

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF BUKOBA
AT BUKOBA**

LAND CASE No. 08 OF 2019

REV. MUHUNDA FRANCIS PAUL -----PLAINTIFF
VERSUS
BUKOKA MUNICIPAL DIRECTOR
& 26 OTHERS -----RESPONDENTS

RULING

Date of last order: 03/12/2021
Date of Judgment: 03/12/2021

Kilekamajenga, J.

The plaintiff lodged a claim against twenty seven defendants including the Bukoba Municipal council. The plaintiff claimed, among other things, to be declared the lawful owner of the suit premises and specific damages at the tune of Tshs. 300,000,000/=. In response, the counsel for the 1st and 2nd defendants filed a joint written statement of defence and raised three points of objection thus:

- i) That, this suit is hopelessly time-barred for four years;*
- ii) That, this suit is bad in law for suing a wrong party hopelessly time barred for four years;*
- iii) That, this suit is bad in law as the plaintiff did not serve statutory notice according to the requirement of the law.*

The Court was satisfied that the summons to the defendants was served by way of publication in the newspaper on 23rd July, 2021. The Court thereafter ordered



the hearing of the point of preliminary objection in absence of the 3rd to 27th defendants. The counsel for the 1st and 2nd defendants, the learned State Attorney, Mr. Athuman Msosole was present to assist the Court in understanding the points of objection. He however abandoned the 3rd limb of preliminary objection and submitted on the 1st and 2nd points of objection. His argument on the 1st point of objection pointed towards **Section 3 (1) of the Law of Limitation Act**. Under the same Act, the plaintiff was supposed to file the suit within twelve (12) years from the date when the cause of action arose. The counsel directed the Court to the case **of Bhoke Kitang'ita v. Makuru Mahemba, Civil Appeal No. 222 of 2017, CAT at Mwanza (unreported)**. He urged further that, the cause of action in this case arose in 2005 when the defendants surveyed the disputed land whilst the plaintiff lodged the instant case in 2019.

On the 2nd limb of objection, Mr. Msosole argued that the 1st defendant namely Bukoba Municipal Director is a natural person and an employee of the Municipal Council of Bukoba and, therefore, under the law cannot sue or be sued. **Section 14 (1) (b) of the Local Government (Urban Authorities) Act** recognizes Bukoba Municipal Council to be an entity with legal personality and not the Bukoba Municipal Director. The counsel cemented his argument with the case of **Auson Nzigu v. Director Bukoba Municipal Council and 3 others, Land**

Case No. 03 of 2017, HC at Bukoba (unreported). After the submission on these two points, the counsel prayed for the dismissal of the suit with costs.

The plaintiff who was unrepresented confirmed that the land was surveyed in 2006 but the cause of action arose in 2011. After the survey, the plaintiff kept on waiting for the title deeds until in 2010 when the 1st defendant promised to compensate him on the surveyed land. However, the compensation was never done. In 2011, the plaintiff found out that, six plots were allocated to other people. The plaintiff further confirmed that he is claiming compensation against the defendants for the land which was surveyed by the 1st defendant. The plaintiff finally filed the instant suit in 2019 after the failed negotiations with the 1st defendant.

On the second point of objection, the plaintiff argued that he decided to join the 1st and 2nd defendants as they allocated his land to the other defendants.

The rejoinder from the counsel for the 1st and 2nd defendants insisted that the cause of action arose in 2005 when the Municipal Council surveyed the land. He stressed further that the case was filed after the expiry of 12 years contrary to the law. The counsel still maintained the view that the 1st defendants lacks legal personality to sue or be sued.

