

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**IN THE DISTRICT REGISTRY OF MUSOMA**

**AT MUSOMA**

**CIVIL CASE NO. 8 OF 2020**

**ELIAS MWITA MRIMI** (*Suing as the Administrator of the Estate of the late*

*Suzana Mubusi Mrimi Masyora*) .....**PLAINTIFF**

**VERSUS**

**NORTH MARA GOLD MINE LTD**.....**DEFENDANT**

**RULING**

*22<sup>nd</sup> September & 28<sup>th</sup> February, 2022*

***Kahyoza, J:***

**Elias Mwita Mrimi**, the Administrator of the Estate of the late Suzana Mubusi Masyora (Elias), sued **North Mara Gold Mine Ltd** (the Mine) for the following reliefs: -

- 1) an order for payment of a fair, adequate and prompt compensation to the tune of Tshs. 6,000,000,000/= (Tshs. six billion) as the value of the suit land currently occupied and being used by the defendant in mining activities;
- 2) payment of general damages to be assessed by the Court;
- 3) costs of this suit; and

4) any other relief(s) or order that this Hon. court may deem fit and just to grant.

The defendant refuted the claim and raised in one of the paragraphs of the Written Statement of Defence a complaint that the cause of action was hopelessly time barred.

The defendant did not raise the issue of time limitation as preliminary point of objection as result the Court framed as one of the issues for determination. After pondering on the issue the Court moved the parties to address the issue whether the cause of action was time barred or otherwise. They addressed the issue by way of written submissions. Both parties were represented. Elias enjoyed the services of Mr. Vedastus Laurean, advocate whereas Mr. Mchome, advocate represented the Mine.

### **Is the cause of action time barred?**

The Mine's advocate, Mr. Mchome submitted that the cause of action trespass and not recovery of land. He submitted further that the plaintiff prays for compensation and damages. He argued that in accordance with Part 1 of the Schedule to the **Law of Limitation Act**, [ Cap. 89 R.E. 2019] item 6, a suit founded on tort is required to be filed within 3 years. This means the limitation period for filing a claim based on tort of trespass, which apparently occurred in 2003, lapsed in 2006. To support his position, he cited the case of **Obeto Werema Joseph @ Obeto Joseph Werema v CATA Mining Limited**, Land Case No. 20 of 2020 HC at Musoma (unreported), where the Court held that-

*"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."*

The plaintiff's advocate, Mr Laurean refuted the defendant's contention that the cause of action was tort hence, time barred. He joined the defendant's advocate that the issue whether a plaint discloses a cause of action, must be determined upon perusal of the plaint alone, together with anything attached so as to form part of it. (See the case of **John Mwombeki Byombalirwa vs. Agency Marinitime Internationale (T) Limited** [1993] TLR. 1). He added that the plaint disclosed the cause of action and that it is true that by 2003 the defendant encroached the plaintiff's land. He submitted further that annexure A to the plaint, established that the disputed land belonged to the deceased Susan Mrimi as against any other persons who would purport to own the same. He argued that the suit was not time barred as it is not based on tort of trespass as alleged by the defendant's advocate. He argued that there is nowhere in the plaint where the plaintiff claims for compensation and damages as remedies for tort. He contended that the reliefs claimed are

clear for payment of fair, adequate and prompt compensation as value of the suited land currently occupied and being used by the defendant and then there is a relief for general damages to be accessed by the court.

The defendant's advocate did not file a rejoinder.

The defendant's advocate and the plaintiff's advocate are in agreement that time limit for a suit based on a tort of trespass is three years. This indeed is the position of the law as stipulated under item 6 of Part 1 of the Schedule to the **Law of Limitation Act**. The dispute is whether the plaintiff's claim is based on a tort of trespass. The answer to the disputed issue is not far-fetched as it is in the plaint. The plaint under paragraph three reads-

*"That the Plaintiff's claim against the Defendant is **a compensation of Tshs. 6,000,000,000/= (Tshs. six billion) for unlawfully entering into the Plaintiff's land and or premises** measuring at about 100 acres (the suit land) situated at Nyamichare-Nyakunguru village, Tarime District in Mara Region and conducting gold mining activities/ business therein **without rendering a prompt, fair and adequate compensation to the Plaintiff.**"*

It is unequivocal that the Plaintiff's claim against the Defendant is for compensation for unlawfully entering into the Plaintiff's land and or premises. Trespass to land is entry into someone's land without any justification. Trespass to land may be committed in any one or more of the following ways; **one**, by unauthorised entry into the land; **two**, by abusing

the right of entry; and **three**, by placing or projecting some object upon the land. In the present case, it is alleged that the Defendant entered the Plaintiff's land unlawfully. That is unauthorized entry. It is trespass to land.

