IN THE COURT OF APPEAL OF TANZANIA

AT MTWARA

(CORAM: KEREFU, J.A., RUMANYIKA, J.A., And MGEYEKWA, J.A.)

CIVIL APPEAL NO. 90 OF 2023

INDO-AFRICAN ESTATE LTD .....APPELLANT

VERSUS

DISTRICT COMMISSIONER FOR LINDI DISTRICT .....1ST RESPONDENT

REGIONAL COMMISSIONER FOR LINDI REGION .....2ND RESPONDENT

THE MINISTER FOR LANDS, HOUSING AND HUMAN SETTLEMENT DEVELOPMENT.....3RD RESPONDENT

THE ATTORNEY GENERAL.....4TH RESPONDENT

(Appeal from the decision of the High Court of Tanzania at Mtwara)

(Twaib, J.)

dated 22nd day of February, 2018

in

(Land Case No. 17 of 2015)

JUDGMENT OF THE COURT

29th May & 12th June, 2024

RUMANYIKA, J.A .:

In the High Court of Tanzania at Mtwara (the trial court), Indo-African Estate Ltd, the appellant herein, unsuccessfully sued the respondents. In that suit, the appellant sought compensation of TZS.

5,000,000,000.00 on Mkwaya Farms which measured 3501 acres situated at Mkwaya Village, in the District and Region of Lindi (the suit land). That the Government, now the respondents had failed to honor her promise to acquire the suit land, allocate it to the Mkwaya villagers and compensate the appellant. The respondents, on their part vehemently denied the appellant's claims. In the course of the trial of the case, the respondent raised a preliminary objection (the objection) on two points: **one**, the suit is time-barred and **two**; the suit is bad for misjoinder and non-joinder of the parties. However, they dropped the second limb of objection down the lane. Upon hearing the parties, the learned trial Judge sustained the objection. Therefore, the suit was dismissed for being time-barred.

The background to the matter is that, the appellant had owned the suit land lawfully since time in memorial. It comprised four different title deeds, namely: CT No. 2620 LO No. 7766, CT No.2607 LO No. 3149, CT No. 13933 LO No.31156 and CT No. 16092 LO No. 307 which made a total of 3501 acres. For many years, the appellant grew some sisal plants thereon until around 1975, when the Cashew-nut Authority of Tanzania (the CATA), now the Cashew-nut Board Authority of Tanzania made a

commitment and promise to acquire the suit land for the purposes of establishing public cashew nut plantation. With this undertaking, the CATA uprooted the existing sisal from the appellant's plots. However, no compensation was paid, as the Government had dropped her plan, for some undisclosed reasons. Later, in 1980, the Government undertook to buy the suit land to establish a College of Agriculture which, allegedly, would be funded by the Republic of Cuba. Again, this mission did not materialize as the Government did not honor her promise. At the same time, it is further alleged, the population of Mkwaya Village and its demand for land increased proportionally. Subsequently, in 2004, the said villagers began to trespass into the suit land culminating into the land dispute. The appellant complained to the respondents vainly, although, the 2nd respondent had assured the former in writing, to compensate it. And, that the 3rd respondent had made a respective evaluation but it withheld the report. Just as the status of the intended acquisition of the suit land and the appellant's claim remained unknown. Further, the appellant complained against the villagers who are vandalized, stole and destroyed its properties, including the cashew-nut trees, hence the claim of TZS 5,000,000,000.00 compensation.

The respondents, on their part, vehemently denied the appellant's claims. At the end of it all, the trial Judge was of the view that the suit is founded on tort, hence hopelessly time-barred, as highlighted above.

Aggrieved, the appellant has fronted four points of grievance which are paraphrased and read as follows: (1) the appellant's cause of action lied on compensation and not on a tort of invasion, as erroneously held by the trial court (2) the suit was not bad for non-joinder of the alleged trespassers of Mkwaya Village as wrongly found by the learned trial Judge (3) the appellant had not sued wrong parties for wrong reliefs at the wrong time, as incorrectly held by the learned trial judge and (4) the learned trial Judge erroneously dismissed the suit based on non-disclosure of the cause of action.

At the scheduled hearing of the appeal, Mr. Halfani Daimu, learned counsel represented the appellant whereas the respondents were represented by Mr. Masunga Kamihanda, learned Senior State Attorney.

