

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE DISTRICT REGISTRY OF DODOMA  
AT DODOMA  
LAND CASE NO. 8 OF 2023**

**MWANAHAMISI JUMA BAYU**

**(Admin of Esatate of late Hamis Juma Mondo) .....PLAINTIFF**

**VERSUS**

<b>1. MAULID HAMISI MPONDO</b> <b>2. SINGIDA MUNICIPAL COUNCIL</b> <b>3. THE ATTORNEY GENERAL OF THE</b> <b>UNITED REPUBLIC OF TANZANIA</b> <b>4. THE SOLICITOR GENERAL</b>	}	<b>.....DEFENDANTS</b>
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**RULING**

*Date of Ruling: 24.08.2023*

**A.J.MAMBI, J**

This ruling emanates from the preliminary objection raised by the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants. Earlier the plaintiff **MWANAHAMISI JUMA BAYU** filed a plaint against the Defendants in Land Case No.8 of 2023.

The learned State Counsels Mr. Kumbukeni assisted by Mr. Nicodemus Aguweyo raised the preliminary objections that the plaint is bad in law for being time bared.

The suit is untenable and incompetent for failure to save the Statutory 90 day's Notice. In their preliminary objection the defendant also contended that the plaintiff has no cause of action against the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants and that the suit is bad for suing a wrong party.

Parties argued their submission through written submissions as per the order of this court. Before addressing other limbs of preliminary objection, I will first address the issue of time limitation. The defendants' learned State Attorney submitted that the cause of action in this matter accrued in 2007. They argued that the plaintiff was required to file the suit within 12 years but she filed after twelve years. They contended that the plaintiff in her plaint at paragraph 9 states that the first defendant trespassed and took possession of the disputed land on 5<sup>TH</sup> August 2007. They referred section 9(1) of the law of Limitation Act Cap 89 [R.E.2019].

The learned State Attorney also referred Item 22 Part 1 of the schedule to the Law of Limitation Act Cap 89 in line with the decision of the Court in **Jafari Mjema vs Mwanga DC & two others at page 5.**

Responding to the issue of time limitation, the plaintiff counsel Mr. C Luambano submitted that he agrees with the provisions of the Law cited by the learned State Attorneys but he was of the view that those provisions of

the law should not be read in isolation. He submitted that the suit was filed within the time limit. He referred section 24 (1) of the law of Limitation Act Cap 89 [R.E.2019]. The learned Counsel also referred the decision of the Court in **Shomari O.Shomari vs Esha Selemani Ibrahim & another Land Appeal No.171 of 2018.**

I have thoroughly gone and considered the submissions and argument by both parties including the documents. In my considered view, the main issue here is whether the suit is time bared or not. The defendants in their preliminary objection have submitted that the suit was filed out of time contrary to section of the Law of the Limitation Act, Cap 89 [R.E.2019], while the plaintiff Counsel briefly submitted that the suit was filed within time.

Before addressing the other point of preliminary objection, I will first focus on the key legal point of time limitation which may determine whether this application can proceed or disposed of at this stage. The legal question that need to be answered at this time is whether the suit was filed within or out of time. I have gone through the plaint and it is clear that the plaintiff filed his suit on 15<sup>th</sup> March of 2023 while the cause of action arose in June 2007 that is more than twelve years after the cause of action arose.

This in my view in the absence of sufficient reasons for such long-time delay, no court would have tolerated to entertain an application of this kind. The plaintiff submission that she filed her suit in time has no merit.

It is trite law that where a person occupies unclaimed land for more than twelve years without any claim that person is deemed to be the legal owner of that land. It is well settled legal principle that, the limitation period for suit to recover land is **twelve years** this court finds that the plaintiff was time bared in instituting the case at this court.

It is clear from these facts and evidence that the plaintiff instituted her case beyond the time limit (16 years) contrary to the law. In my considered view since the plaintiff filed the case against the defendants after 12 years the suit was time bared according to the law. Reference can also be made to the decision of the court in ***ERIZEUS RUTAKUBWA v JASON ANGERO 1983 TLR 365*** where it was held that:

*"The period of limitation for redeeming a shambas is 12 years as governed by the Law of Limitation Act 1971"*

It follows therefore that the period of limitation for redeeming the land or suit to recover land is 12 years as provided under the Law of Limitation Act, Cap 89 [R.E.2019] under item 22 of the Schedule (Section 3).


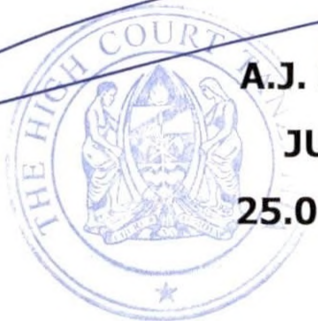
It follows that, since the plaint is not compliance with the law of Limitation Act Cap 89 I find the plaint fatally defective. Reference can also be made to the decision of the court of Appeal of Tanzania in ***The Director of Public Prosecutions v. ACP Abdalla Zombe and 8 others*** Criminal Appeal No. 254 of 2009,

CAT (unreported) where the court held that:


*"this Court always first makes a definite finding on whether or not the matter before it for determination **is competently before it**. This is simply because this Court and all courts have no jurisdiction, be it statutory or inherent, to entertain and determine any incompetent proceedings."*

I therefore agree with the respondents that the application was filed out of time limit required by the law. With due respect I find the point of preliminary objection by the respondents has merit. Since my findings have revealed that the suit is time bared, I don't see any rationale for addressing the other point of preliminary objection. All in all, the records clearly show that the suit was not brought timeously before this court since it was brought beyond the legal requirements of 12 years. This means that the matter is in any event hopelessly time-barred.

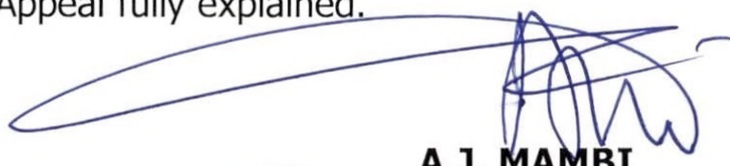

From the above reasoning, I uphold the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents preliminary objection on the point of time limitation. In the view of aforesaid, this matter (land case No.8 of 2023) is time bared and it is accordingly dismissed. I make no orders as to costs. It is so ordered.

  
  
**A.J. MAMBI**  
**JUDGE**  
**25.08. 2023**

Ruling delivered in Chambers this 25<sup>th</sup> of August, 2023 in presence of both parties.

  
  
**A.J. MAMBI**  
**JUDGE**  
**25.08. 2023**

Right of Appeal fully explained.

  
  
**A.J. MAMBI**  
**JUDGE**  
**25.08. 2023**