

**IN THE COURT OF APPEAL OF TANZANIA**

**AT KIGOMA**

**(CORAM: MKUYE, J.A., SEHEL, J.A. And GALEBA, J.A.)**

**CIVIL APPEAL NO. 471 OF 2020**

**1. TANZANIA NATIONAL ROAD AGENCY } .....APPELLANTS  
2. THE HONOURBLE ATTORNEY GENERAL }**

**VERSUS**

**JONAS KINYAGULA .....RESPONDENT**

**(Appeal from the Decision of the High Court of Tanzania  
at Kigoma)**

**(Matuma, J.)**

**dated the 21<sup>st</sup> day of April, 2019**

**in**

**Land Case No. 04 of 2019**

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**RULING OF THE COURT**

14<sup>th</sup> & 16<sup>th</sup> July, 2021

**MKUYE, J.A.:**

The appellants, Tanzania National Roads Agency and the Attorney General (the 1<sup>st</sup> and 2<sup>nd</sup> appellants) were aggrieved by the decision of the High Court of Tanzania at Kigoma (Matuma, J.) declaring the respondent the lawful owner of the suit land and awarding such other reliefs including the appellants to give vacant possession thereof and prohibition from tampering with the houses in the disputed land.

The facts giving rise to the suit before the High Court were that:

The 1<sup>st</sup> appellant was implementing a project which involved the upgrading of Kibondo - Nyakanazi road to bitumen standard. In so doing, it was necessary that the contractor of the project be given a piece of land where she would conduct its activities from. The 1<sup>st</sup> appellant then approached the District Executive Director (the DED) for allocation of a suitable place for the contractor's site. The DED forwarded the request to the Village Government for Kanyonza village. A meeting was convened and it appears that six individuals freely gave out their land for that purpose. The respondent was not among them.

It turned out that the respondent's land measuring four (4) acres was handed out to the contractor on which the latter constructed permanent structures. The respondent complained about it and demanded from the 1<sup>st</sup> appellant that he should be compensated. His request however, did not bear fruit despite several attempts which resulted into unfulfilled promises.

This culminated into the respondent filing a suit claiming against the appellants the sum of Tshs. 99,000,000/= being compensation for acquisition of his land. Before the hearing of the suit, the appellants raised a preliminary objection to the effect that the claim being one of compensation arising from land was time barred as it ought to have

been brought within one-year from when the cause of action arose in 2013.

In the High Court, it was argued by the appellants that in terms of item 1 of Part 1 of the Schedule to the Law Limitation Act, Cap 89 RE 2002, (the LLA) the period of limitation for the claim of compensation over land is one year; and that according to section 4 of the LLA the time limitation commences immediately from the date when the right of action accrues. It was argued that, since the suit was filed after five years from the cause of action, it was incompetent before the Court and ought to be dismissed with costs.

In reply the counsel for the appellant herein prayed for the preliminary objection to be dismissed simply on account that the other party did not cite the law violated in the objection.

Upon hearing the preliminary objection, the High Court overruled it for having been raised without sufficient cause and went on framing issues including the one concerning the ownership of the suit property. Thereafter, the High Court proceeded with hearing of the suit which was found in favour of the respondent as alluded to earlier on. In particular, it decreed as follows:

*"1. The plaintiff is declared lawful owner of the disputed*

*plot measuring four (4) acres and the 1<sup>st</sup> Defendant declared a trespasser thereof.*

- 2. The 1<sup>st</sup> Defendant is ordered to give vacant possession to the plaintiff immediately.*
- 3. The houses built by the 1<sup>st</sup> Defendant in the disputed shamba are declared part and parcel of the disputed shamba under the legal maxim **quicquid plantatur solo solo cedit** i.e. Whatever is affixed to the soil belongs to it.*
- 4. The Houses as shall be identified in the four acres as decreed herein above, shall be and hereby declared as the plaintiff's lawful properties as if he himself constructed them.*
- 5. Whatever acquisition in future if need be for dispossession of the plaintiff must follow the due process for acquisition of land in possession of the villager (plaintiff) and the valuation thereof shall include the houses thereof as if they were built by the plaintiff.*
- 6. The defendants are strictly warned not to tamper anyhow with the would be identified houses in the four acres and demolish any of them, devalue any of them by any means including but not limited to taking off their roofs (unroof them), cracking them or in any other manner making them unfit for human dwelling as they are now. Any attempt or actual commission would not only amount to contempt of Court but also malicious damage to property and individual officer who will cause any destruction thereof would be personally liable."*

Aggrieved with the decision of the High Court, the appellants have appealed to this Court on four (4) grounds of appeal but for reasons which will become apparent in the due course, we shall not reproduce them.

