

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

**LAND CASE NO. 240 OF 2021**

**GOLDEN RULE COMPANY LIMITED ..... PLAINTIFF**

**VERSUS**

**MTELE J. MTELE ..... 1<sup>ST</sup> DEFENDANT**  
**SHABAN SAIDDI MBIKU ..... 2<sup>ND</sup> DEFENDANT**  
**HALMA MSENGWA ..... 3<sup>RD</sup> DEFENDANT**  
**PAGANI HATIBU MPONDA ..... 4<sup>TH</sup> DEFENDANT**  
**MOHAMED A. MSUMI ..... 5<sup>TH</sup> DEFENDANT**  
**SHOMARI A. NGWINJI ..... 6<sup>TH</sup> DEFENDANT**  
**ELIGI J. ASENGA ..... 7<sup>TH</sup> DEFENDANT**  
**PLIKERIA SHAYA ..... 8<sup>TH</sup> DEFENDANT**  
**RAMADHANI MPINGIWA ..... 9<sup>TH</sup> DEFENDANT**  
**MADIA ALLY ..... 10<sup>TH</sup> DEFENDANT**  
**HABIBA LALY ..... 11<sup>TH</sup> DEFENDANT**  
**KABIBI ABDALLAH ..... 12<sup>TH</sup> DEFENDANT**  
**MWAJUMA MUK ..... 13<sup>TH</sup> DEFENDANT**  
**SOMOE KIYOKOZI ..... 14<sup>TH</sup> DEFENDANT**  
**LUCY C. KITANGITA ..... 15<sup>TH</sup> DEFENDANT**  
**SIWEMA P. SABO ..... 16<sup>TH</sup> DEFENDANT**  
**ELIZABETH BALTALOME ..... 17<sup>TH</sup> DEFENDANT**  
**MARIAM ABHAMU ..... 18<sup>TH</sup> DEFENDANT**  
**ZUHULA MATIMBA ..... 19<sup>TH</sup> DEFENDANT**  
**RASHID MLANZI ..... 20<sup>TH</sup> DEFENDANT**  
**KANGUNGU MPONDA ..... 21<sup>ST</sup> DEFENDANT**  
**KIBUYU MOHAMED ..... 22<sup>ND</sup> DEFENDANT**  
**JUMA MTELE ..... 23<sup>RD</sup> DEFENDANT**  
**PLACIDIUS TARIMO ..... 24<sup>TH</sup> DEFENDANT**  
**MAULIDI MUSSA MAULANA ..... 25<sup>TH</sup> DEFENDANT**  
**SHADHILI MAULIDI FIKIRI ..... 26<sup>TH</sup> DEFENDANT**

PASKAZIA DONATI .....	27 <sup>TH</sup> DEFENDANT
JAFARI MTELE .....	28 <sup>TH</sup> DEFENDANT
OMARI MFILINGE .....	29 <sup>TH</sup> DEFENDANT
ABDUL MKUILI .....	30 <sup>TH</sup> DEFENDANT
TWAILI KUFA .....	31 <sup>ST</sup> DEFENDANT
SELEMANI SAIDI .....	32 <sup>ND</sup> DEFENDANT
RASHIDI MOHAMED .....	33 <sup>RD</sup> DEFENDANT
MAGDALENA GIDION .....	34 <sup>TH</sup> DEFENDANT
HASSAN MKWICHI .....	35 <sup>TH</sup> DEFENDANT
FATMA ABDALLA .....	36 <sup>TH</sup> DEFENDANT
BUPE MWASOMOLA .....	37 <sup>TH</sup> DEFENDANT
OMARI A. MTELE .....	38 <sup>TH</sup> DEFENDANT
MWANAISHA SAID .....	39 <sup>TH</sup> DEFENDANT
ABDALLAH ALLY .....	40 <sup>TH</sup> DEFENDANT
ALLY SALIM .....	41 <sup>ST</sup> DEFENDANT
MARIAM ABDALLAH SELENGE .....	42 <sup>ND</sup> DEFENDANT
AULELIYA THOMAS .....	43 <sup>RD</sup> DEFENDANT
MUSA HEMED MKOGA .....	44 <sup>TH</sup> DEFENDANT
SAID ABDALLAH .....	45 <sup>TH</sup> DEFENDANT
SAID MSWAKI .....	46 <sup>TH</sup> DEFENDANT
REHEMA SALIM .....	47 <sup>TH</sup> DEFENDANT
MOHAMED J. MTELE .....	48 <sup>TH</sup> DEFENDANT
HAWA HASSANI .....	49 <sup>TH</sup> DEFENDANT
AMINA S. SALIM .....	50 <sup>TH</sup> DEFENDANT
EMMANUEL PATRICK .....	51 <sup>ST</sup> DEFENDANT
JUMA KISOMA .....	52 <sup>ND</sup> DEFENDANT
ANTHONI SEZALI .....	53 <sup>RD</sup> DEFENDANT
KARIM MTENDANGA .....	54 <sup>TH</sup> DEFENDANT
JOHN FRANCIS .....	55 <sup>TH</sup> DEFENDANT
YUSUPH MNOLITE .....	56 <sup>TH</sup> DEFENDANT
ANWARITE MLOWE .....	57 <sup>TH</sup> DEFENDANT

