

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

CIVIL CASE No. 169 OF 2018

ISLAM ALLY SALEH.....PLAINTIFF

Versus

AKBAR HAMEER.....1st DEFENDANT

CATS TANZANIA2nd DEFENDANT

RULING

7.5.2020 - 16.7.2020

J. A. DE-MELLO J;

This Ruling is in respect of **nine (9) Preliminary Objections** raised by the Defendants that;

- 1. That, the purported power of Attorney appended on plaint constitutes a prima facie forged document and plaint fully is tainted with serious illegalities.**
- 2. The suit filed by plaintiff is time barred by applicable provision of law.**
- 3. That, purported "oral contract to sell land" identified as Plot No. 214 and 216 Block "C" located in Msasani Village Area in Dar es Salaam City is un enforceable at law and by the Court of law.**
- 4. That, this Honorable Court does not have jurisdiction to grant the prayer sought by the Plaintiff relating to issuance of order against 1st defendant to prepare the sale and transfer documents in respect of suit land in favour of Plaintiff as the prayer is contrary to doctrine of freedom and sanctity of contract.**

5. **The High Court (Main Registry) lacks jurisdiction to entertain this suit as the cause of action involved in this suit is Res Judicata.**
6. **The Plaintiff was signed by purported attorney of the plaintiff in this suit who does not possess legal mandate to act as representative of Plaintiff in this suit.**
7. **The Plaintiff and his attorney failed to the date when, and place where the plaint was signed by them.**
8. **That, the Plaintiff does not have any cause of action against the Defendants whether jointly or severally.**
9. **That, there is a misjoinder of the Parties.**

The Court ordered the same be disposed by written submissions and, dates for Parties to file their submissions were accordingly scheduled, sadly with no reply by the Plaintiff. What this translates to, is non compliance of Court orders which tantamount to **Want of Prosecution** in abuse of Court process. However and, considering the submissions by the one moving the Court, the objections needs to be analyzed and determined.

Counsel Matojo Cosatta for the Defendants dropped the 7th point of preliminary objection and, argued the remaining eight. I will for the sake of saving the Courts valuable, time avoid summarizing what Counsel submitted and, I proceed to address the objections in line with what is on record. From them all, I find the **2nd** and, **5th** touching on jurisdiction of this Court of which I am cognizant of their prominence and, importance. I am so guided by the demands of law and procedure to ascertain myself as to whether or not I have the mandate to proceed hearing with what is before me as was discussed in the case of **Fanuel Mantiri Ng'unda vs. Herman M. Ng'unda & Others [CAT] Civil Appeal No. 8 of 1995.**

Counsel for Defendant submitted that, this case was previously filed before the **High Court Land Division in Land Case No. 89 of 2012** and the same was dismissed for **want of jurisdiction** sometimes in **24th October 2014**. In that same vein, the Court expressly made clear that, the matter involved was for breach of oral contract by the first Defendant. In that respect, since there was an oral contract entered in 2005, the 1st Defendant was required to prepare Sale and Transfer document within a period of one year from when it was entered, that, is April 2005, which then expired in April 2006, rendering the cause of action wanting, considering the filing of this suit **in September 2018** after expiry of twelve (12) years and, three months, hopelessly out of time. Since suits founded on contract must be filled within **six (6) years** the cause of action arises as per **paragraph 7** of the **1st schedule** of the **Law of Limitation Act, Cap 89**, this suit must be dismissed with costs. I agree with the learned Counsel for Defendant in making reference to the case of **Tanga Cement Co. Ltd vs. Christopherson Co. Ltd. Civil Appeal No. 133 of 2006** to hold that the cause of action constituting this suit is breach of oral contract between Plaintiff and **1st Defendants**, well stated in **paragraphs 4 and 5** of the Plaint. The law relating to the limitation of actions limits the period within which the various actions can be brought. That, means the right of action cannot endure forever rather, there must be some end to litigations. According to paragraph **7** of the **1st Schedule** to the **Law of Limitation Act Cap. 89**, time limitation for matters of contract nature is six (6) years. From **year 2006** when the breach occurred to **2018** when this suit was filed, **twelve (12) years** have lapsed, against six years when the right of action accrued only. The law also imposes mandatory obligation on the Courts to dismiss the proceedings instituted after the lapse of the prescribed period of limitation.

Section 3 (1) of Cap. 89 provides;

subject to the provisions of this Act, every proceeding described in the first column of the Schedule to this Act and which is instituted after the period of limitation prescribed therefore opposite thereto in the second column, shall be dismissed whether or not limitation has been set up as a defence.

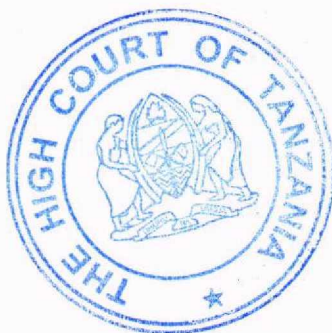
It would have been different if **Leave** would have been sought first, with good and sufficient reason in support thereof. In the case of **Soza Plastic Industries vs. Scolastica Chawalla, Labour Revision No. 73 of 2012** the Court held that;

'The remedy for a time barred application filed without leave is dismissal'

This position was also discussed in the case of **Thomas Ngawaiya versus the Attorney General and 2 Others, Civil case No. 177 of 2013**

For the reasons aforementioned, I will not address the other objection on **Res Judicata** as I find the above, sufficient enough to dismiss the suit.

It is therefore dismissed with costs.



A handwritten signature in blue ink, appearing to read "J. A. De-Mello", is written over a horizontal dotted line.

J. A. DE-MELLO

JUDGE

16/07/2020