

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

LAND CASE NO. 70 OF 2022

JEREMIAH ANDREW KABIGUMILA (Personal Legal
Representative of JACOB A. KABIGUMILA) **PLAINTIFF**

VERSUS

SIMON KATARAMA (Personal Legal Representative
of LEONARD BAMWENDA) **1ST DEFENDANT**
ADAMSON THOMSON ZADINA **2ND DEFENDANT**
THE COMMISSIONER FOR LANDS **3RD DEFENDANT**
THE ATTORNEY GENERAL **4TH DEFENDANT**

Date of last Order: 21.12.2022
Date of Ruling: 06.02.2023

RULING

V.L. MAKANI, J.

This ruling is in respect of preliminary the objection raised by the 1st
3rd and 4th defendants that:

*The suit is time barred as it contravenes Item 16 of Part
I to the Schedule to the Law of Limitation Act Cap 89 RE
2019.*

The raised preliminary objection was argued by way of written
submissions. Mr. Joseph Rutabingwa, Advocate drew and filed
submissions on behalf of the 1st defendant. Mr. Thomas Mahushi,
State Attorney drew and filed submission on behalf of the 3rd and 4th

defendants while Mr. Mashiku J. Sabasaba drew and filed submissions in reply on behalf of the plaintiff.

According to the plaint, the plaintiff is the son and rightful heir of the late Jacob Andrew Kabigumila who was declared by Kisutu Resident Magistrate Court (**Kisutu Court**), the lawful owner of the land known as Plot No.8 Block 18 Kinondoni Area, Kinondoni, Dar es Salaam (the **suit property**), in RM Civil Case No. 56 of 1988. The late Jacob Kabigumila died before executing the decree and so the suit property remained in occupation of Leornada Bamwenda and her daughter Savera Katarama. After the death of Leonarda Bamwenda, her husband Simon Katarama was appointed the Administrator of her estate, and their daughter, Savera Katarama, and her husband Adamson Thomson Zadina remained in physical occupation of the suit property.

The plaintiff herein was appointed Administrator of the estate of her father the late Jacob Kabigumila on 11 April, 2012 and he instituted an application before Kinondoni District and Housing Tribunal (the **Tribunal**) demanding vacant possession of the suit property. The application was struck out for want of jurisdiction and the plaintiff was

advised to execute the decree of Kisutu Court. The execution could not materialize because it transpired that the suit property was registered and a Certificate of Occupancy No. 128315 was issued in joint ownership of the 2nd defendant's children. With this development the plaintiff decided to file the present suit.

Mr. Rutabingwa submitted in support of preliminary objection that the late Jacob Andrew Kabigumila was the alleged decree holder of the judgment of Kisutu Court in Civil Case No.56 of 1988 which judgment was delivered on 29th November 1993. He said the Law of Limitation Act, CAP 89 RE 2019 (the **Limitation Act**) in section 6, provides for accrual of cause of action in certain cases. In subsection (c) of the said section the right of action upon judgement shall be deemed to have accrued on the date of which the judgment was delivered. In Item 16 of Part 1 of the Schedule to the Act provides that the time limit for a suit founded on judgment is twelve years. He said the judgment of Kisutu Court was delivered on 29th November 1993 and it has been brought more than 17 years later. That under section 3 (1) of the Limitation Act such suit ought to be dismissed and went on to pray for the dismissal of the suit with costs.

On his side Mr. Mahushi who is also supporting the preliminary objection, submitted that the plaintiff is praying for judgment and decree against the defendants basing on the decree of Kisutu Court in RM Civil Case No.56 of 1988. He said Item 16 to the Limitation Act provides for the time limit for suits found on judgment to be twelve years. That the present suit at hand was filed on 31/03/2022 which is 28 years counting from November 1993, the date of judgment. He relied on the case of **Albetus Samwel vs Mourice Lanya Okoth, Land Appeal No.36 of 2021(HC-Musoma)** (unreported) and prayed for the suit to be dismissed under section 3 (1) of the Limitation Act.

In reply Mr. Sabasaba said that the suit at hand was filed within time. He said the judgment of Kisutu Court in RM Civil Case No.56 of 1988 was in favour of Jacob Kabigumila who died in March 1997. That the death of the judgment holder stopped the running of limitation against him. Mr. Sabasaba relied on section 25 (1) of the Limitation Act and said the limitation period stopped running from March 1997 until the day when the administrator was appointed. He said since the plaintiff herein was appointed as Administrator on 11/04/2012, then the limitation period stopped to operate from 29/03/1997 to April

2012. That when that period is excluded in the computation of limitation, the period remains four years and that is the period which accrued when the late Jacob Kabigumila was still alive (from 1993 to 1997). He added that section 21 (1) of the Limitation Act allows exclusion of proceedings bonafide filed in court without jurisdiction. That the Administrator immediately after being appointed, he instituted the suit for recovery of land at the Tribunal and the judgement was delivered in June 2017. That on trying to execute the decree it transpired that the property had already been transferred to the 2nd defendant who was not party to the decree. That the period from 2012 to 2017 during which the plaintiff had been prosecuting Application No.24 of 2012 at the Tribunal should be excluded from limitation. He said from 2017 to the filing of this suit the plaintiff was not idle but prosecuting application for execution at Kisumu Court and even if the said period is not excluded still the accrual time would be 8 years. He thus said the matter is not time barred and he prayed for the raised preliminary objection to be dismissed with costs.

