

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IRINGA SUB REGISTRY)
AT IRINGA**

MISC. LAND APP NO. 26 OF 2021

(Arising from Land Appeal No. 10/2021 of the High Court of Tanzania before Hon. F. N Matogolo, J, Original Land Application No. 127/2018 of the District Land and Housing Tribunal of Iringa before Hon. A. J. Majengo, Chairperson).

BENY E. MBALINGA (The Administrator of the Estate of Late Athuman V. Mbalinga)	} APPLICANT
VERSUS		
EMILIA BRUNO YEGAMISE	1ST RESPONDENT
AULELIA BRUNO YEGAMISE	2ND RESPONDENT
ELIZABERTH ELIAS YEGAMISE (The Administratrix of the Estate of the Late Gwido Bruno Yegamise)	} 3RD RESPONDENT
IVETA ANGELO YEGAMISE	4TH RESPONDENT

RULING

23rd February & 29th March, 2023

I. C MUGETA, J:

The applicant preferred the present application under section 47(2) of the Land Disputes Courts Act, [Cap. 216 R.E 2019] (hereinafter referred to as LDCA) seeking for the following orders:

- i. That this honourable court be pleased to grant leave to appeal against the judgment and decree delivered by Hon. F. N Matogolo, J. on 14th September, 2021 in Land Appeal No. 10 of 2021.*



- ii. Costs to follow event.*
- iii. Any other relief this honourable court deems fit to grant.*

Briefly, the background to this application is that the applicant sued the respondents in the District Land and Housing Tribunal (DLHT) for a declaratory order that the land in dispute belongs to the estate of the deceased. The respondents raised a preliminary objection to the effect that the matter was time barred. The DLHT upheld the preliminary objection and consequently dismissed the application. The applicant's appeal to this court was unsuccessful. Still intending to challenge the decision of the DLHT, the applicant filed the present application.

In the hearing of the application, the applicant was represented by Mr. Lazaro Hukumu, learned advocate whereas the respondents enjoyed the service of Mr. Amandi Isuja, learned advocate. The application was argued by way of filing written submissions.

In supporting the application, the applicant's counsel submitted that the principles underlying application for leave was stated in the case of **British Broadcasting Corporation v. Eric Sikujua Ng'maryo**, Civil Application No. 138 of 2004, Court of Appeal of Tanzania (CAT) at Dar es Salaam (unreported). He submitted further that Land Appeal No. 10 of 2021 raises

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issues that require guidance and interference of the CAT. Issues that the applicant intends to take to the CAT are:

One, whether it was proper for this court to disregard the fact that there is no time limit for pursuing an action based on a deceased's estate. **Two**, whether it was proper for the High Court to hold in favour of the respondent despite the fact that the land in dispute was owned by the applicant and the respondents were merely invitees. **Three**, whether it was proper for the trial tribunal and appellate court to wear the shoes of the Probate Court by challenging the grant of the letter of administration of the applicant during the hearing of the matter.

In support of 1st ground, the applicant's counsel submitted that in the judgment of this court, the applicant was blamed for failing to institute his application in 1971 when Athman V. Mbalinga died since the right of action accrued on the date of death of the applicant's father. The cause of action in his view arose when the respondents invaded the applicant's land as provided under section 9(2), 24(1) and 9(2) of the Law of Limitation Act, [Cap. 89 R.E 2019].

Arguing on the 2nd ground, the learned advocate argued that the record shows that sometimes in 1974 the respondent's father one Bruno

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Yogamise who was a Kigonzile Chairman requested the wife of late Athumani Mbalinga allowed the village council to utilize the suit land temporary as Ujamaa farm. Thus, an invitee in his view cannot claim ownership over the land. Supporting the 3rd ground, the applicant's counsel contended that the DLHT and this court failed to interpret section 9(2), 24 and 25 of the Law of Limitation Act, [Cap. 89 R.E 2019]

In support of the 3rd ground, the counsel for the applicant argued that the DLHT and this court failed to interpret section 9(2), 24 and 25 of the Law of Limitation Act, [Cap. 89 R.E 20219] hereinafter referred to as LLA which provides for accrual of cause of action for recovery of deceased's land. The exclusion is dealt with under sections 24 and 25 of the LLA.

