

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

MOROGORO DISTRICT REGISTRY

MOROGORO

LAND APPEAL NO. 119 OF 2022

(Appeal from the judgement and decree of the District Land and Housing Tribunal of Morogoro Application no. 29 of 2017)

LATIFA SAID GANZEL (As a legal attorney of Ramadhani Mohamed Ngedere) APPELLANT

VERSUS

ABDALLAH MOHAMED NGEDERE 1ST RESPONDENT

AHMED SALMIN BIN TAHER 2ND RESPONDENT

RULING

Last order: 31/03/2023

Ruling: 05/05/2023

MALATA, J

The appellant herein appealed to this court challenging the decision of District Land and Housing Tribunal (DLHT) for Morogoro which ended in favour of the respondent, thus declaring him the lawful purchaser of the land in dispute.

When the appeal came for hearing on 16/12/2023 the parties appearance were Mr. Jackson Liwewa learned counsel represented the appellant herein, the first Respondent defaulted appearance as such hearing proceeded ex-parte while Mr. Benjamin Jonas learned counsel appeared for the 2nd respondent.

At the commencement of hearing, Mr. Benjamin Jonas raised an issue that, the appeal was rooted from the time barred land application no.29 of 2017 of DLHT, thus this appeal incompetent for being founded on incompetent proceedings.

As the raised point of law goes to the jurisdiction of the court, legally this court was compelled to determine it before proceeding with appeal on merits.

In support of the preliminary objection, Mr. Benjamin Jonas submitted that, land application no. 29 of 2017 between the parties herein was filed on 13/02/2017 seeking for declaratory reliefs. That application being the mother of this appeal did not expressly disclose as to when the cause of action arose but there is plausible evidence on record by the appellant who testified on 24/10/2017 confirmed that the deed of gift which transferred the suit land was executed in 2010, and the said deed of gift was also tendered and admitted as exhibit. Further, he submitted that

paragraph 6(c) of the land application no.29 of 2017 depicts that, the deed of gift was executed in January, 2010.

Thus, counting from January, 2010 when the cause of action arose to 13/02/2017 when Land Application no.29 of 2017 was filed, it is clear more than seven (7) years had lapsed.

He submitted that, in accordance with Item 24 of part I to the schedule of the Law of Limitation Act Cap. 89 R.E.2019 such suit seeking declaratory reliefs has to be filed within six (6) years from the accrual date. The above position was settled through the court of appeal decision in the case of **CRDB 1996 vs. Boniface Chimya [2003] TLR 415** at pages 416 – 417 of the Judgement, he submitted.

To spice and nourish the position, he cited numerous court decisions such as in **Shakila Shembazi (suing as the administratrix of the Estate of Shembazi Jabir Bakari) vs. Commissioner of Prison and Attorney General**, Land Case no. 32 of 2008 and in **Benedict Gregory Mkasa vs. Mbarouk Seleman and three others** all of which echoed similar position and further that, that is regardless of whether the reliefs sought was incidental or ancillary to the substantial claim.

Reference was also made to sections 4 and 5 of the Law of Limitation Act on the accrual of the cause of action and right of action. In the year 2010

is when the proceedings accrued, it is in that regard, he submitted that land application no.29 of 2017 was time barred, thus deserve to be dismissed as per section 3 of the Law of Limitation Act.

Mr. Benjamin Jonas prayed that, appeal no. 119 of 2022 arising from land application no. 29 of 2017 which was time barred has to be struck out as it is founded on incompetent proceedings. He thus pressed for costs.

Replying in opposition of the raised point of law, Mr. Jackson Liwewa learned counsel submitted that looking at item 22 of part I to schedule the Law of Limitation Act, the period of limitation to recover land is twelve (12) years, the same position was taken by C.J in the case of **Maigu E.M Magenda vs. Abrogast Maungo**, Civil Appeal no. 218 of 2017.

The appellant's claim is for recovery of land and not for declaratory orders and that in land application no. 29 of 2017 of DLHT fall within the claim for recovery of land under item 22 of part I to schedule of the Law of Limitation Act, he succumbed.

To cement his submission cited the case of **Tanzania Teachers Union vs. Chief Secretary and 3 others**, Civil Appeal no. 96 of 2012 where the Court of Appeal stated that statute should be interpreted as they are, provision of one section should not be incorporated into another provision

be it of the same statute or another statute, therefore item 24 and 22 to part I of the schedule the Law of Limitation Act should not be incorporated.

He submitted that, the cited provision authorities by the respondent's counsel bears no relevancy to the present case as they are not in respect to recovery of land.

As to the cause of action, he submitted that, land application no. 29 of 2017 disclosed cause of action in paragraphs 6,8 and 10 of the application.

The applicant came to know the same on 2017 of the transaction. As such the cause of action arose on 2017 when the appellant became aware of the deed of gift. This is imported of the **Magenda's case** at page 13 of the judgement.

Consequently, he prayed for dismissal of the raised point of law for want of merits with costs.

