

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM**

LAND CASE NO. 66 OF 2021

SHUKURU SELIMAN KIRUMBIPLAINTIFF

VERSUS

ELIZABETH MARUWA (As Administratrix Of

The Estate Of The Late PAULO YOHANA KIRA).....**1ST DEFENDANT**

TEMEKE MUNICIPAL COUNCIL.....**2ND DEFENDANT**

THE ATTORNEY GENERAL.....**3RD DEFENDANT**

ABDALLAH HUSSEIN.....**4TH DEFENDANT**

Date of Last Order: 25.07.2022
Date of Ruling: 09.08.2022

RULING

V.L. MAKANI, J.

The 1st defendant in this suit has raised preliminary objections on points of law as follows:

- 1. That the suit is time barred*
- 2. That the plaintiff has no cause of action against the 1st defendant.*

Subsequently, the 2nd and the 3rd defendants also raised a preliminary objection on a point of law that:

- 1. The suit is untenable and bad in law for being time barred contrary to Item 22 of the Schedule to the Law of Limitation Act CAP 89 RE 2019 (the **Limitation Act**).*

The objections were argued by way of written submissions. The 1st defendant drew and filed her submissions personally. She said the plaintiff is seeking to recover Plot 22A Block L which was allocated to Faustin Dandili Kira in 1984 and disposition was completed in the year 1991. A dispute arose, and on 20/10/1992 the Dar es Salaam City Council designated and/or created Plot No. 22A Block L, Mbagala area, Temeke Municipality, Dar es Salaam which was allocated to the 1st defendant's family. The plaintiff was informed of the designation and the allocation and that the occupation by the 1st defendant family was legal. She said if the plaintiff had any problems, he would have instituted the suit not later than 2003 and so the suit is out of time by virtue of Item 22 of Part 1 of the Schedule to the Limitation Act.

As for the valid cause of action the 1st defendant submitted that she does not dispute that the plaintiff's interest is on Plot No. 22 Block L, Mbagala area, Temeke, Dar es Salaam and have never at any point in time challenged ownership by the plaintiff of the said property. She said the 1st defendant family has never trespassed in the said plot and has always been in the boundaries of Plot No. 22A Block L (the **suit land**) which was purchased by Faustin Kira in 1991 and were issued with a Letter of Offer. She said there was a dispute, but the matter

was administratively settled by creating and designating Plot No. 22A Block L to the 1st defendant's family and the plaintiff remained with Plot No. 22 Block L. She said with this information the plaintiff has no valid cause of action against the 1st defendant and the proper remedy is for the court to reject it. She relied on the case of **B.M. Mbassa vs. Attorney General & 2 Others, Civil Appeal No. 40 of 2003 (CAT)**(unreported) and **Domin P.K.G. Mshana vs. Almasi Chande & Attorney General, Civil Case No. 68 of 1994 (HC)**(unreported). She prayed for the suit to be dismissed with costs for being time barred and lack of cause of action.

Ms. Leonia Maneno drew and filed submissions on behalf of the 2nd and 3rd defendants. Ms. Maneno gave a brief background of the matter as derived from the pleadings that the suit plot was originally allocated to Faustin Sanduli Kira and he was issued with a Letter of Offer on 11/07/1984. She said Faustin Kira sold the suit land to the late Paulo Yona Kira whose estate is being administered by the 1st defendant herein. She said on 15/05/1991 the plaintiff became aware that the 1st defendant owned the suit land and he decided to write a letter to the 2nd defendant complaining that his Plot No. 22 Block L was the last plot and would be adversely affected by the newly

created plot which is the suit land herein. The 1st defendant was suspended from any development until the dispute was resolved. On 02/10/1992 the 2nd defendant informed the 1st defendant vide a letter copied to the plaintiff that the dispute was resolved as the suit land was clearly demarcated between the 1st defendant and the plaintiff and Plot 22A Block L was created. The 1st defendant was permitted to proceed with development as the dispute was no longer in existence.

Ms. Maneno further said on 01/11/2017 the plaintiff wrote a letter to the 2nd defendant complaining of the existence of the suit land and again on 30/05/2018 saying the suit plot was an open area and it has never been surveyed. The police were also involved, and the 2nd defendant maintained that the suit land is owned by the late Paulo Yona Kira. With this information Ms. Maneno pointed out that there has been numerous communications from 15/05/1991 to 2018 between the plaintiff and the 2nd defendant about the suit land and there has been clear response that the suit land belongs to the 1st defendant's family. She said the cause of action arose when the plaintiff became aware of the suit land since 15/05/1991. She said the plaintiff omitted this fact in paragraph 8 of the plaint to

deliberately imply that the cause of action arose on 13/10/2017 while the 1st defendant has been in occupancy since 1991 as pleaded in the defendants' Written Statements of Defence. She said according to section 9(2) of the Limitation Act the right of action is deemed to have accrued on the date of the dispossession or discontinuance, and in the present case the right of action arose since 15/05/1991 when the plaintiff started to complain on the occupancy of the 1st defendant. she said the suit is bad in law for it has been instituted after the expiration of the prescribed time under the law of 12 years as provided under Item 22 Part 1 to the Schedule of the Limitation Act. She said when counting from 15/05/1991 to the date of instituting the suit it is about 30 years. She said the delay is inordinate and exorbitant.

Ms. Maneno said the question of limitation of time is a question of law which ousts the court's jurisdiction to determine the suit at hand. She said the plaintiff ought to have adhered to the requirements of Order VII Rule 6 of the CPC which requires the plaintiff to show the ground upon which exemption is claimed if the suit is instituted after the period prescribed under the Limitation Act. She said the plaintiff at hand

does not comply with the requirement of the above order as it did not disclose any exemption of the 30 years delay.

Ms. Maneno also pointed out that in determining the cause of action pleadings and annexures are pertinent. In this case she said the various facts depict that in 15/05/1991 was the time when the cause of action arose, and it needs no ascertainment of facts hence a pure point of law. She relied on the case of **Ali Shabani & 48 Others vs. Tanzania National Roads Agency (TANROADS) & Attorney General, Civil Appeal No. 261 of 2020 (CAT-Tanga)**(unreported). She concluded by praying for the suit to be dismissed in terms of section 3(1) of the Limitation Act with costs for being time barred.

The submissions in reply on behalf of the plaintiff were drawn and filed by Mr. Lutufyo Mvumbagu, Advocate. I have noted that he only made a reply to the submissions by the 2nd and 3rd defendants. He did not respond to the submissions by the 1st defendant. He said the preliminary objection raised is not a pure point of law as it is based on facts and not in conformity with the cases of **Mukisa Biscuits Manufacturing Company Limited vs West End Distributors**