

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

LAND CASE NO. 99 OF 2022

PETER PETER JUNIOR (As an administrator of the
Estate of the late Masoud Mohamed Mgunga).....**PLAINTIFF**

VERSUS

LEORNARD JAMES MSELLE**DEFENDANT**

Date of Last Order: 16.08.2022
Date of Ruling: 10.10.2022

RULING

V.L. MAKANI, J

This ruling is in respect of the preliminary objections on points of law that has been raised by the defendant herein. The objections are as follows that:

- 1. The plaintiff has failed to comply with Rule 10(1) of GN No. 49 of 1971 (The Primary Courts Administration of Estate ules GN. No. 49 of 1971).*
- 2. Time barred.*

The objections were argued by way of written submissions. Mr. Muhdini Selemani, Advocate from Rwejuna & Co Advocates drew and filed submissions on behalf of the defendant. The plaintiff drew and filed submissions personally.

As for the first objection, Mr. Selemani submitted that the plaintiff has failed to comply with Rule 10(1) of GN No. 49 of 1971, because as an administrator he must present his inventory and statement of account within 4 months of the grant of administrator. He said in the case of **Beatrice Brighton Kamanga vs. Ziada William Kamanga, Civil Revision N. 13 of 2020 (HC-DSM)** (unreported) the court said that it is the duty of the administrator to submit statement of account within four months and that duty is mandatory as there is no life administrator in our law. He submitted that in terms of the said case if the administrator does not submit a complete statement in Form V and VI within 4 months containing assets of the deceased or other assets sold or otherwise dealt by him in such period as directed by the court his existence is deemed illegal and his activities of 4 months becomes null and void if there is no extension by the court. He said the mandatory requirement is also supported by the Fifth Schedule to the Magistrates Courts Act CAP 11 RE 2019. He said before the filing of this suit the administrator of the deceased Masoud Mohamed Mgunga is required to apply for and pray for extension of time so as to proceed with the administration of the deceased estate. He prayed for this objection to be sustained.

The second objection raised is that the suit is time barred. Mr. Selemani said according to the Law of Limitation Act CAP 89 RE 2019 a suit to recover land has to be filed within 12 years. He said the plaintiff has filed this case after almost 42 years. He said the deceased Masoud Mohamed Mgunga died on 01/01/1980 and the Probate Cause was filed on 02/01/2015 which is almost 35 years. He said the defendant purchased the suit land in 1995 and developed it and he has been on the suit land for almost 27 years without any disturbance until when the suit was filed this year 2022. He also relied on the book "**Mirathi Nchini Tanzania**" by Simon O. Swai. He prayed for the objections to be sustained and the suit be dismissed with costs.

In response to the first objection the plaintiff said this is not a preliminary objection on a point of law that can dispose the suit in terms of the case of **Mukisa Biscuits Manufacturing Company Limited vs. West End Distributors Limited (1969) EA 696** and **Jalibu Mrisho Mwene Milao (Administrator of the Estate of the Late Mrisho Jalibu) vs. Attorney General & Others, Land Case No. 49 of 2021 (HC-Land Division)** (unreported). He said if the plaintiff was supposed to present an inventory in court to show

compliance with Rule 10(1) GN 49 of 1971 then it would be a matter of evidence which require proof and thus not compliant with the terms in the case of **Mukisa Biscuits** (supra).

As for the second point of objection, the plaintiff said the suit is not time barred because according to paragraph 4 of the plaint the defendant trespassed in the suit land in 2019 and was filed in 2022 which is only 4 years. He said the cause of action arose when the plaintiff trespassed on the land and not in 1980 when Masoud Mohamed Mgunga died. He relied on the case of **Halfani Mohamed Mpuni (an Administrtor of the Estate the late Mohamed Halfani Mpuni) vs. Miraji Rajabu Mlanga & Others (HC-Land Division)**(unreported). He again said section 24 and 25 of the Limitation Act CAP 89 RE 2019 provides for exclusion of time in matter elatig to administration of estate. He prayed for the objections to be dismisses with costs.

I have listened to the parties and the main issue is whether these objections have merit.

As for the first objection, indeed, the court will need proof on the filing, if any, of the inventory by the plaintiff since his appointment. It is clear that to ascertain this the court would need proof therefore the objection would not fall within the ambit of the case of **Mukisa Biscuits** (supra). The objection therefore has no merit and it is overruled.

As for the second objection the plaintiff has said that the cause of action, that is, trespass by the defendant was in 2019; but the defendant claims that the Masoud Mohamed Mgunga died in 1980 and they have ever since been in use of the suit land without any problems. The plaintiff has counted from the death of the Masoud Mohamed Mgunga and also from the time he bought the suit land in 1995 to set the limitation of time. According to the plaint, the cause of action arose after the death of Masoud Mohamed Mgunga, and the exclusion of time applicable under such a circumstance is that provided for under section 24(1) of the Limitation Act which provides:

"Where a person who would, if he 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 the 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."

For that reason, anyone claiming title under Masoud Mohamed Mgunga could have instituted a suit one year after the death anniversary or after the accrual of the cause of action. Inquisitively, one would ask as to when did the right of action arose in this matter. It is indicated in the record that the dispute in relation to the ownership of that suit land was when the defendant was alleged to have trespassed onto the suit land. The cause of action is thus, deemed to have accrued on the date of the trespass on the suit land in question. The cause of action arose in 2019 and the suit has been filed in 2022 and thus it was filed within time. The defendant's argument that he has been on the suit land for more than 27 years will be well argued and proved in the course of hearing. The contention that the suit was time barred was therefore misconceived. This preliminary objection too has no merit.

In the result and for reasons stated above, the objections are hereby dismissed. Costs shall be in the cause. It is so ordered.



V.L. Makani
V.L. MAKANI
JUDGE
10/10/2022