

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB-REGISTRY OF MANYARA
AT BABATI**

LAND CASE NO. 7 OF 2022

THE REGISTERED TRUSTEES OF TANZANIA

ASSEMBLY OF GOD PLAINTIFF

VERSUS

GICHAMEDA VILLAGE COUNCIL1ST RESPONDENT

BABATI DISTRICT COUNCIL2ND RESPONDENT

THE ATTORNEY GENERAL3RD RESPONDENT

RULING

30TH August & 1st September, 2023

Kahyoza, J.:

The Registered Trustees of Tanzania Assembly of God (TAG) sued **Gichameda Village Council, Babati District Council, and the Attorney General (the defendants)** claiming Tzs. 10,800,000.00 as lease rent, payment of interest at the rate of 25% on Tzs, 10,800,000.00 from the date the amount fell due to the date of judgment, court rate interest, vacant possession or a declaration that the plaintiff is the owner of the suit land, general damages and costs. The defendants opposed the claim.

Before the hearing commenced, the defendants raised a preliminary objection that the suit was incompetent and bad in law for being time barred. Parties filed written submissions as ordered to support or oppose the preliminary objection. I will briefly reproduce them as follows.

The respondent's state attorney, Ms. Zamaradi Johannes, submitted in support of the preliminary objection that the plaintiff's claim is in respect of rent arrears. She argued that the cause of action accrued on 14/09/2013 when the first defendants breached contract. A claim for rent arrears may be instituted before the expiry of six years from the date of accrual. To support her position, she referred to section 5 and item 13 to the First Schedule of **the Law of Limitation Act**, [Cap. 89 R.E 2019] (the LLA). She submitted that the cause of action accrued in 2013 and that the statutory time of six years lapsed on the 14/09/2018. She concluded that in 2022 when the plaintiff instituted the claim, the matter was hopelessly time barred. She prayed for dismissal of the suit as that is the only remedy under section 3 of **LLA**.

In reply, Mr. Tadey Lister, the plaintiff's Advocate, submitted that the preliminary objection did not qualify as preliminary objection because, the defendants did not specify not provisions of the law under which it is based

and that it was not based a pure point of law. He also submitted that the suit was not time barred as the agreement was concluded on 14.09. 2013. Following the first defendant's non-payment, the plaintiff instituted a claim before the district land and housing tribunal on 16/07/2019. For that reason, the suit was first instituted before the expiry of six years. To buttress his position, he cited the cases of **Mathias Ndyuki & 15 Others vrs. Attorney General**, Civil Application No. 144 of 2015, **Lweru Enterprises Co Ltd vrs. Mansoor Oil Industries Ltd & 3 Others**, Land Case No.02 of 2022 and **Ali Shabani & Others vrs. TANROADS & the A.G**, Civil Case No. 261 of 2020.

In a rejoinder, Ms. Zamaradi, underscored that **Mathias Ndyuki's** case is distinguishable, since the filing of preliminary objection in the Court of Appeal differs substantially to what is done in the High court. That the objection is based on a pure point of law, as time limit goes to the jurisdiction of the court. That the cause of action in the instant case was not of a continuous nature, and that paragraph 8 of the plaint is clear that contractual breach commenced on the 14/09/2013 and the suit was filed on 27/12/2022, of which it is time barred. And that the matter in the DLHT was truck out for want of competence.

Having heard the rival submission, I wish to comment on the plaintiff's advocate's contention that the preliminary objection was not worthy its name as the defendants did not mention the provision of the law, which the plaintiff violated and that the preliminary of law may not be raised where facts must be ascertained. I am in total agreement with the plaintiff's advocate, Mr. Tadey Lister that the preliminary objection cannot be raised if anything has to be ascertained. He cited the case of **Lweru Enterprises Co. Ltd v. Mansoor Oil Industries Limited Mwanza City Council, and 2 Others**, Land Case No. 02/2022. I concur with the plaintiff's advocate and that is the position of the law in the case of **Mukisa Mukisa Biscuit Co. V. West End Distributors Ltd** [1969] EA 696 at 700, 701 where it was held that-

"a preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit". Moreover, the Court went on to state:

"It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if which is sought is the existence of judicial discretion".