In his brief rejoinder, Mr. Rutabingwa reiterated his main submission and added that the judgment of Kisumu Court was pronounced on 29/11/1993. That the late Jacob A. Kabigumila passed away on

08/03/1997, that is the period of three years and four months. That the probate cause was instituted at Magomeni Primary Court in 2012 that is fifteen years from the date of death. He said Item 16 Part III of the limitation Act requires legal representative of the deceased to apply for administration within 90 days. Therefore excluding 90 days and adding original three years means that plaintiff was required to file the suit not later than 2010 which is within 12 years. He supported his position with section 35 of the Limitation Act. The 3rd and 4th defendants did not file submissions in rejoinder.

The main issue for consideration is whether the preliminary point of objection raised by defendants has merit.

Mr. Rutabingwa and Mahushi are of the opinion that the suit at hand is time barred. The basis of their argument is that the suit at hand is founded on the judgment of Kisumu Court which was delivered in 1993. That the late Jacob A. Kabigumila died on 1997 and the suit at hand was instituted in 2022, that is 28 years from when the judgment of Kisumu Court was pronounced. That, according to Counsel for the defendants this is against Item 16 to the Limitation Act which requires suits founded on judgment to be instituted within 12 years.

Mr. Sabasaba on the other side is of the view that the time stopped to run in 1997 when the plaintiff's father died until 2012 when he was appointed to administer the estate of his late father by Kinondoni Primary Court.

I have gone through the plaint which is the source of the suit at hand. The basis of the suit is the judgment of Kisutu Court which was delivered 29/11/1993. This is clearly reflected in paragraphs 5, 7, 8, 11, 12 and 13 of the plaint where the plaintiff is explaining how the late Jacob Kabigumila was declared the lawful owner of the suit property by Kisutu Court but the said property is yet to be in his hands as an Administrator. As said above, therefore the source of the suit is the judgment of Kisutu Court.

Now what is the time limit for recovery of land founded on judgment? According to section 6 (c) of the Limitation Act, in the case of a suit upon a judgment, the right of action is deemed to have accrued on the date of which the judgment was delivered which is in the present instance 29/11/1993. Further, according to Item 16 Part 1 to the Schedule of the Act the period of limitation for recovery of land is 12 (twelve) years. In terms of these provisions therefore, the cause of

action (the right of action) arose in 1993 when the judgment which is relied upon was delivered and declared the late Jacob A. Kabigumila as the lawful owner of the suit property. In view thereof the suit ought to have been filed by 2005, however, it has been filed on 31/03/2022 which is almost 30 years after the delivery of the judgment. It is apparent therefore that the suit is time barred (see the case of **Albetus Samwel** (supra)).

Mr. Sabasaba argued that from the 1997 when the late Jacob A. Kabigumila died to when the plaintiff was appointed as an administrator, limitation time stopped running. This argument is misconceived. According to section 35 of the Limitation Act, the period for an administrator to recover land is taken from the date of the death. The said section states:

For the purposes of the provisions of this Act relating to suits for the recovery of land, an administrator of the estate of a deceased person shall be taken to claim as if there had been no interval of time between the death of the deceased person and the grant of the letters of administration or, as the case may be, of the probate.

The above provision means that administration of the estate of a deceased dates back to the date of the death. In essence thus limitation period starts to count on the date of the death. Sections

25(1) and (2) of the Limitation Act cited by Mr. Sabasaba are not applicable in this instance because they provide for effects of death after accrual of the right of action. In the instant case, there was no further accrual of right of action as a decision was made and a judgment was already in place.

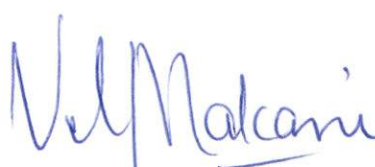
Mr. Rutabingwa pointed out that Item 16 Part III of the Schedule to the Limitation Act requires the legal representative of the deceased to apply to be an administrator within 90 days. The application of the provisions in this case is not viable because it caters for situation where a party dies when his suit and or appeal is still pending in court. But this argument has assisted the court to contemplate why the plaintiff would wait for 15 years (from 1997 to 2012) to file for Letters of Administration. I say so because litigation has to come to an end and that is the whole essence of the limitation period set out in the law. In any case, after the delivery of the judgment in 1993 at Kisumu Court, there were 4 years in which the late Jacob A. Kabigumila could have proceeded with execution but it is apparent nothing was done as the plaint and the submissions by the plaintiff are silent on this. Further, the plaintiff was a witness (**PW2**) in the said case at Kisumu Court, so he was aware of the judgment, and in my view, he should

have acted after the death of his father. With due respect, the delay in obtaining Letters of Administration by the plaintiff is inordinate and as said above, it defeats the principle that litigation has to come to an end. If at all the plaintiff had a valid reason for the delay then he should have sought extension of time of the limitation period from the Minister in terms of section 44 of Limitation Act.

In the result, the objections have merit and are sustained. In terms of section 3(1) of the Limitation Act the suit is hereby dismissed for being time barred. The defendants will have their costs.

It is so ordered.




V.L. MAKANI
JUDGE
06/02/2023