

**IN THE HIGH COURT OF TANZANIA  
IN THE DISTRICT REGISTRY OF DODOMA**

**AT DODOMA**

**LAND CASE NO. 24 OF 2022**

**YUSUPH MOHAMED ..... PLAINTIFF**

**VERSUS**

**ALEX NYIGU**

**DODOMA CITY COUNCIL**

**THE ATTORNEY GENERAL**

**..... DEFENDANTS**

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**RULING**

**2<sup>nd</sup> & 19<sup>th</sup> May, 2023**

**MDEMU, J.:**

On 14<sup>th</sup> July, 2022, the Plaintiff instituted this suit praying for judgment and decree against the Defendants as follows:

- i. An order that the Plaintiff is the lawful owner of the piece of land located at Plot No. 21 Block "L" Kinyambwa Street within Dodoma City Council thereof.*
- ii. An order for permanent injunction against the Defendants, their agents or any other person acting*

*under their instructions from interference with the Plaintiff's land thereto.*

- iii. An order that the Defendants to pay and compensate the Plaintiff herein Tshs. 30,000,000/= for a plot and the sum of Tshs. 15,000,000/= being payment for general damages.*
- iv. Costs of this suit provided for.*
- v. Any other relief(s) that this Honourable Court may deem fit and just to grant.*

On 30<sup>th</sup> August, 2022, the second and third Defendants filed jointly written statement of defence comprising of a notice of preliminary objection that, the suit is bad in law and unmaintainable for being time bared.

On 4<sup>th</sup> April, 2023 parties appeared before me for hearing of the preliminary objection. The Plaintiff appeared in person whereas the second and third Defendants were represented by Mr. Luhinda, Senior State Attorney and Ms. Agness Makuba, State Attorney. It was agreed that, preliminary objection be argued by way of written submissions. Parties complied with the scheduling order.

Submitting in support of the preliminary objection raised, Ms. Agnes argued that, in paragraphs 6 and 7 of the plaint, the plaintiff managed to build a house in 1993 at the disputed plot and thereafter discovered that, the first Defendant has trespassed into the suit land. On this, the Plaintiff filed civil case No. 32 of 1996. The Court conclusively granted ownership to the Plaintiff in respect of the said Plot. She argued that, Order VII, Rule 1(e) of the Civil Procedure Code, Cap. 33 R.E 2019, requires the plaint to disclose a cause of action in which, looking at paragraph 6 of the plaint, the cause of action arose after 1993 and not in 1996 when the plaintiff instituted civil suit No. 32 of 1996.

She contended further that, assuming that cause of action arose in 1996, a suit for recovery of land is to be lodged within 12 years from the date when the cause of action arose as per Part 1, item 22 of the Schedule to the Law of Limitation Act, Cap. 89. She said therefore, since trespass by the first Defendant occurred in 1996, the matter ought to be lodged by 2008, and not in 2022 which is almost 26 years from the time the dispute arose.

It was her further submissions that, mitigation on prosecuting lawful cause in Civil Case No. 32/1996, hence be exempted pursuant to section 21(1) of the Law of Limitation Act, Cap. 89, she argued that, Civil Case

No. 32 of 1996, the dispute was in respect of Block 13/14 KB Kikuyu and not Plot No. 21 Block "L" Kinyambwa Area.

It was Ms. Agnes's further submissions that, such facts should not be considered since they are not pleaded in the plaint to allow Order VII, Rule 6 of the Civil Procedure Code be relied upon. Supporting this argument, she cited the case of **Kigoma Ujiji Municipal Council vs. Ulimwengu Rashid T/A Ujiji Mark Foundation**, Civil Case No. 222 of 2020 and the case of **M/S P&O International Ltd vs. The Trustees of Tanzania National Parks (TANAPA)**, Civil Appeal No. 265 of 2023 (all unreported).

On the issue of compensation as pleaded in item (iii) of the reliefs claimed, she said that, the Plaintiff moved this Court to grant compensation to a tune of Tshs. 30,000,000/=. In her view, a suit for compensation has to be instituted within one year from the date the cause of action arose. She cited part I, item 1 to the Law of Limitation Act, Cap. 89 to bolster her argument. She said that, since the cause of action arose between 1993-1996, and 2010, and the case at hand was instituted in 2022, then it was time barred.

She concluded by stating that, as the claim and reliefs sought by the Plaintiff are time barred, they be dismissed with costs in terms of section 3(1) of the Law of Limitation Act, Cap. 89 R.E 2019.

In reply, the Plaintiff stated among other things that, the suit is not time barred. He argued that, in 1965 the Plaintiff acquired the suit land and built a mud house in 1993. It was in the same year 1993 when the first Respondent trespassed into the said suit land. He thus instituted a case against the first Defendant vide Civil case No. 32/1996 which was decided in his favour. However, in 2016, the first Defendant trespassed again leading to institution of criminal case No. 143/2016 by the Plaintiff.

It was his submissions further that, in 2020, the first Defendant approached him having a letter from the second Defendant claiming the land in dispute be given to the first Defendant. Following such a letter, the Plaintiff instituted land case No. 51/2020 in the District Land and Housing Tribunal on 25<sup>th</sup> of November 2021. However, the said suit was not determined following amendment through Written Laws Misc. Amendment Act No. 1 of 2020 requiring the Attorney General to be a party whenever government institutions are sued. Therefore, it was his submissions that, the cause of action arose in 2020, hence the suit has been filed in time. On the issue of compensation, she contended that, it

is within time as the cause of action arose in 2020 and prior it was filed in 2020 at the District Land and Housing Tribunal.

