

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE SUB-REGISTRY OF MWANZA

AT MWANZA

LAND APPEAL NO. 69 OF 2023

(Appeal from the Decision and decree of the Geita District Land and Housing Tribunal (Hon. Masao, Chairperson) Dated 20th of August, 2021 in Land Application No. 64 of 2019)

DAUD PETRO KASAMBULA (An Administrator of

The Estate of the PETRO MICHAEL KALAGO).....APPELLANT

VERSUS

- 1. HELENA MBOJE BAJIMU**
- 2. JOHN SAULO UDOYA**
- 3. PHILIP KAYENZE**
- 4. ZILAHENDA MLOZI MZUNGU**
- 5. HEZRON HEZEKIA**
- 6. ATHUMANI MOHAMED**
- 7. MARTHER BUTEYE**
- 8. VALENTIN PROTUS**
- 9. MATULANYA MAWE**
- 10. MICHAEL KALEKWA**
- 11. SANGIJA KADASO**
- 12. MAGRETH SWERE**
- 13. JESCA BIWANKO**
- 14. REHEMA BARNABA**
- 15. PHILIMON LUKONDO**
- 16. BUNDARA MASOLWA**
- 17. HONORATA MWINGIRA**
- 18. MASHALA C. MAGINGILA**

..... RESPONDENTS

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19. **ASTELIA MATESI**
 20. **BENEDICTO MIJUMBO**
 21. **MASUDI MOHAMED**
 22. **JOSEPH MISABALA**
 23. **ASHA NAIROBI**
 24. **FLORA MBUKI**
 25. **UWEZO CHARLES**
 26. **MBOKO W. FAUSTINE**
 27. **JOHN LILI**
 28. **VINCENT MPINASON**

JUDGMENT

14th February & 1st March, 2024.

CHUMA, J.

This appeal is against the decision of the District Land and Housing Tribunal (herein after referred as DLHT) for Geita at Geita (Masao, Chairperson) delivered on 20th August 2021, in respect of Application No. 64 of 2019. The said application was preferred by the appellant in the present appeal, in his capacity as the administrator of the late Petro Michael Kalago who died intestate in 1985. The subject matter in the said application and in the present appeal is a farm measuring 50 hectares located at Mbugani, Nyankumbu Ward in Geita District on which the appellant's father owned before shifting to Tabora in 1984.

In the trial tribunal, the appellant claimed that the respondents have been trespassing in the said farm and that all deceased's children (Joachim Petro Kasambula, Samson Maige @ Rocky Petro Kasambula, Benadino

Petro Kasambula and the appellant himself) contested such action and were imprisoned from 1990 to 23rd of September, 2014.

Followingh such actions, the appellant initiated a suit in the DLHT after obtaining a permit from the Minister responsible as per section 44 (1) of the Law of Limitation Act, 89, R.E 2019 (LLA), as Land Application No. 64 of 2019. In the trial tribunal, the respondents raised a preliminary objection that the suit was **first** time-barred and **second** that the permit from the Minister was missed by the appellant. On 20.8.2021, the preliminary objection was sustained by the DLHT. Dissastified, the appellant preferred this instant appeal. The appeal comprises of three grounds of appeal as reproduced hereinunder:

- 1. Kwamba, Baraza la Ardhi na Nyumba la Wilaya ya Geita lilikosea kisheria na kimantiki kwa kufuta maombi ya mleta rufaa kwa kigezo kwamba shauri lilikuwa nje ya muda bila kuzingatia kuwa kuna kibali cha kuongeza muda kwa mleta rufaa kilichotolewa kwa mujibu wa sheria hivyo kufikia maamuzi yasiyo na haki kwa mleta rufaa;*
- 2. Kwamba, Baraza la Ardhi na Nyumba la Wilaya ya Geita lilikosea kisheria na kimantiki kwa kufuta maombi ya mleta rufaa kwa sababu kuwa kibali kilitumika vibaya na wakati kibali kiliruhusu na kuongeza muda wa kufungua maombi kulingana na maeneo yenye migogoro kama yalivyotajwa kwenye barua ya maombi ya kibali hicho, hivyo kufikia maamuzi yasiyo na haki kwa mleta rufaa;*

3. Kwamba, Baraza la Ardhi na Nyumba la Wilaya ya Geita lilikosea kisheria na kimantiki kwa kutoa tafsiri isiyo sahihi ya maana ya kibali kilichotolewa na Wizara kisheria hivyo kufikia maamuzi yasiyo na haki kwa mleta rufaa.