The above notwithstanding, I wish to state that an objection that a suit is time barred qualifies as a preliminary objection. There is nothing to

ascertain because the objection that the suit is time barred is based on **ascertained facts** in the plaint. There is no dispute that facts in the plaint, as far as the plaintiff is concerned, are ascertained. It is trite law that parties are bound by their pleadings. There is nothing to ascertain from either party as the Plaint shows the nature of the claim and the date the cause of action reckoned is clearly indicated. In addition, the law of limitation provides the time limit for instituting an action. There is nothing to ascertain. I find that the preliminary point, to the effect that the suit is time barred, is a legal point of law. I am not travelling in a virgin land as the Court of Appeal in **Moto Matiko Mabanga v. Ophir Energy Plc and 6 Others**, Civ. Appeal No. 119/2021 re-affirmed its position in **Ali Shabani and 48 Others v. Tanzania National Roads Agency and The Attorney General**, Civil Appeal No. 261 of 2020, thus-

"Going by the above authorities, it is clear that an objection on account of time limit is one of the preliminary objections which courts have held to be based on pure point of law which touches on the jurisdiction of the court and whose determination does not require ascertainment of facts or evidence. To determine such an objection, the court needs only to look into the plaints and its annexures without any further facts or evidence to be ascertained in determining as to whether the suit is time barred. In the case of

Ali Shabani and 48 Others (*supra*) when we were faced with an akin situation, at page 8 of our Judgement, we stated that: -

"It is dear that an objection as it were on account of time bar is one of the preliminary objection which courts have held to be based on pure point of law whose determination does not require ascertainment of facts or evidence. At any rate, we hold the view that no preliminary objection will be taken from abstract without reference to some facts plain on the pleadings which must be looked at without reference examination of any other evidence."

That done, I now, proceed to determine whether the suit is time barred. There are undisputed facts; **one**, that the plaintiff instituted the suit on the 27th February, 2023; and **two**, that the plaintiff's claim is for rent arrears, interests and for vacant possession or a declaration that he is a lawful owner of the suit land. Part of the plaintiff's plaint reads that.

"6. That the plaintiff being the recognized lawful owner over the suit land entered into a lease agreement with the first defendant on 14.09.2013....

7. That, under the said lease contract between the Plaintiff and first defendant, the first defendant was obliged to pay the plaintiff the sum of Tzs. 100,000 per month as rent....

8. That... immediately after the entrance into the contract on 14.09.2013, the first defendant disobeyed to pay the contractual rent ..."

It is obvious that the plaintiff's claim is based on a lease agreement. He is claiming rent arrears. He pleaded under paragraph ten (10) that *"counting from the day of default of the contract by nonpayment of rent by the first defendant to date, it amounts to nine years of default"*. He added that *"nonpayment of Tzs. 100,000 per month times twelve years, times nine years is equal to 10,800,000/=..."* I have no doubt in mind that the plaintiff's claim was based on claim of rent arrears and the first defendant defaulted in 2013.

I totally agree with the defendants' State Attorney that item 13 of Part 1 of the Schedule to the the **LLA** provides that the time to institute a suit on recovery of arrears of rent is six years from the date of action accrued. Thus, a claim for rent arrears after six years is time barred. Looking at the plaint, the plaintiff's claim is based on cocktail causes of action. The plaintiff claims for; **one**, Tzs. 10, 800,000/= which is based on breach of a lease agreement; and **two**, vacant possession of or a declaration that he is the owner of the suit land, which is based on trespass to land. A claim based on breach of contract or a claim for rent arrears must be instituted before the expiry of

nine six years. Unless the claim for rent arrears or a claim based on breach of contract continuous breach of contract, a person cannot sue after six years.

I also considered the submission that a claim for rent arrears is time barred. Are there no rent arrears which are not time barred? I understand the defendant's state attorney may have intended to argue that the claim based on breach of contract cannot be instituted after the expiry of six years from the date of breach. There is nothing to suggest that the whole amount claimed as rent arrears fell due in 2013. I agree with the defendants' state attorney that the plaintiff cannot sue on the contract, the breach of which took place in 2013 because the cause of action is time barred. However, it is not legally correct that the plaintiff has no any surviving cause of action against the first defendant.

It is settled that a claim for land can be instituted any time before the expiry of 12 years from the time the cause of action accrued. Since the plaintiff's claim is partly based on time barred cause of action and partly based on surviving cause of action, I do not find it just to dismiss the suit completely. The law is clear that the suit which is time barred, the only remedy is to dismiss it under section 3(1) of the **LLA**. On the same vein, I

dismiss all claims for rent arrears instituted after six years and save a claim for land which is not yet time barred. However, reading the plaint it would be difficult to separate the time barred claims from surviving cause(s) of action during trial, hence, I dismiss time barred claims and strike out surviving cause of action (claim) with leave to file a suit afresh subject to time limitation.

Given the nature of this case, I will make no order as to costs.

It is ordered accordingly.

Dated at Babati this 1st day of September, 2023.



A handwritten signature in blue ink, consisting of a stylized 'J' followed by 'Kahyoza'.

John R. Kahyoza,
Judge

Court: Ruling delivered in the presence of Mr. Maige, the plaintiff's advocate, Mr. Godfrey, state attorney for the defendants and Mr. Omary Ally Kesi, the first defendant's chairman, B/C, Ms. Ombeni (RMA) present.

A handwritten signature in blue ink, consisting of a stylized 'J' followed by 'Kahyoza'.

John R. Kahyoza, J.

1. 09.2023