

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

TABORA DISTRICT REGISTRY

AT TABORA

LAND CASE NO. 09 OF 2022

ISSA MSALANGI.....PLAINTIFF

VERSUS

THE REGISTERED TRUSTEES OF THE ANGLICAN CHURCH

OF TANZANIA DIOCESE OF TABORA.....1ST DEFENDANT

TABORA MUNICIPAL COUNCIL.....2ND DEFENDANT

THE ATTORNEY GENERAL.....3RD DEFENDANT

COMMISSIONER FOR LANDS.....4TH DEFENDANT

RULING

Date: 15/02/2023-3/3/2023

BAHATI SALEMA, J.:

The plaintiff **Issa Msalangi** filed this suit against the defendants praying for compensation of TZS 120,000,000/= or his land left free on 10 acres located at Luanzari area within Tabora Municipality which he owned under customary tenure.

The 2nd and 3rd defendants having been served with a plaint, responded by filing a Written Statement of Defence which was accompanied by a preliminary objection on point of law that the case instituted by the plaintiff is ;

- i. Untenable for being time-barred.*
- ii. The plaintiff has no cause of action against the fourth defendant.*

During the hearing, the applicant was unrepresented whereas 1st respondent was represented by Mr.Amos Gahise, learned Counsel and the 2nd, 3rd and 4th respondents enjoyed the services of Mr.Lameck Merumba, Senior State Attorney. The hearing of the Preliminary Objection was disposed of by way of written submissions, both parties complied with the order of the court.

Before the respondent submitted the objections, he prayed to drop the second one and proceeded to submit on the first ground of objection only which is on the time bar.

In support of the objection, he submitted that the plaintiff's claims are based on compensation where under paragraph 8 of his plaint is complaining that the area in dispute was surveyed without payments. The plaintiff claims payment of TZS.120,000,000/= as compensation which he believes to be equivalent to the disputed land. He submitted

that in terms of item 1 of the Schedule to the Law of Limitation Act, Cap. 89 [R.E. 2019]. Section 4 of the Limitation Act, Cap. 89 provides that time limitation commences immediately from the date when the right of action accrues.

Mr. Merumba submitted that in the instant suit, the right of action accrued in 2012 but this suit was filed in 2021. This suit was filed **nine (9) years** after the cause of action accrued, which is well beyond the time limit of one year. He cited the case of **Tanzania National Road Agency and Another Vs. Jonas Kinyagula**, Civil Appeal No. 471 of 2020 on page 8 that;

"Our starting point will be to restate the issues relating to compensation for doing or for omitting to do an act alleged to be in pursuance of any written law (land inclusive) are covered under item 1 of Part 1 to the schedule to the LLA which requires such claims to be lodged within the period of one year".

He, therefore, invited this court to dismiss this suit in terms of section 3 (1) of the Law of Limitation Act, Cap.89. See **Barclays Bank Tanzania Limited Vs. Phylisiah Hussein Mcheni**, Civil Appeal No. 19 of 2016 at page 15. Similarly in **NBC Limited and Another Vs. Bruno Vitus Swalo**, Civil Appeal No. 331 of 2019 at page 9, the Court of Appeal stated inter alia;

"It is that courts are enjoined not to entertain matters which are time-barred. The limitation period has an impact on jurisdiction. Courts lack jurisdiction to entertain matters for which litigation period has expired".

He prayed to this court to dismiss the suit with costs.

Replying, the plaintiff submitted that the matter is related to the ownership of land which was previously located to him by the 2nd defendant years ago. The 1st defendant did trespass and occupy the land owned by the plaintiff.

The plaintiff conceded that the cause of action started in 2012, however, he instituted the land case in the Ward Tribunal and the matter was dismissed during an appeal in 2015 by the District Land and Housing Tribunal for non-joinder of a proper party.

He further submitted that the time limitation for recovery of land is twelve years in terms of item 22 of the schedule to the Law of Limitation Act, Cap. 89 [R.E. 2022]. In the instant suit the right of action accrued in 2015 after the dismissal of the case at the District Land and Housing Tribunal and the suit was timely filed in 2021, hence this suit was filed within time.

He prayed to this court to dismiss the defendant's objection with costs.

In brief rejoinder, the 2nd, 3rd and 4th defendants stated that the plaintiff admitted the cause of action upon which his suit was based in 2012, but moves this court that he was prosecuting another matter in the District Land and Housing Tribunal which was dismissed in 2015. The plaintiff does not say when he instituted the said matter in the tribunal. The plaintiff further contended that on the reason of the said case in the Tribunal, therefore, the cause of action arose in 2015 and by filing this suit in 2021, he was within time.

He further submitted that, the basis of this suit originated from compensation, which its time limitation is one year. Even if, he accepts his argument that the cause of action arose in 2015 still is time-barred by filing his suit in 2021 which is beyond one year stipulated under the Law of Limitation Act, Cap.89 [R.E. 2019].