Having answered that the Plaintiff's suit is based on a tort of trespass, it follows as day follows night the Plaintiff was required to institute the suit within three years. It is on record that the Defendant trespassed and occupied the Plaintiff's land before 2007 as stipulated under paragraph 7 of the Plaint. Paragraph 7 of the Plaint states that "*...the Defendant, unlawfully and without consultation and or fair compensation trespassed into the deceased land, occupied the same for their gold mining activities and upon complaints by the deceased .....the **defendant purported to value their land in which between the year 2007 and 2008** the deceased was compensated only for 5 acres out of about 105 acres of her land which were left unjustifiably compensated.*" The cause of action arose before 2007, thus, the suit instituted in 2019 was instituted out of the prescribed time.

The Plaint shows that the Plaintiff had once instituted a suit, which this Court struck out on 22<sup>nd</sup> April, 2016. As submitted by the defendant's advocate the law allows in computing the period of limitation prescribed for any suit to exclude time the plaintiff has been prosecution another civil proceeding. See section 21(1) of the Law of Limitation Act, which stipulates that-

*"21.-(1) In computing the period of limitation prescribed for any suit, the time during which the plaintiff has been prosecuting, with*

*due diligence, another civil proceeding, whether in a court of first instance or in a court of appeal, against the defendant, shall be excluded, where the proceeding is founded upon the same cause of action and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is incompetent to entertain it."*

The Plaintiff did not plead facts establishing that if the time he spent prosecuting a case, which was struck out is excluded, the current suit will be within time. The Court of Appeal ruled out that it is the duty of the Plaintiff to plead facts in the Plaint which would justify or necessitate exemption. The Court of Appeal took the above position in the case of **Tanzania Road Agency and the A.G. v. Jonas Kinyangula** Civ. Appeal No.471/2020 CAT (unreported) where it stipulated that-

*"Where the suit is instituted after the expiration of the period prescribed by the law of limitation, the plaint shall show the ground upon which exemption from such law is claimed."*

I am unable to apply the provisions of section 21(1) of the Law of Limitation Act because the Plaintiff did not plead facts for which to ground the exemption of the law of limitation. Even if, I was to exclude the period the Plaintiff spent prosecuting the suit, which was struck out, the suit would still be out of time. The Plaintiff instituted the struck-out suit in 2013, which was baptized Civil Case No.20/2013. Time to sue in this case

expired in or before 2010. Thus, excluding time from 2013 when Civil case No. 20/2013 was instituted to 2016 when it was struck out would not salvage the present suit. Time limit expired before the Plaintiff instituted Civil Case No. 20/2013.

The last issue is what if this Court finds that the suit was not based on tort of trespass but on unpaid compensation, would it be argued that the suit is time barred still? The Plaintiff alleged under paragraph 7 that the Defendant compensated the Plaintiff for only for 5 acres out of about 105 acres of her land. Time limit for instituting a claim for compensation for doing or for omitting to do an act alleged to be in pursuance on any written law (land inclusive) is twelve months. Time limit for suit based on compensation is provided under item 1 of Part I to the Schedule to the **Law of Limitation Act**.

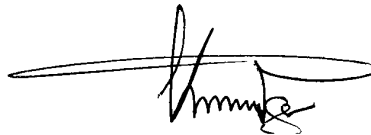
I find refuge in the decision of this Court and later the Court of Appeal in the case of **Ali Shabani and 48 Others v. Tanzania National Roads Agency (TANROADS) and Another** Civil Appeal No. 261 of 2020 (unreported), where the appellants lodged a suit for a claim of compensation of their houses which had been demolished by the respondents, this Court found that the suit was time barred as the claim ought to have been brought within twelve months of the accrual of the cause of action. On appeal, the Court of Appeal upheld the decision of this Court, and it stated thus-

*"In the light of the dear statement of the law, we are unable to disagree with the learned trial judge. He rightly held that the*

*appellant's suit was time barred it being instituted beyond 12 months from the date on which the time accrued. As the suit was time barred, the only order was to dismiss it under section 3(1) of the LLA. Accordingly, we find no merit in ground 2 and dismiss it."*

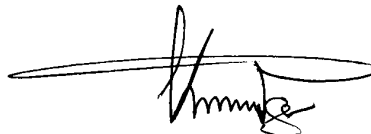
In fine, I find that Plaintiff's suit time barred, as it is a suit based on tort of trespass, the Plaintiff ought to have filed it within three years of the accrual of the cause of action. Consequently, I dismiss the suit and make no order as to costs as the Plaintiff has been in search of his right for quite a long time, the right which the law has thwarted.

It is ordered accordingly.



**J. R. Kahyoza**  
**JUDGE**  
**28/02/2022**

**Court:** Ruling delivered virtually in the absence of the parties, who were notified but could not connect to the virtual court. B/C. Ms. Neema, RMA present virtually.



**J. R. Kahyoza**  
**JUDGE**  
**28/02/2022**