

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

**LAND CASE NO. 4 OF 2023**

**AGREY G. KIBANGA** (The Administratrix of  
the estate of late **Sembe G. KIBANGA**) .....**PLAINTIFF**

**VERSUS**

**NEEMA ISACK KANYAWANA**.....**1<sup>ST</sup> DEFENDANT**  
**SHOSHANGUVE STAR TRADERS LTD**.....**2<sup>ND</sup> DEFENDANT**  
**KINONDONI MUNICIPAL COUNCIL**.....**3<sup>RD</sup> DEFENDANT**  
**COMMISSIONER FOR LANDS**.....**4<sup>TH</sup> DEFENDANT**  
**THE ATTORNEY GENERAL**.....**5<sup>TH</sup> DEFENDANT**

**RULING**

*Date of last Order:07/06/2023*  
*Date of Judgment:11/08/2023*

**K. D. MHINA, J.**

This is the ruling in respect of the preliminary objection raised by the first and second defendants against the plaintiff's plaint in dispute between the parties over the ownership of surveyed land described as Plots 1356 and 1357 Block 'A', Bunju Area, within Kinondoni District in Dar es Salaam ("the suit land").

The facts of this matter briefly, as can be gleaned from the pleadings, is that the plaintiff alleges that the property in dispute currently surveyed as Plot No. 1356 & 1357, Block "A", Bunju was owned by his late father, Godfrey Kibanga since in 1981 after he was allocated by Bunju "A" Village Authority.

Further the deceased constructed the house and started living in the suit property since 1984 until his death in 2016. Between 2007-2011 the deceased felt sick and travelled to Bumbuli- Tanga and later to United State of America for treatment and when he was away for treatment, the first defendant being relative or his mother took advantage of the deceased's absence by surveying the suit land and managed to get certificate of title in her name. Later, in 2012, she transferred the ownership by way of sale to second defendant

Plaintiff further alleges that, in 2012 after returning from treatment, the deceased sold part of the land in disputed to second plaintiff who built house in his land without knowledge of what was done by first defendant.

It was in 2014, the deceased became aware that the first defendant not only registered the suit land in her name but also transferred the ownership to the 2<sup>nd</sup> defendant.

Following the above facts, after being appointed the administrator of the late Sembe G. Kibanga, together with the second plaintiff seek reliefs from this Court by praying for the following declaratory orders;

- i. A declaration orders that 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs are entitled to ownership and possession of their respective suit premises currently forming part of plot no. 1356 and 1357, Block "A" located at Bunju, Kinondoni Municipality.*
- ii. For an order that 1<sup>st</sup> and 2<sup>nd</sup> defendants had no good title/ no interest over the suit premises for want of fraud and misrepresentation.*
- iii. For orders declaring that the certificate of right of occupancy no. 82818 and 82751 earlier registered in the name of the 1<sup>st</sup> defendant and subsequently transferred to the 2<sup>nd</sup> defendant were procured by fraud and through misrepresentation and on order invalidating the same.*
- iv. For order declaring the survey carried out on the disputed land bt the 3<sup>d</sup> defendant and the title deed issued by the Commissioner for Lands illegal, null and void.*
- v. A permanent injunction order restraining the 1<sup>st</sup> and 2<sup>nd</sup> defendants whether by themselves or their servant or agents or otherwise interfering with the plaintiff's occupation of the suit premises.*
- vi. General damages for inconvenient caused by the fraudulent acts and misrepresentation the quantum hereof to be assessed by the Court but in the event not less that TZS 70,000,000/=.*
- vii. Costs of the suit and any other remedies the court may deem just fit to grant.*

The defendants countered the allegations by vehemently disputed the facts in their written statements of defences.

Moreover, the 1<sup>st</sup> and 2<sup>nd</sup> defendants, apart from countering the plaintiff's claims in the written statement of defence but also confronted the plaintiff with a notice of a preliminary objection that canvassed on only one grounds, namely;

- i. The suit is time barred on account that the plot and title at issue was surveyed and registered way back in the year 2008 and in this case was filed in court on 4 January 2023 over and above 12 years statutory period provided for by the law of limitation”.*

Therefore, this Court had to deal with preliminary objections first because it is trite that once a court is seized with a preliminary objection, it is first required to determine the objection before going into the merits or the substance of the case or application.

