IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF MUSOMA

AT MUSOMA

CIVIL CASE No. 6 OF 2021

RAMADHAN SEMBEJO MONGU ..... **PLAINTIFF**

Versus

1. DISTRICT EXCUTIVE DIRECTOR OF MUSOMA MUNICIPAL COUNCIL
2. MARTINE KOROGO
3. ANTONY EDWARD ETUTU
4. THE ATTONEY GENERAL

..... **DEFENDANTS**

RULING

24.10.2022 & 31.10.2022

Mtulya, J.:

This court on 4th February this year, 2022 had determined points of preliminary objection (the objection) raised by the **District Executive Director of Musoma Municipal Council** (the first defendant), **Mr. Martine Korogo** (the second defendant) and the **Attorney General** (the fourth defendant) on the following issues, namely: first, the suit is not maintainable as it contravened mandatory provision of Order VII Rule 1 (f) & (i) of the **Civil Procedure Code [Cap. 33 R.E. 2019]** (the Code); second, the suit is hopeless and unmaintainable under section 14(1) (b) of the **Local Government (Unban Authorities) Act [Cap. 288 R.E. 2002]** (the Local Government Act); and finally, the suit is hopeless and time barred under Item 1 Part I of the

Schedule to the **Law of Limitation Act [Cap. 89 [R.E. 2019]** (the Law of Limitation).

The points were argued by way of written submissions, but in the course of the submissions the parties agreed to drop the first point of objection and argued on the second and third. In the end, this court overruled the points of objection with costs. With regard to the second limb of the objection the court reasoned that:

> ...the law in Order I Rule 9 of the **Civil Procedure Code [Cap. 33 [R. E. 2019]** provides that: *a suit shall not be defeated by reason of the misjoinder or non-joinder of parties, and the court may in every suit deal with the matter in controversy so far as regards the right and interests of the parties actually before it.*

The court bolstered the cited provision in the Code with standard practice in the precedents of **NBC Holding Corporation v. Shirika la Uchumi na Kilimo Ltd (SUKITA) & 63 Others**, Commercial Case No 24 of 2001, where it was held that *a suit cannot be defeated for misjoinder of parties*. The new enactment of section 3A & 3B of the **Civil Procedure Code [Cap. 33. R.E. 2019]** (the Code) via **Written Laws (Miscellaneous Amendments) (No.3) Act, No. 8 of 2018** was also invited in

favour of speed resolution of civil disputes. Regarding the protest on time limitation, this court stated that:

> *I am aware that the third limb of the preliminary objection relates to the limitation of time. However, this court cannot be detained by the protest. It is obvious that the prayers of the plaintiff in the plaint cannot be granted without establishing ownership of the land claimed to have been trespassed. This is justified further by the Written Statement of Defence of Mr. Antony Edward Etutu (the third defendant), who declined all claims of the plaintiff, including ownership of the land, save for the names of the parties.*

Finally, this court concluded that: *This suit is therefore based on two contests, ownership and compensation of the land and may fall within the ambits of Item 22 of Part I of the Schedule to the Law of Limitation.*

Despite this statement of the court, another protest regarding time limitation was brought again in this court by **Mr. Thomas Manyama Makongo**, learned counsel for Mr. Martine Korogo (the second defendant) contending that after the amendment of pleadings in the case, the plaintiff registered materials showing that he was aware of the trespass since 1987, but remained silent without registering any protest in court.

In order to substantiate his claim, Mr. Makongo cited the sixth paragraph in the amended plaint. In reply of the protest, the plaintiff, on the other hand, cited the fifth paragraph in the plaint. In his opinion, he occupied the land uninterrupted since 1955 and the dispute arose in 2020 when he noticed the second defendant cutting down trees in the land. According to the plaintiff the right of action is deemed to have accrued on the date of dispossession of the land in question.

In justifying his position, the plaintiff cited the authorities in section 9 (2) of the Law of Limitation and precedent of the Court of Appeal in **Barelia Karangirangi v. Asteria Nyalwambwa**, Civil Case No. 237 of 2017. I have consulted both the disputed fifth paragraph in the plaint and the provision of section 9 (2) of the Limitation Act. The fifth and sixth paragraphs in the plaint display the following narrations:

> **Fifth Paragraph:** *...the plaintiff occupied the land in dispute through clearing the virgin forest with his mother since 1955, and developed the land in dispute without dispute up to January 2019. The first defendant trespassed into the land in dispute and allocated the land to the second and third defendant without lawful compensation to the plaintiff;*

Sixth Paragraph: *...the plaintiff has developed the land in dispute by planting trees and lived in the land in dispute by her late mother without any dispute, but in 2019 the first defendant trespassed into the land in dispute and allocated the disputed land to the second and third defendants without proper compensation whom started destroying the disputed land by cutting down trees and erect a foundation therein.*

It is vivid from the first glance of the indicated paragraphs that there is no such narrations of materials depicting any trespass to the disputed land in 1987. From the available record, the cause of action is depicted to have arisen in 2019. The available practice from the Court of Appeal shows that in counting number of years for purposes of twelve years limitation period starts when the cause of action arise or when the plaintiff finds a defendant in a disputed land and not when a respondent acquired the land (see: **Barelia Karangirangi v. Asteria Nyalwambwa**, (supra).

The available interpretation of section 9 (2) of the Law Limitation in calculating delay of twelve (12) years is extracted at page 13 of the typed judgment in **Barelia Karangirangi v. Asteria Nyalwambwa**, (supra), that:

...the right of action accrued when the respondent claimed to have found the appellant and her children cultivating the suit land which according to the record, it was in 2007. The respondent had then immediately instituted the suit in the Ward Tribunal. The suit was hence instituted within the prescribed time of twelve years.

This text indicates the standard practice in our superior court and this court is bound to follow the same without any reservation. Having said so and considering the protest of Mr. Makongo was brought in the case without any support of the record, I hereby overrule the same with costs.

It is so ordered

F.H. Mtulya

Judge

31.10.2022

THE HIGH COURT OF TANZANIA MUSOMA

This ruling was delivered in Chambers under the seal of this court in the presence of the plaintiff, Mr. Ramadhani Sembojo Mongu and in the presence of the second and third defendants, Mr. Martine Korogo and Mr. Athony Edward Etutu, respectively.

F.H. Mtulya

Judge

31.10.2022