

**IN THE HIGH COURT OF TANZANIA**

**(IN THE DISTRICT REGISTRY)**

**AT MWANZA**

**LAND APPEAL NO.80 OF 2010**

*(Arising from the Ruling of the District Land and Housing Tribunal of Musoma at Mara in Land Application No. 85 of 2009)*

**JAMES OLIMO t/a VICTORIA SEC. SCHOOL ..... APPELLANT**

**VERSUS**

**MAKUNJA MADEDE TANG'ANA ..... RESPONDENT**

**RULING**

*Last Order: 27.07.2020*

*Ruling: 27.07.2020*

**A.Z.MGEYEKWA, J**

The Appeal originated from the District Land and Housing Tribunal of Musoma in Land Application No. 85 of 2009. The trial Tribunal decided in favor of the respondent. Dissatisfied, the appellant appealed to this court.

The appeal was allowed and nullified the District Land and Housing Tribunal proceedings and ordered for retrial.

Aggrieved the appellant filed an appeal before the Court of Appeal of Tanzania among others, claimed that this court erred in law in holding that Application No. 85 of 2009 before the trial District Land and Housing Tribunal for Mara at Musoma was not time-barred.

The learned counsel for the appellant lamented that this court did not consider an important ground of appeal addressing the jurisdiction of the trial court related to its conduct when hearing of the case that alleged that the suit was time-barred. After the deliberation of the Court of Appeal of Tanzania on the point of objection raised by the learned counsel for the first time, at the stage of appeal. The Court of Appeal of Tanzania decided to remit back the court records to determine the point of law on whether the District Land and Housing Tribunal had jurisdiction to entertain the application.

At the hearing, the appellant enjoyed the service of Mr. Elias Hezron, learned counsel and the respondent had the service of Mr. Mhingo, learned counsel.

Supporting the appeal, the learned counsel for the appellant first informed the court that the matter is remitted back before this court as per the Court of Appeal of Tanzania order which was issued on 19<sup>th</sup> day of June 2020 to allow this court to determine the point of objection which was raised by the learned counsel for the appellant that the matter is time-barred.

Mr. Hezron stated that the dispute originated from the District Land and Housing Tribunal of Musoma whereas the respondent was claiming compensation. Mr. Hezron went on to submit that the respondent claimed that the cause of action against the appellant accrued on the 26<sup>th</sup> day of March 2002 and the application was instituted before the District Land and Housing Tribunal of Musoma in 2009.

Mr. Hezron continued to submit that the respondent was required to file his claims within one year from the date when the dispute arose. He

went on to submit that the compensation claims are governed under Item I Part I of the First Schedule of the Law of Limitation Act, Cap. 89 [R.E 2019]. Mr. Hezron fortified his submission by referring this court to the case of **Registered Trustees of Mwanza Club v Mwanza City Council & Another**, Land Case No. 02 of 2009.

The learned counsel further submitted that the respondent tendered an exhibit PE1 showing that there was ongoing conversation between the parties, however, the communication did not restrain the time of the cause of action to run. To support his submission he referred this court to the case of **Consolidated Holding Cooperation v Rajan Industries Ltd & Another**, Civil Appeal No. 2 of 2003. He added that even if the court would consider the said exhibit, the letter was dated 6<sup>th</sup> day of April 2007; counting the days from 6<sup>th</sup> April 2007 to the date when the cause of action arose in 2009, it is more than two years.

In conclusion, Mr. Hezron insisted that the appeal is time-barred, thus he urged this court to allow the appeal with costs.

Mr. Mhingo, the learned counsel for the respondent submitted that the law requires that suit regarding compensation to be instituted within one year. He went on to state that the present suit was lodged before the District Land and Housing Tribunal after one year. Mr. Mhingo ended up to concede with the learned counsel for the appellant that the case was time-barred.

In conclusion, Mr. Mhingo urged this court to allow the respondent to find an alternative way to pursue his rights.

Rejoining, Mr. Hezron reiterated his submission in chief and stated that the execution is on progress. He prays this court to allow the said properties to be discharged.

I have considered the rival submissions for and against the preliminary objection raised by the respondent's Advocate and the main issue for determination is ***whether the Preliminary Objection is timeous.***

To begin with, from the factual setting, it is beyond question that having heard the respondent's Advocate submission that the appeal is

time-barred, and the learned counsel for the respondent conceded that the case before the District Land and Housing Tribunal of Musoma was time-barred. I had to go through the law and the lower court records to find out whether the appeal was filed out of time. I found that the respondent filed an Application No. 85 of 2009 before the District Land and Housing Tribunal of Musoma in 2009 and as rightly pointed out by both the learned counsels the dispute arose on the 26<sup>th</sup> day of March 2002. The time limit in filing a suit concerning compensation is prescribed under the First Schedule Part I Item I of the Law of Limitation Act, Cap. 89 [R.E 2019] it provides that:-

*" For compensation for doing or for omitting to do an act alleged to be in act alleged to be in act pursuance of any written law the period of limitation is one year."*

Pursuant to the above provision, the respondent was required to lodge his claims within one year from the date of the cause of action arose. Counting the said one year the respondent was required to file the said suit not later than the 25<sup>th</sup> day of March 2002 instead he filed the same on in 2009 that means the applicant was out of time for approximately 6 years. Failure to file the said suit within the time the remedy is dismissal as stated

under section 3 (1) of the Law of Limitation Act, Cap. 89 [R.E 2019], which states that where a suit is brought out of time the remedy is to dismiss even if the issue would not be raised by the parties. In the case of **John Cornell v A. Greco Tanzania Ltd** Civil Case No. 70 of 1998 High Court of Tanzania, it was held that:-

*" However unfortunate it may be for the plaintiff, the Law of Limitation, on actions knows no sympathy or equity. It is a merciless sword that cuts across and deep into all those who get caught in its web."*

Guided by the above authorities and without wasting much time of the Court, I sustain the appellant' Advocate objection that the suit before the District Land and Housing Tribunal of Musoma was hopeless time-barred. Therefore, I proceed to allow the appeal without costs.

Order accordingly.

Dated at Mwanza this 27<sup>th</sup> day of July 2020.

  
A.Z.MGEVEKWA

**JUDGE**

27.07.2020

Ruling delivered on the 27<sup>th</sup> day of July 2020 via audio teleconference, and both parties were remotely present.



  
A.Z.MGEYEKWA

**JUDGE**

27.07.2020