

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND CASE NO. 129 OF 2019

**HYASINTA ELIAS MALISA (As administratrix of the estate of the
Late DR. ELIAS MALISA.....PLAINTIFF**

VERSUS

MINISTRY OF LANDS, HOUSING AND HUMAN

SETTLEMENT.....1ST DEFENDANT

THE COMMISSIONER FOR LANDS.....2ND DEFENDANT

THE ATTORNEY GENERAL.....3RD DEFENDANT

RULING

OPIYO, J.

Mr. Stanley Kalokola, State Attorney, appearing for the three defendants here in above has objected the suit at hand on point of law that the same is time barred. The background information in this matter is that the plaintiff pleads that her late husband, one Dr. Elias Malisa, purchased the landed property from Ununio Ujamaa village on 10th January 1981 which they owned under customary right of occupancy until October, 2012 when her husband died. That, following invasion by trespassers and other occupants she wrote a letter to permanent secretary of the 1st defendant requesting for survey of the suit property and the neighboring pieces of land in 2014. There was no feedback about their request to the 1st defendant. They engaged private surveyor who found that the said land was already surveyed and approved since 1998 over Map No. E'358/2 with

registration plan No. 21218 without their knowledge and designated plot No. 11 with certificate of Title No. 437111 in the name of Goodfreid Kajana Makaya. Upon official search they found Makaya had transferred the land to Shamiana Builders Ltd. That, upon such revelation Ununio village held a meeting in which villagers unanimously resolved that the suit property belongs to plaintiff and not Shamiana Builders Ltd. This was followed by series of correspondence with Minister responsible demanding restoration of their properties but in vain. That to their surprise 1st defendant proceeded to revoke granted Right of Occupancy over the disputed property on 4th day of September, 2017 from Shamiana Builders Ltd offering only ten plots to former occupants including the plaintiff and claiming ownership of the rest pieces of land. This led to institution of the current suit.

In his written submissions Mr. Kalokola submitted that this objection is a matter of law capable of being entertained as stated in **Mukisa Biscuits Manufacturing Co. Ltd. Vs West End Distributors Ltd. (1969) EA**, at it raises a pure point of law not facts that require ascertainment.

While referring to paragraphs 10, 11, 14 and 15 of the plaint, the defendants' counsel insisted that the dispute in question seem to have occurred since 1988 when one Goodfreid Kajana Makaya was granted the suit land. He insisted that reading particularly at paragraph 15 of the plaint, along with annexure **A6** one will find that the suit was in dispute long before 2003. He contended that, the computation of time to sue in this case started immediately after the plaintiff became aware of the trespass. He referred the court to the case of **Lucy Range versus**

Samuel Meshack Mollel & 2 Others, Land Case No. 323 of 2016 High Court of Tanzania, Land Division, at Dar Es Salaam, where it was observed that...

"In determining whether the suit is time barred or not, the court normally looks at the plaint to see as to when the cause of action arose, in other words when the right of action started to accrue".

He insisted therefore, this suit has been brought against Item 22 of the First Schedule of the Law of Limitation Act, Cap 89 R.E 2019 as the same has been brought out of 12 years. The time for instituting this case expired in 2015 counting from the year 2003. Other cases cited by the defendants' counsel in support of his arguments include **Bhoke Kitangita versus Makuru Mahemba, Civil Appeal No. 222 of 2017, Court of Appeal of Tanzania, Edward Elangala versus Pius H.W Ogunde, Civil Appeal No. 75 of 2015, Abdallah Ally Selemani t/a Ottawa Enterprises (1987) versus Tabata Petrol Station co. Ltd and Another, Civil Appeal No. 89 of 2017, James Buchard Rugemalila versus The Republic, Criminal Appeal no. 391 of 2017v (unreported), Yussuf Vuai Juma versus Mkuu wa Jeshi la Ulinzi TPDF & 2 Others, Civil Appeal No. 15 of 2019, Court of Appeal of Tanzania.**

On the other hand, Mr. Norbet Mlwale, learned counsel for the plaintiff in his reply was of the view that, the objection by the learned State Attorney for the respondents is devoid of merits. The suit has been instituted within time as the plaintiff has no cause of action against Goodfreid Kajana

Makaya or any other person save for the defendants. He insisted that the cause of action in this suit accrued when the plaintiff acquired knowledge of the acts of the 1st and 2nd defendants who intended to grant the right of occupancy of the suit property to other occupants and that was in the year 2015. These facts are at paragraphs 12, 13, 18 and 19 of the plaint and are in conformity with sections 3, 4, 5 and Item 22 of Part I of the Schedule of the Law of Limitation Act, Cap 89 R.E 2019. He also cited **Lucy Range versus Samuel Meshack Mollel & 2 Others, supra**, which he insisted that the decision of the said case favors his position as far as the objection is concerned.

In rejoinder the learned Stated Attorney for the defendants reiterated his submissions in chief and added that, parties are bound by their pleadings therefore in ascertaining as to whether the suit is time barred, the plaint should be read together with its annexures not to be read in isolations as stated in **Abdallah Ally Selemani t/a Ottawa Enterprises (supra)**. Since the plaintiff is the one who brought the facts material into this court, he cannot afterwards avoid them by circumventing into the plea of ignorance.

Having gone through the submissions of both parties, the issue for determination in the case at hand is whether the objection has merit or not. The contention in this objection is on when exactly the cause of action between the parties hereinabove arose in order to determine whether the suit is time barred. The defendants through the learned State Attorney are of the view that, the same arose in 2003 or prior to that, dating back to 1988 when the suit land was allocated to one Goodfreid Makaya who

was treated as an invader on the suit land by the plaintiff. The defendants' counsel has relied on the notion that, pleadings must be read as whole and not in isolation. That, reading the whole plaint particularly paragraph 15, along with the annexed documents, one will find that the suit is time bared. The plaintiff however has insisted that the suit is within time. That, the cause of action between the parties arose in 2015 when the 1st and 2nd defendants attempted to grant the right of occupancy of the suit land to other occupants as per the facts under paragraph 12, 13, 18 and 19 of the plaint.

From the pleadings Mr. Goodfreid Makaya was granted the land since 1988 and following his invasion the village held a meeting disputing his ownership declaring the plaintiff as the owner. Therefore, the cause of action finds its root when plaintiff became aware of the alleged invasion resulting to the alleged meeting by Ununio Village on 17th /07/2003 as per annexure A6 to the plaint pleaded under paragraph 15 of the plaint. That means the land currently under dispute was under dispute even before 2003 as that meeting was held purportedly to solve the dispute between plaintiff and God fried Makaya. In terms of item 22 of part 1 of the schedule to the Law of Limitation Act period for recovery of Land is 12 years counting from 2003 the period elapsed 4 years before institution of this suit in 2019 as correctly argued by Kalokola, learned State Attorney.

It is also clear from the pleadings that the right of occupancy was revoked from Shamiani Builders Ltd not plaintiff to entitle the plaintiff to claim from the time of revocation of granted right of occupancy not from her but from a third part. The time to recover the same goes back to when the

one whose was revoked disposed her of the land within her knowledge since then. She delayed in proving her title against the one whose title was revoked by the first defendant. It is only after such proof she would have a cause of action against the defendant in exclusion of the one whose title was revoked, not by mere choice as she claims. For the reasons the preliminary objection is upheld and the suit is dismissed for being time barred.



M.P. OPIYO,
JUDGE
6/7/2021