

**IN THE COURT OF APPEAL OF TANZANIA
AT TABORA**

(CORAM: MUGASHA, J.A., KEREFU, J.A. And MWAMPASHI, J.A.)

CIVIL APPEAL NO. 222 OF 2020

KIGOMA UJIJI MUNICIPAL COUNCILAPPELLANT

VERSUS

ULIMWENGU RASHID t/a UJIJI MARK FOUNDATIONRESPONDENT

**(Appeal from the decision of the High Court of Tanzania
at Tabora)**

(Matuma, J.)

dated the 5th day of March, 2020

in

Land Case No. 13 of 2016

RULING OF THE COURT

20th & 22nd March, 2023

KEREFU, J.A.:

Kigoma Ujiji Municipal Council, the appellant herein, is challenging the judgment and decree of the High Court of Tanzania at Tabora (Matuma, J.) dated 5th March, 2020 in Land Case No. 13 of 2016. In that case, Ulimwengu Rashid t/a Ujiji Mark Foundation, the respondent, sued the appellant for payment of compensation at the tune of TZS. 90,619,905.00 being the value of Plot No. 136 Block L.D Mwasenga Area within Kigoma/Ujiji Municipality (the suit land) allegedly unlawfully acquired by the appellant for construction of classrooms/buildings for

Mwasenga Primary School. The respondent also claimed for payment of general damages, interest at bank rate of 22% over the claimed compensation from October, 2014 till the date of payment in full, interest at court's rate of 7% of the decretal amount from the date of the judgment till the date of payment in full and costs of the suit.

The material facts giving rise to the suit and later this appeal as obtained from the record of appeal indicate that, the original owner of the suit land were the respondent's grandfathers who owned it through customary land ownership. However, later the suit land was inherited by the respondent's father one Rashid Mbalima who in 1980, transferred his ownership over the suit land to the respondent. In 1997 the suit land was surveyed and registered as Plot No. 136 Block L.D and allocated to the respondent in its trading name of "Ujiji Mark Foundation."

Having been officially allocated the suit land, the respondent planned to develop it by constructing a private secondary school. However, before realization of that plan, the appellant unlawfully acquired the suit land and constructed classrooms/buildings for her Mwasenga Primary School without the respondent's permission and/or complying with the legal procedures for acquisition of land and payment of compensation. The respondent approached the appellant to remedy the

situation and after series of communication and negotiations, the appellant agreed to evaluate the suit land in a view to compensate the respondent. Subsequently, the suit land was evaluated in October, 2014, and its value was established to be TZS. 90,619,905.00 which the appellant agreed to pay as a compensation to the respondent. However, the appellant did not pay the agreed amounts of monies to the respondent. The respondent stated that, he had persistently demanded for payment of the said monies from the appellant without success, thus, he decided to institute the suit as indicated above.

In her written statement of defence, the appellant disputed the respondent's claim by stating that, the suit land was lawfully acquired and designated for public use and establishment of Mwasenga Primary School. The appellant stated further that the respondent was paid all the requisite compensation over the suit land. In addition, the appellant raised a notice of preliminary objection consisting of two points challenging the competence of the respondent's suit to the effect that:

- (i) The respondent has no locus standi in respect of the suit; and*
- (ii) The suit is time barred.*

However, the said points of objection were overruled by the trial court and the matter proceeded with the hearing on merit. Having heard the parties and considered the evidence adduced before it, the trial court decided the case in favour of the respondent and the appellant was ordered to pay:

- (i) Compensation at the tune of TZS. 90,619,905.00*
- (ii) General damages at the tune of TZS. 20,000,000.00;*
- (iii) Interest of the decretal amount at bank rate of 22% from 2014 to the date of full payment;*
- (iv) Interest at court's rate of 7% from the date of the judgment until full payment; and*
- (v) Costs of the case.*

The above decision prompted the appellant to lodge the current appeal to express his dissatisfaction. In the memorandum of appeal, the appellant has raised six grounds of appeal. However, for reasons which will be apparent shortly, we do not deem it appropriate, for the purpose of this ruling, to reproduce them herein.

When the appeal was placed before us for hearing, the appellant was represented by Mses. Grace Luondo and Adelaida Masaua, both learned State Attorneys.

Before we could embark on the hearing of the appeal on its merit, Ms. Lupondo sought and obtained leave to submit on a point of law pertaining to the jurisdiction of the trial court to entertain the suit:

“That, the trial court lacked the requisite jurisdiction to entertain the respondent’s suit for being time barred.”

Having observed that the point of law raised by Ms. Lupondo seeks to question the jurisdiction of the trial court to entertain the matter, we invited the parties to address us on that point.

