

**IN THE HIGH COURT OF TANZANIA  
(LAND DIVISION)  
AT DAR ES SALAAM**

**LAND CASE NO 323 OF 2016**

**LUCY RANGE.....PLAINTIFF**

**VERSUS**

**SAMWEL MESHACK MOLLEL.....1<sup>ST</sup> DEFENDANT**

**NAKUROI INVESTMENT COMPANY LIMITED.....2<sup>ND</sup> DEFENDANT**

**SEIF KHALFAN.....3<sup>RD</sup> DEFENDANT**

*Date of last order: 12/06/2018*

*Date of Ruling: 21/06/2018*

**RULING**

**Makuru, J.**

The 1<sup>st</sup> and 2<sup>nd</sup> Defendants, through the services of Mr. Mrindoko Learned Counsel, have raised in their written statement of defence three preliminary objections on points of law that:-

1. The Plaintiff has no *locus standi* to institute this suit.
2. That this suit is hopelessly time barred.
3. That the Plaintiff's suit is *res judicata*.

The Plaintiff appeared in person, unrepresented while Mr. Mrindoko Learned counsel represented the 1<sup>st</sup> and 2<sup>nd</sup> defendants. With the leave of the court the preliminary objections were disposed of by way of written submissions.

In support of the preliminary objections Mr. Mrindoko started with the second preliminary objection. He submitted that, the right of action for recovery of land in which the owner is deceased, the period of limitation is 12 years running from the date of death irrespective of when the letters of administration of his estate were granted. He cited the provisions of section 9(1) and 35 of the Law of Limitation Act, Cap 89 R.E. 2002 to support his argument. The learned counsel went further to cite the case of **Yusufu Same and Another versus Hadija Yusuf** (1996) TLR 347 and **Hadija Juma versus Lilla Mwinyikondo**, Land Appeal No. 2 of 2011(High Court Land Division, unreported).

It is therefore Mr. Mrindoko's contention that at the time of death of Merisha Mubusi, the land was in possession of the deceased. Thus, the Plaintiff's right of action started to run on 12/11/1997 when the owner passed away. According to him, counting 12 years from 12/11/1997 it expired on 11/11/2008. The learned counsel therefore urged this court to dismiss this suit pursuant to section 3 of the Law of Limitation Act.

On the third preliminary objection Mr. Mrindoko contended that, the subject matter in this suit is Plot No. 2144 Block "E" Kunduchi RTD which was also the subject matter in Land Application No. 176 of 2014 at Kinondoni District Land and Housing Tribunal between **Nakuroi Investment Co. Ltd versus Yazid Rajab and 2 Others**. According to Mr. Mrindoko the matter was heard and determined on 22/6/2016 in favour of the 2<sup>nd</sup> Defendant herein. According to him the issue of ownership was settled and operate as *res judicata* against the Plaintiff's interest as the

District Land and Housing Tribunal declared the 2<sup>nd</sup> defendant to be the lawful owner of the suit property.

It is Mr. Mrindoko's further contention that the decision of Kinondoni District Land and Housing Tribunal was judgment *in rem* and that it applies to the Plaintiff herein although she was not a party to it. The learned counsel further cited the case of **Karia and Another versus Attorney General and Others** (2005)1 EA 83.

In his further submission Mr. Mrindoko stated that, the Plaintiff appears not to be a bonafide litigant. According to him, pursuant to paragraphs 7 and 9 of the plaint together with Annexure 3, in Land Application No. 496 of 2009, the Plaintiff was a party in a suit in respect of the same land which was later on transferred to the 2<sup>nd</sup> Defendant. It is the learned counsel's contention that, the Plaintiff has now turned around to institute this suit claiming on behalf of the deceased in order to avoid the earlier decision.

As for the first preliminary objection Mr. Mrindoko argued that, the Plaintiff has instituted this suit in her personal capacity without showing that she is acting as the legal personal representative of the estate of the deceased. The learned counsel further cited the case of **Askrfu Tarimo versus Beatus Casmir Njuu**, High Court Land Appeal No. 100 of 2007 (High Court Land Division, unreported) to support his argument.

It is further stated that, as per the letter of administration attached to the plaint as annexure 2, the name of the administrator is different from the name of the Plaintiff herein. The learned counsel again referred the court

to the case of **Hintz versus Mwakima** (1976-85) EA 128 and urged this court to strike out this suit with costs.

In addition thereof, Mr. Mrindoko cited section 40 of the Probate and Administration of Estate Act which restricts the institution or defending any suit against the interest of the deceased without probate or letter of administration.

In reply thereto, the Plaintiff also started with the 2<sup>nd</sup> Preliminary objection. He contended that, the Plaintiff has clearly stated under paragraph 6 of the plaint as to when the dispute arose. According to her, she has at all material time been in occupation of the disputed land up to the time of the intended survey. The Plaintiff cited section 9(2) of the Law of Limitation Act to support her contention. She added that it is nowhere in the plaint where it has been stated that the dispute arose in 1997 after the demise of the owner.

Citing the case of **Mukisa Biscuits Manufacturing Co. LTD vs West End Diostrubutors LTD** (1969) EA 696, the Plaintiff contended that, the preliminary objection and the case laws cited are irrelevant and that they do not relate to the facts of this case. According to her, the cause of action arose in 2013 therefore the objection be dismissed.

