

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(TABORA DISTRICT REGISTRY)**

AT TABORA

MISC. LAND APPLICATION NO. 50 OF 2021

(From Land Application No. 73 of 2020, District Land and Housing Tribunal for Tabora)

MDAKI ANANIA ZILAHULULA (*Administrator of
estate of the late Anania Zilahulula*) **APPLICANT**

VERSUS

ROSE SALVATORY IKANDILO (*Administratrix of
estate of the late Salvatory Joseph Ikandilo*) **RESPONDENT**

Date of order: 22/05/2023

Date of Ruling: 30/05/2023

RULING

KADILU, J.

This is a ruling on application for revision lodged in the Court by the above-named applicant under Section 41 (1) and Section 43 of the Land Disputes Courts Act [CAP 216 R.E 2019], seeking for the following orders:

- i. That, the court be pleased to call for and examine the record in Land Application No. 73 of 2020 in the District Land and Housing Tribunal for Tabora for the purpose of satisfying itself as to the correctness, legality, or propriety of the proceedings, ruling and order delivered on 03/09/2021 allowing the said Land Application to continue for hearing and determination while it lacks jurisdiction on the matter which is time-barred.*
- ii. Costs of this application be provided for.*

Brief background of this matter is that on 13/10/2020, the respondent filed Land Application No. 73 of 2020 in the District Land and Housing Tribunal against the applicant. In the respondent's application, she stated that the disputed land measures fifteen (15) acres and it belongs to her late father. Sometimes in 1991, the late father fell sick and left for treatment while leaving the disputed land with the respondent who was his co-worker and a friend. The father never came back as he passed away on 16/04/1991. From that time upon the death of the respondent's father, the applicant continued to cultivate the land in dispute without handing it over to the beneficiaries of the late father up to now.

Based on the above facts, the applicant raised a preliminary objection on point of law to the effect that, the suit was time-barred as the applicant had been in occupation and use of the land in dispute since 1991 which was the period of 29 years by the year 2020 when the dispute was referred to the tribunal. The District Land and Housing Tribunal overruled the objection reasoning that the nature of the objection required evidence because the respondent alleged that the dispute arose in 2015 when she was about to distribute the disputed land to the lawful heirs of her late father.

The applicant then filed the present application and prayed for the dispute to be stayed in the tribunal pending the determination of this application. The application was argued by way of written submissions. The applicant enjoyed legal services of Mr. Kelvin Kayaga, Advocate whereas the respondent was unrepresented. Mr. Kelvin submitted that in the course of

describing the nature of the course of action and when it arose, the respondent (applicant in the tribunal) alleged that the applicant herein started to occupy the suit land in 1991 and he did not hand it over to the respondent's family to date. Mr. Kelvin concluded that the cause of action arose in 1991.

He argued that while the preliminary objection was required to be determined on the basis of the pleaded facts, the allegation by the respondent that the dispute arose in 2015 does not feature anywhere in her pleadings. According to the learned Advocate, the pleadings are quite clear that the cause of action arose in 1991 at the death of the respondent's father. He stated that the legal position in our jurisdiction is now settled that parties are bound by their pleadings. He referred to the case of ***Madam Mary Silvanus Qoro v Edith Donath Kweka***, Civil Appeal No. 102 of 2016, Court of Appeal of Tanzania at Arusha.

Mr. Kelvin also made reference to the case of ***James Funke Ngwagilo v Attorney General*** [2004] TLR 163 in which it was held that the function of pleadings is to give notice of the case which has to be met. In that case, the court stated further that in order for an issue to be decided, it ought to be brought on record and appear from the conduct of the suit to have been left to the court for decision. In such a situation, the justice of the case demands that the unpleaded grounds should be ignored and that is not subordinating justice to technicalities. The learned Counsel maintained that the tribunal has no jurisdiction over the matter which is time-barred.

The respondent being a lay person had nothing substantial to submit in reply to the applicant's submission. She submitted on whether or not the present application is competent before this court. Without any disrespect to the respondent, this question was raised earlier by way of preliminary objection by the respondent in her counter affidavit and it was fully determined whereby the objection was overruled. Regarding the applicant's assertion that the tribunal has no jurisdiction to continue to determine a time-barred dispute, the respondent submitted that the allegation needs proof so, it is not a preliminary objection within the meaning of the law. She concluded that the present application is premature hence, she prays the court to dismiss it with costs so that the dispute may be determined on merit.

I have examined the records carefully and considered the submissions by the parties. The question which I am called upon to determine is whether or not the Land Application No. 73 of 2020 pending in the District Land and Housing Tribunal for Tabora is time-barred. It is the applicant's account that the respondent has acquired the suit land by way of adverse possession as he has been in occupation and used for twenty-nine (29) years uninterruptedly. It is a settled position in Tanzania that adverse possession occurs when someone occupies land belonging to someone else, without permission and the occupation continues for twelve (12) years.

The twelve years are counted from the date in which the cause of action arose. The applicant's contention is that the cause of action arose in 1991 when he occupied the land in dispute. The provision of Section 9 (2)

of the Law of Limitation Act [Cap. 89 R.E. 2019] establishes a principle that in any claim for recovery of land, the twelve (12) years limitation period prescribed under item 22 of Part I of the said Act starts to run against the claimant when he gets knowledge of the dispossession of ownership. See the case of ***Idrissa Ramadhani Mbondera v Allan Mbaruku & Another***, Civil Appeal No.176 of 2020, Court of Appeal of Tanzania at Dar es Salaam.

In the instant case, the respondent has shown in her pleadings that from the year 1991 when the applicant occupied the suit land, he never handed it over to the respondent's family to date. Testing these facts to the principle of adverse possession discussed above, it is apparent that from the year 1991 the respondent knew that she had been disposed of ownership of the disputed land. I agree with Mr. Kelvin that parties to any civil proceeding are bound by their pleadings and for that matter, it is not open for the court to base its decision on an unpleaded matter.

The respondent's allegation that the cause of action arose in 2015, features for the first time in her reply to the applicant's written submission. In my considered opinion, a written submission is not a pleading. My understanding of the provisions of Order VI, Rule 1 of the Civil Procedure Code, [Cap. 33 R.E. 2019] is that pleading is the plaint, the written statement of defence, reply to the written statement of defence and any other document produced to court for the purpose of preparing the suit. The respondent having raised the lack of knowledge of dispossession at the submission stage, is an afterthought which is bad in law.

In view of the foregoing, I have found that Land Application No. 73 of 2020 which is pending in the District Land and Housing Tribunal for Tabora is time-barred and therefore, the tribunal has no jurisdiction to determine it. I thus exercise revisional powers vested to this court under Section 43 (1) (a) of the Land Disputes Courts Act [Cap. 216 R.E. 2019] to order the proceedings in respect of Land Application No. 73 of 2020 to be terminated forthwith for lack of requisite jurisdiction by the tribunal. The right of appeal is open to any party dissatisfied with this decision. Considering that the application is in the nature of administration of estate, I make no order as to the costs.

It is so ordered.


KADILU, M.J.,

JUDGE

30/05/2023

Ruling delivered in Chamber on the 30th Day of May, 2023 in the presence of Mrs. Rose Salvatory, the respondent. The applicant is absent.




KADILU, M.J.,

JUDGE

30/05/2023.