

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT ARUSHA

LAND CASE NO. 17 OF 2022

ARUSHA INTERNATIONAL CONFERENCE CENTER.....1ST PLAINTIFF

ATTORNEY GENERAL.....2ND PLAINTIFF

VERSUS

CHISSELS LIMITED.....DEFENDANT

RULING

10th May & 16th June 2023

TIGANGA, J

This ruling intends to resolve the preliminary objection on the point of law raised by the respondent while responding to the plaintiffs' claims. As a matter of practice once the preliminary objections are raised everything is put at a halt for the objections to be determined first as I hereby do.

The plaintiffs herein filed a suit against the defendant for the claim of breach of the lease agreement that was entered between the 1st plaintiff and the defendant at different times. The plaintiff thus sought the following reliefs; a declaration that the defendant breached the contract and that she be ordered to pay the principal sum of USD 155,157.31 and

Tshs. 24,262,240.00/= being rental costs. Also, the defendant be ordered to pay interest at the court's rate of 12% from the date of the judgment to the date of satisfaction of the decree, and the defendant be ordered to pay interest of 18% of the amount claimed from the date of filing the suit to the date of judgment, the plaintiff also claimed for an order to compel the defendant to pay general damages, costs of the suit and any other relief the court will deem fit.

Since the suit was filed under the summary procedure, the defendant sought and was granted leave to defend the case. Under the representation of the learned counsel Mr. Peter Kuyoga Nyamwero, the defendant filed her Written Statement of Defence which was accompanied by the following preliminary points of objection;

1. That, the court has no jurisdiction to entertain this matter.
2. That, the suit is time-barred.
3. The suit is incompetent for being filed without the Certificate from the Plaintiff's Board of Directors.

Hearing of the preliminary points of objection started and the same was argued orally. Supporting the points of objection raised, Mr. Nyamwero opted to drop the third point of objection and proceeded with the remaining two points.

Submitting on the first preliminary point of objection, he asserted that this court lacks jurisdiction over the matter the reason being that, under rule 5E of the High Court Registry Rules G.N 63 of 2001 it established Land Division of the High Court within Dar es Salaam Registry and since then the Chief Justice has never established Other Land divisions in other registries including Arusha. That being the case, it was his view that the matter cannot be entertained by this court.

As to the second preliminary point of objection, the counsel submitted that, the suit has been filed out of the prescribed time. He went further to state that the plaintiff pleaded exemption under Order VII rule 6 of the Civil Procedure Code [Cap 33 R.E 2019]. However, it was his observation that grounds for exemption are provided under the Law of Limitation Act [Cap 89 R.E 2019] and that the time taken for negotiation as demonstrated by the 1st plaintiff is not taken into account. Therefore, he concluded that the time to claim rent arrears under the Law of Limitation Act is six years whereas the claim in the present suit emanated from the year 2004 or 2014 and below, therefore, the same is out of the prescribed time of six years.

Responding to the above submission, the 1st plaintiff who was under the representation of Mr. Mkama Musalama the learned State Attorney

submitted on the first point of the preliminary objection, that it cannot be said to lack jurisdiction as it is well known that, the High Court has unlimited jurisdiction. Mr. Musalama conceded that it is true that the Chief Justice established Land Division at High Court Dar es Salaam Registry only but he had a different view from that of the defendant, that even if Land Divisions have not been established in other registries, the same does not oust the jurisdiction of the High Court, including Arusha Registry to determine land matters. To buttress his arguments, he further stated that the word Land Division, as it appears in the plaint does not go to the root of the matter and the same can be removed through a Court order. According to him, had it been that the claim was commercial then, by nature the High Court will have no jurisdiction. He thus urged the court to invoke the overriding objective to rectify the defect and allow the determination of the matter.

