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

**(CORAM: SEHEL, J.A., KEREFU, J.A. And MLACHA, J.A.)**

**CIVIL APPEAL NO. 204 OF 2020**

**URU CENTRAL COOPERATIVE SOCIETY LIMITED.....APPELLANT**

**VERSUS**

**LAITOLYA TOURS & SAFARI LIMITED.....RESPONDENT**

**(Appeal from the Judgment and Decree of the High Court of Tanzania at Moshi)**

**(Mwingwa, J.)**

**dated the 19th day of January, 2018**
**in**
**Land Case No. 10 of 2015**

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## JUDGMENT OF THE COURT

6th & 11th .December, 2023.

**KEREFU, J.A.:**

The main issue of controversy between the parties to this appeal is the ownership of a parcel of land measuring 27.54 acres (disputed land), located at Kifumbu Estate within Moshi District, Kilimanjaro Region with Certificate of Title No. 10663. It was the appellant's claim before the High Court that the respondent had trespassed into the disputed land and continued to occupy it without her permission.

The essence of the appellant's claim as obtained from the record of appeal indicates that, sometimes in August, 1992, the parties executed a

lease agreement whereas the appellant leased ten (10) acres of the disputed land and three houses to the respondent for a monthly rental fee of US$ 700. The said lease was for a period of ten (10) years effective from January, 1994 to December, 2003. It was the appellant's claim that, the respondent did not honour her contractual obligation, as she never paid the agreed monthly rental fees from January, 1994 to July, 2015 when the appellant decided to file the suit (Land Case No. 10 of 2015) before the High Court.

The appellant contended further that, sometimes in 1997, the respondent trespassed into another land measuring 17.54 acres within the disputed land and illegally proceeded to occupy it. That, having encroached the said land, the respondent uprooted and destroyed coffee and timber trees together with other crops. That, in 2006, the appellant sought administrative intervention from the then Deputy Minister for Land, Housing and Urban Settlement. The said Deputy Minister, referred the dispute to the Settlement Committee of Kifumbu Estate which tried to reconcile the parties but again, the effort proved futile. Thus, the parties engaged in series of correspondences and negotiations which did

not bear any fruits, hence the appellant decided to institute the said suit praying, among others, for the following reliefs:

(a) *A declaration that the appellant is the sole lawful owner of the disputed land;*

(b) *The respondent be ordered to pay a total sum of US$ 153,600 being outstanding rent arrears for the disputed land and the leased ten (10) acres of land;*

(c) *The respondent be declared unlawful tenant and or a trespasser to the disputed land and the ten (10) acres of land located within the same area;*

(d) *The respondent be declared a trespasser to a piece of land measuring about 17.54 acres located within the disputed land;*

(e) *The respondent to be ordered to pay the appellant compensation at the tune of TZS 10,000,000/= for the coffee and timber trees and other plantations uprooted and destroyed in the 17.54 acres located within the suit land;*

(f) *Payment of specific damages at the tune of TZS. 5,000,000.00 being loss of income and appreciation of building costs;*

(g) *Payment of general damages at the tune of TZS. 80,000,000.00 being loss of business opportunity and tarnishing of the appellant's good will; and*

(h) *costs of the suit.*

In her written statement of defence, the respondent, apart from admitting that in 1992 she executed a lease agreement with the appellant and paid a down payment of TZS. 3,000,000.00, she disputed the appellant's claims and averred that the disputed land belongs to her and has been in continuous occupation of the same since 1997. That, the said lease agreement was inoperative from the beginning on account of failure by the appellant to perform her contractual obligations. That, under clause 7 of the lease agreement, the appellant was required to survey and obtain a separate certificate of title for the disputed land immediately after the signing, but she never complied. That, the appellant breached the lease agreement by trespassing into the leased premises and taking away valuable properties thus frustrated and stalled the respondent's plans over the same.

