

**IN THE HIGH COURT OF TANZANIA**

**(LAND DIVISION)**

**AT DAR ES SALAAM**

**LAND APPEAL NO. 246 OF 2021**

(Arising from the District Land and Housing Tribunal for Ilala in Land  
Application No.146 of 2020)

**ABDULLAH AMARI BAAJUN** (Suing as Administrator  
of the estate of the late **SAID OMAR**) ..... **APPELLANT**

**VERSUS**

**ASHA SHABANI KINANDE** (Administratrix of the  
estate of the late **ASHA MWARABU**) ..... **RESPONDENT**

**JUDGMENT**

Date of last order: 14.07.2022

Date of Judgment: 26.07.2022

**A.Z.MGEYEKWA, J**

At the centre of controversy between the parties to this appeal is a parcel of land. The decision from which this appeal stems is the judgment of the District Land and Housing Tribunal for Ilala in Land Application No. 146 of 2020, the respondent was the applicant and the appellant was the respondent. The appellant filed an amended Memorandum of Appeal

on 28th February, 2022 and the respondent's Advocate filed a reply to the amended Memorandum of Appeal on 10<sup>th</sup> March, 2022.

The essence of the appellant's claim as obtained from the record of appeal indicate that, the centre of the dispute is the suit House No.7 Plot No.21 Block D located at Pangani in Ilala District. The respondent claimed that she is the administratrix of the estate of the late Asha Mwarabu who was staying the suit landed property, therefore, she and lodged a suit against Ahmad Amri Baajuni, the administrator of the estate of the late Said Omar claiming that she is the lawful owner of the suit landed property. The respondent claimed that they have been in continuous occupation of the same since 1946.

On his part, the late Ahmad Baajuni disputed the respondent's claims and averred that they are the lawful owners of the suit land. He testified to the effect that Asha Mwarabu, was the administratrix of the estate of the late Shabani Saidi Baajuni who was the lawful owner of the suit landed property and she lived in the suit landed property until her death. Thereafter, the respondent continued to stay in the suit house until when the appellant claimed that the suit landed property belonged to Saidi Omari. The District Land and Housing Tribunal determined the matter and the respondent was declared a lawful owner of the suit landed property.

Undeterred, the appellant has come to this Court seeking to assail the decision of the District Land and Housing Tribunal on 12 grounds of grievance; namely:

grievance; namely:

1. That the Hon. Chairman erred in law and fact for raising a new issue of **Doctrine of Adverse Possession** during composing the judgment and hence declaring the respondent has a legal owner of the disputed land without affording the parties the opportunity to be heard.
2. That the Hon. Chairman erred in law in fact to consider the **Doctrine of Adverse Possession** that it started to run in 1949 when the late SAID OMARI the owner of the disputed property died instead of starting to count the time from 2014 when the administrator of his estate was appointed as required by the law.
3. That the Hon. Chairman erred in law and in fact for ailure to evaluate properly the essence and meaning of Section 9(1) of The Law of Limitation CAP 89 (R.E 2002) that it is a general provision which does not read in its isolation rather it reads together with Section 24 (2) of The Law of Limitation CAP 89 (R.E 2019) and other provisions of the law.

4. That the Hon. Chairman erred in law and in fact to raise the issue of the doctrine adverse possession after discovering that evidence before the tribunal proved that the disputed land the disputed land belongs to the late **SAID OMARI**.
5. That the Hon. Chairman erred in law and in fact for failure to consider that the **Doctrine Adverse Possession** does not apply automatically to the registered land.
6. That the Hon. Chairman had no jurisdiction to declare the respondent as lawful owner of the disputed land under the **Doctrine Adverse Possession** over the registered land as such power is vested only to the High Court by Section 37 (1) of The Law of Limitation CAP 89 (R.E 2019).
7. That the Hon. Chairman erred in law and in fact for failure to properly evaluate evidence before it and come to the conclusion that the respondent failed to prove her case and instead the trial Chairman illegally and without evaluating the evidence decided to deliver judgment in favor of the respondent who failed to prove her case.
8. That the Hon. Chairman erred in law and in fact to declare the respondent the lawful owner of the disputed property while she was just suing under her legal representative and not in her personal

capacity and no proof of any evidence was tendered before the trial tribunal to prove ownership in her personal capacity.

