

**UNITED REPUBLIC OF TANZANIA**

**JUDICIARY**

**HIGH COURT OF TANZANIA**

**BUKOBA SUB REGISTRY**

**AT BUKOBA**

**LAND APPEAL NO. 60 OF 2023**

*(Arising from Land Application No. 27 of 2021 of the Muleba District Land Housing Tribunal  
Muleba)*

**VEREDIANA NTALE ----- APPELLANT**

**VERSUS**

**CLAUDIA PETER LWAKABWA----- RESPONDENT**

**RULING OF THE COURT**

Date of last Order: 26/02/2024

Date of Ruling: 05/03/2024

**BEFORE: G.P. MALATA, J**

This appeal came for hearing on 26/02/2024. The parties appeared represented, Mr. Derick Zephryne learned counsel appeared for the appellant whereas the Ms. Pilly Hussein learned counsel appeared the respondent.

At the commencement of submissions by the appellant, this court observed that, the dispute emanates from Mortgage Agreement entered between the parties herein. That, the appellant secured loan from the respondent and placed land in dispute as collateral for the loan with conditional precedent that, should the

appellant fail to pay in time the loan, the land shall compensate the unpaid loan. The parties concluded the agreement on 24/02/2009 with payment period ending on 24/06/2009.

The contract speaks that;

***YAH: MKOPO WA PESA SHS 480,000/= (LAKI NNE NA ELFU  
THEMANINI) KWA MIEZI MITATU KWA DHAMANA YA SHAMBA.***

***".....Pesa  
hizi zisiporudishwa kwangu tarehe 24 Juni, 2009 nitachukua eneo  
hili"***

Based on the above contract, money was disbursed to the appellant and at the end that is to say on 24/06/2009 the money was not fully thus accrual of right to possess and own the security, the farm to compensate for unpaid loan.

It is alleged that to the date of 24/06/2009 the appellant had not paid though, it is claimed that, the respondent refused to accept payment delivered thereto by the representative of the appellant. This marked the cause of action on the matter for two reasons; **one**, the respondent refused to accept payment as agreed and **two** upon refusal to accept payment cause of action arose against the appellant to enable the money refused to be accordingly. Thus, the cause of action for both parties accrued on 24/06/2009.

This being a mortgage Agreement the time limit within which to institute suit based thereon is six (6) years. The record by the Muleba District Land and Housing Tribunal shows that, the appellant instituted Land Application No. 27 of 2021 on 28/05/2021. Counting from 24/06/2009 to 28/05/2021, it is 12 years passed.

Having so observed, this court find legally plausible to ascertain, if Land Application No. 27 of 2021 on 28/05/2021 of Muleba District Land and Housing was filed within time thus purposes of conferring jurisdiction to the DLHT and this Court as well.

In the event, this court *suo motto* raised such jurisdictional point of law and invited the parties to address on the same. This court was therefore, compelled to stay hearing of an appeal pending disposition of the *suo motto* raised point of law.

Mr. Derick Zephryne, learned counsel commenced his submission by stating that, it is trite law that, issue of jurisdiction is creature of the statute and that, the court is required to ascertain whether it has jurisdiction or not. The matter at hand touches time bar, thus a jurisdiction issue. He submitted that, looking at paragraph 6 (a) (ii) the cause of action arose from the date breach, that is to say 24/06/2009. The respondent's right to repossess and owned collateral the land in disputed kicked off on 24/06/2009.

Having gone through the pleadings and evidence of the Muleba DLHT, it is evident that, land Application No. 27 of 2021 before the DLHT was time barred for being

filed outside the time limit prescribed by law, that is to say beyond the six (6) years.

Finally, he conceded to the point of law that, the matter was time barred and went to opine that, the remedy is to nullify the proceedings and judgment and Decree of the DLHT for want of jurisdiction finally dismiss the present appeal.

Mr. Derick Zephreine learned counsel submitted that since the matter was *suo motto* by the court, it be ordered that each party to bear its own costs. He succumbed.

Ms. Pilly Hussein learned counsel subscribed to the submission by Mr. Derick Zephreine learned counsel that, the DLHT had no jurisdiction to entertain the matter for being preferred outside the time limit prescribed by law. She ended submitting that the respondent be paid costs.

Taking from where both counsels for the parties herein submitted, it is clear that, the matter before the tribunal was contract and the time limit within to institute to enforce the same is six (6) years. Item 7 of Part I to the Schedule of the Law of Limitation Act, Cap.89 R.E.2019 provides that,

***"Suit founded on contract not otherwise specifically provided for six years"***

Courts and tribunals are required not to entertain any matter which is time barred, as they have no jurisdiction to do so, unless extension of time was

sought and granted to file such suit out of time. Doing otherwise is to perpetuate illegalities.