Arguing on the second ground of appeal, it was the submission of Mr. Musalama that, the issue of the suit being filed out of time was pleaded in the plaint and therefore Order VII Rule 1 (e) was complied with. He went further to state that, in the plaint he did not plead that, the delay was caused by negotiations but rather on the acknowledgment of the debts that was done on 24/06/2022 and part payment which was done

on 16/12/2021 and in all cases the plaintiff was still within time. More so, the counsel also stated that, from the facts of this case, it is plainly that there has been a continuous breach and according to section 7 of the Law of Limitation Act where there is a continuous breach the time starts to run from the last breach of the contract which was in 24/10/2016 therefore the plaintiffs having filed their suit on 17/03/2022 they are still within time. He thus prayed for the objection to be overruled.

In rejoinder Mr. Nyamwero insisted that the case was filed in the Land Division and not in the district registry, the plaintiff ought to have filed the case in the proper court and the overruling objective cannot be applied as the case was supposed to be filed in the proper court. As to the issue that the matter was filed out of time, the counsel maintained that acknowledgment of the debt was not pleaded and that the issue also of part payment if taken into consideration would have expired in December 2015. Also, regarding the issue of continuous breach, Mr. Nyamwero submitted that the same is not applicable in the matter at hand as in the present matter contracts were signed/renewed separately, and the rooms that were rented were different therefore the plead of a continuous breach cannot apply.

Having considered the rival submissions from the parties together with the authorities cited, It is now time for the determination of the points of objection as follows;

As to the first point of the preliminary objection that the court has no jurisdiction to entertain the matter. In this point of objection, the defendant maintains that the matter was improperly filed as the Chief Justice has not established a Land Division in Arusha but has established District registries, and Arusha is one of the established Registries. This matter need not detain me much as it is very clear from the plaintiffs' pleadings that the matter was filed at High Court Arusha Land Division. Indeed, as correctly submitted by the defendant's counsel that in the High Court Registries Rules G.N, No 96 of 2005 the District Registries were established and Arusha being one of them, moreover under the same law in Rule 5E it was stated that there shall be a Land Division of the High Court within the registry at Dar es Salaam and any other registry or sub-registry as may be determined by the Chief Justice. In the present matter, the pleadings do not disclose that the matter has been filed in the District Registry of Arusha but rather it is indicated that the same has been filed in the Land Division where such division has not been established at Arusha registry by the Chief Justice. Therefore, it is

with no doubt that there is such an omission as demonstrated above. The question that follows is what is the consequence of such omission? This court has ventured into the Written Laws (Miscellaneous Amendments) Act, 2010 Part VIII where the term High Court (Land Division) was omitted/deleted and substituted with the phrase "High Court". This amendment was meant to allow land matters to be determined by the High Courts including the High Court at Arusha Registry. I am not unsound of the fact that the plaintiff did not indicate the word District Registry in the plaint but as submitted by Mr. Mkama, State Attorney the same does not oust the jurisdiction of this court in determining the matter nor does it go to the root of the subject matter. In the event, I am persuaded to invoke the overriding principle to avoid technicalities for the substantive rights of the parties to be determined, to remove the word Land Division and replace the same with District Registry. That being said the preliminary point of objection is overruled.

As to the second point of objection, the defendant contends that the suit at hand is time-barred. In determining this point, it is pertinent for Order VII Rule 6 of the Civil Procedure Code [Cap 33 R.E 2019] to be reproduced for easy reference;

"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."

From the provision of the law above it is the requirement of the law that where the suit is filed out of time the plaintiff must disclose the ground upon which exemption is claimed and the grounds permitted for exemption are specified under sections 20, 21, 22, and 23 of the Law of Limitation Act. The applicability of Order VII Rule 6 has been revisited by Courts in numerous decisions including the Court of Appeal in **M/S. P & O International Ltd vs. The Trustees of Tanzania National Parks (TANAPA)**, Civil Appeal No. 265 of 2020 (unreported), while faced with an akin scenario, the Court held:

"It is clear from the pleadings that, the appellant never considered that she was time-barred to plead exemption from limitation. 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."

