

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB REGISTRY OF KIGOMA**

AT KIGOMA

LAND CASE NO. 11 OF 2022

**ATANAS BALABUNGWA MONDO (Administrator of estate of the late
Kobali Mlondo) PLAINTIFF**

VERSUS

ELINATHAN KOBALI MLONDO

@KOBALI MLONGO 1ST DEFENDANT

MNANILA VILLAGE COUNCIL 2ND DEFENDANT

HON. ATTORNEY GENERAL 3RD DEFENDANT

Date of Last Order: 21.03.2023

Date of Ruling: 24.03.2023

RULING

MAGOIGA, J.

This ruling is on preliminary objection on point of law that the instant suit is time barred by the learned State Attorney who consequently urged this court to dismiss this suit with costs.

Vide Land Case No.11 of 2022 the abovenamed plaintiff as administrator of estate of the late KOBALI MLONDO who died interstate in 1992 procured the letters of estate in 2021 through which he instituted the instant suit claiming ownership of the land situate at Mnanila Village within Buhigwe district and Kigoma region, 1st and 2nd defendants be declared trespassers, compensation for exhaustive improvement, general damages, interest and costs of the suit.




Upon served, defendants filed written statement of defence resisting the grant of the reliefs sought and simultaneously raised a different set of preliminary objections against the competency of this suit.

When this suit was called on for hearing of the preliminary objections, the plaintiff appeared in person and unrepresented, the 1st defendant was represented by Richard Kasogota Kibili holder of powers of Attorney from the 1st defendant, while the 2nd and 3rd defendants were enjoying the legal services of Mr. Allan Shija and Mr. Godfrey Mwachai, learned State Attorneys.

Mr. Kibili instantly told the court that he prays to withdraw preliminary objections raised and same were so marked.

Mr. Shija argued the preliminary objection that the instant suit is time barred. According to Mr. Shija, their objection is premised in paragraphs 9 and 10 of the plaint shows that, the landed dispute, if any, started in 2009 which is 14 years since then to 2022 when this was instituted. Not only that but also that, in the said suit land there is a Primary school which was constructed in 1982 and none complained against the construction of the school given the fact that even the deceased was alive by then and died ten years after in 1992. Mr. Shija equated the plaintiff as busy body who has unscrupulously acquired the letters of administration after elapse of more than 29 years and is using it to claim which is barred by law.




Guided by the provisions of section 3(1) of the Law of Limitation Act, [Cap 89 R.E.2019] read together with item 22 of the 1st Schedule to the Act, the learned Attorney strongly urged this court to find and hold that the instant suit is time barred and proceed to have it dismissed with costs.

In reply the plaintiff briefly argued that, it is not true of what is argued by the State Attorney because the institution of this suit was result of direction given by this court to open a suit. According to the plaintiff, much as he was appointed in 2021 for the deceased who died in 1992, the time of 12 years started to run when he was appointed and not 2009. On that note, the plaintiff urged this court to find this suit is in time and proceed to dismiss the preliminary objection with costs.

In rejoinder, the learned Attorneys, argued that since the plaintiff has admitted that the deceased died in 1992 and his appointment came in 2021 which is almost 30 years, then, the direction given by Hon. Matuma, J was not for extension, and if need be, he was to seek an extension. Failure to seek and granted extension, this suit is time barred, insisted the learned Attorney.

Having carefully considered the rivaling arguments for and against the preliminary objection and having gone through the plaint and its annextures, I find that the instant suit as rightly argued by the learned State Attorneys is hopelessly time barred. I will explain. One, the claim of

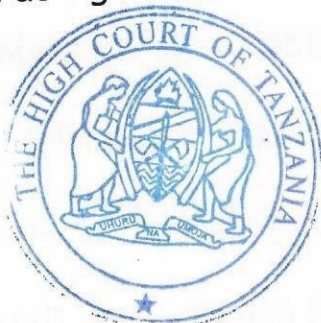


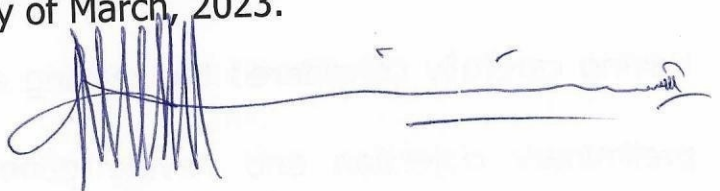
land, if any, is limited to twelve years from when the course of action arose. This is as per item 22 of the 1st Schedule to [Cap 89 R.E.2019] and there is no dispute the 2nd defendant constructed a school since 1978 and to date she has been using it undisturbed even during the life time of the late Kobali Mlongo. The above state of affairs shows that the plaintiff is, as rightly described by the learned Attorney, a busy body who is here regardless of the time elapsed and to him his appointment is far better than time elapsed. Two, the plaintiff's arguments that time has to run from when he was appointed is erroneous and cannot be accepted by this court. Three, the learned Judge's directive in Misc. Land Application No. 44 of 2021 was wrongly interpreted by the plaintiff and did not mean to extend time to open a suit but was to institute subject to time limit.

Without much ado and for the reasons stated above, this court find and hold that, indeed, the instant suit is hopelessly time barred and consequently is hereby dismissed with costs.

It is so ordered.

Dated at Kigoma this 24th day of March, 2023.




S. M. MAGOIGA
JUDGE
24/03/2023