

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE SUB- REGISTRY OF MANYARA

AT BABATI

LAND CASE NO. 5 OF 2022

PANTALEO AWE.....PLAINTIFF

VERSUS

THE REGISTERED TRUSTEES OF KKKT

DAYOSIS YA KASKAZINI KATI.....1ST DEFENDANT

THE BABATI TOWN COUNCIL.....2ND DEFENDANT

THE HON. ATTORNEY GENERAL.....3RD DEFENDANT

RULING

Date: 28/3/2023 & 3/5/2023

BARTHY, J.

The above-named plaintiff instituted the present suit against the defendants for assortment of reliefs including declaration that; the plaintiff is the lawful owner of a piece of land measuring about three quarters of acre situated at Mrara area within Babati Town in Manyara Region.



The second and third defendants lodged their joint written statement of defence and in addition they raised one preliminary objection on point of law to the effect that;

- *That this suit is hopelessly time barred.*

The second and third defendants therefore prayed for the preliminary objections be upheld and the suit be dismissed with costs.

During the hearing of the preliminary objection, Mr. John Lundu learned advocate appeared for the plaintiffs whereas Ms. Zamaradi Johanes learned state attorney represented the second and third defendants. The preliminary objection was disposed of orally.

Submitting on the preliminary objection, Ms. Zamaradi argued the suit is time barred in accordance to Item I of the First Schedule to the Law of Limitation Act [CAP 89 R.E 2019], (the LLA). She further submitted that, according to the said provision, the suit ought to have been instituted with 12 years from the date the cause of action arose.

Ms. Zamaradi pointed out on paragraph 8 of the plaint, where the plaintiff was informed on 10/9/1998 by the Land District office of Babati that, his land has been re-allocated to KKKT Arusha. She was firm that the



cause of action arose in 1998, but the matter was filed in the year 2022. Hence, the period of twelve years had already lapsed.

She further argued that, on paragraphs 16 and 17 of the plaint, the plaintiff had claimed to have once filed an application No. 7 of 2018 and on 29/6/2021 and prayed to withdraw the same with the leave to re-file. However, there was no any annexure attached to the plaint to substantiate the claim.

She submitted that, Order VII Rule 6 of the Civil Procedure Code [CAP 33 R.E 2019], (the CPC) it provides for exemption clause of the time from limitation. Ms. Zamaradi however argued there was no exemption clause in the plaint, that entitled the plaintiff the exemption of time from time limitation.

To buttress her argument, she referred to the case of **Kigoma Ujiji Municipal Council v Ulimwengu Rashid t/s Ujiji Mark Foundation** Civil Appeal No. 222 of 2020, Court of Appeal at Tabora, quoted with approval the case of **M/SP & O International Ltd v The Trustees of Tanzania National Parks (TANAPA)** Civil Appeal No. 265 of 2020 Court of Appeal at Tanga (both unreported), where the court dismissed the suit



for being time barred as there was nothing in the plaint supporting contention to justify delay in filing the suit within time.

She added, since the plaintiff has not advanced the reasons for exemption of limitation of time, the court should find the suit time barred and dismiss the same.

On reply, Mr. Lundu prayed for the preliminary objection raised be overruled. He submitted that, on paragraphs 8 and 9 of the plaint it indicates the plaintiff waited for the 1st defendant to do the evaluation for compensation in which he waited until 7/11/2014. Then he got the notice from the Bishop of KKKT that the suit land has been reallocated.

Then the plaintiff started to make follow up to the second defendant. Having the second defendant remained silent, the plaintiff instituted the instant suit.

Mr. Lundu was in agreement that the plaintiff had previously filed the application which it was withdrawn with leave to refile following amendment of the law.

He went on stating the cause of action arose in the year 7/11/2014 after the notice has been issued without compensation and not in the year



1998. Therefore, the limitation of 12 years has not lapsed and since the suit has been lodged within time there was no need to seek exemption in accordance with Order VII Rule 6 of the CPC.

On a brief rejoinder, Ms. Zamaradi contended that, from the plaint it is clear that the cause of action arose in the year 1998 after the suit land had been reallocated to the first defendant. She maintained her arguments that, there was no exemption clause on the plaint as required by Order VII Rule 8 of the CPC.