The respondent stated further that, through the appellant's resolutions which were concluded in the meetings held in 1997 and 1998 respectively, the ownership of the disputed land was given to her and had processed a letter of offer which was issued in 1999. Subsequently, the respondent developed the disputed land by constructing a tourist

hotel, thirty houses and the school. As such, the respondent raised a counter claim and prayed for the following reliefs:

(a) *A declaration that the respondent is the lawful owner of the land measuring 23.54 acres forming part of Certificate of Tittle 10663 located at Moshi District;*
(b) *An order compelling the appellant to transfer CT 10663 to the Land Officer;*
(c) *An order to the Land Officer to issue a sub-tittle to the respondent;*
(d) *Permanent injunction to restrain the plaintiff and or their agents from interfering with the quite possession and use of the disputed land; and*
(e) *Costs of the suit.*

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 surrender the certificate of tittle No. 10663 to the Land Registry to enable them to prepare the subtitle deed for the respondent.

The decision of the High Court prompted the appellant to lodge the current appeal to express its dissatisfaction. In the memorandum of appeal, the appellant has raised nine (9) grounds of appeal. However,

for reasons which will be apparent shortly, we do not deem it appropriate, for the purpose of this decision, to reproduce them herein.

When the appeal was placed before us for hearing, the appellant was represented by Messrs. Patrick Paul and Wilhad Kitaly, both learned counsel whereas the respondent was represented by Mr. Martin Kilasara, learned counsel. It is noteworthy that, pursuant to Rule 106 (1) and (7) of the Tanzania Court of Appeal Rules, 2009 (the Rules), the learned counsel for the parties had earlier on lodged their respective written submissions and reply written submissions in support of and in opposition to the appeal, which they sought to adopt to form part of their oral submissions.

However, before we could embark on the hearing of the appeal on its merit, Mr. Kilasara 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 appellant's suit for being time barred."*

Having observed that the point of law raised by Mr. Kilasara is on the jurisdiction of the trial court to entertain the matter, we invited the parties to address us on that point.

Submitting on that point, Mr. Kilasara argued that, according to the pleadings lodged by the appellant before the High Court, it is clear that, the appellant's suit was for a claim of payment of rent arrears and ownership of the disputed land falling under items 13 and 22 of the Schedule to the Law of Limitation Act, Cap. 89 (the Act) which prescribe the time limitation of instituting suits founded on recovery of rent arrears to be six (6) years and for recovery of land twelve (12) years from the date when the cause of action accrued. To clarify on this point, the learned counsel referred us to paragraphs 14, 15, 17, 18, 19, 20 and 21 of the plaint read together with paragraph 38, items (b) and (c) in the relief section of the same plaint, where the appellant had prayed for payment of a total sum of US$ 153,600 being outstanding rent arrears for the disputed land.

It was the argument of Mr. Kilasara that, reading the stated paragraphs in the appellant's plaint, the reliefs sought together with several documents attached thereto, there is no doubt that the cause of

action for payment of rent arrears arose in January, 1994 while the cause of action for the ownership of the disputed land arose in 1997. However, the appellant instituted his suit on 5th August, 2015 after lapse of more than twenty-one (21) years which is far beyond the period of six (6) years and 12 years respectively, prescribed by the Act and thus rendering the suit hopelessly time barred warranting an order for its dismissal under section 3 (1) of the Act. In the premises, Mr. Kilasara urged us to invoke the revisional powers bestowed to the Court under section 4 (2) of the Appellate Jurisdiction Act, Cap 141 (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 his response, although, Mr. Paul readily conceded that the lease agreement between the parties was executed in 1992 and became operative effectively from January, 1994 and the suit was lodged on 5th August, 2015 after lapse of the time prescribed by the law, he contended that the suit was not time barred because, the respondent had failed to pay the agreed monthly rental fees from January, 1994 and continued to be indebted to the appellant thus, a continuing breaches of the lease

agreement in terms of section 7 of the Act read together with section 89 (1) of the Land Act, Cap. 113 (the Land Act).