By way of rejoinder, Mr. Benjamin Jonas stated that, under paragraph 6(c) the appellant didn't say if they became aware in 2017, the pleadings are silent. The paragraph does not say as to when the cause of action arose. He insisted that, what is gathered from all the pleadings is that, the appellant claims for declaratory orders and not recovery of land as submitted by the counsel. Declaratory orders must be sought within six

years, he stressed. That is the position of this court and the Court of Appeal to date. Whether one is seeking to recover land or not that has to be gathered from the facts and reliefs sought in the pleading. There is nowhere in the pleadings stated that the appellant herein claimed for recovery of land and the reliefs thereto are for recovery of land. As such appellant was bound under item 24 of part I to the schedule of Law of limitation Act, he succumbed

Having heard the rival submissions from both parties, the issue for determination by this court is whether Land Application no.29 of 2017 was filed out of time.

To start with, it is trite law that, once the proceeding be it an application, suit or appeal is time barred, the court has no jurisdiction to entertain it unless leave is sought and granted to file such proceedings out of time. In ~~is~~ that regard, **section 3(1) of the Law of Limitation Act**, requires the court to raise it *suo motto* and make determination on the same before continuation of the proceedings.

Whether the proceedings is time barred or not has to be assembled from the pleadings or evidence adduced before the court in case of already determined matter, like this. In other words, a party to case or court can ascertain and satisfy itself on the same after having perused the pleadings.

To nourish the above legal position reference is made to some few courts' decisions. In the case of **YARA Tanzania Limited vs. Charles Aloyce Msemwa and 2 others**, Commercial Case no. 5 of 2015, High Court Commercial Division (unreported) the court had once held that;

"It is a cardinal principle of civil procedure founded upon prudence that parties are bound by their pleadings. That it is settled law that parties are bound by their pleadings and that no party is allowed to present a case contrary to its pleadings.

In the **Astepro Investment Co. Ltd Vs Jawinga Company Limited**, in **Civil Appeal No. 8 Of 2015** the court of appeal principled that;

*"...the proceedings in a civil suit and the decision thereof, has to come from what has been pleaded, and so goes the parlance parties are bound to their own pleadings'. See: **Nkulabo Vs Kibirige [1973] EA 1Q2, Peter Ng'homango Vs the Attorney General, Civil Appeal No. 214 of 2011, Sean TAN Tours Limited Vs the Catholic Diocese of Mbulu, Civil Appeal No. 78 of 2012 (both unreported) and James Funge Ngwagilo Vs the Attorney General [2004] TLR 161.***

The court of appeal also while explaining the purpose of pleadings in civil suits, the Court reaffirmed the decision in the case of **James Funge Ngwagilo's** case (supra), that;

"The functions of pleading, is to give notice of the case which is to be met. A party must therefore, so state his case that his opponent will not be taken by surprise. It is also to define with precision the matters on which the parties differ and the points on which they agree, thereby to identify with clarity the issues on which the court will be called upon to adjudicate and determine the matters in dispute."

Further, in case of **Anthony Ngoo and Davis Anthony Ngo Vs Kitinda Kimaro, Civil Appeal No. 25 of 2014**, the court of appeal settled that;

*"The law is settled that the parties are bound by their own pleadings. See **Scan Tan Tour Ltd v The Catholic Diocese of Mbulu**, Civil Appeal No. 78 of 2012 & **Peter Ng'homango v the Attorney General, Civil Appeal No. 114 of 2011** CAT (both unreported).*

According to **Mogha's Law of pleading in India**, it is sated that

"The Court cannot make out a new case altogether and grant relief neither prayed for in the plaint nor flows naturally from the grounds of claim stated in the plaint."

(Emphasis ours)

Order VII Rule 7 of the Civil Procedure Code, Cap 33, R.E. 2019

provides as under:

"Every plaint shall state specifically the relief which the plaintiff claims either simply or in the alternative, and it shall not be necessary to ask for general or other relief which may always be given as the court may think just to the same extent as if it had been asked for; and this rule shall apply to any relief claimed by the defendant in his written statement."

Having highlighted on the principles governing pleadings, I am now satisfied that, pleadings is a foundation of parties' claims and upon being presented before the court, it binds three parties namely; **one**, the court, **two**, plaintiff and **three**, defendant. In other words, the parties to case are bound to prove what is pleaded and the court is bound to travel within it and consider to grant what is asked for as reliefs. In other words, a party assembles reliefs from pleading which must have been pleaded and proven for it to be granted. Even when the pleading is styled that, any other relief(s) this court may deem just to grant for the interest of justice,

this as well should not create substantive reliefs outside the pleaded and prayed ones. It is in that regard, courts are also bound to the pleadings. It is evident therefore that, the pleadings in land application no.29 of 2017 did neither expressly nor impliedly provide for a date, month and year of accrual cause of action as required by Order VII Rule 1 (e) of the Civil Procedure Code which provides that;

"The plaint shall contain the following particulars: -

*(e) the facts constituting the cause of action and
when it arose;*

However, paragraph 6(c) of the land application no. 29 of 2017 establishes as to when the transaction which led to dispute occurred, that is to say, January, 2010. The paragraph provides that, I quote;

