

**THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**  
**(IN THE DISTRICT REGISTRY OF BUKOBA)**  
**AT BUKOBA**  
**LAND CASE APPEAL NO. 78 OF 2022**

*(Arising from Application No. 04 of 2020 of the District Land and Housing Tribunal for Karagwe at Kayunga)*

**SARAFINA SEBASTIAN..... APPELLANT**  
*(Administrator of the Estate of the late Sebastian Joseph)*

**VERSUS**

**LEONARD KASENENE.....1<sup>ST</sup> RESPONDENT**  
**JOVIN KATULEGE.....2<sup>ND</sup> RESPONDENT**  
**ANGELINA KABALYENDA.....3<sup>RD</sup> RESPONDENT**  
**FURUMELLA KASENENE.....4<sup>TH</sup> RESPONDENT**  
**HESHIMA ADAM.....5<sup>TH</sup> RESPONDENT**  
**PAULINA PAULO.....6<sup>TH</sup> RESPONDENT**

**JUDGMENT**

*Date of last Order: 01.06.2023*  
*Date of Judgment: 09.06.2023*  
**A.Y. MWENDA, J**

This appeal is against the ruling of the District Land and Housing Tribunal for Kagera at Bukoba in Land Application No. 04 of 2020.

In the said case, the applicant sued the respondents for trespass/encroachment onto her deceased husband's piece of land. She prayed for an order of vacant possession; eviction order against the Respondents; the orders restraining the respondents from any illegal development and for any other relief(s) the Hon. Tribunal would deem fit and proper to grant.

Before the hearing could commence before the Tribunal, the Hon. Chairman, *Suo motu*, raised an issue regarding time limitations. The Hon chairman discovered that the appellant's husband died on 25/06/2005 and the Application in question was filed on 24/01/2020, almost 14 years later. Having invited the parties to submit, the Hon. Chairman ruled in the respondents' favor on the ground that the suit/application in question was filed out of time. In the event, the said application was struck out.

Aggrieved, the appellant through the services of Mr. Ibrahim Muswadik, leaned counsel, lodged this appeal with eight (8) grounds. The same read as follows:

- 1. That, the trial tribunal (Chairman) erred in law and fact to rule out that the application (case) before the tribunal was time barred, and thus dismissed it.*
- 2. That, the trial tribunal (Chairman) erred in law and fact for not considering the evidence (submission) given by the appellant, thus unjust on part of the appellant. (sic)*
- 3. That, the trial Chairman after gathering that, there was an Appeal No. 48 of 2015 of the same tribunal which originated from Civil Case No. 3 of 2015 of Rukuraijo Ward Tribunal the same parties, misdirected himself to rule out that the suit premise was time barred, while the same was filed within time, save that the order of the same tribunal resulted the appellant to file a new application which resulted from the order of the*

*same Tribunal, thus the applicant was not time bared but save for the legal technicalities. (sic)*

- 4. That, the trial Chairman erred in law and fact for not considering that, the limitation period of time of 12 years is applicable to adverse possession undisturbed for 12 years and/or more, but in this case there is no adverse possession of the suit premise by the respondents for 12 years or more, as the respondents were prior sued in Civil Case No. 3 of 2015 of Rukuraijo Ward Tribunal by the appellant which resulted to Appeal No. 48 of 2015 of the District Land and Housing Tribunal for Karagwe at Kayanga. (sic)*
- 5. That, the trial tribunal erred in law and fact for not considering that, the matter (Application No. 4 of 2020) it need evidence from both parties, to prove ownership, as the appellant had good case against the respondents and appellant and appellant's family possessed the land in dispute throughout after the death of one Sebastian Joseph.*
- 6. That, the trial erred in law and fact for not considering that, the time against the appellant accrued after appointment to be administratrix of the deceased estate. (sic)*
- 7. That the trial chairman after gathering that, the time to demand the suit premise started to accrue on 25/6/2022 and*

*the appellant had Civil Case No. 3 of 2015 of Rukuraijo Ward Tribunal which resulted to Appeal No. 48 of 2015 which was filed on time, erroneously and misdirected himself to dismiss the appellant's Application No. 4 of 2020 (case), since the said Appeal No. 48 of 2015 of the same Tribunal quashed the appellant's case which was filed on time, thus the prevailing situation against the appellant resulted from the order of the same tribunal. Therefore, not subject to dismissal. (sic)*

8. *That, the record of the trial tribunal is full of illegalities and do not contain assessors' opinion who sat with trial chairman during the trial of this matter at hand.*

When the matter came for hearing the Appellant was represented by Mr. Ibrahim Muswadik, learned Counsel whilst the respondents enjoyed the legal services from Mr. Alli Chamani, learned Counsel.

