

**IN THE HIGH COURT OF TANZANIA**

**IN THE REGISTRY  
AT MWANZA**

**HC CIVIL APPEAL NO 36 OF 2006**

**RICHARD SURERA .....PLAINTIFF/RESPONDENT**

**Versus**

**1. TANESCO ..... } .....DEFENDANT/OBJECTOR**

**2. PRINCIPAL SECRETARY MINISTRY  
OF LANDS } .....DEFENDANTS/OBJECTOR**

**3. THE ATTORNEY GENERAL**

**6/11/2007 & 29/5/2008**

**RULING**

**RWEYEMAMU, J.**

The plaintiff **Richard Surera** through his counsel Mr. Makowe advocate filed a suit in this court claiming special damages to the tune Shs.500.000 against the defendants. His claim is that; without his permit; the 1<sup>st</sup> defendant placed an electric cable transmission line through his land, and that the 2<sup>nd</sup> defendant failed to properly advise the 1<sup>st</sup> regarding ownership of the land thereby “*endangering the life of the*

*users of the land and prevented the intended user of the farm against the plaintiff's interest".*

The 1<sup>st</sup> defendant, vide counsel Mr Galati Advocate filed a written statement of defense and gave a notice of Preliminary Objection (PO) asserting that the plaintiff's claim was time barred. According to the record, the AG's chambers Mwanza filed a joint WSD on behalf of the 2<sup>nd</sup> & 3<sup>rd</sup> defendant. In para 1 of that WSD, the defendants appear to raise a two pronged PO, namely that:

- a. The suit is hopelessly time barred,
- b. Plaintiff has no cause of action against the defendants.

But from the record, the AG made no subsequent follow up of the PO as such I have treated it as abandoned and will say nothing further on it.

I now turn to the 1<sup>st</sup> defendant PO subject matter of this ruling. The same was argued by way of written submission. Mr Galati submitted that the plaintiff's *cause of action* was based on a tort of trespass. He went at lengths to define the meaning of the term trespass and concluded that "*the facts stated in the plaintiff's plain paragraph 5 to 9 shows clearly that the plaintiff is suing the defendants for the first defendant's act of interference with his right to peaceful use of his land.*" From that supposition he concludes that the claim is time barred by the Law of Limitation Act 10/1971, where the time limit for bringing a suit founded on a tort of trespass is three years; He derives the period from the documents

attached to the plaint, according to which the trespass occurred in 1994 but the suit filed on 10/9/2002.

In response, Mr Makowe submitted that the claim is not based on trespass but is a land issue as such the period of limitation is 12 years.

In deciding the contending sides, I went through the parties pleadings. In paragraph 5 of the plaint, the plaintiff averred that *“he was the owner of the piece of land described as farm 97 in Nyabange village”*. Responding to this paragraph, the 2<sup>nd</sup> defendant – whose mandate it is to allocate land stated that *“the content of paragraph 5 of the Plaint is disputed.”* It is apparent to me from that response by the 2<sup>nd</sup> defendant that the question of ownership of the piece of land where the offending electricity transmission cable was elected is not undisputed.

In view of that fact, it can not be stated with certainty, as Mr. Galati would wish me to find, that the plaintiff's claim is based on a tort of trespass to land. Under the circumstances, the limitation issue can not be resolved at this stage by way of PO because *“a PO can not be raised if any fact has to be ascertained” ... a PO can not be based on unascertained factual matters...*” In this case, the question of what the cause of action is i.e. whether the plaintiff is the legal occupier of the affected land is a factual one which is subject of contention, to be resolved on adducing evidence.

Due to my explanation above, the 1<sup>st</sup> defendant's PO is dismissed but costs are ordered to be in the cause.

**R M Rweyemamu**  
**Judge**  
**29/5/2008**

**Order:** Case file and judgment forwarded to the District Registrar HC Mwanza, for delivery of the ruling to the parties.

**R M Rweyemamu**  
**Judge**  
**29/5/2008**  
**AT Mtwara HC**