The appellant, at the hearing of the appeal, was represented by Mr. Revocatus Sepetu, a learned advocate. All respondents were represented by Mr. Liberatus Rwabuhanga, a learned advocate.

Submitting in support of the first and second grounds of appeal, Mr. Sepetu, stated that section 44 (1) of LLA empowers the Minister of Constitutional and Legal Affairs to issue an extension of time to cases that are out of time and the responsible Minister extended the time from 5.11.2018 to 30.11.2024 for the appellant to file his case according to the disputed piece of land as stipulated in the said permit. That, the DLHT erred in fact and law in deciding that the matter was time-barred and appellant misused the permit by using it to the case which was not mentioned in the said permit.

In respect of the third ground, the appellant's counsel stated that the permit contains the name of Daud Peter Kasambula while the appellant's name is Daud Petro Kasambula. On this point, he contended that the differences in the above names are typing errors which does not go to the root of the matter. To bolster his position cited the case of **Chang**

Qing International Investment Ltd Vs. Tol Gas Ltd, civil application No. 292 of 2016 whereby the court of appeal regarded the same as a typing error and proceeded to hear the matter. Finally, he prayed that the appeal be allowed and urged the Court to quash the judgment and set aside orders and decree of the DLHT and any other relief this court deems fit.

In response, Mr. Rwabuhanga, the respondent's counsel, stoutly opposed this appeal. He defended the DLHT's decision to dismiss the application on the third ground regarding differences of names appearing in the Ministers permit and names of the appellant to mention (Daud Peter Kasambula and Daud Petro Kasambula) because though the same was raised as a preliminary objection but the chairperson never used the said ground to dismiss application No. 64 of 2019.

Submitting in rebuttal on first and second grounds of appeal, stated that it is undisputed that section 44 (1) of LLA empowers the Minister responsible to extend time to cases which are out of time to be lodged before the court of law. Also, there is no dispute that the cause of action accrued in 1985 after the demise of the deceased. He further stated that in 2017 the appellant filed a case registered as application No. 94 of 2017 which involved Helena Mboje Bajimu & 27 Others and the same was struck out for being out of time. He stated that the permit from the Minister paved the way for the appellant to file a case involving only Helena Mboje Bajimu

& 16 Others and not otherwise. And the appellant indeed lodged a case against Hellena Mboje Bajimu and 27th others which is case No. 64/2019 which are two distinct cases.

The extension of Minister was only in respect of one case involving Hellena Mboje and 16th others. The appellant had no power or right to file cases using such an extension of time other than the referred one. He further argued and cited section 44 (3) of LLA, that the permit provided under section 44 (1) of LLA loses its meaning if the case was already filed and determined by the court with jurisdiction, as the case at hand. In other words, S. 44 (3) of the Law of Limitation Act, Cap 89 R.E. 2019, allows extension only to matters that are not determined conclusively in the court of law.

He concluded by stating that the Tribunal was correct to dismiss the application for being time bard and filed without any permit from the Minister and finally, prayed for the dismissal of this appeal for want of merit with cost.

In a short rejoinder, the appellant's counsel submitted that, since the permit was legally procured and covered the entire farm in dispute and since it is the appellant who knows better about the dispute, then he cannot be challenged on that. The Counsel reiterated his prayer sought during submission in chief.

From the rival submissions by both parties, the issue for determination is whether there are tangible reasons on which the trial tribunal's decision can be faulted. In the course of analysis grounds number one and two will be addressed together.

In the first ground of appeal, the District Land and Housing Tribunal (DLHT) alleged to have erred in law and fact to dismiss the applicant's application for being time barred without due regard to the existing extension of time issued to the appellant in line with the law. The second ground of appeal is to the effect that the granted extension of time was wrongly used.

My close look on the trial tribunals records and all attached documents revealed as rightly submitted by counsel for the respondents that the permit clearly stated the case on which extension of time was granted to mention Helena Mboje Bajimu & 16 Others and not otherwise. And that the appellant lodged a case against Hellena Mboje Bajimu and 27th others which is application No. 64/2019. For clarity and reference, the referred permit reads:

"ORDER OF EXTENSION OF PERIOD OF LIMITATION

*(Made under section 44(1) of the Law of Limitation Act,
Cap 89)*

WHEREAS, DAUDI PETER KASAMBULA (as Administrator of the estate of **PETRO MICHAEL KALAGO**) wishes to commence proceedings against **HELLENA MBOJE BAJIMU and 16th others** to claim land in which the cause of action arose in 1999; ...