Submitting in support to the grounds of appeal, Mr. Muswadik prayed the appellant's grounds of appeal to be adopted as part to his oral submissions. He also notified the court that the 1<sup>st</sup> – 7<sup>th</sup> grounds of appeal are going to be argued together and the 8<sup>th</sup> ground separately.

The learned Counsel submitted that the District Land and Housing Tribunal erred to strike out his client's application on the grounds that it was filed out of time. He said that the reasons advanced by the Hon. Chairman are that, under S. 9(1) of the Law of Limitation Act, [Cap 89 RE 2019], time limitation for claim of the

deceased's property start to run from the moment the deceased dies. According to him, since S. 35 of the same Act, state that the administrator of the estate shall start to perform his duties upon being appointed, it was then improper for the Hon. Chairman to ruled out that the appellant filed an application after 14 years. The learned Counsel stressed that counting the time limitation from 2005 was not proper because, before institution of the application in question, there was another matter which is Civil Appeal No. 48/2015. According to him, the Hon. Chairman ought to have heard the said Application on merits because the respondents bought the land in dispute at different times which necessitate the tendering of evidence to substantiate as to when and how they acquired their respective lands (titles). To support his point, he cited the case of *HAJI SHOMARI VERSUS ZAINABU RAJAB*, CIVIL APPEAL NO. 91 OF 2001 CAT AT DAR ES SALAAM (unreported)

Regarding the 8<sup>th</sup> ground of appeal, the learned Counsel for the appellant submitted that in the records of the District Land and Housing Tribunal, there is no opinion of assessors as required under Section 23 (1) of The Land Disputes Courts Act [Cap 216] and Reg. 19(2) of Cap 216, GN. 174/2003. According to him, on 14/9/2022 when the issue of time limitation was raised, the Hon. Chairman sat with two assessors. The learned Counsel wondered as to why they did not give their opinion despite being in attendance when the issue of time limitation was raised.

The learned Counsel concluded beseeching this Court to allow this appeal with costs, quash the proceedings of District Land and Housing Tribunal at Kayanga and order a retrial.

Responding to submissions by the learned Counsel for the Appellant, Mr. Alli Chamani, learned Counsel for the respondents submitted that the District Land and Housing Tribunal's decision was justifiable. He said that, since the deceased died on 25/06/2005 and the matter was instituted on 24/01/2020 then the cause of action accrued on the date of the deceased's death. On that basis he stressed that Section 9(1) of the Law of Limitation Act, [Cap 89 RE 2019] was correctly applied against the appellant's application. To buttress his point, he cited the case of *HAJI SHOMARI V. ZAINAB RAJAB* (supra) and the case of *ALOYSIUS BENEDICTOR RUTAIHWA V. EMMANUEL BAKUNDUKIZE KENDURUMO AND 9 OTHERS*, LAND APPEAL NO 23 OF 2020, HC (unreported) at page 17.

Responding to submission regarding the 8<sup>th</sup> ground of appeal, Mr. Chamani submitted that assessors are not involved in matters surrounding legal issues. To support the said point he cited the case of *FREDRICK RWEMANYIRA V. JOSEPH RWEGOSHORA*, LAND CASE APPEAL NO. 13 OF 2021 at page 12. To conclude his submissions, Mr. Chamani prayed this appeal to be dismissed with costs.

In rejoinder, Mr. Muswadick prayed the court to depart from the position set under section 9 of the Law of Limitation Act [Cap. 89 R.E 2019] because even the transfers deeds appended in the Written Statement of Defence do not indicate the involvement of village authority. He then concluded with a prayer to this Court to

remit the file before the District Land and Housing Tribunal for parties to be heard on merits.

Having summarized the submission by the learned Counsels for both parties the issues are, **one**, whether the application before the DLHT was time barred and **two**, whether the Hon. Chairman was justified to sit in exclusion of assessors.

