

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE DISTRICT REGISTRY OF MUSOMA

AT MUSOMA

LAND CASE NO. 20 OF 2020

OBETHO WEREMA JOSEPH

@OBETO JOSEPH WEREMA ..... PLAINTIFF

VERSUS

CATA MINING LIMITED ..... DEFENDANT

RULING

*Date of Last Order: 20/05/2020*

*Date of Ruling: 04/08/2020*

KISANYA, J.:

The plaintiff has instituted a suit against the defendant on claim for compensation arising from unlawful acquisition of land without paying him fair and adequate compensation and loss of business. Upon being served with the plaint, the defendant filed a written statement of defence with the preliminary objection on the following points of law:

- 1. To the extent that this suit is based on unlawful acquisition of land that alleged took place in May, 2016 as per paragraph 3 and 6 of the plaint, which is a tort, and to the extent that this suit was filed on 9<sup>th</sup> March, 2020, beyond the prescribed time limit as per item 6 of Part I of the Schedule to the Law of Limitation Act (Cap. 89, 2002) this suit is hopelessly time-barred.*
- 2. To the extent that this suit is based on unlawful acquisition of land that alleged took place in May, 2016 as per paragraph 3 and 6 of the plaint, which is a tort, and to the extent that this suit was filed on 9<sup>th</sup> March, 2020, beyond the prescribed time limit as*

*per item 6 of Part I of the Schedule to the Law of Limitation Act (Cap. 89, 2002) and to the extent that the Plaintiff has not applied for extension of time and secured leave to that effect as per section 14(1) of the Law of Limitation Act (Cap. 89 R.E. 2002) this suit is hopelessly time-barred.*

3. *In the alternative objections (a) and (b) above, the extent that the suit seeks for compensation of Tshs. 600,000,000/= allegedly being loss of business that happened in May 2016 as per paragraph 7 of the plaint which is tort, and to the extent that this suit was filed on 9<sup>th</sup> March, 2020, beyond the prescribed time limit as per item 6 of Part I of the Schedule to the Law of Limitation Act (Cap. 89, 2002) this suit is hopelessly time-barred.*

The Court ordered the preliminary objection to be disposed of by way of written submission. Mr. Renatus Lubango Shiduki, learned advocate for the defendant filed the submission in support of the preliminary objection while the plaintiff's submission was filed by Mr. Mwitwa Emanuel, learned advocate.

The first and second points of objection were argued jointly by Mr. Shiduki, learned advocate. It was submitted by the learned advocate that, paragraphs 3 and 6 of the plaint suggest that, the defendant committed tort of conversion by converting the plaintiff's land. The learned referred this Court to Winfield & Jolowiz Tort, 18<sup>th</sup> Edition, 2010, W.V.H. Rogers, Sweet & Maxwell, Thomson Reuters where conversion is defined to be committed by dealing with the goods of a person which deprives him of the use or possession of them. The learned advocate went to argue that, conversion may be committed by wrongfully taking possession of the goods, by wrongfully disposing them, by wrongfully misusing them, by wrongful destroying them or simply by refusing to give them when demanded. Mr. Shiduki argued further that, having of property by the defendant, subject to conversion is one of the key elements as held in **Imerimaleva and Others vs Dima Nhorongo** (1991) TLR 1 that:

*“...At law a person can be charged with conversion of goods if he had an actual or constructive possession of them at the time of the alleged conversion.”*

The learned advocate contended that, the facts pleaded in the plaint reveal tort and that, the cause of action arose in May, 2016. Therefore, he was of the firm view that, since the suit was filed on 8/3/2020, it was out of time prescribed under item 6 of Part I of the Schedule of the Law of Limitation Act, Cap. 89, R.E. 2002, R.E. 2002 (hence force referred to as “the LLA”) which requires suit founded on tort to be filed within three years from the occurrence of the cause of action.

On the third limb of the objection, Mr. Shiduki argued that paragraph 7 of the plaint tells that, following unlawful acquisition of the land/conversion, the Plaintiff business was closed thereby causing him to suffer loss of Tshs 600,000,000/= . The learned advocate submitted that, an action for recovering loss or damage from a tort is trover which is defined by the Black’s Law Dictionary, 10<sup>th</sup> Edition, 2004, Thomson Reuters at page 2 to mean:

*“a common law action for the necessary of damage for the conversion of personal property the damage general being measured by the property value.”*

In the light of the above, counsel Shiduki argued that, the cause of action for tort of trover in the case at hand was time barred as it was filed beyond the period of three years prescribed under item 6 of Part I of the Schedule to the LLA. For the aforesaid reasons, the learned advocate urged the Court to dismiss the suit with costs for being hopelessly out of time.

