

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE DISTRICT REGISTRY FOR DODOMA  
AT DODOMA**

**CIVIL CASE NO. 10 OF 2022**

**SWEETBERT RWEASIRA.....APPLICANT**

**VERSUS**

**DODOMA CITY COUNCIL.....1<sup>st</sup> DEFENDANT**

**ZANZIBAR TELECOM LIMITED.....2<sup>nd</sup> DEFENDANT**

**THE ATTORNEY GENERAL.....3<sup>rd</sup> DEFENDANT**

**RULING**

*Date of Ruling: 16.08.2023*

**A.J. MAMBI, J.**

This ruling emanates from the preliminary objection raised by the Defendants. Earlier the plaintiff filed **CIVIL CASE NO. 10 OF 2022** against the defendants claiming Tshs 34, 000,000/= as rent areas on his land, Plot No. 9 Block 'B' at Hazina Street within Dodoma City allegedly unlawfully collected by the 1<sup>st</sup> defendant from the 2<sup>nd</sup> defendant from 14<sup>th</sup> June 2007 to June 2022. The plaintiff alleged that his claims emanate from the erection of the communication tower by the 2<sup>nd</sup> defendant on the area which is subject to the dispute on agreement that the 2<sup>nd</sup> defendant shall be paying rent Tsh 2,400,000/=per annum.

Before the matter proceeded, the 1<sup>st</sup> and 3<sup>rd</sup> defendants raised the preliminary objection that this suit is time barred as the plaintiff has filed the suit out of time limit contrary to the Law. The 1<sup>st</sup> and 3<sup>rd</sup> defendants through the state Attorneys in their written submission contended that, it is the

settled law as provided for under section 5 of the Law of Limitation Act Cap. 89, [R.E 2019] that the right of action in respect of any proceedings accrues on the date on which the cause of action arises. They submitted further that item 13 of Part I to the Schedule of the Law of Limitation Act, [Cap 89, R.E 2019] provides that the period of limitation for suits to recover arrears of rent is six years.

The learned State Attorneys submitted that Section 12(3) of The Law of Limitation act Cap 89 R: E 2019 is very clear on the right of action in respect of rent arrears, it provides that;

*"When any person is in possession of land by virtue of a lease in writing by which a rent is reserved and*

- (a) The rent is received by some person wrongfully claiming to be entitled to the land in reversion immediately expected on determination of the lease and*
- (b) No rent is subsequently received by the person rightfully so entitled, the right of action of the last-named person to recover the land shall be deemed to have accrued on the date when the rent was first received by the person wrongfully claiming as aforesaid and not on the date of determination of the lease."*

The learned State Attorneys basing on the above cited provision of the law, argued that, if at all the 1<sup>st</sup> defendant is purportedly to have first received rent in 2007 the time started to run on that year and not at the determination of the lease. They finally submit that the present matter has to be dismissed pursuant to section 3(1) of the Law of Limitation Act [Cap 89, R.E.2019]

which provides that every proceeding described in the first column of the scheduled to the Act and which is instituted after the period of limitation prescribed therefore opposite thereto in the second column, shall be dismissed whether or not limitation has been set up as a defense.

In response, the plaintiff through his learned Counsel referred this Court on the decision of the court in **Mukisa Biscuits Manufacturing Company Ltd v. West End Distributors Ltd** (1969) EA 696 which stands to be the current position of the law regarding preliminary objections. Relying on that decision, the learned counsel for the plaintiff contended that when the matter need to be ascertained or some evidences are needed in order for the court to arrive at certain conclusion the matter cannot be termed as preliminary objection. He submitted that the claims of the plaintiff in the instant case are founded on the lease agreement under which the court needs to ascertain its validity so as to make it binding upon the parties. The plaintiff's counsel submitted that due to this fact, this court is enjoined to call for the said lease agreement to ascertain the provisions on the payments which are the basis of the present suit. He added that the plaintiff also pleaded in his plaint that he came to know that the 1<sup>st</sup> Respondent has already received payment from the 2<sup>nd</sup> Respondent in 2022. The Plaintiff counsel went on submitting that the plaintiff came to realize that the 1<sup>st</sup> Defendant has already collected the rent from the 2<sup>nd</sup> Defendant in June, 2022 when the 2<sup>nd</sup> Defendant started to dismantle the communication tower and it was when the cause of action accrued and the Plaintiff managed to be supplied with the Copy of lease agreement to the effect the lease agreement started in 2007. He added that the plaintiff's claim against the Defendant jointly and/or severally accrued in June, 2022 and not in 2007 as

alleged and submitted by the 2<sup>nd</sup> Defendant. The plaintiff's counsel argued that the right accrued in June, 2022 when the 2<sup>nd</sup> Defendant's lease agreement was terminated and/or failed to operate the Communication Tower. Due to this fact the plaintiff's counsel submitted that it is prudent that this honorable court ascertain the main case and render justice to the parties as the cause of action accrue on the date on which it arises. Reference was made section 5 and 6(a) of the Law of Limitation Act, Cap 89 R.E 2019.

I have thoroughly gone and considered the submissions and arguments by both parties including the documents. In my considered view, the main issue here is whether the suit is time bared or not. The 1<sup>st</sup> and 3<sup>rd</sup> defendants in their preliminary objection have submitted that the suit was filed out of time contrary 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.

