

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

MOROGORO DISTRICT REGISTRY

MOROGORO

LAND CASE NO. 36 OF 2022

SEMENI ABDU KAPERA.....PLAINTIFF

VERSUS

ASHURA HAMISI

MOROGORO MUNICIPAL COUNCIL

ATTORNEY GENERAL

}

..... **DEFENDANTS**

RULING

Date of last order: 02/03/2023

Date of ruling: 16/03/2023

MALATA, J

The plaintiff filed land case against the defendants claiming for among others, a declaratory order that plaintiff be declared a lawful owner of plot no. 237, Block "7" at Lukobe, within Morogoro Municipality. When the matter was scheduled for the First Pre Trial-Conference the second and third respondents raised preliminary objection to the effect that, the suit was hopelessly time barred.

The preliminary objection was disposed orally. On the hearing date, the first defendant was unrepresented, the second and third defendants were represented by Mr. Hemed Mkomwa and Ms. Maryline Makundi both State Attorneys while the plaintiff was represented by Mr. Hassan Mawazo, learned counsel.

Submitting in the support of preliminary objection Mr. Mkomwa learned State Attorney stated that, the root of the objection is on paragraph 7 of the plaint which indicates when the cause of action arose.

As per paragraph 7 of the plaint the cause of action arose in 2008 and this case was filed in this court on 29/11/2022, counting from 2008 to 2022 it is approximately fourteen years has lapsed from accrual of cause of action. He submitted that, the suit of this nature has to be filed within twelve years from the date of cause of action.

Mr. Mkomwa submitted that, this suit was therefore in contravention of Item 22 of Part I to the schedule of Law of Limitation Act, Cap 89, R.E 2019. This makes the present case to be untenable in law as it has been filed out of the time limit prescribed by the law. The second and third defendant pray for dismissal of the suit for being filed outside of the time limit.

In reply Mr. Mawazo submitted that, following the disputes between the second defendant and farmers around the land in dispute inclusive, the

plaintiff was stopped from developing the land in dispute by the second defendant in 2008.

In 2015 the plaintiff visited the land in dispute and found out that, the first defendant has erected building on her land. That is when she started fighting for her rights.

In 2020 the plaintiff filed a suit against the first defendant herein. The matter was struck out for misjoinder of parties, that is the Attorney General and Morogoro Municipal Council. Mr. Mawazo, further submitted that, since the cause of action arose in 2015, then counting therefrom, it is just seven (7) years, as such, he was of the opinion that, the matter is within time. Finally, he prayed that, the Preliminary Objection be dismissed with costs for want of merits.

This court *suo motto* raised the issue of the time limit to apply for declaratory order as prayed by the plaintiff, asked the parties to address on the same as well and started with the plaintiff to address on the same and in rejoinder the defendants were as well given opportunity to comment on the same.

Mr. Mawazo submitted that, it is true the plaintiff is praying for declaratory orders which in our case is replica to claim of land and not as declaratory plainly known and interpreted. However, he submitted that, the time limit commenced on 2015 when the plaintiff found the building in the landed

property developed by the 1st defendant, whereby she filed a case in 2020 which was struck out for misjoinder of parties.

As such, he submitted that, the declaratory orders sought has to be reckoned from 2015 up to 2020 when the plaintiff filed case No. 10 of 2020 praying for declaratory orders. He submitted that, the time lapsed is five years and thus the plaintiff's case is within time. However, he did not state when did the time bar cease to run because counting from 2015 to 2022, it is **eight** years and the limit for suit seeking declaratory orders is **six** years.

Upon rejoinder Mr. Mkomwa submitted that by looking at the plaint the relationship between the second respondent and the plaintiff occurred in 2008 and not otherwise, when the plaintiff was stopped from making any further development on the disputed land. That is how the second defendant get involved in the dispute. There is no other paragraph in the plaint which relates the second defendant with the disputed land.

As to the allegation that the dispute arose in 2015, he submitted that, first, it is the first defendant who claimed to have trespassed the disputed land, the second defendant just received a report from the plaintiff that the first defendant has trespassed over the land. The second defendant issued a demolition notice to the first defendant hence the second defendant has done nothing in infringing the plaintiff's rights.

Submitting on the issue raised by the court suo motu, Mr. Mkomwa stated that, the declaratory orders sought by the plaintiff is time barred as the time limit prescribed by the law is six years, and that this court is exercising original jurisdiction and therefore the filing of land case no. 10 of 2020 has nothing to do with the case before this court because this is not an appellate court.

Therefore, the plaintiff argument is untenable and the cause of action is on 2015 and not 2020 when the case was struck out by the District Land and Housing Tribunal (DLHT). He prayed for the preliminary objection to be upheld and suit be dismissed with costs.

Having considered the rivals arguments by the parties on this limb of objection and upon perusal of the pleadings I shall have two issues for determination, these are;

1. when did the cause of arose against the first and second defendants
2. whether the suit is time barred as against second defendant
3. whether the suit is time barred as it is on the declaratory orders.

Having the issues in mind, the issue of limitation is statutory provided for under Section 5 of the Law Limitation Act, Cap.89 R.E.2019 which provides that;

"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."

