**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**IN THE DISTRICT REGISTRY OF ARUSHA**

**AT ARUSHA**

**LAND APPEAL NO. 21 OF 2022**

**(C/F Application No. 109 of 2021 in the District Land and Housing Tribunal for Arusha at Arusha)**

**MELAMI MESARIEKI LEMNJERE (Msimamizi wa mirathi ya**

**Marehemu MESARIEKI LEMNJERE.....APPELLANT**

**VERSUS**

**SAIGURANI LEMNJERE**

**MAGIE SAKAYA KIVUYO.....RESPONDENTS**

**JUDGMENT**

**30/08/2022 & 20/10/2022**

**GWAE, J**

The appellant, Melami Mesarieki Lemnjere suing as an administrator of the estate of the late Mesarieki Lemnjere was aggrieved by the decision of the District Land and Housing Tribunal for Arusha at Arusha dismissing the appellant's application on the reason that, the same was barred by the law of limitation.

The facts giving rise to the suit at the trial tribunal were that: the appellant is the son of the deceased, Mesarieki Lemnjere and he is the administrator of the estate of his deceased father including the suit property. According to the application, the deceased died in the year 2004

and that, at the time of his death the suit property was under the care of the 1st respondent as the deceased and his family shifted their residence from where the suit property situated and settled at Kilindi area in Tanga Region. Following the death of their father and since the appellant and his relatives were living at Kilindi-Tanga, they decided that the 1st respondent who is their uncle (brother to the deceased) to continue taking care of the suit property which is located at Kisongo Ward, Arusha. In the year 2017 the appellant came to Arusha to visit the suit property and to his surprise he found the suit property in possession of the 2nd respondent who claimed to have bought the same from the 1st respondent. Following this alleged invasion, the appellant decided to file a suit against the respondents seeking for tribunal's order declaring the suit property is the deceased's property, vacant possession, temporary injunction restraining the 2nd respondent from selling the suit property and an order restraining the respondents from trespassing the suit property.

In their written statement of defence, the respondents raised two preliminary points of objection namely; that the application is time barred and that, the land in dispute is not described. The preliminary objection had to be disposed first, and having deliberated the parties' submissions it was the respectful finding of the trial tribunal that, the matter before it

was time barred and on the second point of the preliminary objection the trial tribunal similarly sustained the same and hence went on to dismiss the application with costs.

Dissatisfied with the dismissal order, the appellant has filed this appeal with the following grounds;

1. That the trial tribunal erred in law and in fact by dismissing the application when holding that the application is time barred.
2. That, the trial tribunal erred in law and fact by dismissing the application when holding that the disputed property did not well detailed.

When this appeal was called on for hearing, **Mr Mruma** learned counsel represented the appellant whereas advocate **Kennedy Chando**, represented the respondent. With consensus, the appeal was disposed by way of written submissions.

Supporting the appeal, regarding the 1st ground, Mr Mruma submitted that, the DLHT erred in law and fact to hold that this matter is time barred. It was his further submission that the dispute arose in 2017 when the 1st respondent sold the land to the 2nd respondent and not 2004 when their father died. Thus, counting from 2017 up to 2021 when the application was filed at the DLHT the appellant was still within the

statutory time to file his application against the respondents herein. The counsel went further to state that it is not in dispute that the original owner of the disputed land is the deceased, Mesarieki Lemnjere and later on shifted to the Administrator of Estates who left it under the care of the 1st respondent as he was living very far in Kilindi-Tanga. He further argued that, since the Administrator of the estate became aware of the said disposition of land in 2017 it is that time when the cause of action arose against the respondents and not 2004 when the deceased passed away. The case of **Maigu E. M Magenda vs Abrogast Maugo Magenda**, Civil Appeal No. 218 of 2017 was cited to support his arguments by the appellant's counsel.

Coming to the 2nd ground of appeal, the learned counsel alleged that it was wrong for the DLHT to dismiss the application for the reason that the disputed property was not well detailed. He submitted further that, the disputed land was well elaborated under paragraph 4 of the application, thus the raised Point of Objection lacks merit. He submitted further that, as the trial tribunal is requested not to be tainted with technicalities but rather to deal with matters on merit, the DLHT could have opted not to dismiss the application but to order the appellant to amend the said paragraph. To buttress his arguments, he cited the case

of **James Buchard Rugelamalira vs the Republic and Another**, Criminal Application No. 59/19 of 2017 (Unreported) and Article 107 A (2) (e) of the Constitution of the United Republic of Tanzania of 1977. He finally prayed for the appeal to be allowed and the DLHT's decision to be quash and set aside.

Responding to what was submitted by the counsel for the appellant, the respondent's counsel submitted that as per item No. 22 of Party I to the schedule of **the Law of Limitation Act**, Cap 89 R.E 2019, time limit to recover the land is twelve (12) years. He added that since the disputed land herein belongs to the deceased who died in 2004, a cause of action arose from the date of his death and counting from 2004 up to the time the application was filed at the DLHT, 17 years' period has already lapsed. The same was provided under Section 9 (1) of Cap 89.

Similarly, the counsel for the respondents submitted that the effects of an application field out of the prescribed time is a dismissal as per the Section 3 (1) of Cap 89. He buttresses his argument with the case of **Tanzania National Road Agency and Another vs Jonas Kinyagula**, Civil Appeal No. 471 of 2020 where the Court subscribed its holding in the case of **Ali Shabani and 48 Others vs Tanzania Road Agency and Another**, Civil Appeal No. 261 of 2020 (both unreported).