Regarding the second preliminary objection it is submitted in reply that, if the judgment of the District Land and Housing Tribunal is *in rem* it should have been indicated so in the said judgment. She added that, the land in dispute in this matter is different from the one which was adjudicated in Land Case No. 496 of 2009. According to her, parties in the present case

are not the same as in the previous one and the subject matter is also different. He was of the view that in order to ascertain the facts the court will require evidence.

In reply to the third preliminary objection the Plaintiff submitted that, the Plaintiff can sue in her name as long as she can establish that she has mandate to do so through the letters of administration granted to her. The Plaintiff further prayed that this court allow her to amend the plaint and submit an affidavit proving her names for the interest of justice.

In rejoinder, Mr. Mrindoko reiterated his submission in chief and insisted that all the preliminary objections raised are meritorious. Thus, the suit be dismissed with costs.

Having considered the rival submissions of both parties, I will now determine the merits or otherwise of the preliminary objections raised. I will start with the second preliminary objection that the suit is time barred. In determining whether the suit is time barred or not, the court normally looks at the plaint to see as to when the cause of action arose, in other words when the right of action started to accrue. In the plaint presented before this court, the Plaintiff is claiming that she is the administratrix of the estate of the late Merisha Mubusi who was allegedly the lawful owner of the disputed property. **Section 9(1) and section 35 of the Law of Limitation Act Cap 89 RE 2002** provides for the time of limitation for institution of the suits of this nature. They provide, that:-

*9(1) Where a person institutes a suit to recover land of a deceased person, whether under a will or intestacy and the deceased person*

*was, on the date of his death, in possession of the land and was the last person entitled to the land to be in possession of the land, the right of action shall be deemed to have accrued on the date of death.*

*35. For the purposes of the provisions of this Act relating to suits for the recovery of land, an administrator of the estate of a deceased person shall be taken to claim as if there had been no interval of time between the death of the deceased person and the grant of the letters of administration or, as the case may be, of the probate.*

Paragraphs 4 and 5 of the plaint clearly states that the disputed land was allocated to the deceased since 1975 and that he had been in occupation of the same until year 1997 when he passed away. Therefore, pursuant to section 9(1) (supra) it goes without saying that, the cause of action in this suit arose in the year 1997 when the deceased Merisha Mumbusi passed away. I say so because section 35(supra) makes it clear that in computing the limitation period, the time to obtain letters of administration should not be excluded.

**Item 22 of Part I of the Schedule to the Law of Limitation Act** provides the period of Limitation to recover land to be 12 years. Now, counting from 1997 when the cause of action arose to 2016 when this suit was instituted it is 21 years. The suit is therefore time barred for nine (9) years. Basing on the above, I agree with Mr. Mrindoko that the suit is hopelessly time barred. The second preliminary objection is hereby sustained.

On the first preliminary objection regarding *locus standi*, before determining whether the Plaintiff has *locus standi* or not, I am of the view that it is apposite to understand the meaning of *locus standi* first. The **Black's Law Dictionary**, Eighth Edition at Page 960 has defined *locus standi* to mean:

*"The right to bring an action or to be heard in a given forum"*

(See also the case of **Lujuna Shubi Balonzi, seniour versus Registered Trustees of Chama cha Mapinduzi (CCM)** 1996 TLR 203).

In the plaint before this court there is no indication that the Plaintiff is suing as an administratrix of the estate of the late Merisha Mubusi. However, upon going through the plaint the Plaintiff is alleging to be the administratrix of the estate of the late Merisha Mubusi vide the letters of administration marked as Annx 2 to the plaint. The said Annexure 2 shows that Boke Merisha is the one who has been appointed as an administratrix of the estate of the late Merisha Mubusi. I now wonder whether Boke Merisha and Lucy Range refers to the same person. If it is the same person there should have been an affidavit to that effect. The Plaintiff's prayer in her written submission that she be given an opportunity to amend the plaint in order to include the affidavit is an afterthought and this court cannot in anyway grant. The prayer intends to pre-empt the preliminary objection. Again, the first preliminary objection is meritorious and I hereby sustain it.

As for the third preliminary objection that the suit is *res judicata* I will be guided by the provisions of section 9 of the Civil Procedure Code Cap 89 RE 2002:

*"9. No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially issue in a former suit between the same parties or between parties under whom they or any of them claim litigating under the same title in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised and has been heard and finally decided by such court."*

My understanding of this provision of law is that, in order for the doctrine of *res judicata* to apply, the parties in the former suit must be the same in the subsequent suit, subject matter should also be the same and the matter in issue should be the same in both suits. In the instant case, I am afraid the parties in Land Application No. 496 of 2009 before the Kinondoni District Land and Housing Tribunal are totally different from this suit, the subject matter has also not been clearly identified. Hence, I cannot say they are the same in both suits. On that basis, this suit has not met all the tests of *res judicata* as provided in section 9 of the Civil Procedure Code (supra). The third preliminary objection is with no merits and it is hereby overruled.



Consequently, having found that the suit is hopelessly time barred and the Plaintiff has no locus standi to institute it, I hereby dismiss this suit with costs.



**C.W. Makuru**  
**JUDGE**  
**21/06/2018**

**ORDER:** Ruling delivered in court this 21<sup>st</sup> day of June, 2018 in the absence of the parties. Parties to be notified.



**C.W. Makuru**  
**JUDGE**  
**21/06/2018**