

**UNITED REPUBLIC OF TANZANIA**

**JUDICIARY**

**HIGH COURT OF TANZANIA**

**MOROGORO DISTRICT REGISTRY**

**AT MOROGORO**

**LAND APPEAL NO. 120 OF 2022**

*(Arising from DLHT Land Application no 97/ 2019 for Morogoro District)*

**BERNADA VITALIS MKOBA.....APPELLANT**

**VERSUS**

**PETER UISSO (Administrator of the late John Michael) ... 1<sup>ST</sup> RESPONDENT**

**MOHAMED SEIFU KILONGO ..... 2<sup>ND</sup> RESPONDENT**

**BASTINI RONGO ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

**Date of last order: 22/5/2023**

**Date of judgement: 9/6/2023**

**MALATA, J**

This appeal has its genesis in the District Land and Housing Tribunal for Morogoro District, vide the Land Application No. 97 of 2019. The centre of the dispute is a landed property, one acre located at Dark City (now Mazimbu Road Darajani located at Mazimbu within Morogoro Municipality

in Morogoro Region). After full trial, decision was entered against the appellant.

Aggrieved by the said decision, the appellant filed appeal to this court armed with the following grounds;

1. That, the trial tribunal contravened Regulation 12 of the District Land and Housing Tribunal Regulations G.N 174/ 2003.
2. That, the trial tribunal erred in law and fact by disregarding cogent evidence adduced by appellant and her witness one Melina Chale.
3. That, the trial tribunal improperly invoked and applied doctrine of res judicata in its decision.
4. That, the trial tribunal misconstrued the High Court decision in respect of PC Civil Appeal no. 45 of 2015 between Bernada Vitalis vs. John Michael Uisso hence made a wrong decision in favour of the respondent.
5. That, the trial tribunal erred in law and fact in failure to appreciate the matrimonial disputes and land disputes are two distinct cases in the strict sense of it which requires separate disposal.
6. That, the trial tribunal didn't frame issues for determination in a suit of counterclaim as between 1<sup>st</sup> respondent against the appellant and also appellant was condemned unheard in the said counter claims.

7. That, the trial tribunal erred seriously in law and in fact by determining counter claim in contravention of Regulation 19(2) of the District Land and Housing Tribunal Regulation G.N 174/2003.
8. That, during hearing no witness after adducing evidence appended his or her signature hence the whole trial was vitiated by such defect.

Based on the aforementioned grounds the appellant prayed for the judgement, decree and proceedings of the trial tribunal be reversed and declared that the appellant as lawful owner of the suit property. Cost to follow the event.

This appeal was heard orally, Mr. Jackson Mashankara, appeared for the appellant, while the 1<sup>st</sup> respondent was represented by Mr. Benjamin Jonas, and the 2<sup>nd</sup> and 3<sup>rd</sup> respondents enjoyed the legal service of Ms. Levina Mtweve, all learned counsels.

In the course of composing judgement, and upon perusal of the case file where this appeal emanates, this court noted that the proceedings was founded on the proceedings which were preferred outside the time *limine* prescribed by the law. This means that, the DLHT had no jurisdiction to entertain the matter which was time barred.

In that regard, the court *suo motto* raised such a point of law and invited all parties to appear and address on the same.

At the hearing of the point of law raised by the court *suo motto*, the parties' representation was; Mr. Jackson Mashankara learned counsel appeared for the appellant, Mr. Benjamin Jonas for the 1<sup>st</sup> respondent and 2<sup>nd</sup> Respondent and 3<sup>rd</sup> respondents appeared through Ms. Levina Mtweve all learned counsels.

Addressing on the point of law raised Mr. Mashankara started his submission by citing section 5 of the Law of Limitation Act, Cap 89 R.E 2019, which deals with accrual of cause of action. He also referred this court to the case of **Ramadhani Nkongera vs. Kasani Paul [1988] TLR 56**, which depict on when the right of action begins to run. The position is that, it is when one becomes aware of the said transaction or act complained of.

As to the present case, amended land application no. 97 of 2019, *item 6(a)(iii)* elucidate that the cause of action arose on 7/3/2011. That is the date, the applicant became aware that part of the land in dispute has been sold to the second respondent and part of it was sold to the third respondent.

Based on those facts, the cause of action in this case arose on 7/3/2011 whereas the land application no. 97 of 2019 was instituted on 28/6/2019 claiming for declaratory reliefs being substantive reliefs and other ancillary ones.