Upon taking the floor, Mr. Daimu adopted the appellant's written submission, pursuant to Rule 106 (1) of the Tanzania Court of Appeal Rules, 2009 (the Rules) filed on 08/07/2022.

With regard to the 1st ground of appeal, on the issue of time-bar, Mr. Daimu faulted the trial Judge for having interpreted the pleadings strictly. That, had the trial Judge used liberal approach, for interest of justice, he should not have found that the suit is be time-barred. To reinforce his point, Mr. Daimu cited Indian cases of **H.S. Gambhir and Another v. Van Dev. Shavda And Others** (1990) 98 PLR and **Tata Motors Ltd v. JSC V+b Bank, FAO (OS)** 364/2012 in that pleadings have to be interpreted as a whole and not in piece meals. The learned counsel was optimistic to state the obvious that, in civil proceedings the parties' pleadings set forth the road map of their case. He cited the decision of the Court in the **Registered Trustees of Roman Catholic Archdiocese of Dar es Salam v. Sophia Kamani,** Civil Appeal No. 158 of 2015 [2017] TZCA 381 (27 October 2017: TanzLII) to cement his point. As such, he faulted the learned trial Judge for relying on paragraphs 12, 13 and 14 of the plaint, in isolation of the other paragraphs to decide that the suit is of tort by invasion and time-barred. Since, it was filed about nine years, far beyond the limitation period.

On the 2nd ground of appeal, Mr. Daimu contended that, had the learned trial Judge taken trouble of extending his eye to paragraphs 13 –

18 of the plaint, he could have held the respondents liable. Since, the damage caused to the appellant was aggravated by the villagers who trespassed on the suit land, acting on the respondents' empty-promises. And that the cause of action did not arise in 2004 but some years later. Likewise, Mr. Daimu faulted the trial Judge to find that the suit is bad for misjoinder of the villagers, against whom the appellant had no cause of action whatsoever.

About the 3rd ground of appeal, on suing the wrong parties for the wrong reliefs, Mr. Daimu contended that the trial Judge's finding is not supported by the pleadings on record. He asserted that, the appellant did not have any claims against the said villagers, but a claim of compensation against the respondents for the wrongs done by them.

On the 4th ground of appeal which concerns the dismissal of the suit for non-disclosure of the cause of action, Mr. Daimu contended that, in fact the appellant's claim was for compensation and not for vacant possession by the respondents. Therefore, he argued, the learned trial Judge raised the issue of tort of invasion erroneously and out of the context.

Replying to Mr. Daimu's submission, Mr. Kamihanda adopted the respondents' written submission filed on 26/07/2022, in terms of Rule 106 (7) of the Rules. He opposed the appeal contending that, indeed, the appellant's suit was time-barred as observed, found and held by the trial court, which cannot be faulted. Since, the founding plaint did not disclose the tort of invasion as the cause of action, whose limitation period is three years, in terms of item I of the Schedule to the Law of Limitation Act Chapter 89 of the Laws. Moreover, he asserted that the 2nd and 3rd grounds of appeal challenge the trial court's observations made in passing, as they did not form basis of the impugned decision. And that the 4th ground of appeal has been raised out of context. Since, the suit was time-barred, and on that account only, dismissed. Further, he asserted that the impugned decision was solely based on the appellant's failure to disclose the cause of action and wrong timing, against the law of limitation. To justify his proposition, Mr. Kamihanda cited our decision in **James Buchard Rugemalila v. R,** Criminal Appeal No. 391 of 2017 [2019] TZCA 188 (28 June 2019: TanzLII).

Moreover, Mr. Kamihanda contended that, seemingly, the plaint had disclosed two distinct causes of action. The first one is against the

Cashew- nut Board of Tanzania which had uprooted the appellant's cashew nut trees anticipating start new project which did not materialize, to entitle the respondents the compensation claimed. Another cause of action is against the said local villagers for trespassing on the suit land. Therefore, Mr. Kamihanda argued, those villagers may have trespassed on the suit land misled by the respondents who had not heeded to their promises to acquire it and compensate the outgoing appellant. Nonetheless, he added, the respondents had committed a tort, against which the appellant instituted the suit, but out of time, as rightly observed and held by the learned trial Judge. Thus, he implored us to dismiss the 1st ground of appeal.