At this juncture, it is incumbent upon this Court to 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 needs 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 filled his suit on 21<sup>st</sup> June of 2022 while as per paragraphs 5, 8 and 10 the cause of action arose in June 2007. I wish to quote paragraphs 5, 8 and 10 which reads as follows;

*'5. That, the plaintiff claims against the 1<sup>st</sup> defendant the tune of thirty-four million (say Tsh 34,000,000/=) as the rent arrears unlawful collected from the 2<sup>nd</sup> defendant from 14<sup>th</sup> June 2007 to June 2022 where as the 2<sup>nd</sup> defendant used to erect the communication tower*

*therein into the plaintiffs (sic) Plot without any legal justification for the tune of two million, four hundred thousand (Tsh 2,400,000) per annual rent.*

*8. That, in the same year when the 1<sup>st</sup> defendant formerly known as Capital Development Authority (CDA) without any legal justification intruded into the said lease agreement under illegal manner while informs while informs the 2<sup>nd</sup> defendant that, the part of the west side was not granted to the plaintiff hence diverts the rents that shall and was directed to the 1<sup>st</sup> defendant and the same was executed until the dispute arose when the 2<sup>nd</sup> defendant in June 2022 when wants to dismantle the communication tower which is contrary before the eyes of the law.*

*10. That, since June, 2007 to June, 2022 the plaintiff under amicable solution made some efforts to the 1<sup>st</sup> defendant for the act of trespassing into his part of the Plot while renting the same to the 2<sup>nd</sup> defendant and all the rents the tune of Tsh 2,400,000/= per annual rent was being paid to the 1<sup>st</sup> defendant illegally but all along the officer of them never paid attention and/or takes weight to the plaintiffs claim."*

This in my view in the absence of sufficient reasons for such long-time delay, no court would have tolerated to entertain suit of this kind. The plaintiff submission that he filed his suit in time bay arguing that the claim against the defendants started in June 2022 has no merit.

In this regard, I wish to refer the relevant provision of the Law of the Limitation Act, Cap 89 [R.E.2002]. Indeed section 5 of the Law of the Limitation Act provides that:-

*"Subject to the provisions of this Act the right of action in respect of any proceeding, shall accrue on the date on which the cause of action arises".*

It should also be noted that item 13 of Part I to the Schedule of the Law of Limitation Act, [Cap 89, R.E 2019] provides that:-

*"the period of limitation for suits to recover arrears of rent is six years."*

Reference can also be made to section 12(3)v of the Law of Limitation Act, Cap 89 [R: E 2019] which deals with accrual of right of action in cases of certain tenancies. That section provides that;

*"1) The right of action to recover land from a tenant having a tenancy at will, shall accrue on the date on which the tenancy is determined.*

*(2) A tenancy from year to year or other period without a lease in writing shall be deemed to be determined at the end of the first year or other period, and accordingly the right of action of the person entitled to the land subject to the tenancy shall accrue at the date of such determination:*

*Provided that where any rent has subsequently been received in respect of the tenancy, the right of action shall accrue on the expiry of the period in respect of which the payment of rent was received.*

***(3) Where any person is in possession of land by virtue of a lease in writing by which a rent is reserved and***

***(a) the rent is received by some person wrongfully claiming to be entitled to the land in reversion immediately expected on determination of the lease; and***

***(b) no rent is subsequently received by the person rightfully so entitled, the right of action of the last-named person to recover the land shall be deemed to have accrued on the date when the rent was first received by the person wrongfully***

***claiming as aforesaid and not on the date of determination of the lease”.***

In my view where the law requires one to file his case within a limited time and he decides to file after that time, this shows he was not serious and had no interest in claims. My reason is based on the fact that filing a suit after six years provided by the law without any justification denies jurisdiction of this Court to entertain such a case. Addressing the consequences of filing an appeal out of time was underscored by the court in ***TANZANIA DAIRIES LTD v CHAIRMAN, ARUSHA CONCILIATION BOARD AND ISAACK KIRANGI 1994 TLR 33 (HC)***. In this case the Court of Appeal observed that:-

*"Once the law puts a time limit to a cause of action, that limit cannot be waived even if the opposite party desists from raising the issue of limitation"*

The Law of Limitation Act under section 3 has put a general provision on time limitation for instituting suits or any action. This section provides that:-



*"3 -(1) Subject to the provisions of this Act, every proceeding described in the first column of the Schedule to this Act and **which is instituted after the period of limitation prescribe therefore opposite there to in the second column, shall be dismissed whether or not limitation has been set up as a defense.**"*

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."*

Going through the plaint, with due respect I find that the suit was not brought timeously before this Court since it was brought beyond the legal requirements of six years. This means that the suit is in any event hopelessly time-barred.

From the above reasoning, I uphold the 1<sup>st</sup> and 3<sup>rd</sup> defendants' preliminary objection on the point of time limitation. In view of aforesaid, this suit is time bared and it is dismissed accordingly. I make no orders as to costs. It is so ordered.

  
  
**A. J. MAMBI**  
**JUDGE**  
**16.08. 2023**

Ruling delivered in Chambers this 16<sup>th</sup> day of Augst, 2023 in presence of Ms. Kumbukeni Kombo and Ms. Agnes Makuba, State Attorneys for the 1<sup>st</sup> and 3<sup>rd</sup> defendants and the plaintiff in person.

  
  
**A. J. MAMBI**  
**JUDGE**  
**16.08. 2023**



Right of Appeal explained.



**A. J. MAMBI**

**JUDGE**

**16.08. 2023**