The objections were argued by way of written submissions duly drawn and filed by Mr. Daniel Haule Ngudungi, learned advocate for the 1<sup>st</sup> and 2<sup>nd</sup> defendants, and Mr. Rajab Mrindoko, learned advocate for the plaintiff. The 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> defendants did not file anything.

Supporting the preliminary objection, Mr. Ngudungi submitted that the plaintiffs' claims trace back 2007 as the 1<sup>st</sup> plaintiff pleaded that the suit land was surveyed in 2007 (as per **annexures GK 5 - GK7, forming part of the plaint**) and in 2008 the 1<sup>st</sup> defendant was issued with the Certificate of Title (annexture GK 13-page 2 paragraph 3)

On the 4<sup>th</sup> day of January, 2023, the plaintiffs filed this suit in court after a period of sixteen (16) years lapsed challenging survey and registration of the land at issue is far and beyond the twelve years period prescribed by law.

Item 22 of the Schedule to Law of Limitation Act Cap 89 R.E 2019 provides that;

*"A suit to recover Land -twelve years."*

In addition to that, the plaintiffs did not secured extension of time from the Minister according to Section 44 of The Law of Limitation Act.

Further the plaintiff has failed to utilize the exemption provided for by the Civil Procedure Code Cap 33 R.E. 2019 under order VII Rule 6 which read;

*"Where the suit is instituted after expiration of the period prescribed by the law of limitation, the plaintiff shall show the ground upon which exemption from such law is claimed."*

To bolster his submission, he cited the decision of the Court of Appeal in **Kigoma Ujiji Municipal Council vs. Ulimwengu Rashid t/a Ujiji Mark Foundation, Civil Appeal No. 222 of 2020, (Tanzlii)**, at page 14 when it interpreted the applicability of Order VII Rule 6 of the Civil Procedure Code, it held that;

*"To bring into play exemption under Order VII Rule 6 of the CPC, the plaintiff must state in the plaint that his suit is time barred and state facts showing the grounds upon which he relies to exempt him from limitation. With respect the plaintiff has done neither".*

He concluded by submitting that since the suit is time barred then it should be dismissed.

In response, Mr. Mrindoko submitted that There was no dispute the present suit filed in this Court by the Plaintiffs is for recovery of land hence the time limitation is 12 years as per Item 22 of Part I of the Schedule to the Law of Limitation Act.

He further stated that Section 4 of the Law of Limitation Act prescribes that the period of limitation in relation to any proceedings shall commence

As for the determination of the accrual of right of action and computation of period of limitation in respect of the 1<sup>st</sup> Plaintiff in this suit the relevant provision is section 9 (1) of the Law of Limitation Act. Section 9(1) which provide that;

*"Where a person institute 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 or her 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 the death".*

Applying above provision, the 1<sup>st</sup> plaintiff right of action is deemed to have accrued on 4<sup>th</sup> March 2016 when the deceased died. To bolster his submission Mr. Mrindoko cited **Yusuf Same and another vs. Hadija Yusuf** (1996) TLR 347 and **Hadija Juma vs. Lilla Mwinyikondo**, Land Appeal No.2 of 2011 (unreported) where this Court held that administrator or executor limitation start to count on the date of death of the person he/she administer his/her estate.

Therefore, he submitted that counting from 4<sup>th</sup> March 2016, twelve (12) years is expected to expire on 3<sup>rd</sup> March 2028. It is therefore apparent that the 1<sup>st</sup> Plaintiff right of action is within time and at the time when instituted the present suit on 4<sup>th</sup> January 2023 was not beyond twelve (12) years prescribed by the law of Limitation.

In determining of the accrual of right of action and computation of period of limitation in respect of the 2<sup>nd</sup> Plaintiff in this suit the relevant provision is section 5 of the Law of Limitation Act.