On the 2nd ground of appeal, counsel for the respondent submitted that at DLHT, the appellant conceded that the disputed land was not described, thus the same cannot be challenged at this stage. The same is evidenced at page 6 of the DLHT's ruling, thus, he prayed for the appeal to be dismissed with costs.

This court has examined and considered the record of appeal to begin with the first ground of appeal, this court is called upon to determine whether the trial tribunal was justified to dismiss the suit on the ground that the same was time barred.

From the submissions of the parties, the controversy between the parties is on when did the cause of action arise. As the appellant maintains that, the cause of action arose in the year 2017 when he became aware of the trespass the respondents on the other hand contends that since the land in dispute belonged to the deceased one Mesarieki Lemnjere who died in the year 2004 therefore the cause of action of action accrues at the time of his demise. The respondent's contention is guided by the provisions of section 9 (1) of the Law of Limitation Act.

Reading from the records, it is undisputed fact that, the appellant herein sued the respondents as an administrator of the estate of his late father Mesarieki Lemnjere, it is also undeniable that the deceased named

above died in the year 2004. Now, the issue in question is when did the cause of action arise. Perhaps I should start by citing section 9 (1) of the Law of Limitation (supra) to which the respondents base their arguments;

> *"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."*

With the above provision of the law in mind, this court has also revisited the appellant's application and paragraph 6 (iii) says it all and for easy of reference the said paragraph is hereby quoted;

> *"That, the applicant as a custodian of his late father's estate, together with his relative/family member, they sustained the 1st respondent herein, their uncle will remain to be custodian/manager concerning the suit premise on their behalf while they are away in Kilindi Tanga. In 2017, while the applicant came to visit a suit premise, to his surprise found that it has been invaded and occupied by a person of which (sic) later came to be known to him by the name of Miagie Sakaya Kivuyo purported to purchase it sometimes in May twenty seventeen".*

Having carefully read the above quoted paragraph it is the firm of this court that, it will be a misconception to have section 9 (1) of the Law

of Limitation Act featured in the circumstances of this case. It is well known that each case must be decided according to its peculiar set of facts. From the facts of the matter at hand it is plainly clear that at the time of the death of the deceased, there was no any dispute on the suit premise, and pursuant to the averments of the appellant in his application it was in the year 2017 when he discovered the trespass in the suit land and it is actually the right time when the cause of action is deemed to have accrued. Section 9 (1) of the Law of Limitation (supra) would be applicable had the facts been that, a party was seeking a recovery of his or her land from the deceased or at the time of the death of the deceased person, such said land was in dispute then the cause of action would be deemed to have accrued at the time of his death.

With the above elaboration, this court departs from the findings of the trial tribunal that the cause of action arose in the year 2004 at the time of the death of the deceased as the discovery of the trespass occurred in the 2017 and it is basically when the cause of action is said to have arose. The doctrine of host and invitee must also be borne in minds. As the application was filed on 25/6/2021 pursuant to the provisions of the Law of Limitation Act under column one item 22 of the first part to

the schedule, it goes without saying that the application was filed within time. That being said the first ground succeeds.

As to the second ground of appeal, it does not need to detain me much, regulation 3 (2) of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations 2003 is clear as to what the application should contain, for easy of reference the same is hereunder reproduced.

> *"3-(2) An application to the Tribunal shall be made in the form prescribed in the second schedule to these regulations and shall contain:*
>
> *a) The names and address of parties involved;*
> *b) The address of the suit premises or location of the land involved in the dispute to which the application relates;*
> *c) Nature of disputes and cause of action."*

The respondents have alleged that the appellant herein conceded at the trial tribunal that, the land in dispute was not well described, therefore he cannot deny his admission at this appeal stage. Subject to the rival submissions by the parties, this court revisited the application filed by the appellant at the trial tribunal to ascertain as to whether the land was described or not. Paragraph 4 which is relevant to the said application is reproduced hereunder;

*"Location and address of the suit premises land, unsaved (sic) piece of land located at KISONGO WARD WITH 10 ACRES, AT ENGORORA VILLAGE ARUSHA."*

From the above description it is apparent that the land in dispute was insufficiently described as the appellant failed to demonstrate the boundaries of the said land. In the trial tribunal the appellant admitted on the short fall but sought for salvage under the oxygen principle that is overriding objective pursuant to Written Laws (Miscellaneous Amendments) (No.3) Act, 2018 (Act No. 8 of 2018).

By simple reading of the above regulation, it makes it very clear that, what exactly the land or the area over which the dispute exists is, a question which goes into the root of the matter relating to subsistence of the case. In absence of such description in the plaint or application as the case may be or supply of the map by at inexing the same to the plaint or application. That omission goes to the root of the case and of course, in case the applicant/plaintiff wins the case it will make an application for execution of a decree inexecutable or would be rendered otiose. The suit or application with this defect shall be declared incompetent for want of proper description and sufficient identification of the suit land (See provisions of Order Vi Rule 3 of the Civil Procedure Code, Cap 33, Revised Edition, 2019 and this judicial decision in **Omary Rajabu Ibrahim vs.**

**Mana Company Limited and 3 others**, Land Case No. 1113 of 2018 (Unreported, **Maige J** as he then was now JA).

That being said, this court unhesitatingly finds that, the application before the trial tribunal was incompetent for not properly describing and sufficiently identifying the land in dispute. Consequently, the order for Tribunal dismissing the appellant's application is quashed and set aside and substituted thereof with an order striking out the appellant's application with no order as to costs.

It is so ordered.


**M. R. GWAE**
**JUDGE**
**20/10/2022**