As for the 1<sup>st</sup> issue regarding time limitation, this court is aware of the principle that the right of action accrues on the date the cause of action arises. This principle is provided for under section 5 of the Law of Limitation Act, [Cap 89 RE 2019].

The same reads as follows:

*"Subject to the provisions of this Act, the right of action in any proceedings, shall accrue on the date on which the cause of action arises."*

The takeaway from the above provision is that time limitation begins to run as against the plaintiff from the time the cause of action arises until when the suit is filed in Court. See FREDRICK RWEMANYIRA VS. JOSEPH RWEGOSHORA, LAND CASE APPEAL NO. 13 OF 2021, HC(Unreported).

As hinted above, the appellant filed a suit/application against the appellants for encroachment of her late husband's land who died on 25/06/2005. Being an administratrix of her husband's estate, she filed the said suit on 24/01/2020. It is important to note that in determining whether the suit is time barred or not, a perusal to the plaint is crucial to see as to when the cause of action arose. Please

see FREDRICK RWEMANYIRA VS. JOSEPH RWEGOSHORA, LAND CASE APPEAL NO. 13 OF 2021, HC (Unreported).

From the DLHT's records, the appellant alleged that after her late husband's death, i.e., 2006, the respondent jointly and severally unlawfully (*s/c*) encroached onto the deceased land. At paragraph 6(a)(vi) of her application/plaint she stated that in the year 2015 she instituted a land suit at Rukuraijo Ward Tribunal and later appealed before the DLHT where the lower tribunal's proceedings were quashed, and orders were set aside. That was in Land Application No. 48 of 2015 which was annexed in the pleadings. Based on what the appellant pleaded, it is thus clear that the cause of action arose in 2006 when the respondent's encroached onto the said land. This Court is aware that under part 22 of the First schedule to the Law of limitation Act, [Cap 89 R.E 2019] read together with Section 33(1) of the same act, the period of limitation to recover land is 12 years. It is also important to note that one of the requirements in applying the above position is that there would be no interruption to the adverse possession throughout the aforesaid statutory period. See HUGHES V. GRIFFIN [1969]1 All E R 460.

In the present matter, after the death of appellant's husband in 2005, it took the appellant only ten (10) years to institute the suit against the respondents. That being the case the above principle of the Law of Limitation Act [Cap 89 RE 2019] cannot be applied because there was interruption to the adverse possessor before expiry of time limitation. In other words, the appellant's subsequent application



was not time barred because the previous one was determined on technical grounds. On that basis I find merits in the 1<sup>st</sup> -7<sup>th</sup> grounds of appeal.

Regarding the submissions by the learned Counsel for the appellant that the trial Tribunal's proceedings is tainted with illegality for failure to record the assessor's opinion, I have revisited the record and noted the justification by the Hon. Chairman in his decision to exclude them. It is apparent from the record that the issue of time limitation is a point of law. It is trite law that the assessors are not the legal experts, they are judges of the facts and not the law. While dealing with similar scenario to the one at hand, this court in the case of FREDRICK RWEMANYIRA VS. JOSEPH RWEGOSHORA, LAND CASE APPEAL NO. 13 OF 2021, HC(Unreported)[Supra], while citing the case of BATHOLOMEO PAULO CHIZA Vs. ESSAU WILLIAM NDIZE & 3 OTHERS, Land Appeal No. 216 of 2017, HC(Unreported) held as follows, that:

*"The assessor's function in Land Matters is a bit like advisory jury, providing an opinion to the Chairman about their view of evidence and not law."*

Guided by the above principle, since time limitation is a point of law, it was then justifiable for the Hon. Chairman to exclude the assessors' opinion. That being said I find the eighth(8<sup>th</sup>) ground of appeal unmerited, and I thus dismiss it.

In the upshot I find Merits in the 1<sup>st</sup> -7<sup>th</sup> ground of appeal and as such I allow them. I thus order the original file of Land Application No. 04 OF 2020 to be

remitted before the District Land and Housing Tribunal of Karagwe at Kayanga to proceed with the hearing on merits.

Otherwise, each party shall bear its own Costs.

It is so ordered.

  
A.Y. Mwenda  
**Judge**  
09.06.2023



Judgment delivered in chamber under the seal of this court in the presence of Mr. Ibrahimu Muswadick learned counsel for the appellant and in the presence of the respondents.

  
A.Y. Mwenda  
**Judge**  
09.06.2023