9. That the Hon. Chairman erred in law and in fact to question the legality of the letter of administration of the appellant to the estate of the late **SAID OMARI** while the trial tribunal is not a probate Court to challenge the legality of the administrator of the late **SAID OMARI** hence he was biased.
10. That the Hon. Chairman erred in law and in fact commenced the hearing without reading and explaining the contents of the application to the respondent contrary to the mandatory provision of Regulation 12 (1), (2), (3) (a & b) of The Land Disputes Court (The District Land and Housing Tribunal), Regulations, 2003 which is mandatory.
11. That the Hon. Chairman erred in law and in fact continued hearing of application without proper composition which goes to the jurisdiction of the tribunal.
12. That the Hon. Chairman had no jurisdiction to determine the **said Land Application No. 146 of 2020** as it is a probate case and both parties were claiming interest of the disputed land under their legal representative and not in their individuals' capacity hence only probate

Courts had jurisdiction to determine the issue of ownership raising on probate and not land Courts.

When the matter was called for hearing before this court on 3<sup>rd</sup> June, 2022, the Court acceded to the appellant's proposal to have the matter disposed of by way of written submissions. Pursuant thereto, a schedule for filing the submissions was duly conformed to.

Mr. Kasaizi, the appellant's advocate was the first one to kick the ball rolling. He began by tracing the genesis of the matter which I am not going to reproduce in this appeal. The appellant consolidated and argued the second and third grounds, the fourth and seventh grounds, and the fifth and sixth grounds together and the remaining grounds were argued separately as they appear.

On the first ground, the appellant's advocate contended that the Chairman erred in law by raising a new issue of Doctrine of Adverse Possession during composing the judgment and ended up declaring the respondent a lawful owner of the suit landed property. He claimed the same was not raised by parties hence the parties were denied their right to be heard. To buttress his contention he cited the cases of **Kluane Drilling (T) Ltd v Salvatory Kimboki**, Civil Appeal No. 75 of 2006 CAT,

**Samwel Munsiro v Chacha Mwikwabe**, Civil Application No. 539/08 of 2019, **Nelson Mayombo & Another v Halima Yasini Masanja**, Land Appeal No. 71 of 2020 and **Kumbuwandumi Ndemfoo Ndosii v Mtei Bus Service Ltd**, Civil Application No. 27/02 of 2016. He added that had the tribunal afforded the parties the right to be heard then the appellant could have addressed the tribunal that there is no adverse possession to the fact the administrator of the late Said Omar was appointed in the year 2104. Insisted that the Court of Appeal has many times ruled out that the issue of illegality in the proceedings, decree, or judgment goes to the root of the case. Fortifying his submission he referred this court to the case of **Theresia Mahoza Mganga v The Administrator General (RITA)**, Civil Application No. 5 of 2016.

Submitting on the second and third grounds, Mr. Kasaizi contended that the Chairman erred in law and fact to consider the Doctrine of Adverse Possession that it started in 1949 instead of counting from 2014 when the administrator of his estate that the Chairman erred in law and fact for failure to evaluate properly the essence and meaning of section 9 (1) of the Law of Limitation Act, Cap. 89 [R.E 2019]. Mr. Kasaizi claimed that the Chairman was required to consider the relevant sections such as 3, 5, 9, 10, 24, 25, and 35. He added that the application before the trial tribunal

falls under section 24 (1), (2) of the Law of Limitation that the deceased died before the cause of action accrued. He added that the deceased died in 1949 the time when the administrator was appointed in 2014. He added that in law the cause of action started to accrue in the year 2014 when the legal representative of Said Omar was appointed.

Mr. Kasaizi went on to submit that the issue of Computation of time is resolved by the Court of Appeal of Tanzania in the case of **The Registered Trustees of the Marian Faith Healing Centre @ Wanamaombi v the Registered Trustees of the Catholic Church Sumbawanga Diocese**, Civil Appeal No. 64 of 2007. To cement his submission he also cited the case of **Halfani Mohamed Mpuni (Administrator of the estate of the late Mohamed Halfani Mpuni) v Miraji Rajabu Mlanga, Winfrida Kayanza Pinda, Winfrida Kaynza**, Land Appeal No. 167 of 2019.