He contended that the law is clear under Order VII Rule 6 of the Civil Procedure Code, Cap. 33 [R.E. 2019]. Any suit instituted after the expiration of the time prescribed under the Law of Limitation, the plaintiff must show ground of exemption but the plaintiff is silent. To bolster his argument in the case of **Fortunatus Lwanyantika Masha and Another Vs. Claver Motors Limited** at page 14 . Also in **M/S P and The Trustees of Tanzania National Parks (TANAPA)**, Civil Appeal No. 265 of 2020. It was stated that;

"To bring into play exemption under Order VII Rule 6 of the CPC, the plaintiff must state in the plaint that his suit is time-barred and state facts showing the grounds upon which he relies to exempt him from limitation with respect, the plaintiff has done neither"

Since the plaintiff's suit was not within the ambit of Order VII Rule 6 (supra) he maintained this suit is time-barred and liable to be dismissed with costs.

Having considered the submissions made by the part in the light of the record from the plaint. The issue for my determination is whether the applicant's claim was on compensation over land and if so whether it was filed within time.

Paragraph 8 of the Plaintiff Plaint states that,

"That the 2nd defendant in corroboration with the 1st defendant made unlawful survey to this land without involving the indigenous owners even local leaders and without even paying compensation of outgoing local occupier(The plaintiff)."

It is undisputed that the parties are at one that the time limitation for claims over compensation as provided for item 1 of Part to the schedule to Law of Limitation Act, Cap.89 [R.E 2019] is one year.

According to the submission by the plaintiff, the cause of action arose in 2012 when the plaintiff filed the case at the Ward tribunal in 2013 and he won, and the defendant appealed to the District Land and Housing Tribunal vide Appeal No 84/2013 when the suit was dismissed as there was non-joinder of parties in 2015 and thereafter filed a case in 2021.

The court has considered the argument of both parties that they concede that the cause of action arose in 2012. As revealed in the plaint, one of the reliefs sought is compensation. I agree with Mr. Merumba that, the time limit for pursuing such an action is one year from the date of the accrual of cause of action. Therefore, since the cause of action is claimed to have accrued in 2015, the suit to the extent of the claim for compensation, is hopelessly time barred.

Mr. Merumba submitted that the claim arose in 2012 and the suit was filed in 2021 which is 9 years after the claim arose, it was time-barred in terms of item 1 of part 1 to the schedule to the Law of Limitation Act, Cap. 89 to substantiate his argument he cited the case of **Tanzania National Road Agency and The Honourable Attorney General v Jonas Kinyagula**, Civil Appeal; No 471 of 2020 that the matter is time-barred as cited in the case of **Barclays Bank Tanzania Limited V Phylisiah Hussein Mcheni**.

However, the court is not supporting the argument by the plaintiff that the matter before this court is relating to ownership of land since paragraph 8 of the plaint provides so. The plaintiff prays for judgment and decree against the defendant as follows;

- i. The plaintiff's land to be left free or otherwise the plaintiff be paid TZS 120,000,000/= compensation equal to his land in value.

From the above pleading, the plaintiff's claims was for compensation of his land which was unlawfully acquired by the defendants.

Then it is my considered view that since it was pleaded that the cause of action arose in 2012 or to be specific in 2015 where the District Land and Housing Tribunal dismissed for non-joinder of parties and both parties agree on this. Then the claim ought to have been instituted within one year. However, the respondent lodged the suit in 2021 which was after 6 years.

Therefore guided by the Law of Limitation Act, Cap.89, I subscribe with Mr. Merumba that it was time-barred. Although I am aware that Order VII Rule 6 of the Civil Procedure Code exempts the time limitation so long as the party pleads the facts in the plaint which would justify the exemption. According to the above-cited position of the law, if the party does not advance any such ground, it renders the suit instituted time-

barred. In **Ali Shaban and 48 Others v Tanzania National Roads Agency (TANROAD) and Another**, Civil Appeal, No 261 of 2020 (Unreported).

Guided by the above principle of law therefore, I will as I hereby do, dismiss the suit to the extent of the claim for compensation for being time-barred with costs.

Order accordingly.



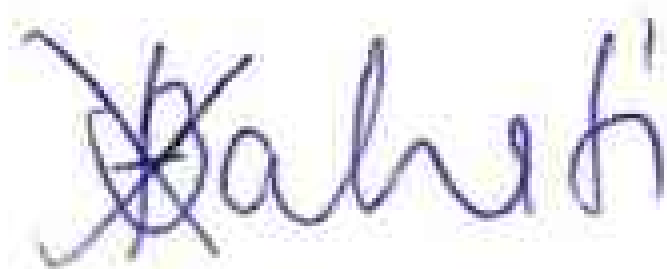
**A. BAHATI SALEMA
JUDGE
03/03/2023**

Court: Ruling delivered in presence of both parties.



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JUDGE
03/03/2023**

Right of appeal fully explained.



**A. BAHATI SALEMA
JUDGE
03/03/2023**

