

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND CASE NO. 69 OF 2021

SAMEER MOHAMED.....PLAINTIFF

VERSUS

THE TEMEKE MUNICIPAL COUNCIL1ST DEFENDANT

THE ATTORNEY GENERAL.....2ND DEFENDANT

SOPHIA BAKARI IMONJE.....3RD DEFENDANT

JACKON BARIKIEL ULOTU.....4TH DEFENDANT

SAMI GEORGE MAHENGE.....5TH DEFENDANT

WAKUBEMBA BAKARI BUSOLO.....6TH DEFENDANT

BAKARI ATHUMAN NDOLWA.....7TH DEFENDANT

MARIAM KONDO MAHENGE.....8TH DEFENDANT

SELEMANI KONDO MAHENGE.....9TH DEFENDANT

Date of last order: 12/10/2022

Date of ruling: 27/10/2022

RULING

A. MSAFIRI, J.

This is a ruling on preliminary objections raised by the above 8th and 9th defendants. There are three points of preliminary objection to the effect that; *Alles-*

1. *The suit is time barred.*
2. *The Plaintiff has no cause of action against the defendants.*
3. *No compensation was paid to the late Kondo Selemani Mahenge.*

It is on record that on 19th May 2021, the above named plaintiff instituted the present suit against the defendants jointly and severally for reliefs *inter alia* a declaration that the plaintiff is the lawful owner of a piece of land described as Plot No. 180 Block 8 Goroka B Toanguma, Temeke Municipality with Certificate of Title No. 64129 (hereinafter referred to as the disputed premises). The plaintiff claims that the disputed premises were illegally sold by the 8th and 9th defendants.

This court on 15th September 2022 ordered the above preliminary objections be disposed of by way of written submissions. The plaintiff appeared through Ms. Janeth Lema learned advocate while Mr. Frank Kilawe learned State Attorney appeared for the 1st and 2nd defendants. On the other hand Mr. Edwin Msigwa learned advocate appeared for the 8th and 9th defendants. The matter proceeds *ex parte* against the 3rd, 4th, 5th, 6th and 7th defendants. *Alle.*

It is further on record that the plaintiff was required to lodge his reply submission on or before 3rd September 2022 but the same was not lodged as ordered hence determination of the preliminary objection will base on the 8th and 9th defendants' submission only.

Submitting on the 1st preliminary objection, the 8th and 9th defendants were of the view that the present matter is time barred because it is alleged that the disputed premises were allocated to the plaintiff sometimes in 2003 and the present matter was filed in Court on 19th May 2021 which is more than five years after the period of limitation had lapsed. To fortify their stance the 8th and 9th defendants have referred to me the Schedule, Part 1 column one and Section 22 of the Law of Limitation Act [CAP 89 R.E 2019] (the LLA).

Hence the 8th and 9th defendants prayed for the matter to be dismissed with costs.

Going by the plaint filed in the present suit, it is not in dispute that the plaintiff states that he acquired the disputed premises by way of purchase from the 1st defendant sometimes on 12th November 2003. It is also not in dispute that the present suit was lodged in court on 19th May 2021. The

Atls

issue for my determination in respect of the 1st preliminary objection is whether the present matter is time barred. It is unfortunate that 8th and 9th defendants could not establish how the present matter is time barred. They simply referred to the dates on which the plaintiff acquired the disputed premises and the dates on which the present suit was lodged. I think that is not enough to rule that the matter is time barred.

I am much aware that as per part 1 item 22 to the schedule of the LLA, suits for recovery of land must be instituted within 12 years. The question is when the period of 12 years starts to run. I am of the settled mind that the period starts to run from the date when the cause of action arose that is from the date on which the 8th and 9th defendants disposed the disputed premises.

The plaint filed in the present suit could not state exactly when the 8th and 9th defendants disposed the disputed land rather it is claimed by the plaintiff that he sustained deadly road accident sometimes in 2014 in which he could not carry out development over the disputed land and therefore the 8th and 9th defendants took that chance to dispose the disputed premises to the 3rd, 4th, 5th, 6th and 7th defendants. Hence without proof of when exactly such disposition was made it is difficult to rule that the

All.

matter has been filed out of time. Hence the 1st preliminary objection is accordingly overruled.

On the 2nd preliminary objection the 8th and 9th defendants claimed that the plaintiff does not have a cause of action because the plaintiff and his mother are non-citizens of Tanzania hence they do not have right to own land in Tanzania.

The 8th and 9th defendants could not establish their claims that the plaintiff and his mother are non-citizens of Tanzania and that they did not cite any law or decided cases to the effect that by the plaintiff being non-citizen the suit becomes incompetent for want of cause of action. The question therefore is whether the plaint filed in the present suit has disclosed a cause of action against the 8th and 9th defendants.

The term cause of action has not been defined under the Civil Procedure Code [CAP 33 RE 2002] but case laws have defined the term. In the case of **John M. Byombalirwa v Agency Maritime Internationale (Tanzania) Ltd** [1983] TLR 1, the Court of Appeal defined the term to mean

"... Essentially facts which is necessary for the plaintiff to prove before he can succeed in the suit..."

Adls.

In the above cited case the Court of Appeal held further that;

"For purposes of deciding whether or not the plaint discloses a cause of action the plaint and not the reply to the written statement of defence should be looked at,"

I am of the settled mind that plaint has disclosed sufficient cause of action against the 8th and 9th defendants. It is claimed under paragraph 9 of the plaint that the 8th and 9th defendants illegally disposed the disputed premises to the 3rd, 4th, 5th, 6th and 7th defendants. Hence I am satisfied that the plaint has disclosed sufficient cause of action against the 8th and 9th defendants. Besides as claimed by the 8th and 9th defendants that the plaintiff and his mother are not citizens that fact alone does not render the plaint defective for want of cause of action.

Consequently the 2nd preliminary objection is overruled.

On the 3rd preliminary objection the 8th and 9th defendant alleged that no compensation was paid to the late Kondo Selemani Mahege who was the former occupier of the disputed premises.

The 3rd preliminary objection should not detain me longer than it is necessary. Whether or not compensation was paid to the late Kondo

Alle.

Selemani Mahege is a matter that can be resolved by the evidence and should not have been raised as a preliminary objection rather it should have been preferred as a counter claim if at all the 8th and 9th defendants have such locus to claim on behalf of the late Kondo Selemani Mahenge.

In upshot and for the foregoing all the preliminary objections raised by the 8th and 9th defendants are hereby overruled with costs.



A handwritten signature in blue ink, appearing to read "A. Msafiri". The signature is written in a cursive style and is positioned above a horizontal dotted line.

A. MSAFIRI,
JUDGE
27/10/2022