Arguing for the fourth and fifth grounds, the learned counsel of the appellant contended that the Chairman erred in law and fact for failure to evaluate properly the evidence and concluded that the respondent failed to prove her case hence the Doctrine of Adverse Possession does not apply. He claimed that the respondent tendered exhibit P2 a letter of administration whereas Asha Mwarabu was appointed to administer the



estate of Shabani Saidi Baajuni but the form does not show that he had any property or show that the suit land belongs to Shabani Saidi Baajuni. He added that the transfer form was a mere form of transfer since there is no any paragraph that mentioned the disputed plot as stated and described under paragraph 3 of the Application No. 146 of 2020. He contended that the appellant claimed that the suit land is a registered land; Plot No. 21 Block D House No. 7 located at Pangani at Ilala within Dar es Salaam Region but she did not tender any document to prove that the suit land was transferred to Shabani Saidi Baajuni or Asha Mwarabu.

He stressed that the respondent's evidence is mere allegations from the bar. To fortify his argumentation he cited the case of **Bakari Salum Matandika & Other v Andrea George**, Land Case No. 34 of 2020. He claimed that Frank Chilonjo the person who witnessed the transfer of the disputed land is not concerned with the suit land. Mr. Kasaizi added that exhibit P2 states only House No. 7, Block, and Plot No are not mentioned thus the same creates doubt on the specification of the suit land. He added that exhibit P3 collectively are payment receipts but the same does not prove ownership since any person can pay tax property in his/her name. He went on to submit that the respondent did not tender any official search

to show if the suit land was registered in the name of Asha Mwarabu or Shabani Said Baajun.

The learned counsel for the appellant submitted that the appellant managed to prove that the suit land belonged to Said Omar and to substantiate his testimony he tendered exhibits D1, D2, D3, D4, D5, D6, and D7. He added that the exhibits state that the disputed House No.7 at Plot No. 21 Block D at Pangani Street within Ilala at Dar es Salaam is registered in the name of Said Omar. To bolster his submission he cited the cases of **Amina Maulid Ambali & 2 others v Ramadhani Juma**, Civil Application No. 173/08 of 2020, and **Agatha Mshote v Edson Emmanuel**, Civil Appeal No. 121 of 2019.

Submitting on the fifth and sixth grounds, the appellant's counsel contended that the doctrine of adverse possession does not automatically apply to registered land. He claimed that the exhibits from the Ministry of Lands and all relevant authorities proved the suit land belonged to Said Omar. He claimed that this court is vested with the power to hear the applications for adverse possession and not the District Land and Housing Tribunal. To support his submission she referred this court to sections 37 (1), (2), (3), (4), (5), (6) of the Law of Limitation Act, Cap. 89 and he cited

the cases of **Registered Trustees of Holy Spirit Sisters Tanzania v January Kamili Shayo**, Civil Appeal No. 193 of 2016.

On the 8<sup>th</sup> ground, Mr. Kasaizi contended that the respondent sued under a legal representative but the court granted the property in her name as a normal person. It was his submission that the decree was not specific and the Chairman has granted the suit land to the stranger. He added that the appellant was supposed to prove whether the suit land belonged to Asha Mwarabu. To buttress his contention he referred this court to the framed issues.

As to the nine ground, the learned counsel for the appellant repeated his earlier submission. He argued that the Chairman faulted himself when he questioned the legality of the letter of the administration of the late Said Omar by not affording parties to address on it.

On the tenth ground, he claimed that the tribunal commenced the trial without ascertaining whether the appellant denies or admits some facts. He argued that the issues were framed without the respondent being ready in the fact to do that to admit or deny the allegation. He claimed that the tribunal had no jurisdiction to proceed with the framing of the issue without first reading the facts to the appellant. Supporting his submission

he referred this court to Regulation 12 (3) (b) of the Land Disputes Court (The District Land and Housing Tribunal) Regulations of 2003. He lamented that the mandatory provision of the law was not followed which gives jurisdiction to the tribunal to frame issues.

