

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

AT DAR ES SALAAM

LAND CASE NO. 14 OF 2020

DENISI ALBERTY MALEMBEKA.....PLAINTIFF

VERSUS

KIBAHA TOWN COUNCIL.....1ST DEFENDANT

THE SOLICITOR GENERAL.....2ND DEFENDANT

RULING

Date of last Order: *11/08/2020*

Date of Ruling: *21/10/2020*

MLYAMBINA, J.

The plaintiff has preferred this suit against the defendants for a Judgment, Decree and Orders:

- a) Disclosing the number of plots so acquired;
- b) Undertake valuation of each plot so as to ascertain the value of each plot and compensation ought to be paid;
- c) Paying adequate compensation reflecting the actual current market value of each of the ascertained and or acquired plots;
- d) Paying adequate interest of 21% per annum of the whole actual compensation for the unnecessary delays and loss of income since 2007 to the date of payment, and;
- e) General damages for inconvenience caused tuned TZs 20,000,000/=;

- f) Payment of costs of this suit;
- g) Any other relief (s) as the Honourable Court may deem fit and just to grant.

Upon being served with the plaint, the defendants filed written statement of defence (WSD) disputing the claims. Further, the defendants raised two *plea in limine litis*;

- a) The suit is not tenable in law for contravening the provision of *Section 6 (3) of the Government Proceeding Act Cap 5 (R.E 2019) of the Laws of Tanzania as amended by the Written Laws (Misc. Amendment) Act No. 1 of 2020*. From the above pleaded facts and claimed relief (s) in particular relief (c) it follows there are only two major claims of the plaintiff.

First, claim for recovery of the acquired land. Given the fact that it is not disputed the land was acquired in 2007, in terms of the *1st Schedule Item 22 of the Law of Limitation Act Cap 89 (R.E. 2019)* Plots were surveyed and total number of five plots were given back to the applicant, pursuant to their agreement the remaining five plots (5) be taken by the Kibaha Town Council (respondent) with the consideration of payment of adequate compensation thereof the payment which is not yet furnished to its finality up to November 2015 where the 1st defendant asked the plaintiff to visit

his office where he asked him to sign compensation form being Tshs 12, 954,500.00 on his part learned State Attorney Stanley Mahenge waived for costs.

I had time to go through the pleadings to satisfy myself on whether the objection raised and conceded have merits. I noted under paragraph 5 of the plaint states.

On or sometime 2007 the plaintiff's Shamba was invaded by the defendant with the intention and purpose of survey plan of plots, under which the total number of ten (10) plots.

b) The suit is hopelessly time barred.

On 21st October, 2020 when the suit was called for mention, Counsel Sauli Santu for the plaintiff conceded with both points of legal objection on two grounds. One the plaintiff omitted to join the attorney general in the proceedings. **Second**, the suit property was acquired way back in 2007. As such, it more than 12 years.

Even if it is accepted that the plaintiffs seeking for compensation of his land which was acquired by the government in 2007, in terms of *the 1st Schedule Item 1 of the Law of Limitation Act* (supra) the time limit for compensation for doing or omitting to do an act alleged to be in pursuance of any written law is one year.

Therefore, at any rate the suit is barred by both first *Schedule Item 22 and item 1 of the Law of Limitation Act (supra)*

Moreover, in terms of *Section 6 (4) of The Government Proceedings Act (supra)* non joinder of the attorney general vitiates the proceedings.

In the circumstances, the suit is hereby marked dismissed for being time barred. Costs be shared.


Y. J. MLYAMBINA
JUDGE
21/10/2020

Ruling delivered and dated 21st October, 2020 in the presence of Advocate Sauli Santu for the Plaintiff, State Attorney Stanley Mahenge for the 1st Defendant and Solicitor Stanslaus Aidan Kigosi, for the 2nd Defendant.


Y. J. MLYAMBINA
JUDGE
21/10/2020