

**IN THE HIGH COURT OF TANZANIA**

**(LAND DIVISION)**

**AT DAR ES SALAAM**

**LAND CASE NO. 167 OF 2021**

**BETWEEN**

**ISDORY JOSEPH MWEPPONGWE ..... 1<sup>ST</sup> PLAINTIFF**  
**FATUMA SHOMARI RAMADHANI ..... 2<sup>ND</sup> PLAINTIFF**  
**MUSSA MATEMA KIZENGA ..... 3<sup>RD</sup> PLAINTIFF**  
**HUSEIN HALFANI TEMO ..... 4<sup>TH</sup> PLAINTIFF**  
**MARTIN MWEKWA SOMBI ..... 5<sup>TH</sup> PLAINTIFF**  
**MWANAIKI SHABANI KUZWIGILE ..... 6<sup>TH</sup> PLAINTIFF**

**VERSUS**

**AHAMED MOHAMED SOUD (Administrator of the  
deceased estate of Omari Salum Soud) ..... 1<sup>ST</sup> DEFENDANT**  
**BAGAMOYO DISTRICT COUNCIL..... 2<sup>ND</sup> DEFENDANT**  
**THE COMMISSIONER FOR LAND ..... 3<sup>RD</sup> DEFENDANT**  
**THE REGISTRAR OF TITLES ..... 4<sup>TH</sup> DEFENDANT**  
**THE ATTORNEY GENERAL ..... 5<sup>TH</sup> DEFENDANT**  
**LEONA SIMON MATERU ..... 6<sup>TH</sup> DEFENDANT**  
**REDEGUNDA BEDA MUSHI ..... 7<sup>TH</sup> DEFENDANT**

**RULING**

*05/10/2022 & 25/10/2022*

*Allo*

## **A. MSAFIRI, J.**

This is a Ruling on preliminary objections raised by the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> defendants also by the 1<sup>st</sup>, 6<sup>th</sup> and 7<sup>th</sup> defendants when they filed their written statements of defence. The objections were to the effect that;

- i) That the suit is incompetent for being hopelessly time barred.
- ii) That the amended plaint was drafted beyond Court order.

The preliminary objections were ordered to be disposed of by way of written submissions. The submissions by the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> defendants were drawn and filed by Mr. Erigh Rumisha, State Attorney. The submissions by the 1<sup>st</sup>, 6<sup>th</sup> and 7<sup>th</sup> defendants were drawn and filed by Mr. Living Rafael, advocate and the reply submissions by the plaintiffs were drawn and filed by Mr. Cleoplace James, learned advocate.

Submitting on the first limb of the preliminary objection that the suit is incompetent for being hopelessly time barred, the Attorney submitted that the plaintiff suit is for compensation falling under Item 1 in the Schedule of the Law of Limitation Act, Cap 89 R.E 2019. That the prescribed time for limitation on suits founded on compensation is 12 months from the date the cause of action accrued.

*Alls*

He stated that, according to paragraphs 6 and 7 of the amended plaint, the suit is out of time warranting for an order of dismissal under section 3(1) of the Law of Limitation Act. He added that even the plaint did not plead exemption under Order VII Rule 6 of the Civil Procedure Code which is coached in mandatory terms. To cement his point, Mr. Rumisha cited the cases of **Barclays Bank Tanzania Ltd vs Phylisiah Hussein Mchemi**, Civil Appeal No. 19 of 2016 (unreported) and **Alphons Mohamed Chilumba vs. Dar es Salaam Small Industries CO-operative Society** (1986) TLR 19.

He prayed for the dismissal of the suit.

On the second limb of objection, Mr. Rumisha submitted that the amended plaint was drafted beyond court order. He said that the order as to the amendment of the plaint was specific but the plaintiff have amended the same beyond the order of the Court by adding another parties to the case and changing the contents of the plaint itself.

He referred the case of **Karori Chogoro vs. Waitihache Menengo**, Civil Appeal No. 164 of 2018 where the Court of Appeal stressed on compliance to a Court order. It held thus;

*"Court orders should be respected and complied with".* *Atle.*

Mr. Rumisha prayed for the Court to uphold the preliminary objections and dismiss the suit with costs.

The 1<sup>st</sup>, 6<sup>th</sup> and 7<sup>th</sup> defendants also raised similar preliminary objections and filed their written submissions through their advocate Mr. Living Raphael. Since the preliminary objections are similar to the one raised also by the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> defendants, I need not repeat what was submitted.

Replying in opposition of the preliminary objections, Mr. James for the plaintiffs submitted on the first limb of objection that the objection is misconceived. That, apart from claim of compensation, the plaintiffs are praying for declaratory order that they are lawful owners of the disputed land. The plaintiffs are claiming to recover their landed property by which the time limitation is 12 years.

He said that Item 1 of the schedule to the Law of Limitation Act is for suit for compensations founded under the written law. He contended that the suit by the plaintiffs is not founded under the written law, rather is founded on the recovery of land or to be compensated based on its value. He maintained that, apart from compensation, the plaintiffs are claiming ownership of the disputed land and it is stated in the pleadings. He argued

that the suit cannot be defeated for the claims of compensation while there is a claim of ownership of land.

To buttress his point, the counsel made reference to the case of **Tanzania National Road Agency & Another vs. Jonas Kingagula**, Civil Appeal No. 471 of 2020, CAT (Unreported).

