

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

**LAND CASE NO. 66 OF 2021**

**SHUKURU SELIMAN KIRUMBI .....PLAINTIFF**

**VERSUS**

**ELIZABETH MARUWA** (As Administratrix Of  
The Estate Of The Late PAULO YOHANA KIRA).....**1<sup>ST</sup> DEFENDANT**  
**TEMEKE MUNICIPAL COUNCIL**.....**2<sup>ND</sup> DEFENDANT**  
**THE ATTORNEY GENERAL**.....**3<sup>RD</sup> DEFENDANT**  
**ABDALLAH HUSSEIN**.....**4<sup>TH</sup> DEFENDANT**

Date of Last Order: 25.07.2022  
Date of Ruling: 09.08.2022

**RULING**

**V.L. MAKANI, J.**

The 1<sup>st</sup> 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 1<sup>st</sup> defendant.*

Subsequently, the 2<sup>nd</sup> and the 3<sup>rd</sup> 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 1<sup>st</sup> 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 1<sup>st</sup> defendant's family. The plaintiff was informed of the designation and the allocation and that the occupation by the 1<sup>st</sup> 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 1<sup>st</sup> 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 1<sup>st</sup> 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 1<sup>st</sup> 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 1<sup>st</sup> 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 2<sup>nd</sup> and 3<sup>rd</sup> 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 1<sup>st</sup> defendant herein. She said on 15/05/1991 the plaintiff became aware that the 1<sup>st</sup> defendant owned the suit land and he decided to write a letter to the 2<sup>nd</sup> 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 1<sup>st</sup> defendant was suspended from any development until the dispute was resolved. On 02/10/1992 the 2<sup>nd</sup> defendant informed the 1<sup>st</sup> defendant vide a letter copied to the plaintiff that the dispute was resolved as the suit land was clearly demarcated between the 1<sup>st</sup> defendant and the plaintiff and Plot 22A Block L was created. The 1<sup>st</sup> 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 2<sup>nd</sup> 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 2<sup>nd</sup> 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 2<sup>nd</sup> defendant about the suit land and there has been clear response that the suit land belongs to the 1<sup>st</sup> 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 1<sup>st</sup> 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 1<sup>st</sup> 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 2<sup>nd</sup> and 3<sup>rd</sup> defendants. He did not respond to the submissions by the 1<sup>st</sup> 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**

**Limited (1969) EA 696, Karata Ernest & Others vs. Attorney General, Civil Revision No. 10 of 2010** (unreported) and **Ali Shabani & Others** (supra).

He said if you go through the plaint the facts that constitute a cause of action are in paragraph 8 of the plaint where it is alleged by the plaintiff that the 1<sup>st</sup> defendant trespassed his land on 13/10/2017 and not 1991 as alleged by the 2<sup>nd</sup> and 3<sup>rd</sup> defendants. He said the suit was instituted within the time set out by the law and therefore the preliminary objection should be dismissed with costs.

The defendants did not file submissions in rejoinder.

I have gone through the submissions and the pleadings filed herein, and before I proceed, I would wish to first consider the argument raised by Mr. Mavumbagu that the objections raised are not preliminary objections on pure points of law.

It is common knowledge that a preliminary objection should raise a pure point of law based on ascertained facts from the pleadings or by necessary implication, not on facts, which have not been ascertained;

and even if ascertained if argued, a preliminary objection should be capable of disposing of the case. A preliminary objection cannot also be raised if what is sought is the exercise of judicial discretion. (see: **Mukisa Biscuits** (supra), followed in **COTWU (T) OTTU Union and Another vs. Hon. Iddi Simba Minister of Industries and Trade and Others [2002] TLR 88**).

In the case of **Attorney General vs. The Board of Trustees of Cashewnut Industry Development Trust Fund & Another, Civil Application No. 72 of 2015 (CAT-DSM)** (unreported) the Court narrated five assumptions in a preliminary objection, that:

- a) It must be a pure point of law*
- b) It must be based on ascertained facts*
- c) It must arise from the parties' pleadings or necessary*
- d) inference thereto*
- e) It must not touch on the Court's exercise of judicial discretion; and lastly,*
- f) If the objection is argued, it must be able to dispose of the matter before the Court completely.*

With the above assumptions in mind and considering the arguments and the pleadings in court, I am of a considered view that the



objections raised by the defendants on limitation of time and cause of action, if they are upheld, they will dispose of the matter. In respect thereof, they meet the tests elaborated in the cited cases above. The arguments by Mr. Mavumbagu are therefore misconceived.

