

THE UNITED REPUBLIC OF TANZANIA
(JUDICIATY)
THE HIGH COURT – LAND DIVISION
(MUSOMA SUB REGISTRY)
AT MUSOMA
(Original Jurisdiction)
LAND CASE No. 8 OF 2023

SCHOLASTIKA PAUL MARWA PLAINTIFF

Versus

1. TARIME TOWN COUNCIL
2. THE ATTORNEY GENERAL
3. YASINTA KAGYA RUMANYIKA

[Administratrix of the Estates of the
Late Rumanyika Lawrence Kyombo]

..... **DEFENDANTS**

RULING

18.07.2023 & 18.07.2023

Mtulya, J.:

Scholastika Paul Marwa (the plaintiff) had preferred the present case in this court on 21st February 2023 claiming for compensation of Tanzania Shillings Three Hundred Million (300,000,000/=Tshs.) against **Tarime Town Council, the Attorney General** and **Yasinta Kagya Rumanyika** (the defendants). The cause of action, according to the seventh paragraph in the plaint, arose in 2016.

On 11th July 2023, the suit was scheduled for necessary orders. However, before the necessary orders were issued, **Ms. Neema Mwaipyana, Mr. Haruna Matata** and **Mr. Anesius Kamugisha**, learned State Attorneys, protested the suit for want of the law enacted in **Item 1 Part I of the Schedule to the Law of Limitation Act [Cap. 89 R.E. 2019]** (the Law of Limitation), which provides for one year time limitation in lodging suits of allegation of compensation over lands. The argument was supported by **Mr. Samwel Marwa**, learned counsel for **Yasinta Kagya Rumanyika** (the third defendant).

The thinking was protested by **Mr. Baraka Makowe**, learned counsel for the plaintiff who had claimed that the **Joint Written Statement of Defence** of the First and Second Defendants displays a land contest. In his opinion, the suit is incompetent before this court as it combines compensation and land disputes hence cannot be resolved in a point of preliminary objection before being struck out for want of competence. Following the confusion on interpretation of the indicated issues, this court had ordered the learned minds to search for an appropriate remedy on the subject to assist this court to arrive at justice without interpolations.

Today morning, the learned minds of the parties appeared again in the court carrying at their hands a precedent of the Court of Appeal in **Tanzania National Road Agency and Another v. Jonas Kinyagula**, Civil Appeal No. 471 of 2020 and settled their differences. In their opinion, the decision had resolved that a cause of action has to be ascertained from the materials registered in the plaint for easy determination of issues and complaints on time limitation.

Having cited the decision, the learned minds agreed that the instant suit is supposed to be dismissed for want of operation of the law enacted in section 3 (1) of the Law of Limitation. However, the learned minds have decided to enter into another contest of costs. According to Mr. Makowe, costs in the present case is not necessary as for the first and second defendants learned State Attorneys enjoy monthly remunerations as State employees and have been employed

to prosecute and defend State interest in courts hence cannot be paid costs in executing their usual duties.

Regarding the third defendant's learned counsel, Mr. Makowe submitted that he appeared during the point of law hearing as a friend of the court and his pleadings are silent on any protest. In Mr. Makowe's opinion it will be unfortunate for a friend of the court to benefit from his friendship with the court. The thinking was protested by the defendants' learned minds with the support of several arguments that: first, award of costs is a creature of the law; second, practice shows that costs always follow the event; third, the defendants have been following the case in several occasions; and finally, the defendant may disturb the defendants by filing fresh land dispute.

I have glanced the Ruling of the Court of Appeal in the indicated precedent of **Tanzania National Road Agency and Another v. Jonas Kinyagula** (supra) and found, the following text at pages 10 & 11 of the Ruling:

...in terms of Order VII Rule (1) (e) of the Civil Procedure Code [Cap. 33 R.E. 2019] the plaintiff is mandatorily required to contain among others, the facts constituting the cause of action and when it arose. This is important to enable ascertainment of issues of jurisdiction time limitation. There is no such requirement in relation to the written statement of defence. As far as the plaint is concerned, the issue of ownership of land was not among the claims by the respondent so as to reckon the time limitation. Thus, we do not agree that

the cause of action can also be discerned from the written statement of defence.


From the above cited text, and reading paragraph seven of the plaint and prayers of the plaintiff, it is obvious in this suit is in breach of Item 1 Part I of the Scheduled to the Law of Limitation. Having said so, I dismiss the same under section 3(1) of the Law of Limitation. I do so without costs. The reason of declining costs is apparent from the record that the learned minds of the parties were ordered by this court to appear today to assist this court to land safely into justice of the parties. They were ordered to do so as officers of this court under section 66 of the **Advocates Act [Cap. 341 R.E. 2019]**, and not as counsels of the parties.



It is so ordered.


F. H. Mtulya
Judge
18.07.2023

This Ruling was delivered in Chambers under the Seal of this court in the presence of the plaintiff, **Scholastika Paul Marwa** and her learned counsel, **Mr. Baraka Makowe** and in the presence of the third defendant **Yasinta Kagya Rumanyika** and her learned counsel, **Mr. Samwel Marwa** and in the presence of learned State Attorneys, **Mr. Turoke Kitiya**, **Mr. Haruna Mustafa** and **Mr. Anesius Kamugisha**, for the first and second defendants.


F. H. Mtulya
Judge
18.07.2023