The respondents' counsel opposed the application as being devoid of merit. He submitted that the decision of this court was proper based on the applicant's pleadings which showed that the suit was time barred as the applicant started using the land since 1974. He argued that the applicant was suing as an administrator of the estate of the late Athuman V. Mbalinga who passed away in 1971 thus 47 years had lapsed from the time of his death to institution of the suit. To cement his submissions, he cited the cases of **Dominicus M. Mvamba v. Thadei Mwangunga &**

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Another, Land Appeal No. 10 of 2016, High Court of Tanzania (HCT) at Iringa (unreported), **Helena Mwaipasi v. Philip Mwambungu & 2 Others**, Land Case No. 10 of 2012, HCT at Mbeya (unreported), **Job Mwanjisi v. Edward Momba & 12 Others**, Land Case No. 18 of 2008, HCT at Mbeya (unreported), **Yusuf Same & Another v. Hadija Yusuf (1996) TLR 347** and **Salum Almasi Jaza (Administrator of the estate of the late Mlang'amba binti Mwichande) v. Tatu Omari Kitambo and Another**, Land Appeal No. 82 of 2017, HCT Land Division (unreported) which provide for time limitation of 12 years for recovery of land.

The respondents' counsel submitted further that the DLHT did not stray in any way to the realm of the Probate court and did not challenge the letters of administration. Therefore, the matter being time barred, the court was right to dismiss it as it was held in **Tanzania Dairies Ltd v. Chairman Arusha Conciliation Board & Issack Kirangi [1994] TLR 33**. In conclusion, the respondents' counsel argued that the applicant has not advanced good grounds for leave. To buttress his argument, he cited the cases of **Erasto Daima Sanga v. Peter Mwonga**, Misc Land Application No. 66 of 2019, HCT at Mbeya (unreported), **Citibank Tanzania Limited v. Tanzania Telecommunications Company Ltd and 5 Others**, Misc.

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Commercial Cause No. 6 of 2003, HCT Commercial Division at Dar es Salaam (unreported) cited in the case of **Winford Mlasha v. Dinales Paul Mwasile (the administratrix of the estate of the late Paul Mwasile) & 2 Others**, Misc. Land Application No. 125 of 2017, HCT at Mbeya (unreported).

In his rejoinder, the applicant's counsel essentially reiterated his submissions in chief. He added that the applicant pleaded that the respondents invaded the suit land sometimes in 2014 to 2015 after the death of the deceased.

The issue in this application is *whether there are legal points as matters of general importance worth consideration of the CAT.*

Section 47(2) of the LDCA vests in the High Court discretion to grant leave to litigants intending to appeal to the CAT. Such discretion, however, should be exercised judiciously as underlined in the **British Broadcasting Case** (supra). An applicant for leave must demonstrate that, the intended appeal raises issues of general importance or a novel point of law or that the grounds show a prima facie or arguable appeal.

In my view, the parties are in contention on the applicability of section 9(2), 24 and 25 of the LLA on when does cause of action arise when it is

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based on the deceased's estate particularly land. The applicant's application at paragraph (i) shows that the owner of the suit property died in 1971. The application further shows that in 1974 after his death, the father of the respondents requested the use of the suit property as Ujamaa farm but in 1978 converted the use of the suit property to his own personal property.

The administrator of the deceased's estate was appointed on the 13th December, 2016. Thereafter, he sued the respondents. The question whether the cause of action arose in 1974 and 1978 or after the appointment of the administrator, in my view, is worth the attention of the Court of Appeal. The submission in rejoinder of the applicant that the cause of action arose in 2014 – 2015 is not supported by the record.

The arguments in issues number two and three are irrelevant. This is because whether the respondents are invitees to the suit land is a matter of fact. There is no evidence to the effect on record as the case was determined on a preliminary objection. The same applies to the issue of the DLHT and the High Court turning themselves to probate court and challenge the grant of the letters of administration. I have read the judgment of the High Court it never addressed this issue even if it was

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raised in the third ground of appeal. I am aware the Court of Appeal cannot decide on an issue that was not decided by the High Court when exercising its appellate jurisdiction.

In the event, I find that the present application has met the legal requirements for grant of leave to appeal to the Court of Appeal. This application is, thus, granted.



I.C MUGETA

JUDGE

29/03/2023

Court: Ruling delivered in chambers in the presence of Amandi Isuja, advocate for the respondents and in the absence of the applicant.

Sgd: M. A. MALEWO

DEPUTY REGISTRAR

29/03/2023