I have considered contenting submissions of parties, pleadings and their annexures. The issue to be determined is whether the preliminary objections, that is, the suit is time barred has merits. It should be clear from the outset that, time limitation is statutory. Under the provisions section 5 of the Law of Limitation Act, Cap. 89, specific on accrual of cause of action, it is stated 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.*

On that stance, in determining limitation, the right of action begins to run when one becomes aware of the said transaction or act complained of. See the case of **Ramadhani Nkongela vs. Kasan Paulo** [1988] TLR 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. Back to the case at hand, the following paragraphs, namely 4,7,8,9, and 10 of the plaint on would be cause of action provide as follows: -

*4. that, the Plaintiff herein in 1965 started to clear the land in dispute measured two acres as it was a virgin*

*land as well as started to develop the same through cultivation thus farming.*

*7. That, after the Plaintiff herein built the said house over the land thus the 1<sup>st</sup> Defendant herein trespassed unlawfully and without justification over the land and started demolishing the house within without any information to the plaintiff and while knowing that the land in dispute belongs to the Plaintiff.*

*8. That, also after the aforesaid house to be demolished by the 1<sup>st</sup> Defendant, thus the plaintiff herein instituted civil case No. 32/1996 claiming the land since it was trespassed before the District Court of Dodoma thus the District Court favoured the Plaintiff herein and the Court ordered that the land in dispute belongs to the Plaintiff and should be compensated the same thereof. Copy of the judgement is hereby annexed and marked as YM1 and leave of this Court is craved for the same to form part of the plaint.*

*9. That, in 2010, the aforesaid land in dispute was surveyed by an organ named Capital Development Authority as it was now 2<sup>nd</sup> Defendant herein and the Plaintiff herein was a native on the land thus the Plaintiff herein was given an identification number as plot number 13, block kikuyu thereof.*

*10. That, while the plaintiff continue to develop the land in quo it came to the knowledge of the plaintiff that,*



*his land was given another person thus 1<sup>st</sup> Defendant herein by 2<sup>nd</sup> Defendant herein thereof.*

*11. That, after follow up, the plaintiff also noted that, his plot of land has been changed and became plot No. 21 Block "L" Kinyambwa-Dodoma and the plot was unlawfully without informing the Plaintiff allocated to 1<sup>st</sup> Defendant herein while knowing that it belongs to the Plaintiff thereof.*

Going through the above quoted paragraphs, it is on record that, sometimes in 1996 the first Defendant trespassed the plaintiff's land. The suit was determined by the District Court of Dodoma vide Civil case No. 32 of 1996 where the decision was in favour of the Plaintiff. Later, in 2010 the suit land was surveyed by the then Capital Development Authority (CDA) in which the Plot was named as Plot No. 13 Block Kikuyu and allocated to Plaintiff. Furthermore, the disputed land again changed from Plot No, 13 block Kikuyu to plot No. 21 Block "L" Kinyambwa and allocated to the first Defendant. The plaint is silent as to when these changes were affected and when the Plaintiff became aware of such changes on the tittle of the suit land.

I wish to make it clear here that, disclosing facts establishing when the cause of action arose in the plaint is paramount and the most important fact to consider during preparation and drawing of a plaint.



Particulars as to when the cause of action arose must be clearly and specifically be pleaded in the plaint. This is relevant so as the Court to have an opportunity to determine whether the suit is barred by the law of limitation or otherwise. This is the Central issue in the raised preliminary objection.

Essentially, is a legal requirement that, a plaint must contain necessary facts constituting a cause of action. This is reflected under Order VII, Rule 1 (e) of the Civil Procedure Code, Cap.33 which provides that: -

*The plaint shall contain the following particulars*

*(a-d) NA*

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

*(f-i) NA*

From the wording of the above provisions of the law, it follows therefore that, consequences on failure to demonstrate and show in the plaint real facts constituting cause of action and when it arose, the effect thereof is to limit the Court to determine exactly whether the suit filed is within the prescribed time or the same is out of time.

It is my considered observation therefore that, compliance with the requirements of the law stipulated under Order VII, Rule 1 (e) of the CPC is mandatory and failure to comply with the same renders the whole proceedings incompetent. In the cases of **Stanbic Finance Tanzania Ltd vs. Guiseppe Trupia and Chiara Malavasi** [2002] TLR 217 and the case of **Anna Joseph Luvanda vs. Swaibu Salim Hoza and Two Others** [2014] TLR 73, the Court observed that, the plaint was fatally defective for non-disclosure as to when the cause of action arose.

Furthermore, there are facts which have been stated in the submissions made by the Plaintiff to the effect that, the cause of action arose in 2020 when the first Defendant approached the Plaintiff having a letter from the second Defendant stating that, the disputed land has been allocated to him. This was not stated in the plaint. I find it to it to be an afterthought and cannot be considered right away. That notwithstanding, the said facts were relevant in one reason, that is, it would have enabled the Court to determine time limitation thus dispose the preliminary objection raised.

Consequently, the Plaintiff plaint is hereby struck out for being fatally defective for failure to disclose facts which would allow this Court to determine if the claim on ownership of Plot No. 21 Block "L" and

whether the claim of compensation was within time. The costs to follow the event.

It is so ordered.

  
**Gerson J. Mdemu**

**JUDGE**

**19/05/2023**

**DATED at DODOMA** this 19<sup>th</sup> day of May, 2023.

  
**Gerson J. Mdemu**

**JUDGE**

**19/05/2023**