On the second limb of objection, Mr. James submitted that the objection lacks merit. He said that the counsel for the defendant has failed to submit as to what has been changed after amendment, and what parties have been added and what contents has been changed in the amended plaint.

The counsel contended that the amendment of the plaint has been made due to Court order and there is no any added contents. He concluded by submitting that, all preliminary objections lacks merits and should be dismissed with costs.

The issue for my determination is whether the raised preliminary objections has merit.

On the first limb of objection, it is argued by the defendants that this suit is time barred as it is founded on compensation claims and on breach of contract.

*Atls.*

Item 1 of the schedule to the Law of Limitation Act provides the time for compensation for doing or for omitting to do an act alleged to be in pursuance of any written law, to be one (1) year.

At paragraph 7 of the amended plaint, it is stated that, in 2010, one Omari Salum Soud (now the deceased) attempted to evict the plaintiffs from the disputed land. The plaintiffs instituted the complaint before Magomeni Ward Tribunal against the said Omari Salum Soud. That, when the matter was called for hearing before the said Ward Tribunal, the said Omari Salum Soud, admitted the claims and committed himself to pay compensation to the plaintiffs.

Basing on those facts, the claim for compensation by the plaintiffs is based on the commitment to pay compensation which was done by the late Omari Salum Soud. It is my view that this is not compensation in pursuance of any written law as laid down in Item 1 of the schedule of the Law of Limitation Act.

On the claims that the suit is time barred because it is based on the breach of contract, I find that this requires the ascertainment of facts on whether there was a contract between the parties as per the Law of Contract.

*Atle.*

It is my view that these points of objections have no merit and I hereby overrule them.

On the second limb of objection, the defendants argued that the amended plaint was drafted beyond the court's order.

I have gone through the Court records and it is shown clearly that this matter was instituted sometimes in October 2021.

The first plaint shows that there was eight plaintiffs which were as follows;

- JUMA SELEMANI MOHAMED ..... 1<sup>ST</sup> PLAINTIFF
- ISDORY JOSEPH MWEPPONGWE ..... 2<sup>ND</sup> PLAINTIFF
- PETER PETER JUNIOR ..... 3<sup>RD</sup> PLAINTIFF
- FATUMA SHOMARI RAMADHANI ..... 4<sup>TH</sup> PLAINTIFF
- MUSSA MATEMA KIZENGA ..... 5<sup>TH</sup> PLAINTIFF
- HUSSEIN HALFANI TEMO ..... 6<sup>TH</sup> PLAINTIFF
- KASSIM SHABAN JAKAYA ..... 7<sup>TH</sup> PLAINTIFF
- ELIZABETH MOMWI TIMO ..... 8<sup>TH</sup> PLAINTIFF

On 07/12/2021, the leave of the Court was granted to the plaintiffs to amend their plaint to join the Commissioner for Land as a defendant in the

suit. *Alls.*

The amended plaint following the order was filed in Court on 11/3/2022 and contained eight plaintiffs which are as follows;

JUMA SELEMANI MOHAMED ..... 1<sup>ST</sup> PLAINTIFF  
ISDORY JOSEPH MWEPPONGWE ..... 2<sup>ND</sup> PLAINTIFF  
PETER PETER JUNIOR ..... 3<sup>RD</sup> PLAINTIFF  
FATUMA SHOMARI RAMADHANI ..... 4<sup>TH</sup> PLAINTIFF  
MUSSA MATEMA KIZENGA ..... 5<sup>TH</sup> PLAINTIFF  
HUSSEIN HALFANI TEMO ..... 6<sup>TH</sup> PLAINTIFF  
MARTIN MWEKWA SOMBI ..... 7<sup>TH</sup> PLAINTIFF  
MWANAIDI SHABANI KUZWIGILE ..... 8<sup>TH</sup> PLAINTIFF

From the plaints, the first one had Kassim Shabani Jakaya and Elizabeth Momwi Timo as the 7<sup>th</sup> & 8<sup>th</sup> plaintiffs respectively. The second amended plaint has removed Kassim Shabani Jakaya and Elizabeth Momwi Timo and replaced them with Martin Mwekwa Sombi and Mwanaidi Shabani Kuzigwile. Even the current amended plaint has Martin Mwekwa Sombi and Mwanaidi Shabani Kuzigwile.

Going through the records, I have found no prayer was ever made by the plaintiff to amend the plaint to remove the former 7<sup>th</sup> and 8<sup>th</sup> plaintiffs and replace them with the current 7<sup>th</sup> and 8<sup>th</sup> plaintiffs. So the amendment of the plaint to remove and add the plaintiffs was done by the plaintiffs' side without seeking leave of the Court.

*Aelle -*  
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The order of the Court of 07/12/2021 was specifically on the amendment of the plaint to add the Commissioner for Land as a defendant in this suit and nothing else. Later there was an order to amend the plaint when the then 3<sup>rd</sup> plaintiff one Peter Peter Junior prayed to withdraw from the suit.

In the circumstances, I am forced to agree with the objection raised by the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> defendants that, the plaintiffs have failed to comply with the Court's order dated 07/12/2021 and went beyond that order and make amendments on the plaintiffs, by removing some and adding new ones without notifying the Court and seeking leave to do that.

Going contrary to the Court's order is tantamount to Court contempt and cannot be tolerated. Basing on the above findings, I sustain the second limb of preliminary objection and I struck out this suit with costs.



  
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**A. MSAFIRI**

**JUDGE**

**25/10/22.**