When the appeal was called on for hearing, the appellants were represented by Messrs Lameck Merumba and Peter Sengelema, both learned State Attorneys, whereas the respondent enjoyed the services of Messrs Thomas M. Msasa and Michael Mwangati both learned advocates.

Before commencement of the hearing of the appeal, we required the learned counsel to address us on whether or otherwise the suit which was for compensation over land before the High Court to which this appeal originates was within time.

Mr. Merumba readily conceded that the suit was not within time. He reasoned that according to paragraph 4 of the Plaint at page 12 of the record of appeal, the respondent had prayed for compensation of Tshs. 99,000,000/=. He added that under paragraphs 6 and 7 of the same Plaint what the respondent was seeking was to be compensated

and further to that, in his evidence as shown at page 45 of the record of appeal, he insisted to be paid compensation and costs.

Under the circumstances, the learned State Attorney argued that, since the claim arose in 2013 and the suit was filed on 10/6/2019 which was 6 years after the claim arose, it was time barred in terms of item 1 of Part I to the Schedule to LLA. In which case, he said, the High Court lacked jurisdiction to entertain it. While referring to the case of **NBC Limited and Another v. Bruno Vitus Swalo**, Civil Appeal No. 331 of 2019 (unreported), the learned State Attorney argued that as the matter was time barred, it be dismissed under section 3 of the LLA.

Mr. Merumba also challenged the learned trial judge in dealing with the issue of ownership of the suit land which was not part of the pleadings. In the premises, he urged the Court to invoke its revisional powers under section 4 (2) of the Appellate Jurisdiction Act, Cap 141, R.E. 2019 (the AJA) and nullify the proceedings, quash the judgment and set aside the decree of the High Court with costs.

In response, Mr. Msasa dismissed the argument by the appellants' counsel arguing that it was from the pleadings, that is, the Plaintiff and the Written Statement of Defence in which the two issues in controversy

arose. While conceding that the issue of compensation ought to be brought within a period of one year, he contended that the issue of ownership of the disputed land was still within time in terms of item 22 of Part 1 of the Schedule to the LLA. He said, it was for this reason that the High Court made a determination on both compensation and ownership. At any rate, he added that, the issue of ownership was raised and agreed by both parties and that they testified on it.

In relation to the case of **NBC Limited and Another** (supra) cited by Mr. Merumba, it was Mr. Msasa's argument that it is distinguishable to this case, and rightly so in our considered view, because in that case the cause of action arose out of contract of sale which has a different time limitation as per item 7 of Part I of the Schedule to the LLA. In this regard, he was of the view that the High Court had jurisdiction to deal with the matter the way it did.

In rejoinder, Mr. Merumba stressed that ideally the Plaintiff has to be clear on its claims and the issue of ownership was not reflected in it.

We have examined and considered the record of appeal as well as the arguments from either side. Having done so, it seems to us that it is undisputed that the parties are at one that the time limitation for claims

over compensation as provided for under item 1 of Part I to the Schedule to LLA is one year. The issue for our determination is whether the respondent's claim was on compensation over land and if so whether it was filed within time.

Our starting point will be to restate that issues relating to compensation for doing or for omitting to do an act alleged to be in pursuance of any written law (land inclusive) are covered under item 1 of Part I to the Schedule to the LLA which requires such claims to be lodged within the period of one year.

In this matter, in paragraphs 4, 6 and 7 of the Plaintiff, the respondent (former plaintiff) stated as follows:

- "4. That the plaintiff claims against the Defendants the sum total of Tshs. 99,000,000/= for compensation following the acquisition of the plaintiff's land.*
- 5. That the plaintiff customarily owned 7 acres of land located at Kakonko area in Kakonko District within Kigoma region since 1960.*
- 6. That in 2013 the 1<sup>st</sup> defendant acquired 4*



*(four) acres among the said 7 acres of the plaintiff's land and constructed residential houses for their staff unlawfully without paying any compensation to the plaintiff.*

7. *That the 1<sup>st</sup> defendant promised to compensate the plaintiff but they ended up not compensating him to date."*

Apart from that, the respondent in paragraph 11 of the Plaint prayed for the judgment and decree with such reliefs as the sum total of Tshs. 99,000,000/= as compensation; payment of general damages; costs of the suit; and any other reliefs that the court could deem fit and just to grant.

From the above pleadings, there is no gainsaying that all through, the respondent's claim was for compensation of his land that was acquired by the appellants.

However, at page 20 of the record of appeal, it shows that the appellants herein (former defendants) filed a joint Written Statement of Defence together with a notice of preliminary objection to the effect that the claim for compensation was time barred. In dealing with the said

point of preliminary objection the High Court overruled it for lack of any basis.

