

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

**LAND APPEAL NO. 78 OF 2021**

*(Appeal from the decision of District Land and Housing Tribunal for Kinondoni at  
Mwananyamala in Application No. 357 of 2015)*

**JUMA SAID**

(being Administrator of the late **SAID JUMA**) ..... **APPELLANT**

**VERSUS**

**SOPHIA CHUWA NTATI** (Current Administrator of the late  
Catherine Piyangu) ..... **1<sup>st</sup> RESPONDENT**

**ZAKARIA SYMONE** (being Administrator of the late  
Catherine Piyangu) ..... **2<sup>nd</sup> RESPONDENT**

**HAMIS HAMDOUN** ..... **3<sup>rd</sup> RESPONDENT**

**MOHAMED KHAMIS HAMDOUN** ..... **4<sup>th</sup> RESPONDENT**

**J U D G M E N T**

*Date of Last order: 15/10/2021*

*Date of Judgment: 10/12/2021*

**T. N. MWENEGOHA, J.**

This is appeal against the decision of the District Land and Housing Tribunal of Kinondoni at Mwananyamala (henceforth Trial Tribunal) in Application No. 357 of 2015.

At the Tribunal the appellant herein was the applicant whereby among other orders he was praying to be declared the lawful owner of the suit premises described as House No. 960/Plot No. 512 Block "9" Mwananyamala area, Kinondoni District, Dar es Salaam.

The respondent therein raised a preliminary objection on a point of law that the suit was hopelessly time barred. The Trial Tribunal sustained the preliminary objection and dismissed the application with costs.

The appellant was aggrieved with the said Judgment therefore he lodged this appeal on the following grounds: -

- 1. That the District and Housing Tribunal erred in law and in fact for not considering the essence of Revision decided by the High Court rather directed itself into issues which were not the essence of the Revision.**
- 2. That the trial Chairman did not consider further that the matter before him was not new. And thus, the time barred objection was already overtaken by event. It was never a fresh case which bears a different land case number, rather a continuation of the case.**
- 3. That the trial Chairman did not consider the decision of the court of appeal which was already given a clear light on the matter. The decision was brought into his attention by the way of written submission.**
- 4. That the decision upon which the trial Chairman relied in delivery his judgement is totally distinguished with current matter at hand.**
- 5. That the trial Chairman erred in law by erroneously calculating the time that, since 4<sup>th</sup> September 1969 to 2013, 51 years had elapsed, that may have been his own invested mathematics.**

He therefore prayed for decision of the Trial Tribunal be dismissed and appeal be allowed with costs.

Appeal was conducted by way of written submissions, where it was ordered for the appellant to file his submission on 26/8/2021 and respondent to reply 9/9/2021, a rejoinder (if any) to be filed on 17/9/2021. The appellant's submission in chief was indicated to be drawn and filed by himself however his rejoinder have been drawn and filed by Deusdedith Maginga Kelanga, Advocate while the respondent was represented by Mr. Rajab Mrindoko, Advocate. Both parties complied with the filing schedule.

In his submission to support his appeal the appellant opted to combine and argue all the grounds of appeal together. It was his submission that that the Trial Tribunal decided the application without considering the exactly time of the application before him. Supporting his argument appellant cited the case of **Martin D. Kumaliya and 117 others vs. Iron and Steel Ltd Civil App. 70/18/2018 CA** where the Court of Appeal applied the principle of overriding objective to maintain the application. Also, he cited the provision of Article 107A(2)(e) of the Constitution of the United Republic of Tanzania which requires court to determine matters on merit not to entertain technicalities.

He further submitted that the trial Chairman failed to take into account that the year 1969 is when the appellant's father passed away. The appellant by then was only two years old and the only child. Thus, even assuming the limitation period as argued by the trial Chairman is correct still the clock started ticking when the appellant attained the age of majority. Supporting his argument appellant cited the case of **Haji Shomari Vs Zainab Rajab Civil Appeal 91/2001** in this case the Court of Appeal held that:-

*"Section 9(1) where a person institutes a suit to recover land of the deceased person whether under the will or intestate 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.*

*Therefore, in terms of Section 9(1) of LMA the right of action accrued on the death(sic) of father's death. However, at the time the appellant could not institute the suit to recover the said house since he was only 9 years old and therefore, a minor in terms of section 2 of the age of the Majority Act. We hasten to add at this juncture that the exact date of the appellant death was neighed(sic) disclosed neither on pleadings nor in evidence adduced during the trial. Section 2 of the age of Majority provides the followings..."*

On the strength of the above argument, the appellant prayed upon this Court to allow the appeal with cost and the matter to be heard on merit before another Chairman.

In reply Mr. Mrindoko submitted that when it comes to issues touching on point of law, such as the aspect at jurisdiction which encompasses the question of limitation, a party may raise such issues at any stage of the proceedings. He submitted the reason for the respondent to raise this issue is to ensure that the Court is seized with jurisdiction to deal with the matter as the question of jurisdiction is fundamental.

