

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF BUKOBA

AT BUKOBA

CIVIL CASE NO. 8 OF 2023

VEDASTO RUGACHWA..... PLAINTIFF

VERSUS

TANZANIA ELECTRICITY SUPPLY CO. LTD..... 1ST DEFENDANT

ATTORNEY GENERAL..... 2ND DEFENDANT

RULING

1st and 7th August, 2023

BANZI, J.:

On 2nd May, 2023, the Plaintiff instituted this suit against the defendants claiming that, in the year 2009, the 1st defendant encroached into his land measuring 70 to 112 metres valued at Tshs.250,000,000/= and erected power station. Among other things, he prayed to be declared as the lawful owner of the suit land and be paid specific damages of Tshs.250,000,000/= million and general damages of Tshs.50,000.000/=. After being served with plaint, the defendants filed their written statement of defence whereby, apart from denying the claim, they raised preliminary objection on points of law, thus:

- 1. This suit is incompetent for contravening section 6(2) of the Government Proceedings Act Cap. 5 which the same puts mandatory for the Attorney General to be served with ninety days' (90) notice before any proceeding is instituted against the Government.*

- 2. The plaint is defective for want of identification of the subject matter as per Order VII Rule 3 of the Civil Procedure Code [Cap. 33 R.E 2019].*
- 3. This suit is time barred.*

At the hearing of the preliminary objection, the plaintiff appeared in person, unrepresented whereas the defendants were represented by Ms. Theresia Masangya and Mr. Nestory Lutambi, learned State Attorneys.

On the outset, Ms. Masangya prayed to abandon the first point of objection on the reason that, after perusing the records in their office, she found that the plaintiff served them with the notice according to law. Then she left Mr. Lutambi to submit on the remaining points.

Mr. Lutambi commenced with the third point and submitted that, according to item 22 of the Schedule to the Law of Limitation Act [Cap. 89 R.E. 2019] ("the LLA"), the suit of this nature should be filed within 12 years after arising of dispute. He went on stating that, according to section 4 of the LLA, the time starts to run on the date the right of action accrues. He contended that, paragraph 6 of the plaint reveals that, the course of action arose in 2009 when the plaintiff was informed about the alleged trespass. However, despite being aware of the alleged trespass, the plaintiff filed the instant case on 2nd May, 2023 which is more than 12 years and thus, he urged this Court to dismiss this suit pursuant to section 3(1) of the LLA for

being time barred. He supported his prayer by the case of **Fortunatus Lwanyantika Masha and Another v. Claver Motors Ltd** (Civil Appeal No. 144 of 2019) [2022] TZCA 433 TanzLII.

Reverting to the second point, Mr. Lutambi submitted that, the plaint is defective for want of description of the subject matter of the suit. The plaintiff failed to describe the location of the suit land and its boundaries. He argued that, the basis of describing the subject matter is to make sure that the disputed area is easily identified as required under Order VII, Rule 3 of the Civil Procedure Code [Cap. 33 R.E. 2019] ("the CPC"). He cited the case of **Victoria Kokubana v. Wilson Gervas and Another** (Land Case No. 70 of 2016) [2019] TZHCLandD 29 TanzLII. He therefore prayed that, in case the third point fails, this suit should be struck out for being incompetent.

In his reply, the plaintiff argued that, the suit is not time barred because he was informed about the trespass on 1st January, 2010. Thereafter, in 2015, he issued notice to the first defendant which was not responded. He further contended that, he later complained to the District Commissioner and it was when the first defendant replied to his complaints. According to him, the time starts to run when he began to follow up his case. Therefore, since he started to make follow ups in 2015, he is still in time. Submitting on the second point, the plaintiff contended that, the disputed land is described at paragraph 1 as well as in the letter attached to the plaint.

Therefore, he prayed for the objection to be dismissed and the suit to be heard on merit.

In her rejoinder, Ms. Masangya emphasised that, parties are bound by their pleadings and the plaintiff at paragraph 6 of the plaint stated that, he was informed of the encroachment in 2009. However, he did not take any action until 2023 when he filed this case. She further contended that, the plaintiff did not state why he did not file the suit within time and by issuing notice in 2020, it does not mean the suit was filed at that time. She further insisted that, the plaintiff did not describe the subject matter because in paragraph 1, he explained his place of residence and in paragraph 5, he mentioned the size of the suit land without its location. Besides, the attached letter is in the language not understood by the court. Thus, it was her prayer that, the plaint be struck out for being defective and the suit deserves to be dismissed for being time barred.

Having perused the plaint and considered the submissions of both sides, the main issue before this Court for determination is whether the objection has merit.

Starting with the third point, it is undisputed that, the suit at hand concerns recovery of land which according to item 22, Part I of the Schedule to the LLA must be instituted within 12 years. In the matter at hand,

according to paragraph 6 of the plaint, the plaintiff was informed about the alleged trespass in 2009. The Paragraph reads as follows:

"THAT in the year 2009, the plaintiff was informed by his late mother that his piece of land had been encroached upon by the 1st defendant;"

According to section 4 of the LLA, time begins to run when the cause of action accrued. In the instant case, according to the extract above, the time commenced to run in 2009 when the plaintiff was informed about the alleged trespass. From 2009 when the cause of action arose to 2023 when the plaintiff filed the suit before this Court, it is almost 14 years. Thus, it goes without saying that, this suit is time barred for being instituted 14 years later from the date when the cause of action accrued.

Although the plaintiff in his submission claimed to be aware on 1st January, 2010, still from 2010 to 2023 is 13 years which is more than 12 years prescribed by law for instituting the suit for recovery of land. Apart from that, the plaintiff argued that, he is still within time as proceedings began in 2015 when he stated to follow up this matter with the first defendant. However, this argument is misplaced because according to section 3 (2) (a) of LLA, in case of the suit, the proceeding is instituted when the plaint is presented to the court having jurisdiction to entertain such suit and for this suit, it was on 2nd May, 2023 and not otherwise. Moreover,

communication between him and the first defendant cannot be a defence when it comes to limitation of time as it was stated in the case of **Fortunatus Lwanyantika Masha and Another v. Claver Motors Ltd** (*supra*). In the same case, the Court when considered the consequences of instituting the suit out of time limit stated as follows:

"However, unfortunate it may be for the plaintiff; the law of limitation is on actions knows no sympathy or equity. It is a merciless sword that cuts across and deep into all those who get caught in its web."

For those reasons, since this suit is time barred for being instituted beyond 12 years prescribed by law, it deserves to be dismissed as provided under section 3 (1) of the LLA. Since the third point suffices to dispose of the suit by dismissal, I do not see any reason to delve into the second point whose effect would be to strike out the suit.

That being said, I find the objection with merit and it is hereby sustained. Consequently, I dismiss this suit for being time barred. Each party shall bear its own costs. It is accordingly ordered.



I. K. BANZI
JUDGE
07/08/2023

Delivered this 7th August, 2023 in the presence of Mr. Nestory Lutambi,
learned State Attorney for the defendants and the plaintiff in person.



A handwritten signature in blue ink, consisting of a large, stylized 'B' followed by a horizontal line and a small flourish at the end.

I. K. BANZI
JUDGE
07/08/2023