IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT MWANZA.

LAND CASE APPEAL NO. 5 OF 2007.

(From the Decision of the District Lane and Housing Tribunal of Mwanza District at Mwanza In Land Case No. 75 of 2006).

FELICIAN MHINGA ..... APPELLANT

VERSUS

[1]. PATRICK PAUL MAMKWE

[2]. MWANZA CITY COUNCIL .....RESPONDENTS

JUDGMENT.

A.A.Nchimbi, J.

In this appeal, the appellant is seeking for an order that the suit plot be re-allocated to him or, in the alternative, he is seeking for compensation for unexhausted improvements he had made on the said suit plot as claimed in the application that was lodged in the District Land and Housing Tribunal for Mwanza District. The appellant has been aggrieved with the Ruling in Land Application No. 75 of 2006. In his memorandum of appeal, he has advanced six grounds of complaint, namely:-

[1]. That the Honourable Chairperson erred both in Law and fact, in holding that the application was time barred a fact, which is not true as the allocation, amounted to abuse of office, which are criminal offences under sections 94 and 96 of the Penal Code.

[2]. That the Honourable Chairperson erred in both law and fact, when awarding the appellant compensation for the unexhausted improvements the appellant had made onto the suit premises.

[3]. That the learned Chairman erred both in law and fact when she failed to take into consideration that there was an abuse of office on the part of the 1st Respondent who was a Municipal Council Engineer, who used his official position to survey the said suit plot of Land, and thereafter allocated to himself the said suit plot of Land without even bothering to compensate the appellant for his unexhausted improvements which were claimed in the main suit /Application.

[4]. That the learned Chairperson erred in law and fact when she failed to take into consideration the National Land Policy, that a person found in occupation of unsurveyed Land during survey process, is the one always given priority of being allocated the said surveyed plot of land hence it was illegal for the 2nd Respondent to allocate the said suit plot of Land to the 1st Respondent instead of allocating the said suit plot to the Appellant the original occupier.

[5]. That the learned Chairperson failed to take into consideration the fact that the appellant had a good cause (sic) of action and a claim of right, for being allocated the suit premises and or in the alternative for

being compensated for the unexhausted improvements the appellant had made prior to being wrongfully deprived the suit plot of land through an acting amounting to an abuse of office which is a criminal offence contrary to the Provision of section 94 and 95 of the Penal Code Cap. 16 R.E. 2002 punishable with 3 years imprisonment.

[6]. That Criminal offences have got no time limit and or Law of Limitation as such allocation of Land tainted with illegality cannot be enforced by Courts of Law.

The appeal has been argued by way of written submissions. The record does not clearly show if parties were offered with any expert legal assistance respectively albeit it is indicated that the appellant's submissions were drawn and filed by one George O. Hezron (Advocate).

Be that as it may in his submission the appellant opted to argue only the first ground of appeal and prayed to abandon the rest of the grounds.

In arguing the first ground of appeal, the appellant submits that the trial the application was not time barred. The appellant contends that for the court of law to rule that the suit is time barred, or not, the date on which the cause of action arose must be certain

and that the court can only satisfy itself on this requirement by looking at the pleadings.

It is contended that the trial chairperson having found that the date on which the cause of action arose was not stated in the application, it was then wrong to rule that the application was time barred. The Appellant goes on to lay an accusation that the Chairperson having realized that the pleadings did not indicate the date on which the cause of action arose, assumed that the cause of action arose in 1985 because that was the date on which the applicant was allocated another piece of land. It is argued, this is a misconception because a matter of law cannot be assumed. The view taken by the appellant is that the Tribunal should have allowed parties to testify so that the question regarding when the cause of action arose would get answered.

