

IN THE HIGH COURT OF TANZANIA
AT TANGA
CIVIL CASE NO.5 OF 2004
ABDALLAH HASSAN.....PLAINTIFF
VERSUS
VODACOM (T) LTD.DEFENDANT

22/8/07 & 8/11/07

R U L I N G

A.A.M. SHAYO,J.

The defendant, namely, Vodacom Tanzania Ltd has raised three preliminary objections. The first one is that the honourable court has no jurisdiction to entertain the suit the cause of action of which arose out of a land dispute. The second one is that the suit is time barred. The third one is that the plaintiff has no cause of action against the defendant.

It is not irrelevant at this juncture, I presume, to mention that Mr. Nyika, learned counsel for the defendant, abandoned the third objection in the course of his written submissions. The remaining two objections were, however, strenuously resisted by Mr. Kilule, learned counsel for the plaintiff, that is, ABDALLAH HASSAN.

No doubt a brief recount of what has transpired is a necessary preface to these proceedings. It is common ground that the plaintiff had in 1992 allegedly applied for land from Jitengeni Village Council Mombo with the expressed aim of putting up an economic project complex which included erection and running of a Saw Mill, a garage and a Training School for Mechanics. The application was approved and the plaintiff paid the necessary fees to the village authority. Following the allocation of the required parcel of land along MOMBO/Mulembule Road by the village council, the plaintiff allegedly caused Project building plans drawn and an Economic Feasibility Study carried out and later solicited

Development Funding in collaboration with one Professor Mbuya of United States of America and other donors.

It is further common grounds that sometime in early August, 2001, the plaintiff and Professor Mbuya visited the site after finalizing partnership arrangements. They were greeted by the Base Transformer Tower that had been erected by the defendant without the permission and/or consent of the plaintiff. The defendant had allegedly committed a tortious act of Trespass to Land. The plaintiff then subsequently sent a demand letter to the defendant claiming damages of shs.450 million for trespass to land and immediate removal of the transmission tower. That was on 8/07/2004. It would appear the defendant did not heed or respond, whereof the plaintiff instituted the present suit against the defendant. The plaintiff is claiming general and exemplary damages of Tshs,450 million, mesne profit of Tshs.150,000/= per diem from 1/09/2001 till the date the plaintiff's economic activities would have reached operational stage and eviction of the defendant from the site.

The fore going then is a brief chronology of the events giving rise to the present matter. It is against the above stated background that the defendant, through learned counsel, Mr. Nyika presumably from IMMA Advocates, has raised two points of preliminary objection, namely:-

One, that the Honourable Court has no jurisdiction to entertain the suit the cause of action of which arose out of a land dispute.

Two, that the suit is time barred.

Arguing in support of the first ground of objection, Mr. Nyika, learned council submitted that under section 167 of the Land Act, No.4/1999 the jurisdiction for disputes concerning land is exclusively vested on the Land Courts listed in the said Act and established by the Courts (Land Disputes Settlement) Act 2 of 2002. Quoting section 167(1) of Act 4/99, he further argued that the dispute which is before the honourable court is about the alleged trespass to land by the defendant, and therefore a dispute concerning land.

It is also Mr. Nyika's argument that when a court is vested with exclusive jurisdiction it is only that court which can competently deal with disputes arising from such matters. That the Land Courts listed in section 167 of Act 4/99 are established by the Courts (Land Disputes Settlements) Act 2/2002 under section 3 (quoted in extensor). That section 3 of Act 2/2002, he said, vests jurisdiction on all disputes concerning land on courts established by section 167 of Act 4/99.

Mr. Nyika went further to submit that Act 2/2002 came into operation on October 1st, 2003 through GN No.223 of 2003. That the present suit was filed on 30th July, 2004. In the circumstances, it is their humble submission that this honourable court lacks jurisdiction to deal with the matter as jurisdiction to deal with land dispute is exclusively vested on the land courts in accordance with the laws referred above.