Concerning the eleventh ground, the learned counsel for the appellant contended that the trial started on the date of framing issues and the assessors were absent hence they could not give their opinion on the issues framed. It was his view that the tribunal reached a wrong decision because assessors were not present on the day of framing issues.

Concerning the twelfth ground, the learned counsel for the appellant argued that the Chairman erred to determine the application since it is a probate case and both parties were claiming interest of the disputed land under legal representative and not in their own individual capacity. He went on to submit that both parties were representing the deceased thus it was a probate issue. To support his submission he cited the case of **Zamda Amrani Mdemu v Bank of Afrika Tanzania Ltd**, Land Case No. 41 of 2017.

On the strength of the above submission, the appellant's advocate beckoned upon this court to allow the appeal with costs and set aside the proceedings and decision of the trial tribunal.

The respondents' confutation was strenuous. Mr. Adnan came out forcefully and defended the trial court's decision as sound and reasoned. In the first part of the submission, the appellant's counsel submission is unfounded and misconceived. He argued that the trial granted what was prayed for by the respondent and she was declared a lawful owner of the suit land.

Submitting on the first ground, the respondent's advocate contended that the Doctrine of Adverse Possession was not raised as an issue, instead, the issue was raised by the tribunal had two issues for determination; whether the suit land belongs to Asha Mwarabu and to what reliefs are parties entitled to. He argued that adverse possession was an interpretation of events that was already part and parcel of evidence adduced by witnesses during the trial. Supporting his submission he referred this court to pages 13 and 14 of the typed judgment of the trial tribunal. He also referred to the submission of Ahmed Baajuni that Shabani Baajuni was living with her wife Asha Mwarabu thus she had the right to be appointed as an administrator of the estate of her

late husband. He went on to submit that Shabani Baajuni was the sole owner of the suit land.

Submitting on the second and third grounds, the learned counsel for the respondent contended that the purpose of ownership of a house in dispute the computation of time did not start to run from the time when Ahmed Amari Baajuni was appointed as an administrator of the estate of the late Said Omar in 2014. To support his position he cited the case of **Yusuf Same & Another v Hadija Yusuf**, Civil Appeal No. 38 of 1996, HC at Dar es Salaam (unreported). He submitted that section 9 (1) of the Law of Limitation Act, Cap. 89 [R.E 2019] is a general provision that does not read in isolation but must be read together with section 24 (2) of the Law of Limitation Act, Cap.89. In his view, section 9 (1) of the Law of Limitation Act, Cap. 89 [R.E 2019] is a proper provision in the context of the case which was before the tribunal.

Arguing for the fourth and seventh grounds, Mr. Adnan argued that House No.7 located at Pnagani Street at Ilala is mentioned in all documents and the respondents and her siblings are living in the said house for more than two decades while the appellant has never lived in the suit landed house. He added that there is no any other house No.7 in Pangani Street at Ilala apart from Plot No. 21 Block D. He contended that

there is nowhere in the application where it is stated that the suit landed property is registered. He claimed that the pleading shows that the suit land is House No. 7 Plot No. 21, Block D Pangani Street within Ilala, Dar es Salaam. He added that exhibit P2 is a transfer of occupancy in relation to House No. 7 issued by Kisutu District Court in favour of Asha Mwarabu and the same is sufficient proof that the ownership of the house in dispute was transferred by the Probate Court from Shabani Baajuni to his wife Asha Mwarabu being the administrator of the estates and only surviving lawful heir of a house in dispute.

He continued to argue that Shabani Baajuni acquired ownership of the said house and the same was part of Probate Cause No. 105 of 1989 and Asha Mwarabu applied for a grant of letter of administration of her late husband's estate. He added that the transfer of ownership to Asha Mwarabu was not contested. Mr. Adnan went on to submit that the exhibit P2 was a reliable document to prove that Asha Mwarabu was the lawful owner of the suit landed property and the Senior Resident Magistrate, Frank Chilonjo witnessed the transfer of the said property he added that the Chairman believed that Asha Mwarabu was the lawful owner as per Regulation 10 (3) (b) of the Land Disputes Courts (District Land and Housing Tribunal) Regulations GN. 174 of 2002.