In addition, Mr. Paul referred us to paragraph 4 of the lease agreement and argued that, since the lease was renewable and the parties did not exercise their rights to terminate it under paragraph 12, it should be taken that, each year, there was continuing breaches of the agreement until 2015 when the appellant lodged the suit. It was his further argument that, upon the said breach and trespass over the disputed land by the respondent, the appellant resorted to administrative intervention by engaging the respondent through negotiation which was geared to settle the dispute amicably but, to no avail. That, considering the time spent through negotiations and reconciliation, the suit was not time barred. Based on his submission, Mr. Paul urged us to find that, under such circumstances, the suit was not time barred and proceed to hear it on merit.

In a brief rejoinder, Mr. Kilasara challenged the submission of his learned friend by arguing that, since there is no evidence in the record of appeal suggesting that the said lease was renewed, the claim by Mr. Paul that the same was automatic renewed has no basis. He contended

further that, even if, the same could have been renewed, as suggested by Mr. Paul, it does not relieve the appellant from demanding the rent arrears from the respondent timely and as prescribed by the law. According to him, the provisions of section 7 of the Act relied upon by Mr. Paul, is not applicable in this appeal. He thus reiterated his previous submission and insisted that the suit was time barred.

On our part, having considered the submissions made by the parties in the light of the record of appeal before us, it is clear to us that both learned counsel for the parties are at one on the applicable limitation period for the institution of a suit to recover rent arrears and land as prescribed under Items 13 and 22, Part I to the Schedule of the Act. We, respectfully, share similar views on both issues and we wish to emphasize that pursuant to the said provisions, the prescribed time limit for recovery of rent arrears is six (6) years while for land recovery is twelve (12) years from the date when the cause of action accrued.

Therefore, to ascertain the time when the cause of action accrued against the respondent, we have scrutinized the contents of the plaint and we agree with Mr. Kilasara that, a closer look at paragraphs 14, 15, 17, 18, 19, 20 and 21 of the plaint together with paragraph 38, items (b)

and (c) in the relief section, the plaint bear testimony that the suit was filed out of the prescribed time. We shall let paragraphs 14, 17 and 19 of the plaint to speak for themselves:

> *"14. That, the payment and retention...was to be operative for ten (10) years* ***from January 1994*** *up to December, 2003;*
>
> *17. That,* ***the respondent has never paid the rent for the said suit land (sult property) since January, 1994 to date of preparing this plaint (01st day of July, 2015);***
>
> *19. That, sometimes in* ***1997, the respondent illegaiiy trespassed into a piece of land*** *measuring about seventeen point five and four (17.54) acres..." [Emphasis added].*

Again, in paragraph 38, items (b), (c) and (g) of the reliefs in the same plaint, the appellant prayed for payment of a total sum of US$ 153,600 being outstanding rent arrears for the disputed land, the respondent to be declared a trespasser of the disputed land and be ordered to handover a vacant possession.

It is clear that the facts disclosed in the above paragraphs of the appellant's plaint, they mean nothing less than demonstrating that the appellant's claim or the cause of action against the respondent for recovery of land accrued in 1997 when the respondent is alleged to have trespassed into the appellant's land. Thus, by filling the suit on 5th August, 2015, after a lapse of eighteen (18) years, it is clear that the appellant's claim to recover land was filed contrary to item 22 of Part 1 of the Schedule to the Act which require claims for recovery of land to be brought within twelve (12) years from the date when the course of action accrued.

Likewise, under paragraph 14 of the same plaint, it is clearly indicated that the appellant's claim on rent arrears accrued in 1994, but again, the appellant's claim on the same was brought in 2015 after lapse of almost twenty -one (21) years in contravention of item 13 of Part 1 of the Schedule to the Act which require such claims to be brought within the period of six (6) years from the date when the course of action accrued.