Moreover, Mapigano, J (as he then was) had the following to say concerning the applicability of Order VII rule 6 of the CPC in the case of

**Alphonse Mohamed Chilumba vs Dar es Salaam Small Industries
Co-Operative Society** [1986] T.L.R 91;

"Order 7 rule 6 CPC provides that 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. In other words, where but for some ground of exemption from the law of limitation, a suit would prima facie be barred by limitation, the plaintiff must show in his plaint such ground of exemption. If no such ground is shown in the plaint, it is liable to be rejected under rule 11 (c) of the same order...."

It is the submission of Mr. Mkama that he relies on his exemption from limitation under section 27 (3) of the LLA where the defendant acknowledges the debt and the party payment of the debt and party payment of Tshs. 2,840,000/= making the balance of the debt to be Tshs. 24,262,240/= which does not fall on the specified grounds for seeking exemption but what appears from the rest of the paragraphs is that the delay was contributed by the 1st Plaintiff's engagement into endless/fruitless negotiations with Defendant on the payment of the rent and surprisingly, while the defendant was in default yet the 1st plaintiff kept on renewing the lease agreement with her. It has been held times and again that negotiations between parties cannot act as a bar to the

limitation of time and more so it does not fall under the specified grounds seeking exemption. In **M/S. P & O International Ltd** (supra), the Court of Appeal referred to the decision of the High Court at Dar es Salaam in **Makamba Kigome & Another Vs. Ubungo Farm Implements Limited & PRSC**, Civil Case No. 109 of 2005 (unreported) whereby Kalegeya, J (as he then was) made the following pertinent statement:

"Negotiations or communications between parties since 1998 did not impact on limitation of time. An intending litigant, however honest and genuine, who allows himself to be lured into futile negotiations by a shrewd wrongdoer, plunging him beyond the period provided by law within which to mount an action for the actionable wrong, does so at his own risk and cannot front the situation as a defence when it comes to limitation of time."

The plaintiffs' counsel has also relied on the exemption under section 7 of the LLA which provides that;

"Where there is a continuing breach of contract or a continuing wrong independent of contract a fresh period of limitation shall begin to run at every moment of the time during which the breach or the wrong, as the case may be, continues."

In this case, the learned State Attorney is of the view that in this case there was a continuous breach and that in law, where there is a continuous breach, the time starts to run from the last breach of the contract which was on 24/10/2016, therefore, the plaintiffs have filed their suit on 17/03/2022 they are still within time. On that, Mr. Nyamwero maintained that, acknowledgment of the debt was not pleaded and that if the issue of part payment time taken into consideration would have expired in December 2015. Regarding the issue of continuous breach, Mr. Nyamwero submitted that the same is not applicable in the matter at hand as in the present matter contracts were signed/renewed separately, and the rooms that were rented were different therefore the plead of a continuous breach cannot apply.

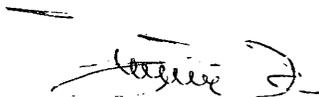
In short, there has been no dispute that the defendant has been a tenant of the plaintiff for so long, and so far, from the submissions by the parties, the issues of whether there was an acknowledgment of the debt or not, and the issue of there being part payment by the defendant, are in my view not a pure matter of law. They attract some evidence that is not on record and for practical purposes not worth consideration by the court at this stage. It will be absurd to rule at this stage on this issue as a point of law, whilst the same would have been framed as an issue that

can be proved or disproved by evidence by the parties during trial. That said, it is my finding that, although in issues that preceded this one about time limitation I have found merit and ruled in favour of the arguments presented by the defendant, on this last issue, I find that, there is a possibility of having evidence to justify the two points namely the part payment or acknowledgment of the debt. In the event, the objection is overruled with no order as to cost.

It is so ordered.

DATED and delivered at **ARUSHA** this 23rd June 2023




J. C. TIGANGA

JUDGE