The learned counsel for the respondent valiantly argued that the appellant cannot raise an objection that exhibit P2 was not bearing a stamp duty since he did not challenge its admissibility. Supporting his submission he cited the cases of **Sospeter Nyanza & Another v Republic**, Criminal Appeal No. 289 of 2018 (unreported) CAT, and section 45 of the Land Disputes Cap. 216 [R.E 2019]. He stressed that the case before the tribunal was properly decided and therefore it met the ends of justice and the appellant is not prejudiced. He strongly argued that neither of the respondents have the rights over the suit land since they are neither heirs of Said Omar nor Shabani Baajuni and Asha Mwarabu.

As to the fifth and sixth grounds, the learned counsel for the respondent contended that section 37 (1) of the Law of Limitation Act, Cap. 89 [R.E 2019] is inapplicable in the circumstances of the case at hand as the respondent did not file a case before the tribunal to seek registration to a registered land through adverse possession but was seeking ownership of a house as legal personal representative of the deceased. He claimed that section 37 (1) of the Law of Limitation Act, Cap. 89 [R.E 2019] is applicable when a person seeks registration through adverse possession of registered land. He insisted that the tribunal had jurisdiction to determine the suit landed property since the matter was determined based



on the transfer of the house to Asha Mwarabu thus the doctrine of adverse possession was applied to determine the question of ownership.

With respect to the ninth ground, the learned counsel for the respondent was brief and straight to the point. He contended that the appellant's counsel has unfairly and without proof leveled allegations against Hon. Chairman, claimed that there is no any proof that the Chairman proved the case on behalf of the respondent.

On the 8<sup>th</sup> ground, the respondent's counsel contended that the tribunal or court is capable of questioning mysterious circumstances of appointment of the administrator of the estate of a deceased of the case relates to the deceased' land. To buttress his contention he cited the case of Ysufu Selemani Kimaro v Administrator General & 2 Others, Civil Appeal No. 266 of 2020 (unreported) CAT. He added that in the matter at hand the tribunal posed the query which did not determine the case but was most important for proper understanding of the nature of the case. Supporting his submission he referred this court to page 15 of the typed judgment.

As to the tenth ground, Mr. Adnan contended that the Chairman fully complied with the requirement of Regulation 12 (1), (2), (3) (a) & (b) of the

Land Disputes Courts (The District Land and Housing Tribunal) Regulation of 2003. He went on to submit that before commencement of the hearing the trial Chairman made sure that all parties were made aware of the contents of pleadings, thus, in his view, the issues framed were agreed by parties and the tribunal, and the issues were read and understood by parties before trial.

As to the eleventh ground, Mr, Adnan valiantly argued that there is no any law that requires the assessors to the tribunal to give their opinion on the issues framed by the tribunal. He submitted that Regulation 23 (2) of the Land Disputes Courts (The District Land and Housing Tribunal) Regulation of 2003 indicates that the District Land and Housing Tribunal shall be duly constituted to include the Chairman and two assessors who will be required to state their opinion and the same was complied with.

On the issue of whether the matter is a probate or land case, Mr. Adnan argued that the fact that the parties are litigating as administrators does not make the case probate. He added that it is the cause of action which determined the nature of the case and the cause of action before the tribunal was ownership of land. He stated that his position is in tandem with the findings of the Court of Appeal of Tanzania in the case of Yusufu Selemani (*supra*). He added that the Probate Court has resolved the

present dispute and granted the ownership of the house in dispute to the late Asha Mwarabu via Probate Cause No. 105 of 1989 and no appeal or revision was lodged to challenge the said grant of ownership.

On the strength of the above submission, the respondent's advocate beckoned upon this court to uphold the trial tribunal decision and find that all grounds of appeal are devoid of merit, and dismiss the appeal with costs.

