

IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND APPEAL NO. 60 OF 2020

(From the decision of the District Land and Housing Tribunal for Kilosa in Application No. 16 of 2019, RS Mnyukwa, Chairperson)

RASHID TOGWA (As administrator of the estate of the late **MOHAMED TOGWA**).....**APPELLANT**

VERSUS

PEAPEA VILLAGE COUNCIL.....**RESPONDENT**

J U D G M E N T

Date of last Order: 119/11/2020

Date of Judgment: 11/03/2021

MANGO, J.

Aggrieved by the decision of the District Land and Housing Tribunal for Kilosa in Application No. 16 of 2019, the appellant preferred this appeal on the following grounds

- 1. That the trial tribunal grossly erred in law and facts when it held that land application No. 16 of 2019 was time barred;**
- 2. That the trial tribunal erred in law as the Preliminary Objection raised by the respondent was not a pure point of law but rather a matter of facts;**

- 3. That the trial tribunal grossly misdirected itself when it concluded that the appellant was appointed as an administrator of the estate of the late Mohamed Togwa in 2012;**
- 4. That the trial tribunal erred in law and facts for failure to apprehend the facts of the case that the appellant was appointed to be an administrator of the estate of the late Mohamed Togwa through Rudewa Primary Court Probate and Administration Cause No. 8 of 2001 and it was wrong for the trial tribunal to dismiss the said application as probate was yet to be concluded as per relevant law;**
- 5. That the trial tribunal erred in law and facts to appreciate that the cause of action against the respondent arose when the respondent issued to the appellant a notice /letter to relocate the disputed land and not during the death of the late Mohamed Togwa in 2001.**

The application was argued by way of written submissions. The appellant was represented by Mr. Cleophas Manyangu learned advocate while the respondent had services of Mr. Edward Kutandikilwa Municipal solicitor working with Kilosa District Council.

In his submission in support of the appeal, Mr. Manyangu abandoned the second and fifth grounds of appeal. Submitting in support of the third ground of appeal, he argued that, the trial tribunal misdirected itself when it concluded that the appellant was appointed as an administrator of the estate of the late Mohamed Togwa in 2012. He submitted that, Mohamed Togwa passed away in 2001 and on 19th October 2001 Probate and Administration

Cause No. 8 of 2001 was instituted before Rudewa Primary Court in respect of his estate. On 5th February 2002, Rashid Togwa was appointed to be the administrator of the estate of the late Mohamed Togwa. This is contrary to the holding of the District Land and Housing Tribunal for Kilosa which held that the administrator of the estate of the late Mohamed Togwa was appointed on 23rd October 2012. He argued that, it was wrong for the trial tribunal to hold that Application No.16 of 2019 was time barred because the said probate case is still pending as the administrator has not yet filed an inventory regarding the administration of the estate. According to him the trial tribunal considered only section 9(1) and 35 of the Law of Limitation Act [Cap 89 R. E. 2019] and did not consider the provision of section 25(1) of the Act. He argued further that, section 25(1) provides for exclusion from computation of the period of limitation, time spent in prosecution of the probate cause. He is of the view that the trial tribunal erred in holding that Land Application No 16 of 2019 was time barred while the administrator is not done with the prosecution of probate cause No. 8 of 2001 before Rudewa Primary Court.

In his reply submission, Mr. Edward Kutandikila submitted that, the trial court did not err as Land Application No. 16 of 2019 was indeed time barred. He reproduced the contents of sections 4, 9(1) and 35 of the Law of Limitations Act and argued that in determining time limit for recovery of land of the deceased person, the three section should be read together. He submitted further that according to the sections mentioned, the right of action to recover land where the owner is dead subsists for or within 12 years irrespective of when the letters of administration was granted. To cement his arguments the learned counsel cited the case of **YUSUPH SAME AND ANOTHER Versus HADIJA YUSUPH** [1996] TLR 347.

Submitting on the application of section 25(1) of the Law of Limitations Act, the learned counsel argued that, the period which may be excluded under the section is the period from when the probate case has been filed to the time when the administrator is appointed. It does not include the period under which the administrator performs his duties in respect of the deceased estate. In this he cited the case of **SALUM ALMASI JAZA (Administrator of the estate of the deceased MLANG'AMBA BINTI MWICHANDE) Versus TATU OMARI KITAMBO and JUMA ATHUMANI KISUNGURA**, Land Appeal No. 82 of 2017 High Court of Tanzania, Land Division where this court held that, the time which is excluded under section 25 of the Law of Limitation Act is from the date of filing Probate Cause to the date when the administrator is appointed. He also cited the case of **Shomari Omari Shomari (Administrator of the Estate of the late Selemani Ibrahim Maichila) Versus Esha Selemani Ibrahim and Another**, Land Appeal No. 171 of 2018, High Court of Tanzania, Land Division.