In reply, Mr. Emmanuel argued that tort of conversion applies to goods, corporeal and immovable properties and not land as in the circumstances of this case. He cited the case of **Saving and Finance Commercial Bank Ltd (NIC Bank Tanzania Ltd) vs BIDCO Oil Soap and Another**, Civil Appeal No. 42 of 2012 and CRDB

**(1996) LTD vs Boniface Chimya** (C.A), Civil Appeal No. 57 of 1999 TLR 2003 to support his argument.

The learned advocate contended that, the plaintiff's claim is based on acquisition land and that conversion in land is called adverse possession. Therefore, counsel Emmanuel was of the firm view that, the suit was filed in time because the time limit for adverse possession is 12 years. He invited the court to read the case of **Waldron vs Rotzler**, 862 F. Supp 762 (N.D.N.Y 1999) where it was held that, land cannot be converted. He also referred us to the book titled **Law of Tort with Statutory Interpretation** (Atchuthen Pillai, M.A. M.L at p. 115 which defines conversion as:

*“the tort of conversion may be defined as any act in relation to the goods of a person which constitutes an unjustifiable denial of title of them. The essence of conversion, the wrong which trover was a remedy, is calling in question the title of another person to goods. It was alleged –(1) that the Plaintiff was possessed of goods,(2) that he accidentally lost them, (3) that the defendant found them and (4) that the defendant converted them to his own use.”*

Counsel Emmanuel went on to argue that since the defendants have denied to have forcefully and unlawfully evicted the Plaintiff from his landed property, conversion cannot be determined before the plaintiff proves this title by evidence.

On the third point of objection, counsel Emmanuel adopted his submission in respect of first and second point of objection. He argued further that, loss of business is factual issues which cannot be determined at this stage. The learned advocate supported his argument by citing the case of **Masolele General Agencies vs African Inland Church Tanzania** (1994) TLR 192 where it was held that, loss of business must include fixtures as well as chattel affixed therein for business purposes. The learned advocate went on to argue that, as the plaintiff was

unlawfully and forcefully evicted from his land, there are damages which must be proved during trial. Therefore, he urged the court to consider the principle of overriding objective which requires that, the suit be decided on merit and not on technicalities. Counsel Emmanuel argued further that the instant case is land case and that pursuant to section 3(1) (g) of the Land Act, Cap. 311, R.E. 2019 compensation is among of cause of action for land. That said, Mr. Emmanuel requested the Court to dismiss the application with costs.

When Mr. Shiduki rose to rejoin, he started by defining the term corporeal advocated by the counsel for the plaintiff to mean having physical, material existence, tangible, land and fixtures. The learned advocate went on to argue that, the plaintiff had failed to prove that land is not corporeal property and incapable of conversion. On the ground that the suit was based adverse possession, the learned advocate replied that, the said fact was not pleaded in the pleadings and that, parties and courts are bound by the pleadings as held in **Juma Jaffar Managers, PBZ and Others**, Civil Appeal No. 7 of 2002 at Tanzania (unreported).

It was submitted further by Mr Shiduki that, the facts averred in the Plaintiff and reply to the written statement of defence suggest that the suit is based on trespass to land. He reiterated argued that, the cause of action is based on tort namely, conversion of land and its structures, trevor and trespass. The learned counsel contended further that, section 3(1)(g) of the Land Act (Cap. 113, R.E. 2019) and the Land (Assessment of the Value of the Land for Compensation) Regulations, 2001 cannot apply as the plaint disclose conversion, trover and trespass and not compensation for unlawful acquisition of land by the state. Therefore, counsel Shiduki reiterated that, the suit was filed out of time prescribed by the law.

After due consideration to the rival submission by the learned advocate for both parties, the main issue is whether the suit at hand is time barred. It is deduced from

the submission by the learned advocate for the defendant that this suit is founded on tort whose time limitation under item 6, Part I of the Schedule to the LLA is three years. On the other hand, the learned advocate for the plaintiff argues that, the suit is not time barred because it is founded on land whose time limitation is 12 years from the date of cause of action.

The preliminary objection raised by the defendant is based on section 3(1) of the Law of Limitation Act which reads:

*“3.-(1) 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.”*

Reading from the above cited provision, the trial court is obliged to dismiss the suit filed beyond the period of limitation specified in the Schedule to Law of Limitation Act. In determining whether the suit is time barred or not, the court looks at the pleading filed by the plaintiff including the relief sought to understand the nature of cause of action.