Submitting on that point, Ms. Lupondo argued that, according to the pleadings lodged by the respondent before the High Court, it is clear that the respondent’s suit was for a claim of payment of compensation falling under item 1 of the First Schedule to the Law of Limitation Act [Cap. 89 R.E. 2019] (the LLA) which prescribe the period of instituting suits founded on compensation to be within twelve (12) months from the date when the cause of action accrued. To clarify on this point, she referred us to paragraphs 3, 9 and 10 of the plaint together with items (i) in the relief section, where the respondent had prayed for compensation of TZS. 90,619,905.00 being the value of the suit land allegedly unlawfully acquired by the appellant. It was the submission of the learned State Attorney that, reading the stated paragraphs in the

respondent's plaint, the reliefs sought together with several documents attached thereto, there is no doubt that the cause of action arose in October, 2014 after the valuation of the suit land. However, the respondent instituted his suit on 8th December, 2016 after lapse of more than two years thus rendering the suit hopelessly time barred warranting an order for its dismissal under section 3(1) of the LLA, she argued. To buttress her proposition, she cited the cases of **Tanzania National Road Agency & Attorney General v. Jonas Kinyagula**, Civil Appeal No. 471 of 2020 and **Said Mohamed Said v. Muhusin Amiri and Another**, Civil Appeal No. 110 of 2020 (both unreported). She then insisted that, since the suit was time barred, the trial court did not have the requisite jurisdiction to entertain it. In the premises, the learned State Attorney urged us to invoke the revisional powers bestowed to the Court 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 which will also result in striking out the instant appeal with costs for being incompetent.

In response, the appellant did not have much to contribute to the legal issue raised by the appellant, other than submitting that, after the valuation of the suit land in 2014, he trusted that the appellant will pay

the agreed compensation amount over the suit land, which did not happen. That, he was engaged in a series of exchange of correspondences and negotiations which did not bear any fruits, hence he decided to institute the suit.

Upon being probed by the Court as to whether the plaint has complied with the requirement of Order VII Rule 6 of the Civil Procedure Code, [Cap. 33 R.E. 2019] (the CPC) by containing a paragraph indicating a ground upon which an exemption from limitation could have been relied upon by the trial court to justify such delay, he responded that the plaint is silent on that aspect. He however, urged the Court to make a finding that the suit was not time barred and proceed to hear it on merit.

In a brief rejoinder, Ms. Luondo reiterated what she submitted earlier and argued that, since there are no facts pleaded by the respondent in the plaint for exemption of time limitation envisaged under Order VII Rule 6 of the CPC, he could not rely on the alleged exemption as he beseeched this Court to so determine. As such, she insisted that the suit before the High Court was time barred warranting an order for its dismissal under section 3 (1) of the LLA. That, since that

was not done, the proceedings before the High Court were irregular as the suit was time barred and should be nullified.

Having considered the submissions made by the parties in the light of the record of appeal before us, it is clear that parties are at one that the respondent's suit being founded on a claim for compensation was instituted out of the time prescribed under item 1 of the First Schedule to the LLA. We, respectfully, share similar views as, indeed, the pleadings bear it out that the cause of action arose in October, 2014 when the appellant is allegedly failed to pay compensation to the respondent. This is clearly reflected under paragraphs 3, 9 and 10 of the respondent's plaint read together with Item (i) in the relief section in the plaint. We shall let the paragraphs to speak for themselves:

3. The plaintiff is suing the defendant for payment of a compensation of Tshs 90,619,905/=, the same being the value of the plaintiff's plot No. 136 Block L.D Mwasenga area within Kigoma/Ujiji Municipality that was unlawfully acquired by the defendant for the construction of classrooms/buildings for the defendant's Primary School known as Mwasenga Primary School within Kigoma/Ujiji Municipality. He is also claiming respective interests at bank and court's rates (22% and 7%) therefore, general damages for

unlawful acquisition of the suit land, costs of the suit and any other relief;

9. *Upon valuation of the suit land...it was further agreed between the plaintiff and the defendant that the commensurate compensation payable to the plaintiff would be a total of Tshs. 90,619,905/= as demonstrated in Annexure 'C' hereto which forms part of this plaint; and*
10. *The suit land was duly evaluated for payment of the agreed compensation to the plaintiff a way back in October, 2014 but the defendant has so far adamantly neglected and refused to pay the agreed compensation to the plaintiff despite several oral demands and the statutory notice that was served upon the defendant as per Annexure 'D' and 'E' hereto which together form part of this plaint."*

From the above pleadings, there is no gainsaying that all through, the respondent's claim was for compensation of his land that was allegedly acquired unlawful by the appellant. It is also on record that upon receipt of the respondent's plaint, the appellant filed the written statement of defence together with a notice of preliminary objection, among others, 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 10 of the plaint reproduced above, the respondent clearly pleaded that the appellant failed to pay him compensation in October, 2014. That being the case, and as correctly argued by Ms. Lupondo, the respondent's suit founded on a claim for compensation ought to have been instituted within the period of twelve (12) months from October, 2014 when the cause of action accrued and not otherwise. Thus, the respondent's suit being lodged on 26th November, 2016 after lapse of more than two (2) years was definitely 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), 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 (12) months of the accrual of the cause of action. On appeal to this Court, the trial court's decision was upheld and the Court stated that:

"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 twelve (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."