In his brief rejoinder, the appellant reiterated his submission in chief. He had nothing new to rejoin rather the appellant insisted that the appellant did not tender any documents related to suit House No. 7 Plot No. 21 Block D Pangani Street at Ilala, Dar es Salaam. In conclusion, the appellant urged this court to allow the appeal with costs.

Having heard the submissions of both parties simultaneous with carrying a thorough review of the original record, I wish to begin with the first and second grounds. The appellant's advocate is claiming that the respondent did not tender a registered title related to the suit's landed property.

I have gone through the original proceedings and noted that Asha Shabani Kinande (PW2), testified to the effect that she is living in Asha

Mwarabu's house and she is the administratrix of the estate of the late Asha Mwarabu. To substantiate her testimony she tendered a letter of administration (Exh.P1), a letter of administration of Asha Mwarabu, and a loss report (Exh.P2) collectively this Probate and Administration form was issued in 1993 but the same does not state the Plot No and Block No. House No.7. The respondent also tendered a TRA receipt which shows Plot No. 21 House No. 7 without mentioning the Block number.

On his side, Ahamed Amari Bajuni (deceased) tendered a letter of administration (Exh.D1), a letter from Regional Land Office Agent, Coast Region dated 23<sup>rd</sup> July, 1963. He testified to the effect that the record of registration shows that Mr. Said Omari, was the registered owner of Plot No. 21, Block 'D' House No.7, Pangani Street, Ilala within Dar es Salaam. A land rent receipt dated 1<sup>st</sup> December, 1971 concerning House No.7 located at Pangani and Urban House Tax receipt dated 4<sup>th</sup> January, 1966 bearing the name of Saidi Omari. There is a letter from the Ministry of Lands, Housing & Urban Development dated 4<sup>th</sup> April, 1970 to Saidi Omari concerning Land rent – Plot No. 21 Block D House No.7 (Exh.D3) collectively.

Concerning the fourth and fifth grounds, in my considered view, the appellant's documentary evidence is elaborative and related to the suit landed property, however, the late Ahamed Ammary Baajuni in his testimony testified to the effect that the suit landed property belonged to Saidi Omari and he has never lived in the suit land and Said Omari was the biological father of Shaban Baajuni who was living in the suit land with her late wife Asha Binti Mwarabu until 1987 when he passed away. DW1 testified to the effect that Asha Binti Mwarabu had the right to be appointed as an administratrix of her late husband. Astonishing, DW1 applied for the administration of the estate of the late Said Omar in 2014. There is no dispute that the respondent is living in the suit land to date and there is no dispute when the transfer of ownership from Said Omari to Asha Mwarabu in 1993 no one raised any objection.

After a thoroughly perusal of the tribunal record and decision, I found that the late Ahmad did not apply for administration of the estate of the late Said Omari or raise any complaints while he had a chance to raise his claiming in 1949 after the death of Said Omari. Again, the late Ahmad had an opportunity to file a probate cause after the death of Shabani Baajuni in 1987, however, he did not do so. The late Ahmad did not lodge a probate cause until 2014, he was appointed to administer the estate of the

late Said Omar after 64 good years. In my considered view, failure to raise his objection means he had conceded that the late Asha Mwarabu was the lawful owner of the suit land. Therefore, he cannot come to this court and claim that the transfer effect by the late Asha Mwarabu was in a mere form.

Another issue of contravenes, the learned counsel for the appellant is claiming that the respondent's documents show that the suit landed property is House No. 7 without mentioning the Plot and Block numbers. It is worth noting that the respondents are living in the suit landed house that shows that the suit landed property in question is the same as stated in the respondent's application. The suit land is clearly stated by the respondent on paragraph 6 (a) (i) of the application and the cause of action constituting the claim is ownership of House No. 7 Plot No. 21 Block 'D' located in Pangani Street at Ilala. Therefore, the appellant's claims are unfounded.

