

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

LAND CASE NO 29 OF 2021

PAULO JOHN MASSAY1ST PLAINTIFF
ZAKARIA MATEI SABIDAI.....2ND PLAINTIFF
GODLISTEN CHARLES SWAI.....3RD PLAINTIFF
SAFARI MRISHO.....4TH PLAINTIFF
NUHU MOHAMED AHMED.....5TH PLAINTIFF
ELIAS JONAS NYANG'ATO.....6TH PLAINTIFF
SILANGA KALASINGA.....7TH PLAINTIFF
DAUDI SULE HILONGA.....8TH PLAINTIFF
RUTH WILIAM MASHAMBO.....9TH PLAINTIFF
MWANTUMU ALLY SALUM.....10TH PLAINTIFF
RAHADHANI HUSSEIN MUSHI.....11TH PLAINTIFF
ESTER ANGURUSU.....12TH PLAINTIFF
ARAFA BAKARI ALLY.....13TH PLAINTIFF
HARDSON STRAPHIN MERO.....14TH PLAINTIFF
OMARY SAIDI SELEMANI.....15TH PLAINTIFF
HAMZA HUSSEIN MUSHI.....16TH PLAINTIFF
KASI JOHN MASSAY.....17TH PLAINTIFF
SANDEM LOHAY SAKITA.....18TH PLAINTIFF

YASSINMOHAMED MARUSU.....19TH PLAINTIFF
REHEMA KHALIFA UKU.....20TH PLAINTIFF
PAULO OLJUMBE KITELEKI21ST PLAINTIFF

VERSUS

HON. ATTORNEY GENERAL1ST DEFENDANT
TANZANIA ELECTRIC SUPPLY COMPANY LTD.....2ND DEFENDANT
MONDULI DISTRICT COUNCIL 3RD DEFENDANT
MAKUYUNI VILLAGE COUNCIL 4TH DEFENDANT

RULING

08/03/2022 & 25/04/2022

KAMUZORA, J.

The plaintiffs instituted a suit against the defendants claiming amongst other things payment of Tanzanian Shillings, three hundred seven million eight hundred ninety thousand (307,890,000/=) being compensation resulting from compulsory land acquisition by the 2nd defendant for 400KV project from Singida to Namanga through Makuyuni Village (Kenya- Tanzania power Interconnection project).

The defendant disputed the plaintiffs claim by filling a written statement of defence and a notice of preliminary objection on point of law that, this suit is hopelessly time barred.

Hearing of the preliminary objection was done orally whereas the defendants enjoyed the service of Mr. Mkama Msamala, learned State Attorney while the plaintiffs enjoyed the service Mr. Kamazima, learned advocate.

Submitting in support of the preliminary objection, Mr. Msalama argued that, the suit was brought in court out of time as the plaintiffs' claim is based on the compensation resulting from the conduct of 2nd defendant of acquiring of the land which belongs to the plaintiffs in year 2015 as stated under paragraph 6 of the plaint. Mr. Msalama submitted that it is the requirement of the law that claims for compensation is to be filed within one year from the date of the acquisition of the land as stated under Item 1 part 1 to the schedule of the Law of Limitation Act Cap 89 R.E 2019. That, since the 2nd defendant acquired the disputed land on 2015 until on 27/09/2021 when this suit was filed, it is almost six years thus out of time. That, the court have no jurisdiction to try the same as the issue of time goes to the jurisdiction of the court to try the matter. To cement his submission, he cited the case of **Tanzania National Road Agency and another Vs Jonas Kinyagula**, Civil Appeal No. 471 of 2020 (Unreported). Mr. Msalama prays for this court to consider that the suit was filled out of time and that the court lacked

jurisdiction to try the same. He insisted that the plaintiff had to first apply for an extension of time referring the case of **Laswaki Village Counsel and another v Shibe Abebe** (2004) TLR 2014.

Mr. Msalama also submitted that apart from the law of limitation Act, section 139 (c) of the Land Acquisition Act, Cap118 R.E 2019 provides for the limitation on the dispute based on the amount to be paid as compensation and the provision gives six weeks from the date the notice of acquisition of land is issued. That, under paragraph 8 of the plaint, the 2nd defendant issued publication to acquire land on 2015 hence the suit filed was out of time and thus prayed that the suit be dismissed with costs.

In reply submission Mr. Kamazima submitted that, the basis of the claim that this suit is out of time is the fact under paragraph 8 which was interpreted by the counsel for the defendant to mean that the land was acquired on 2015. Mr. Kamazima explained that, the plaint does not indicate that the land was acquired in 2015 as there is no date as when the land was acquired and there was no date the project was initiated.

Mr. Kamazima submitted further that if the counsel for the defendant wanted to know the exact date of acquisition, he was

supposed to ask for better particulars of the plaint. He insisted that, a preliminary objection should be based on pure point of law and should not call for further evidence and for this he cited the case of **Mukisa biscuits Manufacturing company Limited v. Westend Distributors Limited** (1969) EALR 696.

Regarding the case of **Tanzania National Road Agency**, Mr. Kamazima submitted that, the same is distinguishable from the facts of this case. He stated that the facts in that case was clear that the land was acquired on 2013 and it was not in dispute by both parties while in the present case going through the plaint there is no exact date of the acquisition to compute when time started to run.