The time limit within which to file a suit seeking for declaratory orders is six (6) years. This is provided in item 24 of part I to the Schedule of the Law of Limitation Act. As the cause of action arose in March, 2011 while land application no. 97 of 2019 was filed on 28/06/2019, counting from March, 2011 to 28/06/2019 it is clear more than eight (8) years passed. This confirms that, land application no. 97 of 2019 was lodged out of time for more than two years.

As the said land application was filed in DLHT beyond the time limit, then the DLHT had no jurisdiction to entertain it. The remedy was to dismiss it as per section 3(1) of the Law of Limitation Act.

On the same vein, this court also lacks jurisdiction to adjudicate on the appeal before it as it is rooted from a nullity proceeding, the time barred application.

Mr. Benjamin Jonas, subscribed to what Mr. Mashankara submitted. He further referred this court to the court of appeal in the cases of **CRDB 1996 vs. Boniface Chimya [2003] TLR 413**, in **Shakila Shembazi**

(suing as the administratrix of the estate of Shembazi Jabir Bakar) vs. The Commissioner of Prisons and Attorney General, and in Benedict Gregory Mukasa vs. Mbaruku Selemani and three others (unreported) where similar legal position was cemented.

Finally, he asked the court to nullify the proceedings and judgement in land application no. 97 of 2019. He also asked the court to dismiss the appeal with costs.

Lastly, Ms. Levina Mtweve for the 2<sup>nd</sup> and 3<sup>rd</sup> respondents subscribed to what her fellow counsels succumbed that, land application no.97 of 2019 was time barred, the effect of which is as submitted by Mr. Jackson Mashankara and Mr. Benjamin Jonas. She thus prayed for dismissal of appeal with costs.

Having heard submission of all learned counsels, this court is indebted to decide on whether the Land Application No. 97 of 2019 was time barred and its consequence and fate of the instant appeal.

To start with, it is settled position of the law that, issues touching time limit of the proceedings goes to the jurisdiction of the court to determine the matter before it. As such, a point of law touching time limit can be raised at any time, even at the appellate stage either by parties or the court *suo motto*, like in this case.

Courts and tribunals are enjoined not to entertain any matter which is time barred. Consequently, it have to nullify the proceedings which are time barred.

The court of appeal in the case of **D.P.P vs. Bernard Mpangala and two others**, Criminal Appeal no. 28 of 2001 had these to say;

*"Admittedly, **limitation is a legal issue which has to be addressed at any stage of proceedings as it pertains to jurisdiction.** However, parties have to be given a right of hearing, especially as in this case where there was a need to give some explanation and even to tender proofs."*

That is to say, any case which has been filed out of the prescribed time by the law. Courts and tribunals are not clothed with jurisdiction to entertain matter which is time barred. In case it does, its decision will be a nullity.

Therefore, the court must satisfy itself before commencement of hearing of case on merits on whether it has jurisdiction to hear and determine the matter before it, as the issue of jurisdiction goes to the very root of courts and tribunals creation and its mandate.

Further in the case of **Sospeter Kahindi vs. Mbeshi Mbashani**, Civil Appeal no. 56 of 2017 (unreported) the court held that

*"The question of jurisdiction of a court of law is so fundamental. Any trial of any proceedings by a court lacking requisite jurisdiction to seize and try the matter will be adjudged on appeal or revision."*

In the case of **Tanzania Revenue Authority vs. Kotra Company Limited**, Civil Appeal no. 12 of 2009 (unreported) where the court of appeal held that;

*"The question of jurisdiction is fundamental in court proceedings and can be raised at any stage, **even at the appeal stage**. The court, suo moto, can raise it."*

In the present case as rightly as submitted by Mr. Mashankara, learned counsel for the appellant the only place in the amended plaint where it is shown when the act complained of by the appellant accrued is paragraph **6(a)(iii)** of the Land application no.97 of 2019. It establishes as to when the transaction which led to dispute occurred, that is to say, 7/3/2011. The paragraph provides that, I quote;

*(iii) that, **on 7<sup>th</sup> March, 2011** the 1<sup>st</sup> respondent (now deceased) who is biological father of the currently administrator*



*of his estate, sold the suit land measured 253 sqm secretly and without consent of the applicant as the lawful owner to the 2<sup>nd</sup> respondent and now the 3<sup>d</sup> respondent bought half of the land in dispute measured 294 sqm from the second respondent.*

There is no other date which shows that the act complained of came to the appellant's knowledge. In the circumstances thereof, the said date remains the accrual of cause of action or the date which the right of action began to run against the appellant.

