

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

AT SHINYANGA

CIVIL CASE NO. 04 OF 2020

1. NGWANDU SHEGHEMBE KIJA @ MWANDU.....PLAINTIFF

2. KUMJULA KISULA PLAINTIFF

VERSUS

1. MEATU DISTRICT COUNCIL.....

2. MWANGUDO VILLAGE COUNCIL.....

3. THE ATTONEY GENERAL.....

4. MWIBA HOLDING LIMITED.....

DEFENDANTS

RULING

26th July & 19th August, 2022

MKWIZU, J:

Plaintiffs suit is basically a tortious claim as reflected in paragraphs 7 for the destruction of the entire village which was set on fire by the chairperson for Mwangundo village followed by the eviction of the villagers approximately thirteen clans including the plaintiffs. Due to that alleged illegal action, plaintiffs are now in court seeking for:

1. A declaration that the villagers herein are the lawful owners and legal residents of the Mwangundo Village, Songambe A, Sub Village
2. Order of restitution of the plaintiffs to their valid homes and farms for the purpose of continuing with their lives and other settlement
3. Payment of all disturbance allowances and costs incurred by the plaintiffs for the unlawful and forceful eviction from their residence and homes

4. Adequately fairly and promptly compensation by the defendants herein
5. General damages may be reasonably assessed by this honorable court.

Apart from denial of the claims by the defendants through their respective written statements of defence, the plaint was as well hailed with several preliminary objections. In the WSD filed in court on 9/9/2021, Mr. George Kalenda learned State Attorney for the 1st, 2nd and 3rd defendant had a total of four preliminary points of law to wit:

- i. That, this suit is prematurely instituted*
- ii. That, this plaint is defectively instituted*
- iii. That, this suit is bad in law for nondisclosure of the value of the disputed land*
- iv. That this suit is unmaintainable for non-disclosure of cause of Action against 1st, 2nd and 3rd Defendants.*

On the other hand, the counsel for the 4th defendant had raised a total of three objections against the plaint:

- i. The plaint does not disclose a cause of action against the 4th defendant*
- ii. The suit is time barred*
- iii. The plaint is defective for want of description of the suit land.*

Unfortunately, plaintiffs who were aware of the hearing of the preliminary objection did not attend without leave hence *ex-parte* hearing of the preliminary objection.

At the hearing, the learned State Attorney prayed to abandon the 3rd and 4th preliminary points and argued the 1st and 2nd points. Mr. Pharles Malengo for the 4th defendant also dropped the two points of objection arguing the point on time limitation only.

Submitting on the 1st preliminary point of law, Mr. Kalenda said, the suit was prematurely filed in court. He was of the view that since the matter involves the Government, then its institution was subject to the issuance of the 90 days' notice under section 6 of the Government Proceedings Act, (Cap 5 RE 2019). His augment was necessitated by the fact that 1st and 2nd defendants are Government authorities established under the Local Government Authorities Act Cap 287 falling under the definition of the Government institution as described under section 26 of the written laws (Misc. Amendment) Act No 7 of 2020 amending section 16 of the Government Proceedings Act. And that, the plaintiff's 90 days' notice prepared on 5/8/2020 was only served to the 1st and 2nd defendants on 3/9/2020 in exclusion of the Attorney General and the Solicitor General contrary to section 6 of the GPA.

The learned State Attorney also contended that, under the same section above, the Attorney General is to be joined as a necessary party but in this case, he is just mentioned as a party not a necessary party. The case of **AL Adawi Co Limited V TIB Development Bank Limited and 2 Others**, Misc. Land Application No 38 of 2020 was also cited on this point as a reference.

The second preliminary objection by the learned State Attorney was that the plaint is defective for lack of proper description of the suit land. He said, the description given under paragraph 6 of the plaint is too general

contrary to the provisions of Order VII Rule 3 of the CPC, Cap 33 RE 2019. Citing the decision of **Daniel Gadala Kanuda V Masaka Ibeho and Others**, Land Appeal No. 26 of 2015, the learned State Attorney urged the court to strike out the matter with costs.

Arguing the point of time limitation, Mr. Pharles Malengo for the 4th defendant said, the claim by the plaintiffs is a tort in nature based on trespass to land coupled with a compensation claim for the wrongful act by the defendants. He stated further that, Item 6, Part I of the first schedule to the law of limitation Act, claims in tort are to be instituted in court within three (3) years period. He on this point relied on the decision of **Sarbjit Signh Bharya and Another V NIC Tanzania Bank & Another**, Civil Appeal No. 94 of 2017 (unreported). He said, while paragraph 7 of the plaint discloses that the cause of action arose on 17th to 20th July 2014, the suit was filed in court on 23/12/2020 which is beyond the three years period required by the law.