Mr. Kamazima claimed that the wordings of section 13 (c) of the Land Acquisition Act was misconceived by the counsel for the defendant because the words used is "may institute" and not shall institute. He added that the intention of the parliament was not to limit the time frame for filing the dispute in court to six weeks as the same would go against section 6 of the Government Proceedings Act which requires the issue of 90 days' notice to the Government before suing it. He finalized by stating that the preliminary objection filed by the counsel for the

defendant was misconceived and prays the same be dismissed with costs.

Upon a brief rejoinder Mr. Msalama reiterated his submission in chief and added that, the preliminary objection raised is on pure point of law as it concerns time limit hence the case of Mukisa was irrelevant to the objection. He added further that, from paragraph 6 to 8 of the plaint the plaintiffs' claims for compensation from the act of the 2nd defendant initiating electrical power project. To him the dispute arose in 2015 and if not the plaintiff was required to state the date as to when the cause of action arose. He thus prayed for the suit to be dismissed with cost.

Having heard the submissions from the counsel for the parties, the matter that needs the attention and adjudication by this court is whether the suit before it is time barred or not. Basing in the pleadings and the submissions by the learned advocate for the parties it is clear that this suit is founded on a claim for compensation on land acquisition by the Government whose time limitation is governed by Item 1 of Part I of the Schedule to the Law of Limitation Act Cap 89 R. E 2019 (LLA) which prescribes time limitation in suit of this nature to be is one year and section 13(c) of the Land Acquisition Act Cap 118 R. E 2019 which

prescribes time limitation of six weeks from the time the land is acquired.

The learned advocate for the plaintiffs contended that, wordings of section 13 (c) of the Land Acquisition Act does not impose a mandatory requirement the suit be filed within the prescribed time limit as there are procedures to be followed in suing the Government. He insisted that the suit is not time barred because the cause of action did not arise on 2015 as what pleaded under paragraph 8 of the plaint was misinterpreted by the counsel for the defendants.

In determining whether the suit is time barred or not, the court normally looks at the plaint filed by the plaintiff together with documents attached to it in order to understand the nature of the cause of action and when it arose. Order VII Rule 1(e) Of the Civil Procedure Code Cap 33 R.E 2019 requires the plaint to contain among other *the facts constituting the cause of action and when it arose*. For this also see the case of **MIC (T) Limited Vs TTCL**, Commercial case No 146 of 2002 (unreported) cited in approval in the case of **First National Bank (T) Ltd v Yohane Ibrahim Kaduma & another**, Commercial Case No. 128 of 2019 HC Commercial Division at DSM (Unreported) where it was held that,

"the question 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."

Having gone through the plaint and its annexures it is with no doubt that the plaintiffs claim is based on compensation arising from land acquisition used for the 2nd defendant's project. I am in agreement with the submission by the counsel for the defendants that the cause of action in this matter arose in year 2015. Apart from paragraph 8 of the plaint this fact is also reflected in various annexures in the plaintiffs' plaint. Annexure A1 the plaintiff's valuation form portrays the cause of action to be in year 2015/05/19. Annexure A7 is a copy of 90 days statutory notice showing that the dispute arose in the year 2015. The same reads: -

"(c) Mwaka 2015 wakati shirika lilikuwa linahitaji kuanza Mradi wa kilovolti 400 kutoka lilihitaji kutwaa (acquire) baadhi ya maeneo yakiwemo ya wadai watarajiwa ambao kwa uzalendo mkubwa wadai walikubali kutoa maeneo yao ili kupisha utekelezaji wa mradi huo"

In the light of the above, it is not true as claimed by the counsel for the plaintiffs that the cause of action did not arise in the year 2015.

It is unfortunate that apart from general denial that the dispute did not arise in the year 2015, no any other date was stated as the date the cause of action arose. The contention by the counsel for the plaintiff that the defendant could have asked for better particulars in unwarranted and an afterthought. As pointed out above, the plaint must show the time the cause of action arose and it is not a matter for asking better particulars. But, if we agree that the dispute did not arise in the year 2015, then the plaint will still remain defective for failure to state as to when the cause of action arose thus contrary to Order VII Rule 1(e) Of the Civil Procedure Code Cap 33 R.E 2019.

It is my settled view that as the project that was initiated by the 2nd respondent in the year 2015 was conducted in the land acquired from the plaintiffs, the cause of action arose in that year. The project could not be initiated in the plaintiffs' land before the same could be acquired from them. I therefore conclude that the cause of action arose in the year 2015.

It was contended by the counsel for the plaintiffs that the law does not impose a mandatory requirement that the suit be filed within the prescribed time limit as it used the word may instead of shall. He

also contended that since the suit of this nature required a party to give 90 days' notice to sue the government.

I understand that suing the government goes with the requirement of issuing a 90 days' notice as per the Government proceedings Act. However, that does not exonerate a party from complying with the requirement of the law related to time limitation in initiating the suit. It has been a practice that where a notice is required, and if not specifically stated, the time for issuing such notice will be excluded in computing the time limitation provided that it is issued within time specified by the law. In this matter, the cause of action arose in the year 2015 when the land was acquired but the notice to sue the government was issued in the year 2021 after the expiration of the time set to challenge the acquisition. Thus, the plaintiff cannot claim that the delay was because of the requirement to issue a 90 days' notice.

I am fully convinced that the preliminary objection raised has met the requirement as per the case of **Mukisa Biscuits** (supra) as it is purely on point of law. The issue of time limitation ousts the jurisdiction of the court in entertaining the suit. I therefore uphold the preliminary

objection as raised by the counsel for the defendants that, the suit is time barred. In that respect, the suit is dismissed with costs.

DATED at **ARUSHA** this 25th day of April 2022.