Therefore, the Chairman was right to rule out that the Doctrine of Adverse Possession was applicable in the matter at hand. As elaborated above the appellant's exhibits shows that the late Ahmad was appointed to administer the estate of the late Saidi Omari. However, they did not raise any complaints at all the time when Asha Mwarabu was living in the

suit land and even after her death in 1993. Counting from the date when Asha Mwarabu passed away to the time when Ahamed was appointed as an administrator in 2014, is a lapse of 21 years. Therefore, even though the respondent tendered exhibits relating to House No.7 without mentioning Plot and Block numbers, the fact that they are staying in the suit landed property to-date suffice to prove that the house in dispute is the one located in Plot No. 21, Block D Pangani Street within Ilala, Dar es Salaam. I have considered the fact that, the appellant had a chance to raise his complaints within 12 years as provided under Part 1 Item 22 of the Law of Limitation Act, Cap.89 [R.E 2019] provides that a suit to recover land is 12 years, however, he did not do so. Therefore, for the foregoing reasons, it is clear that the appellant had no right to raise his complaints after the lapse of more than 35 years.

Submitting on the second and third grounds, in my considered view section 9 (1) of the Law of Limitation Act, Cap. 89 [R.E 2019] is inapplicable in the circumstances at hand. For ease of reference, I reproduce section 9 (1) of the Act hereunder:-

*“ 9.-(1) Where a person institutes a suit to recover the 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.*

Applying the above provision of law in the matter at hand, it is clear that the above provision is inapplicable in the instant case. I am saying so because the issue of the suit land arises even when the late Said Omar was alive since his son Shabani Baajuni was living in the said suit landed property.

The learned counsel for the appellant submitted that the Doctrine of Adverse Possession arose after noting that Ahmad was claiming ownership of the suit land property is unfounded. I am saying so because after the death of Said Omar, the late Said Omar estate was in the hands of his son one Shaban Baajuni and after his death, his wife continued to administer the estate of his late husband and the late Ahmad and his relatives did not raise any objection. Therefore, the Doctrine of Adverse Passion was not a new issue the same arises from the evidence on record whereas DW1 evidence led the tribunal to reach such a conclusion.

Mr. Kasaizi raised an issue of time limit that the time of limitation started to run from the time when Ahmad was appointed to administer the estate



of the late Said Omar. In my considered view, the cause of action started to run after the death of Said Omar. I am saying so because Shaban Baajuni stayed in the disputed house even after his death, Asha Mwarabu the wife of the late Shabani Baajuni was appointed to administer the estate of the late Shaban Baajuni and she managed to transfer the ownership from Shabani Baajuni to her name. Asha Mwarabu stayed in the suit property until she died in 1993. Thereafter, Asha Kinande was appointed to administer the estate of the late Asha Mwarabu in 2016 and they are staying in the suit landed property to date. Therefore, the time cannot run after the appellant's being appointed to administer the estate of the late Said Omar.

On the eleventh ground, the issue of assessors, as rightly submitted by the learned counsel for the respondent the presence of assessors at the time of framing issues is not a statutory requirement. See Regulation 23 (2) of the Land Disputes Courts (The District Land and Housing Tribunal) Regulation of 2003. As long as the assessors were present during the hearing of the case the same suffices. Therefore this ground is devoid of merit.

On the last ground, the issue of land matter or probate, the evidence on records reveals that this is a case of land matter since the parties were

contesting about ownership of land and the issue framed reflected the matter of land. As long as both parties were appointed to administer the estates of the deceased, then they were capable to institute a land case claiming ownership of the suit landed property.

In the upshot, I find that the appellant's grounds of appeal are devoid of merit. Thus, I dismiss the appeal without costs.

Order accordingly.

Dated at Dar es Salaam this date 26<sup>th</sup> July, 2021.

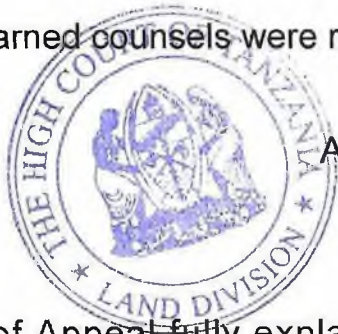


  
A.Z.MGEYEKWA

**JUDGE**

26.07.2021

Judgment delivered on 26<sup>th</sup> July, 2021 via audio teleconference whereas both learned counsels were remotely present.



  
A.Z.MGEYEKWA

**JUDGE**

26.07.2021

Right of Appeal fully explained.