

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM
LAND CASE NO. 88 OF 2022

ISLAM ALLY SALEH (Suing under
Power of attorney of ABEL MICHARO) PLAINTIFF

VERSUS

CATS TANZANIA LIMITED 1ST DEFENDANT

INTERNATIONAL COMMERCIAL BANK
(TANZANIA) LTD) 2ND DEFENDANT

RULING

Date of last Order: 30.08.2022

Date of Ruling: 09.09.2022

A.Z.MGEYEKWA, J

On 23rd April, 2022, the Plaintiff herein, instituted this suit against the eight Defendants seeking the following six reliefs.

- a) *Refund of 150,000 UD Dollar being the amount advanced to the First Defendant as purchasing price.*

- b) *Specific Damage to the tune of 50,000 US dollars against the First Defendant for maintenance done to the house from 2005 to the time of drafting this Plaintiff.*
- c) *General damages to as assessed by this Honourable Court.*
- d) *Cost of the suit.*
- e) *An injunction against the Second Defendant from evicting the Plaintiff until Claimant is paid in full.*
- f) *Any other relief that this Honourable tribunal deems fit, just, and equitable to grant.*

The 1st Defendant filed a Written Submission Defence and raised six points of Preliminary Objection as follows:-

1. The High Court (Land Division) lacks jurisdiction to entertain this suit as the same is time-barred under the relevant and applicable provision of the law.
2. That, the purported "oral Contract for sale of land" identified as Plot No. 214 Block "C" located in Msasani Village area in Dar es Salaam city is unenforceable at law and in the Court of law and any Course of action arising therefrom is unenforceable under the doctrine of extupi causa.
3. That, the plaintiff does not have any cause of action against the First Defendant whether jointly and/or severally.

4. That the Plaintiff was signed by the purported attorney of plaintiff who does not possess legal mandate to act as representative of the plaintiff in this suit through power of attorney under both laws of the United Republic of Tanzania and under laws of the Republic of South Africa.
5. The Plaintiff is legally defective generally for being drawn and lodged in violation of relevant and applicable provisions of law and legal principles.
6. This suit instituted by Plaintiff is generally incompetent and unmaintainable in law for being drawn and lodged in violation of relevant and applicable provisions of law and legal principles.
7. That, suit and plaintiff thereof are legally incurably defective within purview for the doctrine of cumulative effect.

When the matter was called for hearing of the preliminary objection on 1st August, 2022, the Plaintiff enjoyed the legal service of Mr. Bahati holding brief for Mr. Aaron Lesindamu, learned counsel, the 1st Defendant enjoyed the legal service of Mr. Matojo, learned counsel and Mr. Bahati Makaba represented the 2nd respondent. The Court ordered parties to argue the preliminary objection by way of written submissions. Pursuant thereto, a schedule for filing the submissions was duly conformed to.

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 appeal. That is the practice of the Court founded upon prudence which we could not overlook.

The learned counsel for the 1st Defendant began by tracing the genesis of the matter which I am not going to reproduce in this appeal. On the first limb of the objection, Mr. Matojo started his onslaught by submitting on the first limb of objection. He argued that this court lacks jurisdictions to entertain this suit as the same is time-barred. The learned counsel for 1st Defendant contended that paragraphs 4, 5, 6, and 12 of the Plaintiff when read in tandem with reliefs sought by the Plaintiff is clear that the cause of action is founded on a breach of contract for the sale of land. He added that such contract was in form of the oral agreement.

He went on to submit that the suit founded on the contract must be filed within 6 years from the day of cause of action. Fortifying his submission he referred this court to paragraph 7 of the First Schedule of Law of Limitation Act, Cap. 89. Thus in his view, he stated that Land Case No. 88 of 2022 must be dismissed with costs within the purview provision of section 3 (1) of the Law of Limitation Act, Cap. 89.

On the second limb, the learned counsel for the 1st Defendant averted that the Plaintiff wrongly joined the 1st Defendant in this suit. The learned

counsel for the 1st Defendant contended that the Plaintiff does not have any cause of action against the 1st Defendant whether jointly and/or severally. He argued that in paragraph 4 of the Plaint the Plaintiff pleaded that in 2012 the Plaintiff entered into an oral contract for the sale of suit land with Akber Hameer. It was his submission that thus, Cats Tanzania Ltd was not and still is not a party to the oral contract for the sale of land. He went on to submit that Cats Tanzania Ltd is protected by the Doctrine of Privity of Contract as enshrined in section 37 (I) of the Law of Contract Act, Cap. 345. To buttress his submission he cited the case of **Puma Energy Tanzania Ltd Plaintiff v Spec- Check Enterprises Ltd**, Commercial Case No. 19 of 2014.