That the right of action for the 2<sup>nd</sup> Plaintiff accrues when the cause of action arises. It is further settled law that the right of action accrued or begun to run when one became aware of the said transaction or act which is complained. He substantiated his submission by citing the decision of the Court of Appeal in **Salim Lakhani and two others vs. Ishfaqe Shabiri Yusufali (as administrator of the Estate of the Late Shabir Yusufali)**, Civil Appeal No. 237 of 2019 the Court at page 13 quoted with the approval of the case of **Ramadhani Nkongela vs. Kasan Paul** (1988) TLR 56.

According the Plaintiff, 2<sup>nd</sup> Plaintiff and the deceased became aware of the survey and issuance certificate of title in the name of the 1<sup>st</sup> Defendant and



that has sold the same to the 2<sup>nd</sup> Defendant in 2014 after he was sued. Counting 12 years from 2014 when 2<sup>nd</sup> Defendant became aware, 12 years is expected to expire on 2025. Therefore, the suit is not time barred.

The defendant did not file the rejoinder.

Having gone through both parties' pleadings and submissions, the issue for determination is straight forward on whether or not the plaintiffs claim is time-barred.

Based on Item 22 to the First Schedule of the Law of Limitation Act (LLA), it is quite clear that the period of limitation for instituting proceedings for suit to recover land is 12 years.

In this matter there are two plaintiffs, the first plaintiff sued as the administrator of the estate of the late Sembe G. Kibanga who it is alleged as the original owner of the land in dispute and the second plaintiff who it was alleged, he purchased part of the suit land from the late Sembe G. Kibanga. According to the law these two plaintiffs are covered by by different position of law. While the 1<sup>st</sup> plaintiff as an administrator is covered by section 9 (1), the second plaintiff is covered by section 5. Both of the Law of Limitation Act.

To start with the first plaintiff, section 9 (1) of the LLA reads 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.*

According to paragraph 8 of the plaint and the probate form No. IV issued by Kawe Primary Court on 09 May 2016 (Annexure GK1) the deceased, Sembe G. Kibanga passed away on 4 March 2016. Therefore, limitation against the first plaintiff started to count from that date and by filing this suit on 4 January 2023, it quite clear that the first plaintiff is within 12 years to file a suit for recovery of land.

This position is well settled in the cited case of **Hadija (Supra)** where it held that;

*"Mdogwa's estate started running in 1963 when the said Mdogwa passed away (irrespective of when the letters of administration of his estate were granted".*

Flowing from above it is quite clear that the claim filed by the first plaintiff is within time.

Reverting to the second plaintiff, as I alluded to earlier, he is covered by section 5 of the LLA.

Section 5 read that;

*"5. Subject to the provisions of this Act the right of action in respect of any proceeding, shall accrue on the date on which the cause of action arises".*

As per the cited law, the computation of time (12 years) for recovery of land accrues from the date on which the cause of action arose.

The applicability of section 5 is well expounded in the cited case of **Salim Lakhani (Supra)**, where the Court of Appeal held that;

*"Essential s. 5 of the Limitation Act prescribes that the period of limitation in relation to any proceedings shall commence from the date on which the right of action for such proceedings accrues. The law is further settled that; the right of action begins to run when one becomes aware of the said transaction or act which is complained of".*

Therefore, it is imperative to note that time limitation starts to run when a person becomes aware of the infringement or an act which he/ she is complained of.

In the instant case as per paragraph 12 of the plaint, it was alleged that the second plaintiff became aware of the act in 2014. In the submissions it was stated the deceased and the second plaintiff became aware after being sued by the second defendant. Therefore, counting from 2014 the second plaintiff also is within time.

Flowing from above it is quite clear the argument raised by Mr. Ngudungi that the suit is time barred because the survey was conducted in on 2007 and the title was issued in 2008 is of no merits because as per section 5 and 9(1) of the LLA cited above, the plaintiffs are within time

Likewise, his arguments regarding the application for extension of time to the Minister under section 44 of the LLA and the applicability of Order VII Rule 6 of the CPC, also are without merits.

Having given the matter due consideration I am of the settled mind that preliminary objection raised lack merits because the suit is not time

barred. In the circumstances dismiss the preliminary objection with costs and ordered the suit to proceed with hearing on merits.

It is so ordered.



  
**K. D. MHINA**

**JUDGE**

**11/08/2022**