Having gone through the plaint and the reply to written statement, I am in agreement with the learned counsel for the defendant that, the suit at hand is based on tort of trespass and that, the cause of action arose in May 2016. This fact is reflected in paragraphs 3 and 6 of the plaint which reads:

*“3. The Plaintiff claim against the defendant arising from unlawful acquisition of land in May 2016 without paying a fair and adequate compensation and loss of business as the result of the said acquisition.*

*6. That, sometimes in May, 2016 while the plaintiff was still in possession of the land and still conducting business thereon, the defendant removed the plaintiff by force*

*without paying compensation for the land exhaustive improvement which amounts to not less than Tshs. 200,000,000/= only.*

Further, in his reply to written statement of defence, the plaintiff elaborates the above paragraphs to effect that, his claim is based on trespass to land. This is stated in paragraphs 2 and 9 of the reply to statement of defence where the plaintiff avers that:

*“2. ... the Plaintiff reiterates what is stated under 3 and 6 of the Plaint. Further, it is stated that the Plaintiff being a lawful owner of the disputed Land, and conducting a lawful registered business in the same, the Defendant unlawfully encroached/trespassed into the same and forcefully removed/ evicted him from the said landed property without compensation as to the exhaustive and development attached to the said land hence claim for compensation.*

*9...the Plaintiff reiterates what is stated under 4 of the Plaint and that after the Plaintiff unlawful encroachment/trespass to the Plaintiff's land, they destroyed some of the fixture, demolished the same, seized the possession of the therein and therefore cause the business of the Plaintiff to collapse and thus he is entitled to compensation.”*

In the light of the above, the plaintiff's claims is not based on the adverse possession as argued by counsel Emanuel. The pleadings imply that the defendant entered and remained on the land in possession of the plaintiff without permission or justifiable cause. Thus, he trespassed to the plaintiff's land. In **Avit Thadeus Massawe vs Isidory Assenga**, Civil Appeal No. 6 of 2017, CAT at Arusha (unreported), the Court of Appeal associated itself with cited with the definition of the concept of trespass to land given by Mr. C. S. Binamungu in his book LAW OF TORTS IN TANZANIA to mean:

*“entering, remaining or causing an object to fall on the premises/land in the possession of another without permission and /or without justifiable cause.”*

In that respect, the ingredients of tort of trespass to land are entering or remaining on the land, possession of premises. Both the plaint and reply to written statement of defence show that, the defendant trespassed to the plaintiff's land when he entered and remained thereon without permission or justifiable cause. Further, the remedies available against tort of trespass to land are perpetual injunction and monetary compensation as held in **Avit Thadeus Massawe** (*supra*). In the present case, the plaintiff is praying for the monetary compensation as follows:

1. *An order for compensation to the Plaintiff to be made by the defendant, which must be fair, just and adequate amount not less than Tanzanian Shillings Two Hundred Million Only (TZS 200,000,000/=).*
2. *Compensation for loss of business due to the closure of his business on May, 2016 in the area namely Kataryo within Musoma District, which were affected by the defendant or its assignee or agents of the company amount not less Tanzania Shillings Six Hundred Million Only (TZS 600,000,000/=).*

Thus, I find that the relief sought in the case at hand is compensation arising from the tort of trespass to land. This is not a suit for recovery of land whose time limitation is 12 years from the date of cause of action. Pursuant to item 6, Part I of the Schedule to Law of Limitation Act, the time to institute suit is founded on tort is three years from the date of cause of action. Even if it is taken that the suit is based compensation, item 1, Part I of the Schedule to Law of Limitation Act provides that the time limitation for "compensation for doing or for omitting to do an act alleged to be in pursuance of any written law" is one year.


It is on record that, the cause of action arose in the present case arose in May, 2016. This is also reflected in the financial reports appended to the plaint. Therefore, the time limitation for the cause of action for compensation lapsed in June, 2017 while the cause of action founded on tort of trespass to land ended in June, 2019. However, the present suit was filed on 9<sup>th</sup> March, 2020. This Court find that the



suit was filed beyond the time prescribed by the law. According to the provision of section 3(1) of the Law of Limitation Act, I am inclined to dismiss it. The Court has no mandate to determine suit filed out of time. The principle of overriding objective which was advocated by the learned counsel for the plaintiff cannot apply in the circumstances where the suit has been filed out of time.


In view of the aforesaid, I hereby uphold the preliminary objection that, the suit is time barred. In that respect, the suit is dismissed with costs.

Dated at MUSOMA this 4<sup>th</sup> day of August, 2020.

  
E. S. Kisanya  
JUDGE  
4/8/2020

Court: Ruling is delivered in open Court this 4<sup>th</sup> day of August, 2020 in the presence of Mr. Masous Hamis, learned advocate holding brief for Mr. Mwita Emmanuel, learned advocate for the plaintiff and Mr. Renatus Lubango Shiduki, learned advocate for the defendant.



  
E. S. Kisanya  
JUDGE  
4/8/2020