

**IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)
AT DAR ES SALAAM**

CIVIL CASE NO. 181 OF 2011

**1. AURELIA TEMBA
2. ATHUMAN MTAUKA
3. ELVANIA TRAVASSO
4. CATHERINE J. MILANZI
(on behalf of themselves and others) PLAINTIFFS**

VERSUS

**1. CHIEF OF DEFENCE FORCES,
TANZANIA PEOPLES DEFENCE FORCES (TPDF)..... 1ST DEFENDANT**

**2. PERMANENT SECRETARY, MINISTRY
OF DEFENCE & NATIONAL SERVICE..... 2ND DEFENDANT**

3. ATTORNEY GENERAL 3RD DEFENDANT

Date of last submission:

Date of Ruling: 09/04/2014

RULING

F. Twaib, J:

Aurelia Temba and her co-plaintiffs are suing the Permanent Secretary, Ministry of Defense and National Service and the Attorney General in

representative capacity, for payment of Tshs. 1,147,748,082/= in specific damages and a further sum in general damages and interests.

In their plaint, filed on their behalf by Associated Attorneys, Advocates, on 3rd November 2011, the plaintiffs describe their claims as compensation for injuries and loss suffered, for destruction caused to their landed properties, and mental torture.

All the plaintiffs were owners of properties in the neighbourhood of a military base installation known as KJ19/1214 at Mbagala, Dar es Salaam. On 29th April 2009, a number of bombs that were stored at the military base exploded, causing loss of lives, injuries, destruction and damage to the plaintiffs, their relatives, and their movable and immovable properties.

Following discussion with the defendants, some compensation was paid to them by the Government between August 2009 and July 2010. However, the plaintiffs considered this compensation inadequate, "incredibly small and unreasonable". It was for this reason that the plaintiffs have filed this joint action.

The defendants, through the office of the Attorney-General, have raised a point of preliminary objection, arguing that the suit is time-barred.

In his written submissions in support of the preliminary objection, the Attorney-General (AG) has relied on the fact that the plaintiffs are claiming for "compensation" under two categories (specific and general) on the ground that the compensation paid to them was not fair and not adequate. The AG opines that since this is a suit for "compensation", it falls within the ambit of paragraph 1 of part I of the Schedule to the **Law of Limitation Act**, Cap 89(R.E. 2002). Under the Act, he argues, the period of limitation for a claim for compensation is one year.

Hence, according to the AG, since the first payment to the plaintiffs was made on 23rd August 2009 and the last one on 28th July 2010, then the one year period available to the plaintiffs ended on 28th July 2011. And even if one takes the date on which the plaintiffs instructed their valuers, Trace Associates, to carry out a valuation of their property (15th September 2010), counsel further argues, the one-year period had already expired by the time the plaint was filed on 30th November 2011.

In a brief but focused reply, counsel for the plaintiffs recited the statutory provisions relied upon by the learned State Attorney who represented the Defendants. Paragraph 1 of part I of the schedule to the **Law of Limitation Act** reads:-

[Suit] for compensation for doing or for omitting to do an act alleged to be in pursuance of any written law.....one year.

Learned counsel for the plaintiffs submitted that the suit does not arise from any *written law* to which the defendants' failure for doing or omitting to do an act pursuant to any such law can be traced.

Counsel for the Defendants has not cited any law allegedly infringed, that may have called for the application of Para 1 of item I quoted above. The plaintiff's counsel thus concludes that the suit is actually based on tort.

With respect, I agree entirely with the Plaintiff's counsel. Their clients' claims for compensation are in the nature of a claim for damages based on tort, and the relevant provision in the schedule to the **Law of Limitation Act** is item 6 of Para I to the Schedule, which prescribes a period of three years for all actions in tort.

As argued by the learned counsel for the plaintiffs, the Defense counsel has not cited any law pursuant to which the suit may be based. And, I

would venture to say, considering the plaintiff's claim as set out in the
plaint, there is, indeed, to my knowledge, no such law.

It follows, therefore, that this suit has been filed within the statutory
period, and it is not time-barred. Consequently, the preliminary objection
lacks merit. It stands dismissed. Costs to be in the cause.

DATED and DELIVERED in Court this 9th day of April, 2014.

F. Twaib

Judge