

IN THE HIGH COURT OF TANZANIA

DODOMA SUB - REGISTRY

AT DODOMA

LAND CASE NO. 40 OF 2022

1. JULIUS KAJEGA CHILONGANI @

MBOGO KAJEGA

2. MAGRETH CHILONGANI

3. VAILETI ALIFAYO MAKACHA

4. AMOS MAKACHA

5. MAHILA MAKACHA

6. MIKA JULIUS KAJEGA

..... PLAINTIFFS

VERSUS

1. CHAMWINO DISTRICT COUNCIL

2. ATTORNEY GENERAL

.....DEFENDANTS

RULING

8th & 20th September, 2023

HASSAN, J:.

The plaintiffs herein are natural persons and they are working for gain at Buigiri Ward, Chamwino District within Dodoma region. Altogether disputing against Chamwino District Council for ownership of plots of land



and houses located at Chikuyu "B" Buigiri Ward, Chamwino District within Dodoma region. The plaintiffs claims the sum of Tshs. 1,000,000,000.00 as compensation for their disputed land and houses.

Relying on the claim made against them, the defendants raised a point of preliminary objection on the point of law to the effect that the suit is time barred.

On the 12th day of July, 2023 the matter was called on for hearing of an objection raised. Appearing on behalf of all six plaintiffs was Ms. Sarah Ngereza, learned advocate. Whereas on the other side Ms. Agness Makuba assisted by Ms. Kumbukeni Kondo, both learned State Attorneys stands for the defendants.

Arguing on the point of preliminary objection raised, Ms. Makuba kickstarted by submitting that this suit was filed out of time. She contended that these six plaintiffs are claiming for compensation of their land which they claimed to have been acquired by the 1st defendant in different times.

Ms. Makuba argued further that on the 6th and 7th paragraphs of the plaint, the 1st and 2nd plaintiffs claimed that their land was acquired by the 1st defendant since 2012 and they were not compensated. The 3rd,

4th, 5th and 6th plaintiffs claimed that their land was acquired by the 1st defendant on 2015 as in paragraphs 10, 11, 12 and 13 of plaint.

With that description, the learned State Attorney contended that, in their view the cause of action had arisen in 2012 for the 1st and 2nd plaintiffs. As for the 3rd, 4th, 5th and 6th plaintiffs their cause of action had arisen in 2015. Thus, this suit was filed on 14th day of November, 2022. That means, for the 1st and 2nd plaintiffs this suit was filed out of time for nine (9) years since the cause of action has arisen. Also, for 3rd to 6th plaintiffs they have filed the suit for seven (7) years out of time.

With those facts, Ms. Makuba argued that as to the Law of Limitation Act, [Cap. 89 R.E 2019] item 1 part I, it provides that a claim for compensation has to be instituted within one (1) year. To that note, she submitted that the 1st and 2nd plaintiffs were supposed to institute their claim on 2013, whereas for the 3rd to 6th plaintiffs they were supposed to institute their claim in 2016.

Therefore, since this suit was filed out of time, the same should be dismissed under section 3 (1) of the Law of Limitation Act, [Cap. 89 R.E 2019]. In addition to that, Ms. Makuba also referred the case of **Ali Shabani & 48 Others v. Tanzania National Roads Agency (TANROADS) & Another, Civil Appeal No. 261 of 2020 CAT –**

Tanga (unreported), where at page 12 para 1 the court of appeal dismissed the appeal for being time barred. See also, **Tanzania National Roads Agency & The Attorney General v. Honas Kinyagula, Civil Appeal No. 471 of 2020 CAT – Kigoma** (unreported), where at page 13 para 3 it was held that:

"We subscribed to the above cited authority, in this case, since the suit was lodged far beyond the prescribed time it is time barred, and hence, the trial High Court lacked jurisdiction to entertained it. Since the trial High Court entertained an incompetent suit, the whole proceedings and judgment thereof were a nullity."

In conclusion, she prayed this case be dismissed for being filed out of time with costs.