As regards the 2nd and 3rd grounds of appeal, on the issues of non-joinder of the villagers and suing the wrong parties for wrong reliefs at the wrong time, Mr. Kamihanda contended that the court made those findings in passing much as the findings did not form the basis of the impugned decision therefore, the findings are inconsequential. He referred us to page 366 of the record of appeal showing that the suit was dismissed only for being time-barred. Further, Mr. Kamihanda

asserted that the appellant did not establish cause of action against the respondents on a land dispute as alleged.

After considering the learned counsel's written submissions for and against the appeal and the record as a whole, the central issue for our determination is whether the appellant's suit was time-barred. We note from the very outset that, the issues of misjoinder of the parties for wrong reliefs and wrong timing were raised by the learned trial Judge just in passing. This is discerned from page 366 of the record of appeal, that:

> *"...having found that the **suit against the parties herein is founded on tort and it is time-barred**, I am compelled to sustain the preliminary point of objection and dismiss the suit..."*

(Emphasis added).

We entertain no doubts therefore, that the impugned decision solely resulted from a time-bar objection which is the subject of this appeal. For the above reason therefore, with profound respect, we find the 2nd and 3rd grounds of appeal misconceived, and, on that account dismissed.

We now turn to the 1st ground of appeal, about, what was the cause of action against whom. The starting point is the settled law, that in civil litigation, the parties' pleadings set a road map of their cases and are binding upon them, as correctly argued by Mr. Daimu. We have restated this proposition repeatedly, including in the **Registered Trustees of Roman Catholic Church** (supra), **Barclays Bank T. Ltd v. Jacob Muro**, Civil Appeal No. 357 of 2019 [2020] TZCA 1875 (26 November 2020: TanzLII) and **Paulina Samson Ndawavya v. Theresia Thomasi Madaha**, Civil Appeal No. 45 of 2017 [2019] TZCA 453 (11 December 2019: TanzLII). While doing so, the Court followed its previous decision in **James Funke Gwagilo v. The Attorney General,** Civil Appeal No. 67 of 2001 (unreported). It held that:

> "... *The function of pleadings* ***is to give notice of the case which has to be met****. A party must therefore so state his case that his opponent will not be taken by surprise. It is also to define with precision the matters on which the parties differ and the points on which they agree, thereby to identify with clarity* ***the issues on which the court wiil be cailed upon to***

adjudicate *to determine the matters in dispute...".*

(Emphasis added)

We also note that, for better determination of the rights of the parties, their cases are determined of the issues framed and recorded during trial. For this case, the look of the 2nd issue, among others recorded at page 144 of the record of appeal reads; "*whether Mkwaya villagers invaded and distributed the plaintiff suit farm thereof among themselves, and if so, whether this was done on the strength of representatives made by the Government".*

At least, it is not disputed that the appellant had fronted a bundle of two distinct causes of action, as rightly observed by Mr. Kamihanda: ***One,*** against the said villagers on a tort of invasion as per the issue referred to above which had its traces from paragraphs 12, 13, 14 and 18 of the plaint. The said villagers may have invaded the suit land between 2004 and probably on or by 07/10/2015, inclusive of the dates, when the appellant instituted the suit. For instance, paragraph 18 of the plaint reads:

"The villagers who invaded...the farm are vandalizing, stealing and destroying the plaintiff's properties..."

Still stressing on the continuing trespass by the local villagers, as discerned from paragraph 12 of the plaint, the plaintiff pleads:

"...This...culminated into the current land conflict which is the subject matter of this case...."

Further, at paragraph 19 of the plaint, the appellant stated:

"The police have acquiesced to the villagers' invasion, vandalizing and destructing the plaintiff's properties at the farms"

Still on the date that the cause of action is likely to have arisen, at paragraph 12 of the founding plaint, the appellant stated:

"That, the population of Mkwaya Vilage increased and the demand for more land intensified, the only land available was the plaintiff's farm...as such from year 2004 the villagers began to trespass the farm..."

Noted, is that, the look of the preceding quoted parts of the plaint would show clearly, that, the cause of action fronted by the appellant was trespass by the villagers which arose in 2004. However, the

appellant instituted the suit in 2015, when it was close to eleven years, hardly one year before expiry of the limitation period of twelve years. On that understanding therefore, the appellant's claim might have been raised within time. However, the said villagers were not made a party to that suit.