NOW, THEREFORE, I...Minister for Constitutional and Legal Affairs of the United Republic of Tanzania, in the exercise of the power conferred upon me by section 44(1) of the Law of Limitation Act, Cap 89, **DO HEREBY EXTENT** the period of limitation which the said **DAUDI PETER KASMBULA** (as administrator of the estate of **PETRO MICHAEL KALAGO**) may wish to commence as aforesaid, by a period not exceeding one half of the period prescribed by the Law of Limitation Act, Cap 89, which shall commence on 30th October 2028 and end on 30th November,2024.

Dated at Dodoma this 5th day of November,2028.

Sgnd

MINISTER FOR CONSTITUTION AND LEGAL AFFAIRS"

From the above observation, I align with Mr. Liberatus Rwabuhanga counsel for the respondent that the appellant decided to lodge a case contrary to the dictates of the issued permit. Hence application No. 64 of 2019 which was lodged in court out of time without extension of time or leave of the Minister. Therefore, the DLHT was correct to dismiss the application as there was nothing on which the trial tribunal would base its

contrary decision.

Before moving to the third ground of appeal, I wish to say a word on section 44 (3) of the Law of Limitation Act submitted by the respondent's advocate which also reflected in the decision of the trial tribunal. According to him the permit provided under section 44 (1) of LLA loses its meaning if the case was already filed and determined by the court with jurisdiction, as the case at hand. And that the appellant rushed to the Minister seeking an extension of time in application No. 64 of 2019 following the decision of the trial Tribunal in which application No 94 of 2017 was alleged to have been struck out on time bar grounds.

It is quite clear that section 44 (3) of the Law of Limitation Act, Cap 89 R.E. 2019, allows extension only to suits that are not determined by any court competent to determine the same. Section 44 (3) reads:

No order under this section shall be made (a) In relation to any suit after the determination of the suit by any court having jurisdiction to determine the same.

However, in the instant matter, the record reveals that application No 94 of 2017 was withdrawn with leave to refile after obtaining leave from the responsible Minister following the prayer of the applicant to withdraw the same for the purpose on 16.03.2018. Hence on this point, I decline to join hands with the submission of the respondent's counsel and the trial

tribunal's findings on pages 21 to 23 that the said permit was illegally obtained by contravening section 44(3) of the Law of Limitation Act, Cap 89 because the application was not conclusively determined thereat.

Regarding the third ground of appeal in which the District Land and Housing Tribunal (DLHT) is blamed for having erred in law and fact to dismiss the applicant's application by misinterpreting the extension of time issued by the Ministry in Law, hence leading to a wrong decision against the appellant, I have the following to say. In his submission, Mr. Revocatus Sepetu counsel for the appellant admitted the fact that the extension was issued to Daudi Peter Kasambula while the appellant, the applicant thereat is known as Daudi Petro Kasambula. He, however, submitted that such disparity of names is a mere typing error that does not go to the root of the matter. To bolster his position, he cited the case of **Chang Qing International Investment Ltd Vs. Tol Gas Ltd**, civil application No. 292 of 2016. Whereby the court of appeal regarded the same as a typing error and proceeded to hear the matter.

On the other hand, Mr. Rwabuhanga counsel for the respondent contended that, the issue of names was not an issue there and that in the judgment of 20.8.2021 nowhere the chairman of DLHT Geita used such an issue or reason to dismiss the entire application. On this point, I feel unable to side with either of the two advocates' submissions because the indication

and description of proper names to the suit is a legal requirement prior to the hearing of the case and the claimant must satisfy the court that he has a right of action against the person sued. The Court of Appeal of Tanzania made the same pronouncement in the case of **Malietha Gabo vs Adam Mtengu** (Civil Appeal No.485 of 2022) [2023] TZCA 17318 (8 June 2023) TanzLII, that;

Suing a wrong party has serious consequences which include rendering the trial vitiated or subjecting execution to untold hurdles. Indeed, it is a matter which must be determined at the earliest.

From the foregoing cited authority, no doubt the issue of names ought to have been discussed and determined by the District Land and Housing Tribunal as the same goes to the root of the matter at hand.

In line with what has been discussed, the above discussion boils down to the conclusion that this appeal is devoid of merit. To that end, the appeal is hereby dismissed with cost. It is so ordered.

DATED at **MWANZA** this 01st day of March 2024.




W. M. CHUMA
JUDGE