REGISTRAR

17/10/2022

Right of appeal fully explained.




M.S. KASONDE

DEPUTY REGISTRAR

17/10/2022