Having gone through rival submissions of the parties, the sole issue for determination is whether or not the suit is time barred.

I have keenly gone through the plaint filed in the instant suit. In determining the issue at hand, I have taken into account the competing submissions of the parties, where Mr. Lundu argued the cause of action arose in 2014 when the plaintiff got the notice that the suit land was reallocated. On the other hand, Ms. Zamaradi was firm that cause of action arose in the year 1998 when the plaintiff became aware of the suit land being reallocated.



In determining when the cause of action arose, I have gone through the plaint, where on paragraph 8 it states clearly that on 10/9/1998 the plaintiff received a letter from Babati District Land Department. The plaintiff was informed the suit land had been allocated to the KKKT Dayosisi Mkoani Arusha Jimbo la Arusha and the plaintiff was not required to make further development.

It is apparent clear that, the plaintiff was dispossessed of the suit land effectively in the year 1998 and the first defendant had the occupation by cutting down trees as seen on paragraphs 8 and 11 of the plaint.

In determining when the cause of action arose with respect to the issue at hand, the court will consider them in relation to the reliefs sought by the plaintiff on his plaint. Starting with the first relief which essentially is on recovery of the suit land, has specific time limitation from the time the cause of action accrues.

As rightly as submitted by Ms. Zamaradi that, the time limit to institute a suit for recovery of land is 12 years as provided on Part I Item 22 of the Schedule to the LLA. It was the argument of the defence counsel that the cause of action was accrued in the year 1998 when the plaintiff

got the letter of reallocation of suit land for the first time. Whereas Mr. Lundu on his arguments was firm that the proper notice was issued to the plaintiff on 2014, that is when the cause of action arose.

The most important question to this issue is as to when in law, does the right of action to recover land arise. Since it is a settled that, in any claim for recovery of land, starts running against the claimant when he gets knowledge of the dispossession of ownership.

In this matter the plaintiff had the knowledge of the dispossession on his land for the first time on 10/9/1998 when he received a letter from Babati Land District Office. It is now about 24 years since the cause of action arose, where the time limit to institute a suit for recovery of land is 12 years as provided on Part I Item 22 of the Schedule to the LLA.

To this issue, the Court of Appeal in the case of **Idrissa Ramadhani Mbondera v. Allan Mbaruku & Another** (Civil Appeal 176 of 2020) [2023] TZCA 204 held that;

...any claim for recover of land, the 12 years limitation period prescribed under item 22 of Part I of the said



Act, starts running against the claimant when he gets knowledge of the dispossession of ownership.

It is therefore clear that the cause of action arose more than 12 years ago: As the plaintiff became aware on the reallocation of land in the year 1998 with the letter from Babati District Land Department.

However, there was the argument that there was the claim for exemption from time limitation that would not benefit the plaintiff. On this matter it is clear that the suit is barred with limitation of time as prescribed by the law. As the 12 years period had lapsed.

It was therefore proper for the plaintiff to implead on his plaint the ground upon which the exemption from the law is claimed, parallel with Order VII, Rule 6 of the CPC which reads;

*Where the suit is instituted after the expiration of the period prescribed by the law of limitation, **the plaintiff shall show the ground upon which exemption from such law is claimed.*** [Emphasis is added].

The wordings in the provision above impose the mandatory obligation to state on the reason to be considered for time exemption. The emphasis

was made in the case of **Fortunatus Lwanyantika Masha & Another v. Claver Woshi Limited** (Civil Appeal 144 of 2019) Court of Appeal of Tanzania [2022] TZCA 433, quoting with approval the case of **M/ P & International Ltd v. The Trustees of Tanzania National Parks (TANAPA)**, Civil Appeal No. 265 of 2020, the Court when considering the applicability of Order VII Rule 6 of the CPC 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.*
"[Emphasis added].

In the present matter it is clear that there was no exemption clause to exempt the plaintiff from time limitation as rightly pointed out by Ms. Zamaradi.

In upshot I find the preliminary objection raised by the second and third defendants to be meritorious, hence the same is sustained.



Consequently, the suit is hereby dismissed with costs under Section 3(1) of the LLA.

It is so ordered.

Dated at Babati on 3rd of May 2023




G. N. BARTHY,

JUDGE

3/5/2023