The appellant, at DLHT claimed for among other, declaratory reliefs, that the Tribunal declare her as the lawful owner of the suit land. The time limit for seeking the same is six (6) years. This position is echoed by Item 24 of part I to the Law of Limitation Act and cemented in the court of appeal in case of **CRDB 1996 vs. Boniface Chimya** (supra), the court specifically stated that;

*"What was sought in this case was, among others, a **declaratory order, the period of limitation prescribed for which is six years**; therefore, the suit was filed well within time in respect of the declaratory order sought, whether the relief sought was ancillary or incidental to the substantive relief, the period of limitation remains the same;"*

Therefore, based on the principles of this court and court of appeal on the time limit within which to seek for declaratory orders as presented by both counsels hereinabove, is settled to be six (6) years based on Item 24 of Part I to the schedule of the Law of Limitation Act. I am convinced to hold that, the appellant herein was required to file the said land application within six (6) years from March, 2011. The filing of land application no. 97 of 2019 on 28/06/2019 was in contravention of the above stated legal principles. The application was therefore filed out of time. The DLHT had no jurisdiction to entertain the application for being time barred. I hereby cement to what the court of appeal principled in the case of **CRDB 1996** supra.

The question which follows is what is the consequence of the appeal filed out of time. Reference shall be made to numerous court decisions to wit; the case of John **Cornel vs. A. Grevo (T) Ltd**, Civil case no. 70 of 1998 cited in the case of **Nyanza Folklore Research Institute (NFRI 1985) vs. Mwanza City Council and others**, High Court of Mwanza, Land Case no. 04 of 2020 where it was held that;

*"However unfortunate it may be for the plaintiff; **the law of limitation is on action knows no sympathy or equity. It***

***is a merciless sword that cut across and deep into all those who get caught in its web"***

The above position is cemented by section 3(1) and (2) (a) of the Law of Limitation.

***(1) Subject to the provisions of this Act, every proceeding described in the first column of the Schedule to this Act and which is instituted after the period of limitation prescribed therefore opposite thereto in the second column, shall be dismissed whether or not limitation has been set up as a defence.***

***(2) For the purposes of this section a proceeding is instituted-***

***(a) in the case of a suit, when the plaint is presented to the court having jurisdiction to entertain the suit, or in the case of a suit before a primary court, when the complaint is made or such other action is taken as is prescribed by any written law for the commencement of a suit in a primary court;***

In the case of **Barclays Bank Tanzania Limited vs Phylisiah Hussein Mcheni**, Civil Appeal no 19 of 2016 the court of appeal had these to say;

***"Finally, therefore there was no basis for the High Court Judge to strike out the complaint that had been presented in court after***

*expiration of 60 days.....in view of that position of the law it is our conclusion that the learned High Court Judge should have resorted to section 3(1) of the Act to dismiss the complaint instead of striking it out as she did."*

Guided by the principles in the afore stated precedents, the land application no. 97 of 2019 ought to have been dismissed by the DLHT

As such, I am inclined to agree with the legal position presented by all counsels. Honestly, I hereby convey my sincere thanks to all of them for standing and acting honestly and professionally in advancing arguments. Sincerely, I applaud all of you for your outstanding professionalism.

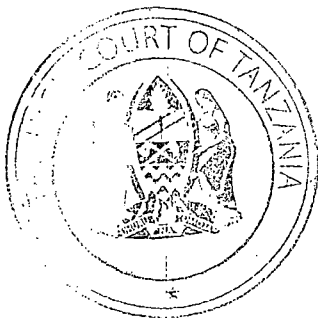
For that reason, in order to avoid perpetuating illegality by dealing with the time barred proceeding of which this court and DLHT have no jurisdiction, it is wastage of parties' resources for trying to deal with a nullity.

In the final result, this court hereby nullify all proceedings and decision of DLHT for being time barred and want of jurisdiction. Further, since the present appeal emanate from a nullity the same is hereby dismissed.

Owing the circumstances of this case, I make no order as to costs.

**IT IS SO ORDERED**

**DATED at MOROGORO** this 9<sup>th</sup> June, 2023



  
G. P. MALATA

**JUDGE**

09/06/2023