Applying the cited provisions of the law in the appeal at hand, the learned counsel argued that, the only period that can be excluded is four months which run from 10th October 2001 when probate cause No. 8 of 2001 was filed before Rudewa Primary Court to 5th February 2002 when the appellant was appointed to be the administrator of the estate of the late Mohamed Togwa. He added that, after being appointed to be the administrator of the deceased's estate Rashid Togwa acquired capacity to sue or to be sued in respect of the estate of Rashid Togwa. In that regard time limit for the dispute at hand started to run on 5th February 2002. The appellant filed Land Application No. 16 of 2019 for recovery of the deceased land on 29th May 2019 which is more than 12 years from when the cause of action arose. In

that regard he is of the view that, the application was filed beyond the prescribed time limit hence the trial tribunal was right in dismissing the same.

In his rejoinder, Mr. Manyangu reiterated his submission in chief.

From the submissions by both parties and court record the following facts are not disputed

- i. That the land in dispute was the property and was in possession of the late Mohamed Togwa at the time of his death
- ii. That Mohamed Togwa died on 3rd September 2001
- iii. That Rashid Togwa was appointed to be the administrator of the estate of the late Mohamed Togwa on 5th February 2002 via Probate and administration cause No. 8 of 2001.
- iv. That on 07th November 2016 Peapea Village council communicated its intention to allocate the disputed land to other Peapea Villagers via a letter written by Village Executive Officer addressed to Mohamed Madali Togwa's family, informing them of the decision of the village council to allocate the disputed land to other Peapea villagers
- v. Mohamed Togwa's family was aggrieved by the decision of Peapea Village Council and they initiated legal proceedings contesting ownership of the suit property via the administrator of the estate of the late Mohamed Togwa.
- vi. That the appellant issued a 30 days statutory notice of intention to sue the village council and the same was received by Peapea village executive Officer on 31st August 2018.

- vii. That on 29th May 2019, the appellant filed Land Application No. 16 of 2019 claiming that the suit land is part of the estate of the late Mohamed Togwa and praying for nullification of the village councils notice to allocate the suit land to other villagers and Restraint order restraining the respondent from interfering with the ownership of the suit premise.
- viii. In his written statement of defence, the respondent raised a preliminary Point of objection that the application is time barred.
- ix. The trial tribunal upheld the objection and dismissed the application, hence, this appeal.

The appellant raised three grounds of appeal however in his submissions he submitted on only one ground of appeal which concern the decision of the trial tribunal to dismiss the application for being time barred. The learned counsels representing parties to this appeal researched and submitted intensively on whether the application was time barred or not. Thus, the only issue for determination by this court is whether the application was indeed time barred or not.

The law is very clear as it has been submitted by the learned counsels that the time limit for recovery of the land belonging to the deceased person is 12 years as provided under section 9(1) of the Law of Limitations Act. The only issue in this case is when the 12 years started to run. The respondent having in mind section 35 of the Law of Limitations Act is of the view that the 12 years started to run from the death of the late Mohamed Togwa that is September 2001. The appellant is of the view that the 12 years' time limit have not yet started to run as the Probate case in respect of the deceased estate is yet to be concluded.

Ordinarily computation of the period of limitation commence at the time the cause of action arose. According to the facts of the case as can be gathered from the pleadings, the cause of action arose in 2016 when the village council informed Mohamed Togwa's family of its intention to allocate the disputed land to other villagers. This means the cause of action arose after the death of Mohamed Togwa. In such circumstances computation of period of limitation cannot commence at the time of death of Mohamed Togwa. The law, section 24 of the Law of Limitations Act provides for effects of death in computing the period of limitation and as to when time limit in respect of actions by and against deceased persons starts to run. The section 24(1) of the Law of Limitations Act reads;

*Where a person who would, **if were living**, have a right of action in respect of any proceeding, **dies before the right of action accrues**, the period of limitation shall be computed from **the first anniversary of the date of death of the deceased or from the date when the right to sue accrues to the estate of the deceased, whichever is the later date.***

According to the cited provision, time limit may start to run from the first anniversary of the deceased's death or from when the cause of action accrued whichever is the later. In the case at hand the right to sue accrued on 2016 when the village council expressed its intention to allocate the land which is alleged to form part of the estate of the late Mohamed Togwa. This means even during the first anniversary of the death of Mohamed Togwa the cause of action subject to the appeal at hand had not yet accrued. Thus, the administrator of the deceased estate had no reason to institute any suit for recovery of the disputed land because there was no any dispute that the land is part of the estate of the late Mohamed Togwa. For that reason, Application

No. 16 of 2019 is not time barred as time limit for this action accrued in 2016 and calculating from 2016 to 2019 is only three years.

Therefore the appeal is hereby allowed. The decision of the District Land and Housing Tribunal for Kilosa is here by set aside. The matter is hereby remitted back to the trial tribunal so that the application can be held and determined on merits preferably by a different chairperson with a different set of assessors. Costs to follow events.


Z. D. MANGO
JUDGE
11/03/2021