In that regard, courts must satisfy itself at the commencement of hearing, on whether it has jurisdiction to hear and determine the matter before it.

In the case of **D.P.P vs. Bernard Mpangala and two others**, Criminal Appeal no. 28 of 2001, the court of appeal had these to say;

*"Admittedly, **limitation is a legal issue which has to be addressed at any stage of proceedings as it pertains to jurisdiction.** However, parties have to be given a right of hearing, especially as in this case where there was a need to give some explanation and even to tender proofs."*

In the case of **Sospeter Kahindi vs. Mbeshi Mbashani**, Civil Appeal no. 56 of 2017 (unreported), the court held that;

*"The question of jurisdiction of a court of law is so fundamental. Any trial of any proceedings by a court lacking requisite jurisdiction to seize and try the matter will be adjudged on appeal or revision."*

Also, in the case of **Tanzania Revenue Authority vs. Kotra Company Limited**, Civil Appeal no. 12 of 2009 (unreported) where the court of appeal held that;

*"The question of jurisdiction is fundamental in court proceedings and can be raised at any stage, **even at the appeal stage**. The court, suo moto, can raise it."*

The question which follows is what is the consequence of the appeal filed out of time. Reference shall be made to numerous court decisions to wit; the case of John **Cornel vs. A. Grevo (T) Ltd**, Civil case no. 70 of 1998 cited in the case of **Nyanza Folklore Research Institute (NFRI 1985) vs. Mwanza City Council and others**, High Court of Mwanza, Land Case no. 04 of 2020 where it was held that;

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

The above position is cemented by section 3(1) and (2) (a) of the Law of Limitation Act

***(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 prescribed therefore opposite thereto in the second column, **shall be dismissed whether or not limitation has been set up as a defence.***

*(2) For the purposes of this section a proceeding is instituted-*

*(a) in the case of a suit, when the plaint is presented to the court having jurisdiction to entertain the suit, or in the case of a suit before a primary court, when the complaint is made or such other action is taken as is prescribed by any written law for the commencement of a suit in a primary court;*

In the case of **Barclays Bank Tanzania Limited vs Phylisiah Hussein Mcheni**, Civil Appeal no 19 of 2016 the court of appeal had these to say;

*"Finally, therefore there was no basis for the High Court Judge to strike out the complaint that had been presented in court after expiration of 60 days.....In view of that position of the law, it is our conclusion that, the learned High Court Judge should have **resorted to section 3(1) of the Act to dismiss** the complaint instead of striking it out as she did."*

Guided by the principles in the afore stated precedents, land application no. 27 of 2021 ought to have been dismissed by the DLHT

As such, I am inclined to agree with the legal position presented by all counsels.

Having ascertained that, land application no. 27 of 2021 was time barred this court exercises the mandates under section 43 (1) (b) of the Land Disputes Courts Act, Cap.216 R.E. 2019. The section reads;

*(1) In addition to any other powers in that behalf conferred upon the High Court, the High Court-*

*(a) shall exercise general powers of supervision over all District Land and Housing Tribunals and may, at any time, call for and inspect the records of such tribunal and give directions as it considers necessary in the interests of justice, and all such tribunals shall comply with such direction without undue delay;*

***(b) may in any proceedings determined in the District Land and Housing Tribunal in the exercise of its original, appellate or revisional jurisdiction, on application being made in that behalf by any party or of its own motion, if it appears that there has been an error material to the merits of the case involving injustice, revise the proceedings and make such decision or order therein as it may think fit.***


In the event, this court hereby revise and nullify all proceedings and decisions entered by the Muleba DLHT in land Application No. 27 of 2021 before the DLHT as it was entertained without jurisdiction for being filed outside the time limit prescribed by law.



Meanwhile, since the present land appeal no.60 of 2023 emanated from a nullity proceedings and decision, the same is hereby dismissed. Each party shall bear its own cost as the point of law was raised by the court, *suo motto*.

**IT IS SO ORDERED**

**DATED** at **BUKOB**A this 5<sup>th</sup> March, 2024.

  
G. P. MALATA  
**JUDGE**  
05/03/2024

**DELIVERED** at **BUKOB**A in chamber this 5<sup>th</sup> March, 2024 in the presence of Mr. Derick Zephryne learned counsel for the appellant and Ms. Pilly Hussen learned counsel for the respondent.



  
G. P. MALATA  
**JUDGE**  
05/03/2024