As regards the second preliminary point of objection, Mr. Nyika, learned counsel, quoting para. 3 of the plaint, argued that the plaintiff's cause of action in this suit is based on the tortious action of trespass to land. That the cause of action in this suit arose in May 1st, 2001 when the defendant after buying the land from the village council, built the transmission tower. It was his stance that under clause 6 of the law of Limitation Act 1971 suits the cause of action of which is based on tort has to be instituted within three years from the date when the cause of action arose. That from 1st May, 2001 to 30th July, 2004 when the suit was instituted is two months over and above the time limited by law. He cited section 3(1) of the Law of Limitation Act, 1971 and submitted that this suit was instituted two months after expiry of the three years period limited by law. This therefore hopelessly time barred and ought to suffer the consequences provided in section 3(1) of the Limitation Act and that is to be dismissed with costs.

In rebuttal, Mr. Kilule, learned counsel, submitted that it was a misconception on the part of the counsel for the defendant to claim in ground one that the honourable court has no jurisdiction to entertain the suit the cause of action of which arose out of a land dispute, since Act No.2/2002 came into

operation on October 1st, 2003 GN.NO.223/2003. It was his stance that such approach is rather unrealistic and far fetched. Mr. Kilule fortified his argument by making reference to the case of MARY MAREALLE VS IBRAHIM S. KAJEMBO, HCT CIV.REV.NO.167/2001 (unreported) in which Kimaro,J. (as she then was) held:-

“It is until such institutions which are conferred with exclusive jurisdiction on land matters become operative, that the District and Courts of Resident Magistrates will cease having jurisdiction on land matters. For the time being, they do have jurisdiction to entertain those cases..... The position at the moment is quite clear. The institution conferred with exclusive jurisdiction on land matters are not yet operative.”

On the basis of that, Mr. Kilule submitted that by the time the plaintiff filed this suit on 30th July 2004 the District Land and Housing Tribunals, The High Court Land Division and other relevant Tribunals and courts were not yet operative neither in Korogwe District nor in Tanga Registry.

It is further his argument that the plaintiff did apply and obtained leave to institute this suit to any court other than Primary Court. In her ruling in **Misc. Civil Application No.71/2002**, he said, Longway, J. held:-

“It is likely that the Jitengeni Village truly has no Land Dispute Council in place yet, as may be the case in many villages. Had it been in existence, no doubt the issue would have found its way there through the respondents, but it did not....I therefore find it proper to allow the application by the applicants as prayed.”

It is his submission therefore that the plaintiff was allowed to file this suit after the honourable court had taken judicial Notice as to the fact that there was no such courts alleged to be possessed with the exclusive jurisdiction, save for this honourable court. Mr. Kilule humbly submitted that had the defendants counsel directed his mind to such position, he could not have raised such a misconceived preliminary point. He thus prayed that the first point of law be dismissed with costs.

In respect of the second point of law that the suit is hopelessly time barred, it was submitted that the defendant's counsel has again mis- conceived the true position of the law. Mr. Kilule, argued that the plaintiff's claim is essentially for recovery of land that the defendant trespassed. That under the First Schedule Item 22 to the Law of Limitation Act, 1971 a suit to recover land has a time limitation of 12 years and not 3 years as put by the counsel for the defendant.

It is further argued that even assuming that the time of limitation is 3 years, which is strongly disputed, the time started to run as from when the plaintiff became aware of the trespass by the defendant and not from the time the defendant purportedly bought the suit plot. He went further to argue that para.8 of the plaintiff's plaint clearly underscored the position that the suit is not only for damages for the defendant's trespass but also for eviction of the defendant from the suit premises. It is clear therefore that the suit fall under item 22 of First Schedule to the Law of Limitation Act, 1971 and that time of recovery is 12 years as opposed to 3 years as contended by the defendant's counsel.

Further to that, Mr. Kilule argued that even if one assumes that time limit is 3 years and it started to run from the time the defendant bought the suit premises from the village counsel, which is strongly disputed, he insisted that the plaintiff was suffering from legal disability to sue the defendant, hence his application for leave to sue the defendant in the court other than the Primary Court. He found his support under section 16 of the Law of Limitation Act, 1971 which he quoted thus:-

"Where after the right of action for a suit or an application for execution of a decree has accrued and before the period of limitation prescribed, for such suit or application expires, the person to whom such right has accrued suffers a disability, in computing the period of limitation prescribed for such suit or application, the time during which such person is under disability shall be excluded."

It is Mr. Kilule's submission therefore that there is no way the defendant can challenge the jurisdiction of this honourable court neither for want of jurisdiction nor for want of time limitation. He thus prayed that the preliminary objection by the defendant be dismissed with costs as it is containable.