The right of action begins to run when one becomes aware of the said transaction or act which is complained of. See: **Ramadhani Nkongela vs. Kasan Paulo [1988] T.L.R. 56.**

In determining whether the suit is time barred or not, the court normally looks at the plaint to see when the cause of action arose, in other words when the right of action started to accrue. The case of **John M. Byombalirwa vs. Agency Maritime Internationale (Tanzania) LTD** 1983 TLR 1 defined cause of action by stating that,

"Although the phrase cause of action has not been defined under the Civil Procedure Code, but that expression simply means essential facts which a plaintiff in a suit has to plead and later prove by evidence if he wants to succeed in the suit."

The counsels in this case are in dispute on which is the correct date of accrual of cause of action, is it in 2008 as in paragraph 7 when the plaintiff was stopped by the 2nd defendant not to make further development on the land or when the plaintiff found out the trespass by the first defendant as in paragraph 8 of the plaint.

For easy reference I find it convenient to reproduce extract of the plaint where the controversy arose;

Paragraph 7 of the plaint avers,

7. That on the years 2008, the plaintiff started to make developments from the dispute premise by clearing the natural trees but she was notified by the Morogoro Municipal Council to stop developments as the said disputed premise at Lukobe have dispute between the farmers and Morogoro Municipal Council.

Paragraph 8,

*8. That sometimes on 2015 the plaintiff went to her disputed premise at Lukobe and found that the **first defendant** trespassed to her disputed premise and she built the house thereon. Hence the plaintiff reported the said issue to the Morogoro Municipal Council.*

From the above quoted paragraphs of the plaint, it is clear that, there are different cause of action. **First**, the cause of action against the second defendant accrued in 2008 when he was stopped from developing the in question, **two**, as against the first defendant the cause of action accrued in 2014 as per annexure E2 to the plaint. This is a letter by the plaintiff narrating when construction of building started, however as per the above quoted paragraph from the plaint it started from 2015.

In the plaint, the plaintiff claims and pray for reliefs of

I quote;

i. *A declaration that, the plaintiff is the lawful owner of the Plot No. 237 Block "7" in Lukobe, Morogoro Municipality and the 1st defendant is the trespasser.*

ii.

iii.

iv.

v.

Taking the version of what is claimed in the plaint the plaintiff, is claiming for declaratory order. As such the time limit within which, to file suit based on declaratory orders is six years. This is gathered from item 24 of Part I to the schedule to the Law of Limitation Act which provides that;

"Any suit not otherwise provided for six years"

The above position is cemented by the Court of appeal in the case of **CRDB (1996) LTD v. Boniface Chimya (2003) TLR 413** where it was that;

"Under the act we are clear in our minds that a declaratory decree falls under item 24 in part 1 of the first schedule to the Act. The prescribed period of limitation is six years. From 24th March 1994, when the motor vehicle was seized to 21st July 1996, the time when

*the suit was instituted, it is a period well within six years prescribed by law. **As the basis of the claim was a declaratory order, we think it does not matter whether the relief sought was ancillary or incidental to the substantial relief claim as claimed by Rweyongeza. We think the period of limitation prescribed under the law is the same. viz six years. We are satisfied that the learned Judge was correct in holding that the limitation period was six years.***"

Counting from 2015 to 24th May, 2022 when plaintiff filed this case, it is almost eight (8) clear years which is more than six (6) years prescribed by the law within which to file suit based on declaratory orders.

I wish to disagree with what has been submitted by Mr. Mawazo learned counsel for the plaintiff that the cause of action is to be reckoned from 2015 to 2020 when the case from DLHT was struck out. The cause of action is to be reckoned from the time the plaintiff becomes aware of the transaction he/ she is complained about to the of filing the present case. In this case it is in 2015 when it came to the knowledge of the plaintiff that the first defendant has trespassed over her land. Further, this court exercising original jurisdiction over the matter and thus filing of the Land case no. 10/ 2020 has no any connection with Land case no. 36 of 2022 at the High Court.

As such, the suit is time barred against both defendants as against the 1st defendant, it is time barred for almost eight (8) years as the action accrued in 2015 though as per annexure E2 it accrued on 2014 as against the 2nd defendant it accrued in 2008 when the plaintiff was stopped from developing the suit premises thence, the suit is time barred for fourteen (14) years.

Further, if we were to agree that, this suit is for recovery of land in which its time limit is twelve (12) years as per Item 22 of Part I to the First schedule of the Limitation Act, then the suit is time barred as against the 2nd defendant as the cause of action accrued in 2008 when the plaintiff was stopped from developing the land in question. the suit was filed after fourteen (14) years. However, the suit at hand is for declaratory orders in which its time limit as stated herein above is six years.

The remaining question is what is fate of the suit at hand filed outside the prescribed time limitation?

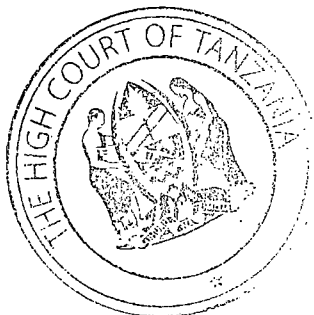
The court of appeal in the case of **Ali Shabani and 48 others vs. Tanroads and Attorney General**, Civil Appeal no. 261 of 2020 (unreported), stated that as the suit was time barred, the only order was to dismiss it under Section 3(1) of The Law of Limitation Act.


In the circumstances, since the plaintiff filed the suit out of time the only remedy is to dismiss it.

In the upshot, I uphold the preliminary objection. Consequently, I dismiss the suit with costs.

It is so ordered.

DATED at **MOROGORO** this 16th March, 2023.




G. P. MALATA
JUDGE
16/03/2023