In determining the two limbs of preliminary objections in this case, certain facts have become evident. It is clear that the land in dispute was surveyed by Municipal Council of Bukoba. The plaintiff's oral submission confirmed that the land was surveyed in 2006. Thereafter, the plaintiff commenced negotiations with the Municipal Council on compensation and processing of title deeds on some plots. The negotiations ended in vain in 2011 when the Municipal Council refused the proposal to compensate the plaintiff. In 2019, the plaintiff took the dispute to Court. The plaint only hints at paragraph 11 on the claim for compensation. However, the plaintiff's prayers stated in the plaint partly points towards ownership of the land and partly on compensation. For the purposes of clarity, I wish to address two points in this case. **First**, this being a land dispute, its claim is time-barred after expiry of twelve years from the date when the cause of action arose. The cause of action arose when the land was surveyed in 2005 and the plaintiff started pre-court negotiations with the Bukoba Municipal Council. The plaintiff could not have commenced negotiation if he still possessed the land. Even if the land could have been surveyed in 2006, the time had lapsed by the time he filed the suit in 2019. Under the schedule to the Law of Limitation Act, Cap. 89 RE 2019, the suit was already time barred in 2019. Pre-court negotiations with the 1st defendant did not halt the time from running. On this point of law, the case of **Makamba Kigome and another v. Ubungo Farm Implements Limited and PRSC, Civil Case No. 109 of 2005 (unreported)** which was quoted with approval in the case of **M/S P & O International Ltd**

v. The Trustees of Tanzania National Parks (TANAPA), Civil Appeal No. 265 of 2020, CAT at Tanga (unreported) stated that:

"Negotiations or communications between parties since 1998 did not impact on limitation of time. An intending litigant, however honest and genuine, who allows himself to be lured into futile negotiations by a shrewd wrong doer, plunging him beyond the period provided by law within which to mount an action for the actionable wrong, does so at his own risk and cannot front the situation as defence when it comes to limitation of time."

Also, the same stance was stated in the case of **M/S. P & O International Ltd** (*supra*) thus:

"It is trite that pre – Court action negotiations have never been a ground for stopping the running of time."

In the instant case, the case would have been time-barred even if the plaintiff was claiming compensation from the defendants. This is according to item 1 in the first schedule of the Law of Limitation Act, Cap. 89 RE 2019. The case of **M/S P&O International Ltd** (*supra*) reinforced this position of law further that:

"We did so mindful of the naked fact that the appellant's suit was for compensation falling under item 1 in the first schedule of the Law of

Limitation Act [Cap. 89 RE 2019] the (Act) prescribing the time limit on suits founded on compensation at 12 months from the date the cause of act accrued."

To put the points at easy understanding, the plaintiff's claim for compensation was time barred only 12 months from the date when the cause of action arose. On the claim for ownership of the land, the plaintiff's claim was also time-barred since the cause of action arose in 2005 and he (plaintiff) filed the suit in 2019. There was a lapse of almost 14 years since the cause of action accrued.

On the second limb of objection, this court should not be detained by an obvious point of law which is clearly expressed under Section 14 (1) (b) of the Local Government (Urban Authorities) Act [Cap. 288 RE 2002] that:

14 (1) Every urban Authority established or deemed to have been established under this part, and in respect of which there is existence a certificate of establishment furnished under Section 9, shall with effect from the date of commenced of the establishment order, be a body corporate, and shall:

a) N/A


b) in its corporate name be capable of suing or being sued.

In the instant case, as rightly argued by the learned State Attorney, the first defendant namely Bukoba Municipal Director has no legal personality to sue or

be sued because he/she is an employee. On this point, I would only strike out the suit to allow the plaintiff to amend the plaint. But, so long as the suit is time-barred, the only remedy as provided under **Section 3 (1) of the Law of Limitation Act**, is to dismiss it. Therefore, I hereby dismiss the suit with costs.

It is so ordered:

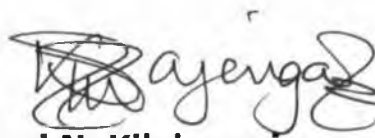



Ntemi N. Kilekamajenga
JUDGE
03/12/2021

Court:

Ruling delivered this 03rd December 2021 in the presence of the plaintiff present in person and the counsel for the 1st and 2nd defendant present in person. The 3rd to 27th defendants were absent. Right of appeal explained to the parties.




Ntemi N. Kilekamajenga
JUDGE
03/12/2021

