

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

LAND CASE NO. 28 OF 2021

REHEMA HUSSEIN SALUM -----PLAINTIFF

VERSUS

NKINDI NSHAU----- 1st DEFENDANT

SELEMANI IDDI MRISHO-----2nd DEFENDANT

RULING

Last Order: 10.05.2022

Ruling Date: 13.05.2022

M. MNYUKWA, J.

While filling written statement of defence, the 1st defendant herein raised three preliminary objections that;

- a. That the suit is hopelessly time-barred.
- b. That the suit is not properly before this Honourable Court for want of payment of court fees by the plaintiff.
- c. That the suit is misconceived for non-joinder of necessary parties, to wit, the Mwanza City Council, the Registrar of Titles and the Honourable Attorney General.



As a matter of practice, preliminary objection was scheduled to be heard first. Plaintiff was enjoying services of Mr. Akram Adam, learned advocate, while the 1st defendant was represented by Mr. Nasimire. Preliminary objection was argued orally.

Addressing the court first, Mr. Akram Adam went straight to concede the preliminary objection raised in respect of time barred ground and prayed court's leniency not to award the costs.

Responding to Mr. Akram Adam, Mr. Nasimire addressed that since the preliminary objection on time limitation adequately dispose the case, they will not argue the remaining preliminary objection. He prays for the dismissal of the suit for being time barred and he supports plaintiff's counsel prayer for the court not to order costs since it is a pro bono case.

From parties' submissions, it is now my duty to see whether the suit is time barred and therefore a subject of dismissal. For a suit to be tried, it must be brought to the court within the time prescribed by the law. That is to say, time limit is among the elements that gives a court jurisdiction to try any matter. Time limitation is being prescribed under the law of Limitation Act, Cap 89 RE 2019. In order to determine if the suit is within time the court must look on the plaintiff's pleadings in order to determine when did the right of action accrued for the time limit to be construed as



provided under section 4 of the Law of Limitation Act Cap 89 R. E 2019. From the plaint, the 3rd paragraph states that the cause of action aroused on 31st January 2002 when the 2nd defendant transferred their matrimonial home to the 1st defendant without plaintiff's consent. From 2002 up to 2021 when this suit was instituted, 19 years has already passed.

Item 22 of Part II of the schedule to the Law of Limitation Act has provided a limitation of 12 years for a suit to recover land. However, the law has provided a legal requirement for the time of limitation to be extended as provided for under section 44(1) of Cap 89 RE: 2019 which states that: -

44(1) "Where the Minister is of the opinion that in view of the circumstances in any case, it is just and equitable so to do, he may, after consultation with the Attorney-General, by order under his hand, extend the period of limitation in respect of any suit by a period not exceeding one-half of the period of limitation prescribed by this Act for such suit."



From the court's records the plaintiff was keen enough to go through the required process of applying for extension the period of limitation from the Minister as seen in the letter annexed in her plaint from the permanent secretary of the Ministry of Constitutional and Legal Affairs dated 14th July 2021, together with Extension Order dated 26th June 2021, where the Minister extended the period of limitation. However, it was unfortunate that the extended time by the Minister was only one half of the 12 years which is six years as per section 44(1) of the Law of Limitation Act which makes a total of 18 years while the suit was filed after 19 years as a result even the extended time has also elapsed. That is to say the suit was filed out of time as conceded by plaintiff's counsel.

Looking at the consequences of filling the suit out of time, the Law of Limitation Act Cap 89 R.E 2019 has provided for under section 3(1) that if the matter is filed out of the prescribed time, the remedy is to dismiss the suit. This was also the holding in the case of **NBC Limited and Another Vs. Bruno Vitus Swalo**, Civil Appeal No. 331 of 2019, where the Court of Appeal held that the suit that has been filed out of time has to be dismissed in accordance with section 3(1) of the Law of limitation Act.

On the foregoing, the first raised preliminary objection is hereby upheld and the suit is dismissed. Considering that the matter was a



probono case and for the purposes of restoring parties relationship I make
no orders as to costs.




M.MNYUKWA
JUDGE
13/05/2022

Court: Ruling delivered on 13st May 2022, in the presence of both parties' counsels.


M.MNYUKWA
JUDGE
13/05/2022