*"That the said **ABDALLAH MOHAMED NGEDERE** the first respondent and the young brother of **RAMADHANI MOHAMED NGEDERE** purported to obtain the said house through the deed of gift from his brother on **5th day of January, 2010** who at the time his brother was outside of this country until to date, moreover the actual owner of the said house one **RAMDHANI MOHAMED NGEDERE** was not in position to give away the said property as a gift to his brother due to the fact that the said property in dispute was and still a matrimonial property that the said house gained at*

*the time he was already contracted in wife and husband relationship with one **LATIFA SAID GANZEL** (the applicant) and later got married on"*

This is echoed by testimonies by the appellant when adducing evidence at the DLHT on 24.10.2017 where she testified that, I quote;

*"When Ramadhani sent me to pay fees at Land office I realised the applicants' names have been changed, I notified the applicants. I also notified the applicant; I also went to peruse the file and I realised that the first respondent has changed ownership to him. I also discovered that the first respondent used a false deed of gift that he received a gift from Ramadhani Ngedere. **The deed of gift is dated 2010"***

Additionally, it is on evidence that, **first**, Deed of gift was effected on 5th January, 2010, **second**, deed of transfer of disposition was effected on 5th January, 2010, **third**, sale agreement was effected on 28th January, 2010 and **forth**, the transfer deed was signed on 28th January, 2010. The deed of sale and transfer were tendered as evidence to DLHT.

That is the period when all transaction was made no other mentioned year apart from January, 2010. Neither the Appellant (**LATIFA SAID**

GANZEL) nor **RAMADHANI MOHAMED NGEDERE** (owner) did state anywhere in the pleadings or attachment that the cause of action arose in a year, 2017.

Through the pleadings in land application no.29 of 2010, the only fact, I have collected is that, the appellant is claiming for declaratory orders. This is assembled from paragraph 7 of the application which illustrates clearly that, I quote;

"Relief claimed

*a) **Declaration** that the applicant is the **rightfully owner** of the disputed house.*

*b) **Declaration** that the **sell** and **transfer** from Ramadhani Mohamed Ngedere to Abdallah Mohamed Ngedere of the said house is illegal and void.*

c)(d).....(e)..... and (f)....."

From the extract of the application, it is with no industrious of doubt that the appellant sought for declaratory orders and not otherwise. There is neither express nor implied claim of recovery of land or just mentioning it by passing, let alone attempt. This court and the parties hereto are bound by the pleadings as such cannot act from not is before it.

It is my holding, therefore that, land application no. 29 of 2017 was for declaratory orders that is to say; **one**, declaration that

Applicant/Appellant is lawful owner of the disputed house, **two**, that the sale and transfer agreements be declared null and void, **three**, that the disputed house be returned to the applicant/appellant.

Therefore, based on the principles of this court and court of appeal on the time limit within which to claim for declaratory orders in which all courts settled to be six (6) years with due regard to Item 24 of part I to the schedule of the Law of Limitation Act, I am convinced to hold that, the appellant herein was required to file the said land application within six (6) years from January, 2010. The filing of land application no. 29 of 2017 was in contravention of the above stated legal principles.

In the upshot, I am inclined to agree with Mr. Benjamin Jonas learned counsel for the 2nd respondent that, land application no.29 of 2017 was preferred outside the time *limine* prescribed by law. This being an issue touching jurisdiction of the DLHT, the DLHT had no jurisdiction to adjudicate the application which was time barred.

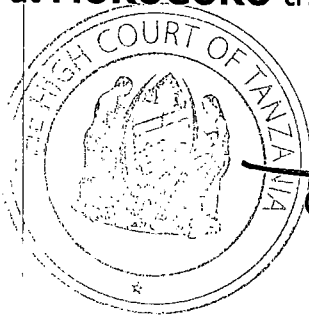
Therefore, guided by decision by the court of appeal in the case of **NBC Limited and another vs. Bruno Vitus Swalo**, Civil Appeal no. 331 of 2019 where the court of appeal held that, the suit which is filed out of time has to be dismissed in terms of section 3(1) of the Law of Limitation Act, then land application no. 29 of 2017 ought to have been dismissed by DLHT for being time barred.

Since the proceedings and judgement in land application No. 29 of 2017 were a nullity for being time barred, even land appeal No.119 of 2022 before this court is a nullity as it emanates from a nullity. A nullity in law means nothing.

Pursuant to section 42 of the Land Disputes Courts Act, Cap.216 R.E.2019 I hereby reverse and set aside the judgement by the DLHT in Land Application No.29 of 2017 for being nullity ab initio, as it rooted from the time barred application. I further hold that, since, land application no.29 of 2017 was a nullity, then, land appeal no.119 of 2022 before me which emanates from a nullity proceeding is as well as a nullity. Consequently, I hereby dismiss it with costs.

IT IS SO ORDERED.

DATED at MOROGORO this 5th May, 2023.



G. P. MALATA

JUDGE

05/05/2023