He added that the Court of Appeal in the case of **Christopher Bitekeye versus Tanzania Portland and Cement Company Limited, Civil Appeal No. 66 of 2001 (unreported)** *suo motto* raised the issue of limitation and ordered the parties to address the issue. This is because limitation is a question of jurisdiction which can be raised at any stage of the proceedings either by parties or the Court. It was his submission that, the argument by the Counsel for the appellant that the issue of limitation

was not raised during institution of the application in 2015 cannot be raised in this amended application lack merits.

Regarding the appellant's argument that the trial Chairman decided the application without considering the exactly time of the application before him, It was his reply that there is nothing to restrain the trial Chairman from determining the objection raised. Especially being an issue of limitation of time which touch the jurisdiction. That, it can be raised at any stage of the proceedings.

He argued that this application was filed in July, 2015 to recover the land purported to be of the deceased who passed away 1969. That, the trial Chairman was correct in holding that in determining of the accrual of right of action and computation of the period of limitation for recovery of land where the deceased was the last person in possession, the period of limitation is 12 years running from the date of death of the deceased irrespective of when the Letter of Administration was granted as per Section 9(1) and section 35 of the Law of Limitation Act. That, it was well explained by the Court of Appeal in the case of **Yusuf Same and another Versus Hadija Yusuf (1996) TLR page 347**. Therefore to him the trial Chairman was correct in upholding the objection and dismissing the matter for being time barred.

It was his further submission that the overriding objective principle cannot be applied blindly even where there is a clear rule of procedure. That, the Court of Appeal of Tanzania refused to apply the principle in the case of **Mondorosi Village Council and 2 others vs. Tanzania Breweries Limited and 4 others, Civil Appeal No. 66 of 2017**.

He insisted there is nothing in the pleading which suggest that when the deceased passed away in 1969, the Applicant had only 2 years of age. That, there is nowhere in the original application and or in the amended application where the Appellant pleaded those facts. It was his submission that where a party invites the Court to exclude a certain period for any reason envisage by the Law of Limitation Act, he must plead those facts because it is that these facts which will enable the Court to compute and exclude the relevant required period. He added further that even if we assume that time started to run when the Appellant reached the age of majority, it follows those 12 years period ended in 1996, hence time barred.

That, even the facts that this case started in 1993 when Appellant was 24 and years that he was within 12 years of limitation, are also new facts because these facts were not pleaded in his pleadings.

It was his submission that the Appellant pleaded that in 2013 Applicant was appointed as administrator and for purpose of administration he started searching in the Land Registry where he discovered that the 1<sup>st</sup> and 2<sup>nd</sup> Respondent's late mother was registered as lawful owner since 1976.

He replied that even if we assume that this case started in 1993 as submitted, it was probate matter and not a land matter. As per the Appellant's submission this probate matter ended in 1994. From the record, the Appellant was advised by the High Court Judge Mapigano, J in Civil Appeal No. 105 of 1994 to file the matter afresh.

He submitted that even if we assume that time started to run in 1994 when the Appellant advice to refile the matter, it follows those 12 years period ended 2005. It was his submission that by the time the Applicant institute the present suit in July 2015 he was time barred by 10 years. He referred this in the High Court decision in the case of **SEMEN MWINYIMVUA**

**K1NGARU VERSUS DAVID MUGANDA**, Land Case No.317 of 2016  
(Unreported).

On the strength of arguments and the cited authorities, it was his submission that this appeal has no merits and prayed that this appeal be dismissed in its entire with costs.

In rejoinder the appellant mainly reiterated his submission in chief and insisted that the cause of action raised when the appellant attained the age of majority.

Having gone through the submissions of both parties the main issue for determination is whether the Chairman was correct to dismiss the application before him for being time barred.

The main argument of the appellant is that the Chairman could have considered that the appellant was a minor thus to him the cause of action accrued when the appellant attained the age of majority.

In reply Mr. Mrindoko contented that the suit is time barred even the overriding objective principle cannot be applied as there is the provision of law, guiding the matter.

It is undisputed fact that the cause of action began to run on the demise of the owner of the land. this position is found under section 9 of the Law of Limitation Act, cap 89 R. E. 2019. It provides that:-

*"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."*

From the proceeding it is clearly that that the late Juma Said passed away in 1969, counting from the death and when the matter has been first filed it has been more than 12 years which is the time in which the suit for recovery of land should be instituted as per item 22 of the first schedule to the Law of Limitation Act.

However, the Appellant alleged that in 2013 the appellant was appointed as administrator and for purpose of administration and upon searching in the land registry he discovered that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents' late mother was registered as lawful owner since 1976. The proof to that effect has been attached to the records of this appeal.

Considering the fact that the appellant was the only son of the deceased and the fact that his father passed away when he was 2 years old, I took the benefit of doubt in favor of the appellant herein that he discovered the suit house to be sold in 2013 upon his official search. Calculating from 20<sup>th</sup> May 2013 when he discovered that the land had been sold to the respondents to the time when the application has been first filed in the Trial Tribunal, I find that the application has been filed within time.

Having said that I find the chairman was not correct to order that the application was time barred. The matter is hereby remitted to the Trial Tribunal so as the parties can be heard on merits.

It is so ordered.



  
**T. N. MWENEGOHA**  
**JUDGE**  
**10/12/2021**