Responding to this contentious issue, Ms. Sarah started by acknowledging what was submitted by the rival advocate. She then succumbed that this suit was filed within time. And with respect to the cause of action, she submitted that it occurred simultaneously since the claim raised from same place, that the disputed land is located at Kikuyu

"B" street within Chamwino District, Ward of Buigiri where all plaintiffs claimed for compensation to the same defendants.

With respect to the argument that this suit was filed out of time, Ms. Ngereza protested that the time of which cause of action arose is 2022 after the plaintiffs made follow up for payment of compensation and the same was unsuccessful. She further submitted that looking on the plaint, it shows that all that time which was mentioned by the defendant's advocate that the cause of action has arisen, the plaintiffs were making follow up for payment of compensation which is since 2012 where the 1st defendant has conducted evaluation for the purpose of paying compensation to the plaintiffs.

Therefore, she contended that since that time, that is 2012 to 2015 where they conducted the second evaluation for the purpose of compensating the plaintiffs, from that time to 2022 the plaintiffs were making efforts to seek for compensation with respect to the disputed land. And those efforts were done in conjunction with the chairman of Chikuyu village when they met with land officers.

To strengthen her submission, she referred the Civil Procedure Code, Order VII rule 6 which provides that when the suit is instituted after expiration of period prescribed by the law of limitation, then, the plaint

shall show the grounds upon which exemption from such law is claimed. She continues to submit that they have mentioned that in paragraph 6 to 17 of the plaint.

In conclusion, backed up with article 107A (2)(e) of Tanzania constitution which require the court to dispense justice without being tied up with technicality which may obstruct dispensation of justice, Ms. Ngereza submitted that, since the law allows, it is her prayer that this preliminary objection lacks merit and the same should be overruled with costs.

Re-joining her earlier submission, Ms. Makuba submitted that she heard the rival's submission that this suit was filed out time and by referring to Order VII Rule 6 of the Civil Procedure Code, [Cap. 33 R.E 2019] she conceded that the suit was filed out of time and as she has enlisted the reasons for delay in the plaint from paragraph 6 to 17. However, she submitted, looking at those paragraphs there is nowhere it was shown that the plaint was filed out of time and also there is no where she gave reasons as to why law of limitation should not be used. Therefore, she submitted that this provision of law of limitation cannot be used to safe guard her case. Thus, she stressed that this suit was lodged out of time and it should be dismissed with costs.

With respect to the issue that the plaintiffs were making efforts for follow up of their claims, Ms. Makuba contended that the undertaking does not bar the plaintiffs to file the case to claim their rights. She added that even those efforts do not accelerate the cause of action to move forward, and that, by the time the plaintiffs were making those efforts, they were already out of time. For instance, the 1st and 2nd plaintiffs were out of time for nine (9) years, while 3rd to 6th plaintiffs were out of time for seven (7) years.

Ms. Makuba referred the court to section 4 of the Law of Limitation Act, which provides:

"The period of limitation prescribed by this act in relation to any proceeding shall, subject to the provisions of this Act hereinafter contained commenced from the date on which the right of action for such proceeding accrues."

She therefore cemented that, as for this section, when negotiation started, cause of action had already arisen since 2012 for the 1st and 2nd plaintiffs and 2015 for the 3rd to 6th plaintiffs. Thus, she pressed that the plaintiffs were making efforts while they were in their own wrong and to let their right go.

Additionally, she submitted that advocate for plaintiffs averred that cause of action had arisen simultaneously. On their part, they held that evaluation can be held in a number of times according to the size and use, but looking on the plaint at paragraph 5 and 6, it only shows about the 1st and the 2nd plaintiffs and that evaluation was conducted on 2012. And as for paragraph 10 to 13 which mention the 3rd to 6th plaintiffs it addressed evaluation of 2015. Therefore, cause of action had arisen in different time for these two sets of plaintiffs and they were all out of time as per the law. More so, she prayed that this suit should be dismissed with costs.