We are mindful of the fact that, in his submission, Mr. Paul urged us to find that the suit was filed within time because, there was

continuing breaches of the lease agreement as the respondent failed to pay the agreed monthly rental fees from January, 1994 and continued to be indebted to the appellant till 2015 when the suit was filed. With profound respect, we are unable to agree with Mr. Paul on this point. The legal position as regards continuing breaches does not apply in the circumstances of the instant appeal. Section 7 of the Act under which, Mr. Paul apparently based his argument, provides that:

> "*Where there is a continuing breach of contract or a continuing wrong independent of contract a fresh period of limitation shall begin to run at every moment of the time during which the breach or the wrong as the case may be, continues.*"

As intimated above, in the instant appeal, there was only one form of breach of contract, which is the failure by the respondent to pay rent arrears within the agreed period. Pursuant to paragraph 14 of the appellant's plaint reproduced above, the lease agreement was for the period of ten (10) years from January, 1994. Since, there is no evidence on the record suggesting that the said lease was renewed, it is obvious that it expired in 2004, hence the issue of continuing breach, relied upon

by Mr. Paul, does not arise. As such, we are in agreement with the submission of Mr. Kilasara that, section 7 of the Act is not applicable in the circumstances of this appeal.

We are equally mindful of the fact that, in his submission, Mr. Paul also urged us to find that, the time limitation on the suit stopped due the time spent for communications/negotiations and administrative measures pursued by the appellant to try to settle the dispute amicably. With respect, we find the argument by Mr. Paul untenable. It is settled that, communications or negotiations between the parties is not a ground for stopping the running of the time of limitation. Therefore, to rescue the suit, the appellant was required to comply with the requirement of Order VII Rule 6 of the Civil Procedure Code, Cap. 33 (the CPC) which 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].*

Furthermore, 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."*

In the instant appeal, 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 appellant would not have succeeded on that aspect, because apart from narrating the historical and factual background on what transpired between her and the respondent, there is nothing in the plaint supporting Mr. Paul's contention to justify the delay. This is so, because, the appellant has never considered herself that she was 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 [2021] TZCA 248: (9 June 2021: TanzLII), 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 appellant did not bring the suit, which was time barred, within the ambit of Order VII Rule 6 of

the CPC, we agree with Mr. Kilasara that the suit should have been dismissed by the High Court under section 3 (1) of the Act for being time barred. In **Barclays Bank Tanzania Limited v. Phylisiah Hussein Mchemi,** Civil Appeal No. 19 of 2016 [2021] TZCA 202: (17 May 2021: TanzLII), the Court when considered the consequences brought by time limitation to institute a suit, it was inspired by unreported decision of the High Court Dar es Salaam Registry in **John Cornel v. A. Grevo (T) Limited**, Civil Case No. 70 of 1998 (unreported) 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 judgment from which an appeal could lie to this Court.

Consequently, we invoke revisional powers vested in the Court under section 4 (2) of the AJA and hereby nullify the entire proceedings

before the High Court in Land Case No. 10 of 2015, quash the judgment and set aside the resultant decree.

In the event, the incompetent appeal is hereby struck out with costs.

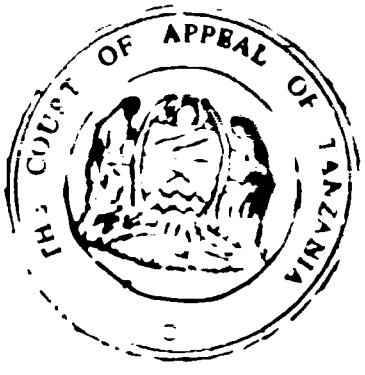
**DATED** at **MOSHI** this 11th day of December, 2023.

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

R. J. KEREFU
**JUSTICE OF APPEAL**

L. M. MLACHA
**JUSTICE OF APPEAL**

The judgment delivered this 11th day of December, 2023 in the presence of Mr. Patrick Paul and Mr. Wilhad Kitaly both learned advocates for the appellant and Mr. Edwin Tango learned advocate holding brief for Mr. Martin Kilasara learned advocate for the respondent, is hereby certified as a true copy of the original.




G. H. HERBERT
**DEPUTY REGISTRAR**
**COURT OF APPEAL**