I have seriously considered the arguments advanced by the learned counsels in support of their respective stances. Let me now start with the first point of preliminary objection, touching on the jurisdiction of this court to entertain the suit the cause of action of which arose out of a land dispute. There is no doubt that this present suit arose out of a land matter. As rightly submitted by Mr. Nyika for the defendant, section 167 of the Land Act No.4/1999 (cap.113 R.E. 20020 and if I may add also section 62 of the Village Land Act No.5/1999 (Cap.114 R.E. 2002) vested a structure of courts with exclusive jurisdiction on all matters concerning land.

Section 167(1) provides, I quote in extensor:-

"167(1) The following courts are hereby vested with exclusive jurisdiction, subject to the provisions of this part, to hear and determine all matters of disputes, actions and proceedings concerning land, that is to say –

- a) The Court of Appeal.
- b) The Land Division of the High Court established in accordance with law for time being in force for establishing courts divisions;
- c) The District Land and Housing Tribunals;
- d) Ward Tribunals;
- e) Village Land Councils."

Apparently, the wording of section 62(2) of Act 5/99 is exactly the same, save that it states, subject to the provisions of Part III of the Land Act.

The said structure of courts were established by the Land Disputes Courts Act No.2 of 2002 that came into force on 1st October, 2003. Section 3(1) of the Act provides:-

"3(1) Subject to section 167 of the Land Act, 1999 and section 62 of the Village land Act, 1999 every dispute or complaint concerning land shall be instituted in the court having jurisdiction to determine land disputes in a given area.

(2) The court of jurisdiction under sub section (1) include:

- a) The Village Land Council;
- b) The Ward Tribunal;
- c) The District Land and Housing Tribunal.
- d) The High Court (Land Division)
- e) The Court of Appeal of Tanzania."

I fully agree with Mr. Nyika, learned counsel for the defendant that since Act no.2/2003 came into operation on 1st October, 2003 – GN. NO.223/2003 the jurisdiction of other/ordinary court on any matter concerning land ceased from that date. That being the case the present suit was filed on 30/07/2004 when already the structure of courts vested with exclusive jurisdiction had, by law, started to operate as from 1st October, 2003.

With respect to Mr. Kilule, learned counsel for the plaintiff the Revisional Order in MARY MAREALLE'S Case (supra) doesn't came into his rescue because it is true when the order was given in 2001 the courts conferred with jurisdiction had not become operative. In this present case, the established courts became operative as from 1st October, 2003 and automatically the jurisdiction of ordinary courts were onsted from the very date.

I also have no quarrel with Mr. Kilule that he had applied and obtained leave from this court to file a suit in the court other than the Primary Court. That was Misc.Civil Appl.No.71/2002 whose ruling was delivered on 4th August, 2003. Obviously by then the Land Disputes Courts Act No. 2/2002 had not come into force. By then the ordinary courts including this court, still had jurisdiction. The position could have been different if the plaintiff had filed this suit immediately after 4/8/2003 but before 1st October, 2003. On 1st October, 2003 when Act No.2/2002 came into force/operation, the jurisdiction of ordinary courts had

been onsted, the ruling of this court notwithstanding. By 30th July, 2004 when the plaintiff filed this suit, this court had no jurisdiction as the ruling dated 4th August, 2003 had been overtaken by events.

If anything, the plaintiff was supposed to have filed the suit in the Land Division of the High Court and not this ordinary High Court whose jurisdiction had been onsted as from 1st October, 2003. To have done otherwise, as he did, the plaintiff was not only offending the law, that is, section 3 of Act No.2/2002, but was also taking the risk of this matter being dismissed for want of jurisdiction.

The first ground of objection by the defendant that this honourable court has no jurisdiction to entertain the suit the cause of action of which arose out of a land dispute is hereby sustained. The issue of jurisdiction is a very fundamental one for the survival of any suit. Now that this court has no jurisdiction, it is sufficient to dispose off the matter. It will serve no useful purpose to consider the second ground of objection.

In the upshot, the suit is accordingly dismissed with costs.

It is so ordered.


A.A.M. BHAYO, J.

8/11/2007

Delivered at Tanga in Chambers this 8th day of November, 2007, in the presence of the plaintiff in person and Ms Linda L/O for Defendants.

Right of appeal explained.


A.A.M. BHAYO, J.

8/11/2007