This brings us to a follow up issue as to when did the cause of action arise and, we think, the answer is not farfetched.

According to paragraph 6 of the Plaint reproduced earlier on, it was pleaded that the said land was acquired in 2013 and it seems to us that both parties are agreeing on this. If that is the case then the claim ought to have been instituted within one year, that is, sometimes in 2014. However, the respondent lodged the suit in 2019 which was after four (4) years had lapsed.

We have considered Mr. Msasa's argument that since there was another issue of ownership of land, the suit was not time barred under item 22 of Part I to the Schedule to the LLA which provides for the period of limitation of twelve years for the claim of land. In other words, he seems to suggest that the other cause of action was discerned from the written statement of defence. However, we are not in agreement with that line of argument. This is so because, in terms of Order VII rule (1)(e) of the Civil Procedure Code, Cap 33 R.E. 2019 (the CPC), the Plaint is mandatorily required to contain among others the facts

constituting the cause of action and when it arose. This is important to enable ascertainment of issues of jurisdiction of the court including time limitation. There is no such requirement in relation to the written statement of defence. As far as the Plaintiff is concerned, the issue of ownership of land was not among the claims by the respondent so as to reckon the time limitation. Thus, we do not agree that the cause of action can also be discerned from the written statement of defence.

On the other hand, we are mindful that Order VII rule 6 of the CPC exempts the time limitation so long as the party pleads the facts in the Plaintiff which would justify/necessitate exemption. The said provision provides:

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

This position has been taken recently by this Court in the case of **Ms. P & O International Ltd v. The Trustees of Tanzania National Parks (TANAPA)**, Civil Appeal No. 265 of 2020 (unreported) when the Court was confronted with similar situation, it adopted with

approval a High Court decision in the case of **Alphons Mohamed Chilumba v. Dar es Salaam Small Industries Cooperative Society**, [1986] TLR 91 which stated as follows:-

*“Order 7 rule 6 provides that where the suit is instituted after the expiration of the period prescribed by the law of limitation the plaintiff shall show the ground upon which exemption from the law is claimed. In other words, where but for some ground of exemption from the law of limitation a suit would prima facie be barred by limitation, it is necessary for the plaintiff to show in his plaint such grounds of exemption. If no such ground is shown in the plaint, it is liable to be rejected under Rule 11 (c) of the same order.”*

According to the above cited position of the law, if the party does not advance any such ground, it renders the suit instituted time barred. In the case of **Ali Shabani and 48 Others v. Tanzania National Roads Agency (TANROADS) and Another** Civil Appeal No. 261 of 2020 (unreported), where the appellants lodged a suit for a claim of compensation of their houses which had been demolished by the respondents, the trial High Court found that the suit was time barred as the claim ought to have been brought within twelve

months of the accrual of the cause of action. On appeal to this Court, the decision of the trial court was upheld, and it was stated as follows:

*"In the light of the clear statement of the law, we are unable to disagree with the learned trial judge. He rightly held that the appellant's suit was time barred it being instituted beyond 12 months from the date on which the time accrued. As the suit was time barred, the only order was to dismiss it under section 3(1) of the LLA. Accordingly, we find no merit in ground 2 and dismiss it."*

We subscribe to the above cited authority. In this case, since the suit was lodged far beyond the prescribed time it was time barred, and hence, the trial High Court lacked jurisdiction to entertain it. Since the trial court entertained an incompetent suit, the whole proceedings and judgment thereof were a nullity.

In the event, in exercise of our powers bestowed on us in terms of section 4(2) of the AJA, we hereby nullify the trial court's proceedings, quash the judgment and set aside the decree thereof and substitute it

with an order sustaining the preliminary objection that was raised before it. As the issue was raised by the Court, we do not make any order as to costs.

**DATED** at **KIGOMA** this 16<sup>th</sup> day of July, 2021.

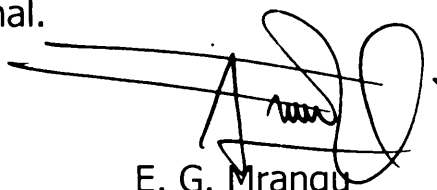
R. K. MKUYE  
**JUSTICE OF APPEAL**

B. M. A. SEHEL  
**JUSTICE OF APPEAL**

Z. N. GALEBA  
**JUSTICE OF APPEAL**

This judgment delivered this 16<sup>th</sup> day of July, 2021 in the presence of Mr. Raymond Kimbe, learned State Attorney for the Appellants and Mr. Sadiki Aliku holding brief for Mr. Thomas Msasa and Mr. Michael Mwangati, learned counsel for the Respondent, is hereby certified as a true copy of the original.



  
E. G. Mrangu  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**