

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)

AT DAR ES SALAAM

LAND CASE NO. 108 OF 2022

CHARLES PETER SEMWENDA (ADMINISTRATOR OF THE ESTATE
OF MAKAME MOHAMED SUNGURA (DECEASED) PLAINTIFF

VERSUS

AZANIA BANK LTD 1ST DEFENDANT

MARK AUCTIONEER AND COURT BROKERS
COMPANY LIMITED 2ND DEFENDANT

ZUMBI MUSIBA (ADMINISTRATOR OF THE ESTATE
OF THE LATE ELVIS MUSIBA) 3RD DEFENDANT

CORPORATE ADVISORY SERVICES LTD 4TH DEFENDANT

THE HON. ATTORNEY GENERAL OF THE
UNITED REPUBLIC OF TANZANIA 5TH DEFENDANT

KIGAMBONI MUNICIPAL COUNCIL 6TH DEFENDANT

THE REGISTRAR OF TITLES 7TH DEFENDANT

THE COMMISSIONER FOR LANDS 8TH DEFENDANT

RULING

Date of last Order: 19.07.2022

Date of Ruling: 20.07.2022

A.Z.MGEYEKWA, J

On 9th May, 2022 Charles Peter Semwenda, the administrator of the estate of the late Makame Mohamed Sungura, the Plaintiff herein,

instituted this suit against the eight Defendants seeking the following six reliefs.

- a) *A declaration that the suit premise rightfully belongs to the plaintiff.*
- b) *A declaration that the 1st, 3rd, and 4th Defendants acquired the title of the suit premise illegally due to the negligence act of the 6th, 7th, and 8th Defendants.*
- c) *A declaration that the 1st, 3rd, and 4th defendants trespassed into the suit premise of the plaintiff.*
- d) *Award of Tshs. 700,000,000/= as general damages.*
- e) *Award of compensation at a present commercial rate for a malicious act by the Respondents.*
- f) *Cost of the suit be provided for.*
- g) *Any other relief(s) this Honourable Court seem fit to grant.*

The 3rd, 5th, 6th, 7th and 8th Defendant filed a Written Submission Defence and they raised a point of Preliminary Objection as follows:-

1. *That this suit is time-barred as per provisions of the Law of Limitation Act.*

When the matter was called for hearing of the preliminary objection on 12th July, 2022, the Plaintiff enjoyed the legal service of Mr. Marwa whereas, the 3rd Defendant had the legal service of Ms. Maira, learned

counsel and the 5th, 6th, 7th, and 8th had the legal service of Mr. Luoga, learned State Attorney.

As the practice of the Court has it, we had to determine the preliminary objection first before going into the merits or demerits of the suit.

The learned counsel for the 5th, 6th, 7th and 8th Defendant started his onslaught by submitting that the suit is time-barred. To buttress his contention he referred this court to the 1st Schedule, Item 22 of the Law of Limitation Act, Cap.89. He added that the Plaintiff has attached a letter dated 22nd May, 1997 complaining that since 1997 there was a dispute and the Plaintiff complained that the defendants have invaded his plot. Mr. Luoga submitted that from the year 1997 to date is more than 12 years. Mr. Luoga submitted that annexures are part of pleadings. To buttress his contention he referred this court to the case of **Ali Shabani & 48 Others v TANROADS** and another, Civil Appeal No. 261 of 2020.

The learned State Attorney insisted that the annexure P2 (d) appearing in paragraph 15 of the Plaint show clearly that the dispute started in 1997 and they have lodged their case in 2022. Fortifying his submission he cited the case of **Moto Matiko Mabanga v Ophir Energy PLC & 6 Others**, Civil Appeal No. 119 of 2021.

On the strength of the above submission, the learned State Attorney beckoned upon this court to dismiss the suit with costs.

Ms. Maira, learned counsel for the 3rd Defendant added that the objection of time-barred is a pure point of law. To support her position she cited the case of **Mukisa Biscuit Manufacturing Company Ltd v West end Distributors Ltd** (1969) EA 696. She contended that the Plaintiff in paragraph 13 of the Plaint stated that the dispute started in 2003 or 2005 Thus, it was her submission that in accordance with section 5 of the Law of Limitation Act, the right of action of any proceeding accrues on the date when the cause of action arose. In his view, the time limit of 12 years lapsed and the consequence is to dismiss the suit as per section 3 of the Law of Limitation Act, Cap. 89.