Mr. Matojo submitted in length on the Doctrine of Privity which defines a person who is not a party to a contract and acquires neither benefits nor obligations under the contract. It was his submission that the 1st Defendant being not a party to the purported oral contract for the sale of the suit cannot be sued under the contract to which he was not a party thereto thereby 2nd Defendant was wrongly joined by Plaintiff in this suit inevitably its name should be struck out. The learned counsel for the 1st Defendant insisted that the Plaintiff wrongly joined the 1st Defendant in Civil Case No. 88 of 2022 because in the case of **Islam Ally Saleh v Akibar Hameer & Cats Tanzania Ltd**, Land Case No. 89 of 2012. He argued that the

Plaintiff had no cause of action against the 1st Defendant herein in connection to the oral contract for the sale of the suit.

The learned counsel opted to drop the last limb of objection.

On the strength of the above, the learned counsel for 1st Defendant invited this court to sustain the two preliminary objections and dismiss or strike out the case with costs.

In reply, the counsel for the Plaintiff was brief and he focused on the fourth point of objection. He conceded that the Power of Attorney was signed in South Africa by Marisa Mulla, counsel while the power is limited within the territory. Mr. Lesindamu opted not to submit on the remaining objections. Ending, he urged this Court to strike out the suit without costs.

I have carefully summarized the submissions made by learned counsel for the 1st Defendant. The counsel for the Plaintiff has conceded with the objection raised by the 1st Defendant's counsel that the Power of Attorney was signed in South Africa by Marisa Mulla, counsel while the power is limited within the territory. He opted not to submit on the remaining objections. In my considered view, I will determine the other points of objection to find out whether they are meritorious or not.

Concerning the first objection, the controversy on which the objection is anchored is whether *this suit is time-barred*. In order to ascertain whether

the suit was time-barred. I had to find out when the cause of action arose. In the Plaint, the Plaintiff on paragraph 4 is claiming a refund of USD 150,000 being the amount of money paid to the 1st Defendant as an advance of the purchasing price of the House in Plot No. 214 and 216 Block 'C' in Msasani Village Area in Dar es Salaam under Title No. 52127.

Reading paragraphs 4, 5 and 6 of the Plaint, I noted that the Plaintiff's claims are related to the contract and he did not state when the Plaintiff and 1st Defendant entered into the said contract. However, as rightly pointed out by the learned counsel for the 1st Defendant, the Plaintiff's claims are pegged on a contract that was not revealed by the Plaintiff. The time when the alleged cause of action arose can be counted from the year 2012. I am saying so because the Plaintiff in paragraph 5 of the Plaint stated that the mortgage was disposed to the NMB as per the 2012 search. Again, in paragraph 7 of the Plaint, the Plaintiff stated that they made a search in the land registry in 2012, land search revealed that Title No. 5212 was still mortgaged in favour of the 1st Defendant to the NMB. To substantiate his allegations he attached a report (annexure LAS -3) which was signed in 2002.

In my considered view, the cause of action arose in 2012, after the 1st Defendant served the Plaintiff to vacate the premises. The Plaintiff did not take any action even after noting that the 1st Defendant discharged the

mortgaged on 27th July, 2015 (annexure IAS-5). As rightly stated by the 1st Defendant the Plaintiff's claims are related to an agreement and the limitation of time to lodge a suit related to contract is six months, counting the same from the year 2012 the six months lapsed in 2018. Paragraph 7 of the First Schedule of Law of Limitation Act, Cap. 89.[R.E 2019] provides that:-

“Suit founded on contract not otherwise specifically provided for six years.”

Basing on the above findings and provision of law, I agree with Mr. Matojo that the suit is hopelessly time barred.

In the upshot, for the reasons epitomized above, I sustain the objection raised by the Defendants' counsels and dismiss Land Case No.88 of 2022 with costs.

Order accordingly.

DATED at Dar es Salaam this 9th September, 2022.



A.Z.MGEYEKWA

JUDGE

09.09.2022

Ruling delivered on 9th September, 2022 via video conferencing whereas Mr. Bahati Makamba, counsel for the 2nd Defendant also holding brief for

Mr. Aaron Lesindamu, counsel for the Plaintiff, and Mr. Matojo Cosatta,
counsel for the 1st Defendant.




A.Z.MGEYEKWA
JUDGE
09.09.2022