In addition to the above, Mr. Pharles Malengo submitted that prayer No 4 in the plaint seeks for a fair compensation which again is time barred in terms of Item 1 part I of the 1st schedule which stipulates 12 months as time limit for instituting claims for compensation. He on this relied on the decision of **M/S P and O International Limited v The Trustees of Tanzania National Parks (TANAPA)**, Civil Appeal No. 265 of 2020, CAT (Unreported) Land Case No 1 of 2020, **Luhumbo Investment Limited V National Bank of Commerce and 2 others** (also unreported) stating that the plaintiff's suit would not have a chance in court without a plea of exemption under Order VII Rule 6 of the CPC. This court was thus invited to dismiss the suit with costs.

My determination of the points of law raised will commence with the last point raised by Mr Pharles Malengo for if sustained will put the matter into rest. This is the issue of time limitation based on two causes of action, tort, and compensation. I have keenly considered Mr. Malengo's submissions. Indeed, paragraph 7 of the plaintiff's plaint asserts tort as the cause of action resulted from the MWANGUDO's chairperson's wrong actions committed on 17th -20th July 2014. The said paragraph reads:

*"7. That, on 17-20th July, 2014 the Mwangudo Village via its chairperson one Isack Bilu and Tungu unlawfully and without any benefit of doubt set fire to the Villagers houses and burnt almost entire village properties (including plaintiffs herein) and forcefully evicted a total of thirteen (13) clans from their houses and shambas including, **Yunge Salawa, Ngw'andu Shang'embe, @ Mwandu, Kunjula Kisula, Maduhu Ngala, Regina Saguda, Mbala Njige, Kuwaingu Masunga, Kwandu Luseko, Sado Kulwa, Maltin Seni, Saguda Joseph, Salumu Kunjula and Yage Megh'embe.**"*

It is, as rightly submitted by Mr. Malengo that the cause of action by the plaintiff arose in July 2014. In terms of the Item 6 of Part I of the 1st schedule to the Law of Limitation Act, time to institute claims based on Tort is three years from the accrual of the cause of action. And according to section 5 of the same Act, the cause of action accrues on the date on which the cause of action arises. The section says:

"5. Subject to the provisions of this Act the right of action in respect of any proceeding, shall accrue on the date on which the cause of action arises"

So, the three years period from which the claim by the plaintiff would have been filed began to run from 17th July 2014 when the cause of action arose. Simple arithmetic counts three years to July 2017.

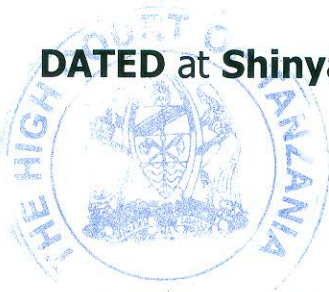
Even if the suit was for compensation, still it would have not escaped the web of section 3(1) of the law of limitation Act. This is so because, the compensation claimed in the fourth prayer of the plaintiffs' plaint is based on the wrongful act allegedly committed by the defendants herein in the year 2014 thus, under Item 1, Part I of the First Schedule to the Law of Limitation Act, such a claim was to be filed within 12 months from the accruals of the cause of action. Again, counting from July 2014, one would appreciate that the plaintiffs ought to have filed their claim in court before August 2015. Meaning that, the filing of the suit by the plaintiff after July 2017 without a plea of exemption under order VII Rule 6 of the CPC was an empty exercise leading to nowhere than to a dismissal pitch of section 3 (1) of the Law of Limitation Act.

Before I pen off, I feel obliged to say a little bit on the description of the suit land by the plaintiffs. Incontrovertibly, the plaintiff's plaint lacks proper description of the suit land contrary to Order VII Rule 3 of the CPC requiring the plaint, where the subject matter of the suit is immovable property, to contain a description of the property sufficient to identify it. It is evident that the subject matter of the plaintiff's case is based on land, and that the description given in the plaint is not enough for proper identification of the suit land. While paragraph 6 names the plaintiffs as legitimate residents of Songambe A sub-village in Mwangundo Ward, Meatu District in Simiyu Region, paragraph 7 lists the name of 13 people whose houses were destroyed in the same village without specification of each one's land and/or resident so as to sort out the plaintiffs' suit land

for purposes of determining the validity or otherwise of the claims in this matter.

All said and done, I declare the plaintiff's suit time barred and proceed to dismiss it under section 3(1) of the law of limitation Act. Defendants to have their costs. Order accordingly

DATED at Shinyanga this 19th day of AUGUST 2022.




E.Y. MKWIZU
JUDGE
19/08/2022

COURT: Right of appeal explained.


E.Y. MKWIZU
JUDGE