In conclusion, the learned counsel for the 3rd Defendant urged this court to dismiss the suit.

Mr. Marwa, learned counsel for the Plaintiffs resisted the preliminary objection with some force. He claimed that the instant suit is lodged on 9th May, 2022 and paragraphs 13 and 15 does not disclose the cause of action. He submitted that paragraph 21 of the Plaint shows that between August and October, 2021 the Plaintiff was caught by surprise after seeing a notice of sale of the suit premises. He said that the objection is not a pure point of law. Thus, it was his submission that the objection raised is premature and the defendants intends to preempt the main suit. Fortifying his submission, he cited Order VII Rule 6 of the Civil Procedure Code

Cap.33. Stressing on the point of annexures, he claimed that this court cannot look at the annexures since the same are party of evidence.

Mr. Marwa went on to submit that the cause of action occurred after the death of Makame in 2019 when they realized that the defendants wanted to auction the suit property. Supporting his submission he referred this court to section 9 of the Law of Limitation. He contended that paragraph 13 does not relate to the cause of action but rather the historical background of the case. To support his submission cited the case of **Amina Maulid Ambali & 2 others v Ramadhani Juma**, Civil Appeal No. 35 of 2019.

On the strength of the above submission, he urged this court to apply the principle of overriding objection under section 3A of the Civil Procedure Code and dismiss the objection with costs.

In their rejoinder, Mr. Luoga insisted that in the case of **Matiko**, the Court of Appeal of Tanzania examined the plaint and the relevant annexures. Thus, it was his view that as long as the Plaintiff attached the said letter then the same form part of the pleadings. He insisted that since the deceased during his lifetime complained about the suit land then the court to find that the dispute started in 1997 which is the proper year when the cause of action arose.

Ms. Maira, maintained her submission in chief. She added that the cause of action arose in 1997. To fortify her submission she referred this court to paragraph 12 of the Plaint.

The issue which I am called upon to resolve in this ruling is whether the preliminary objection raised by the Defendants is meritorious. I have carefully summarized the submissions made by learned counsels for the Plaintiffs and Defendant. Before I address the main issue, I find it necessary to consider the validity of the preliminary objection since the Plaintiff's counsel has contended that the point of objection does not disclose the point of law.

To address the above issue, let me revert to what the Court in **Mukisa Biscuit** (supra) stated concerning improper objection. The Eastern African Court had this to say:-

“a preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court, a plea of limitation, or submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.” [Emphasis added].

In the light of the clear statement of above authority, I disagree with the Plaintiff's counsel's submission, the raised objection meets the criteria of a preliminary objection since the issue of time-barred is a matter of law.

Back to the wagon, in the instant case, the controversy on which the objection is anchored is *whether this suit is time-barred*.

The Defendants' counsels have locked horns with the Plaintiffs' counsel on this matter. Each part opposes the version of the other and above all. I had to peruse the Plaint and in fact, I have noted that the Plaintiff has brought a suit against the 6th Defendants and the 6th Defendant was once involved in a dispute concerning the same plot with Makame Sungura. As rightly pointed out by Mr. Luoga the matter in dispute as per the Plaintiff's pleading and annexures arose in 1997 and annexures are part of pleadings.

Therefore as rightly pointed out by Mr. Luoga, learned State Attorney the complaint was pleaded therein and the same is a ground for time limitation since paragraphs 10, 12, and 15 with the annexure P2 (d) disclose the communication which took place between the deceased and the 6th defendant on the issue of trespass. Therefore, I differ with the submission of the learned counsel for the Plaintiff that annexure P2 (d) cannot be looked at since the same is part of pleadings.

In the upshot, for the reasons epitomized above, I proceed to sustain the objection raised by State Attorney and dismiss the Land Case No.108 of 2022 without costs.

Order accordingly.

DATED at Dar es Salaam this 20th July, 2022.



A.Z.MGEYEKWA

JUDGE

20.07.2022

Ruling delivered on this 20th July, 2022 via video conferencing whereas Mr. Marwa, learned Advocate and Mr. Luoga, learned State Attorney were remotely present.



A.Z.MGEYEKWA

JUDGE

20.07.2022