Nevertheless, from the two causes of action noted above, the learned trial Judge, rightly so in our considered view, picked only one, about the respondents' failure to compensate the appellant allegedly promised by the respondent, before the villagers could take over the suit land. Put in other words, it appears that the appellant's cause of action is stemmed on the alleged negligent or reckless statements or empty promises by the respondents. Since, they mislead the villagers leading to the loss on the part of the appellant. However, we note that, this was a tortious action which was filed hopelessly out of time and perhaps prematurely, as correctly observed by the learned trial Judge. It is so, because, neither the respondents' undertaking to acquire the suit land for the Cashew-nut Board of Tanzania nor their intention, at a later stage, to acquire the suit land for the villagers had materialized to entitle the appellant the compensation claimed. Even, assuming that the

appellant's action was against the respondents' act to uproot the appellant's sisal, with intention to acquire and allocate the suit land to the Cashew-nut Board, which is not the case, still, that action would be time-barred.

The above referred mixed up causes of action may have put the appellant on cross-road thus, unable to know who, between the villagers and the respondents it should sue. However, the fundamental legal principle remains to be that, the parties to the case are bound by their own pleadings. Since, neither common law nor equity gives a lee way to a court of law to edit or rather, amend the pleadings unsolicited. Being confronted with a similar problem in the case of **Registered Trustees of Roman Catholic Archdiocese of Dar es Salaam** (supra), the Court held that:

> *"In our legal system it is the responsibility of the parties and not anyone else to set the agenda for the trial by their pleadings".*

It follows therefore, that it will be too much demanding by court users if they can expect the courts to do interpretation of the parties' pleadings the way it is done for statutes. In the latter case, at times we ask

ourselves as to what was intention of the legislatures to enact such a statute, which is not the case to the present appeal. It is so, because, a court to capture what is in the mind of a litigant could be an endeavor whose accomplishment would be next to impossible. Therefore, Mr. Daimu's complaint that the trial Judge strictly interpreted the pleadings is respectfully unfounded.

Equally to be noted is that, in the agony of the moment as observed above therefore, chances are that, the appellant had filed the suit while knowing it is time-barred. Therefore, pursuant to the provisions of Order VII Rule 6 of the Civil Procedure Code, Cap 33 R.E. (the CPC), the appellant should have put such a disclaimer in the plaint. For clarity, the operative provisions of the CPC read as follows:

> *"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).

Regards the issue under scrutiny, the provisions of the CPC cited above have been tested on a number of occasions. See-our decisions in

Tanzania National Roads Agency and Another v. Jonas Kinyagula, Civil Appeal No. 471 of 2020 [2021] TZCA 310 (16 July 2021: TanzLII) and **Fortunatus Lyanyantika Masha and Another v. Cleva Motors Ltd.** Civil Appeal No. 144 of 2019 [2022] TZCA 433 (18 July 2022; TanzLII). In the latter case, we followed our decision in **M/s P & O International Ltd v. The Trustees of Tanzania National Parks (TANAPA),** Civil Appeal No. 265 of 2020 [2020] TZCA 248 (9 June 2021: TanzLII), where we 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..."*
>
> (Emphasis added).

It is very unfortunate, in the present appeal that the appellant was not bothered to take refuge of the provisions of the CPC referred above. It foresaw it and thus, risked the dismissal of its suit and has to withstand the consequences. The 1st ground of appeal also lacks merit and is dismissed.

In the up short, we find the appeal unmerited and dismiss it with costs.

DATED at **MTWARA** this 11th day of June, 2024.

R. J. KEREFU
JUSTICE OF APPEAL

S. M. RUMANYIKA
JUSTICE OF APPEAL

A. Z. MGEYEKWA
JUSTICE OF APPEAL

The Judgment delivered this 12th day of June, 2024 in presence of Mr. Stephen L. Lekey who took brief for Mr. Daimu Halfani, learned counsel for the Appellant and Mr. Masunga Kamihanda, learned Senior State Attorney for the Respondent/Solicitor General is hereby certified as a true copy of the original.

A. L. KALEGEYA
DEPUTY REGISTRAR
COURT OF APPEAL