Going through the rival submissions, I will start to calculate as to when did the cause of action arise, and I think the answer is not mindboggling. It appears from the above submissions that there is no dispute that the normal time of which cause of action has arisen elapsed. Looking from the plaint, it crops two sets of plaintiffs, the first include 1st and 2nd plaintiffs whose land and houses were acquired by the 1st defendant and evaluation was completed in 2012 without being compensated (see paragraph 6 of the plaint). And the second set include 3rd to 6th plaintiffs whose land and houses were also acquired by 1st

defendant and evaluation completed in 2015 and they were not compensated (see paragraph 8 and 9 of the plaint).

In such circumstance, observing the time frame, it is apparent that a cause of action which arose in 2012 should have ended in 2013. Likewise, cause of action which arose from 2015 should have also ended in 2016.

Thus, if at all, the plaintiffs have had any claim for exemption under Order VII rule 6 of CPC, they should have mentioned the grounds for exemption in the plaint. For clarity Order VII rule 6 of Civil Procedure Code provides:

"Where the suit is instituted after the expiration of the period prescribed by the law of limitation, the plaint shall show the ground upon which exemption from such law is claimed."

It is also apparent from the decision of **Consolidated Holding Corporation v. Rajani Industries and Another, Civil Appeal No. 2 of 2003** where the court of appeal stated:

"It is apparent that under these provisions, the time taken in negotiating for settlement is not one of the

categories of instance in which time is excluded in computing the period of limitation."

Now, in the light of the above statement of the law, the follow up question is whether or not the time delayed to seek compensation is worth protection of exemption under Order VII rule 6 of CPC.

In this matter at hand, observing all 18 paragraphs in the plaint, it is clear that cause of action arose far back since 2012 for the 1st and 2nd plaintiffs and ended in 2013 and 2015 for the 3rd to 6th plaintiffs and ended in 2016. It also worth noting that, since then, there was no any legal action taken by the plaintiffs.

Similarly, there is nowhere in the plaint where plaintiffs have pleaded any relevant ground for exemption in computing the period of limitation. Plaintiffs confirmed at paragraph 14 of the plaint that, at the latest, 1st defendant had completed evaluation in 2015, and since then the 1st, 2nd, 3rd, 4th and 5th plaintiffs have not been compensated and no clear information was placed to the plaintiffs, and yet remained mute without any action.

As for the 6th plaintiff, paragraph 13 indicates that as up to 2020 there was final interaction with the 1st defendant where some payment was made. Further to that, a letter of assurance for payment was issued

by the 1st defendant as evidenced at paragraph 15, though, after default from 2020 no action was taken until late 2022 while period for limitation had also elapsed. Again, apart from mere declaration that the 6th plaintiff made great follow up to 1st defendant for the payment of the remaining sum, no any ground shown in the plaint as to why legal measure, including institution of suit was not taken to enforce payment of the remaining compensation before the time had not gone beyond twelve months from when cause of action started to exist.

Thus, in the clear statement of the law, owing to the circumstance at hand, I cannot go beyond what was transpired by the Court of Appeal in **Ms. P & O International Ltd v. The Trustee of Tanzania National Parks (Tanapa), Civil Appeal No. 265 of 2020** (Unreported) when it adopted the decision in **Alphons Mohamed Chilumba v. Dar es Salaam Small Industries Cooperative Society, [1986] TLR 91** where it was held that:

"Order 7 rule 6 provides that where the suit is instituted after expiration of the period prescribed by the law of limitation the plaint shall show the ground upon which exemption from since 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, it is necessary for the plaintiff to show in his plaint such grounds 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."

That being the position of the law, it is obvious that, since the period within which fall beyond the law of limitation has elapsed, and no ground for exemption was unveiled from the plaint, then I find merit in the matter. Consequently, I sustain the preliminary objection raised by defendants. In the end, for the foregoing reason I dismiss the suit with costs.

Accordingly ordered.

DATED at **DODOMA** this 20th day of September, 2023.



A handwritten signature in blue ink, appearing to read "S. H. Hassan", is written over a horizontal line.

S. H. HASSAN

JUDGE