Similarly, in the instant appeal, since the respondent's suit was lodged far beyond the prescribed time, it was time barred, thus, the trial High Court lacked jurisdiction to entertain it.

It is also on record, and as agreed by both parties that the respondent's plaint is silent on the mandatory requirement under Order VII Rule 6 of the CPC that, for a suit which is instituted out of the prescribed time, the plaint should contain a paragraph indicating grounds upon which an exemption from such delay is claimed. For the sake of clarity, Order VII Rule 6 of the CPC provides that:

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

The requirement imposed by the above provision of the law is not optional, because the word used therein is 'shall' which denote a mandatory compliance and not otherwise. We are mindful of the fact

that, in his submission, the respondent, though he admitted that, the plaintiff is silent on a ground upon which an exemption from limitation could have been relied upon, he urged us to find that the suit was lodged within time as the delay was occasioned by series of exchange of correspondences and negotiations between the parties that turned out to be abortive as the appellant refused to pay the said compensation.

With respect, we are unable to agree with the respondent on this point. It is settled that communications or negotiations between the parties is not a ground for stopping the running of the time. In **Consolidated Holding Corporation v. Rajan Industries Ltd & Another**, Civil Appeal No. 2 of 2003 (unreported) the Court stated clearly that the time taken in negotiations does not fall under the specified ground warranting exemption from limitation. The Court sought inspiration from the decision of the High Court at Dar es Salaam Registry in **Makamba Kigome & Another v. Ubungo Farm Implements Limited & PRSC**, Civil Case No. 109 of 2005 (unreported) where Kalegeya, J. (as he then was) made the following observations:

"Negotiations or communications between parties since 1998 did not impact on limitation of time. An intending litigant, however honest and genuine, who allows himself

to be lured into futile negotiations by a shrewd wrong doer, plunging him beyond the period provided by law within which to mount an action for the actionable wrong, does so at his own risk and cannot front the situation as defence when it comes to limitation of time."

It is our considered view that, even if we assume, for the sake of argument, that negotiation or correspondence fell within grounds for seeking exemption envisaged under Order VII Rule 6 of the CPC, still the respondent would not have succeeded on that aspect, because apart from narrating the historical and factual background on what transpired in respect of the suit land, there is nothing in the plaint supporting his contention to justify the delay. This is so, because, the respondent never considered his claim to be time barred, so as to include a ground in the plaint to plead exemption from limitation. In **M/S P & O International Ltd v. The Trustees of Tanzania National Parks (TANAPA)**, Civil Appeal No. 265 of 2020, the Court when considering the applicability of Order VII Rule 6 of the CPC stated 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.”
[Emphasis added].

Likewise, in the current appeal, since the respondent did not bring his suit, which was time barred, within the ambit of Order VII Rule 6 of the CPC, we agree with Ms. Lupondo that the suit should have been dismissed by the High Court under section 3 (1) of the LLA for being time barred. In **Backlays Bank Tanzania Limited v. Phylisiah Hussein Mchemi**, Civil Appeal No. 19 of 2016 (unreported) the Court when considering the consequences brought by time limitation to institute a suit, it subscribed to the unreported decision of the High Court Dar es Salaam Registry in **John Cornel v. A. Grevo (T) Limited**, Civil Case No. 70 of 1998 where it was stated that:

“However, unfortunate it may be for the plaintiff; the law of limitation is on actions knows no sympathy or equity. It is a merciless sword that cuts across and deep into all those who get caught in its web.”

It is therefore our settled view that, since the suit before the High Court was time barred, that court did not have the requisite jurisdiction to adjudicate on the matter and pronounce judgement from which an appeal could lie to this Court. It is our settled view that, had the learned High Court Judge properly directed his mind, he would have sustained

the preliminary objection raised in that respect and dismissed the time barred suit as required by section 3 of the LLA.

Consequently, we invoke revisional powers vested in this Court under section 4 (2) of the AJA and hereby nullify the entire proceedings, quash the judgment and set aside the resultant decree. In the event, since the appeal stemmed from null proceedings and judgment, the purported appeal is hereby struck out. Considering the circumstances in this appeal, we make no order as to costs.

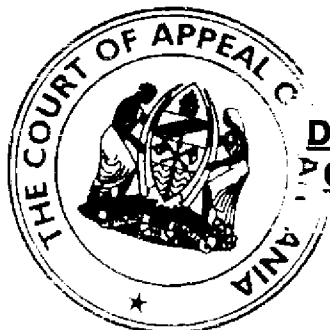
DATED at TABORA this 21st day of March, 2023.

S. E. A. MUGASHA
JUSTICE OF APPEAL

R. J. KEREFU
JUSTICE OF APPEAL

A. M. MWAMPASHI
JUSTICE OF APPEAL

The Judgment delivered this 22nd day of March, 2023 in the presence of Ms. Mariam Matovolwa, learned State Attorney for the Appellant and Mr. Ulimwengu Rashid the Respondent in person, is hereby certified as a true copy of the original.




C. M. MAGESA
DEPUTY REGISTRAR
COURT OF APPEAL