In reply the Respondents resist the appeal on the ground that the appellant's suit was and is still time barred for being brought after expiration of 21 years. Thus the trial tribunal was correct in dismissing the suit. It is amplified that the purpose of the Law of Limitation Act is to make litigants to bring their action in court within the time frame set. Respondents do not dispute the fact that limitation of suits is checked in the pleadings presented in court. They have referred this court to Rustomji on Law of limitation, 4th Edn. Pg. 31 where it is stated that "***Limitation is checked only when the plaint is actually presented in the proper court and***

not when by mistake or design, it was filed in an incompetent Court".

It is thus, contended that, once the law puts time limit to a cause of action, that limit cannot be waived even if a party desists from raising the issue of limitation. The case of ***TANZANIA DAIRIES LTD VS CHAIRMAN, ARUSHA CONCILIATION BOARD AND ISSACK KIRANGI*** (1994) TLR 33. is also referred to in that regard.

Having gone through the submissions of both parties together with the record of the lower Tribunal especially the Ruling of the trial Chairman, I have noted, with great concern, that the Chairman erred in dismissing the appellant's application basing on the ground that it was time barred. The trial chairman in his ruling at page 4, paragraph two stated as follows and I quote.

> *"In Paragraph 6(a) the applicant did not specifically state when the cause of action arose. In my opinion because one of the prayers is allocation of the suit land to the applicant, even the cause of action starts from the date of allocation i.e. 1985. The applicant has filed his case on 4/4/2006, more than twenty years. Item 22 of First schedule of the law of limitation Act 1971 provides for person can recover his right on land. Because the time has lapse against the applicant, this tribunal uses section 3(1) of the law of limitation 1971 to dismiss this application".*

On a close perusal of the record, it is clear that in paragraph 6(a) of the application that was lodged by the appellant herein, as quoted by the trial chairman, it is only stated that there was a demolition of the applicant's 6 roomed house worth Tshs 30,000.000/= without being compensated. And in part II of that paragraph the applicant states that there was wrongful allocation of the applicant's suit premises to the 1st Respondent.

I have taken my time to read between two lines the paragraph that the learned chairman quoted in his ruling, so as to satisfy myself whether he was right to apply the law of limitation in his decision. I significantly note that there is nowhere in the said paragraph stating the year when the applicant was allocated the suit land. The trial chairman states that one of the prayers of the applicant is allocation of the suit land to him and that the house in question was demolished in 1985. That is the basis of the trial chairman going further to state that the application is time barred because more than 21 years has elapsed.

It is my considered view that, it was wrong to apply the law of limitation in the circumstances of the application, as the trial chairperson did, because for one to determine as to whether the application was time barred, the date on which the cause of action arose should have been certain and shown in the pleadings. As said, the trial chairman simply decided to assume the date when the cause

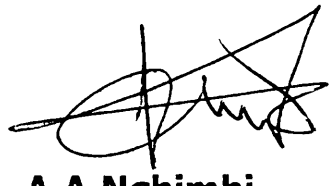
of arose and came up with the conclusion that the matter was time barred.

To the contrary the trial chairman ought to have noted that the pleading suffered from a serious defect of not showing when the cause of action arose. The consequence of that should have been to strike out the application so that the applicant could be in a position to amend and refile his pleadings.

In the light of the foregoing, I find that the trial chairman made a fatal error by assuming the date when the cause of action arose while the pleading is silent on that.

In the premises, the appeal is allowed with costs. I quash the decision of the District Land and Housing Tribunal of dismissing the application and set aside all orders made thereof. In stead an order striking out the application is made.

Costs to follow event.



A.A.Nchimbi,

JUDGE.

15/6/2012.

Coram	:	Hon. A.A.Nchimbi, J.
Appellant	:	Absent.
For 1st Respondent	:	Absent.
For 2nd Respondent	:	Absent (See affidavit of service).

Cc : Regina.

Court.

Judgment delivered.

A.A.Nchimbi,

JUDGE

15/6/2012.

Parties to be supplied with copy of the Judgment.

A.A.Nchimbi,

JUDGE

15/6/2012.