I will start with the objection on cause of action. Order VII Rule 1 of the Civil Procedure Code Cap 33[R.E2019], requires the plaintiff who moves the court by a suit, to plead particulars in their plaint to disclose a cause of action. Briefly stated cause of action can be defined as a set of facts which give a person (plaintiff) a right to a judicial redress, or a relief against another (defendant) (see **Stanbic Finance Tanzania Ltd vs. Giuseppe Trupia & Another [2002] TLR 217** and **John Byombalilwa v. Agency Martine International (T) Limited [1983] TLR 1**). To be able establish if the statement of claim establishes the cause of action, resort has to be made to the contents of the statement of the claim together with their accompanying attachments (See: **Anthony Leonard Msanze & Another v. Juliana Elias Msanze & 2 Others, Civil Appeal No. 76 of 2012 (CAT)** and **Zebedayo Mkodya vs. Best Microfinances Solution Limited & 4 Others, Commercial Case No. No. 95 of 2016 (HC-Commercial Division)**) (both

unreported). The position in the cited decisions was propounded by the defunct East African Court of Appeal in **Jeraj Shariff & Sons v. Chotai Fancy Stores [1960] E.A. 375**, wherein it was stated as follows:

*"The question whether a plaint discloses a cause of action must be determined upon a perusal of the plaint alone, together with anything attached so as to form part of it and upon the assumption that any express or implied allegations of fact in it are true."*

The 1<sup>st</sup> defendant alleged that there is no cause of action against her because the land that the plaintiff claims does not belong to him but to the 1<sup>st</sup> defendant's family. Mr. Mavumbagu stated categorically that the cause of action is trespass as established in paragraph 8 of the plaint where it is stated, among other things, that the 1<sup>st</sup> defendant trespassed in the plaintiff's land and destroyed properties found therein and erected concrete poles. The plaintiff's land as claimed by the plaintiff at paragraph 7 of the plaint measures 70 x 75 x 20 and titled as Plot No. 22A, Block L located at Mbagala Kibonde Maji Temeke Municipality, Dar es Salaam. It is apparent therefore that the basis of trespass is ownership of land and if one is not owner of the suit land then the claim of trespass is cannot duly stand.

Looking at the plaint the claim of ownership is not clearly visible. The plaintiff has said that he bought the suit land from one Abdallah Hussein in the year 1981 but there is nothing annexed to support this assertion. Further, according to the plaint the alleged suit land is a registered land (Plot 22A, Block L, Mbagala Kibonde Maji Temeke

Municipality, Dar es Salaam), but there is no Certificate of Title or Letter of Offer that has been attached to support this assertion. Even the whereabouts of the said documents have not been addressed while it is a known fact that possession of Certificate of Title or Letter of Offer is prima facie proof that one is legal owner of the said piece of land. In any case, if the plaintiff is owner of the suit land as he wants the court to believe, then he would not have prayed to be the lawful owner of the suit land, but he would have stuck to the prayer for a declaratory order that the 1<sup>st</sup> defendant is a trespasser. It therefore means the plaintiff is not sure if at all he is owner of the suit land. It is apparent therefore that there is nowhere in the plaint together with the attached annexures, that it has clearly been demonstrated that the plaintiff is the lawful owner of the suit land for him to allege trespass. In the absence of clear facts on ownership of the suit land by the plaintiff, I am not persuaded that the facts in the plaint constitute facts which gives the plaintiff the right to a relief against the defendants. In other words, with such an unclear status on ownership, the plaintiff cannot claim trespass as against the 1<sup>st</sup> defendant.

Simply said, the facts in the plaint do not crystallize into acts which would be said to have been done by the 1<sup>st</sup> defendant to form acts which cause of action can possibly accrue. Subsequently, I am satisfied that a cause of action against the defendants is conspicuously missing rendering the suit to be unmaintainable. In consequence thereof, this preliminary objection succeeds, and it

disposes of the suit, and for that reason, I shall not deal with the remaining objection that was raised.

Now, having established that the plaint does not disclose a cause of action against the 1st Defendant, what are the consequences thereof?

The answer to this is found in Order VII Rule 11(a) of the CPC which states that a plaint which does not disclose a cause of action shall be rejected.

In a similar vein, and for the reasons stated above, the plaint is hereby rejected and accordingly the suit is struck out with costs.

It is so ordered.



**V.L. MAKANI**  
**JUDGE**  
**09/08/2022**