Date of last Order: 12/12/2022

Date of Judgment: 01/03/2023

## **RULING**

### **I. ARUFANI, J**

This ruling is for the points of preliminary objections filed in this court by the counsel for the 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup>, 11<sup>th</sup>, 12<sup>th</sup>, 13<sup>th</sup>, 14<sup>th</sup>, 15<sup>th</sup>, 16<sup>th</sup>, 17<sup>th</sup>, 19<sup>th</sup>, 20<sup>th</sup>, 21<sup>st</sup>, 22<sup>nd</sup>, 25<sup>th</sup>, 27<sup>th</sup>, 30<sup>th</sup>, 31<sup>st</sup>, 34<sup>th</sup>, 36<sup>th</sup>, 41<sup>st</sup>, 43<sup>rd</sup> and 47<sup>th</sup> defendants which read as follows: -

- 1. That this suit is hopelessly time barred*
- 2. That this suit contains misjoinder of parties*
- 3. That the plaintiff has no cause of action against the 11<sup>th</sup>, 12<sup>th</sup>, 13<sup>th</sup>, 14<sup>th</sup>, 15<sup>th</sup>, 16<sup>th</sup>, 17<sup>th</sup>, 20<sup>th</sup>, 21<sup>st</sup>, 22<sup>nd</sup>, 41<sup>st</sup> and 47<sup>th</sup> defendants.*

When the matter came for hearing the afore listed points of preliminary objection the plaintiff was represented by Mr. Benitho Mandele, learned advocate and while the tenth and twenty fourth defendants appeared in the court in person the rest of the defendants were represented by Ms. Christine Katala, learned advocate. The counsel for the plaintiff prayed the points of the preliminary objections be argued by way of written submissions and as the prayer was not objected the court granted the prayer hence the points of preliminary objection were argued by way of written submissions.

The court has observed that, although the points of preliminary objections were raised by the 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup>, 11<sup>th</sup>, 12<sup>th</sup>, 13<sup>th</sup>, 14<sup>th</sup>,

15<sup>th</sup>, 16<sup>th</sup>, 17<sup>th</sup>, 19<sup>th</sup>, 20<sup>th</sup>, 21<sup>st</sup>, 22<sup>nd</sup>, 25<sup>th</sup>, 27<sup>th</sup>, 30<sup>th</sup>, 31<sup>st</sup>, 34<sup>th</sup>, 36<sup>th</sup>, 41<sup>st</sup>, 43<sup>rd</sup> and 47<sup>th</sup> defendants but the submission filed in the court to support the points of preliminary objections is a joint submission of all defendants with exception of the tenth and twenty fourth defendants who are not represented in the matter.

The counsel for the defendants stated in her submission in relation to the first point of preliminary objection that, paragraphs 10, 11, 12 and 13 of the plaint states the defendants started to encroach into the plaintiff's land and the plaintiff wrote a letter to the Local Government Authorities about the people who had trespassed into their land. She stated the plaintiff averred in the mentioned paragraphs that, from 2008 until 2011 he was out of the country working as a Secretary General of the Tanzania Association of Managers and Owners of Non-Government School and Collages.

She stated the fact that the plaintiff was outside the Tanzania working in the mentioned post is a lie because there is no evidence to show the plaintiff was working with the stated association. She stated even if it will be taken the plaintiff was out of the country but the plaintiff is a company which cannot have only one person to operate it. She states there must be other Directors, Secretary or other officers who would have represented the plaintiff in the matter. She stated that, as the plaintiff

was aware of the alleged encroachment, she ought to have given a power of attorney to other officers of the company to act on his behalf.

She argued that, from 2006 to 2019 is more than 12 years which had elapsed upon which the plaintiff ought to have filed the suit in the court against the defendants. She submitted that, item 22 of Part 1 of the Schedule to the Law of Limitation Act, Cap 89 R.E 2019 provides for a suit to recover land to be 12 years. She stated the defendants have been living in the land in dispute for more than 12 years and there is no suit filed in the court against them. She submitted the principle of adverse possession gives the defendants legal ownership to the land they are occupying. She argued the defendants have a better title than anyone else including the real owner of the person with paper. She based on the above arguments to submit the plaintiff's suit is hopelessly time barred.

She argued the second and third points of preliminary objections together and stated that, the plaintiff has no cause of action against the 11<sup>th</sup>, 13<sup>th</sup>, 14<sup>th</sup>, 15<sup>th</sup>, 16<sup>th</sup>, 17<sup>th</sup>, 20<sup>th</sup>, 22<sup>nd</sup>, 41<sup>st</sup> and 47<sup>th</sup> defendants. She stated that, the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 18<sup>th</sup>, 26<sup>th</sup>, 27<sup>th</sup>, 28<sup>th</sup>, 29<sup>th</sup>, 32<sup>nd</sup>, 35<sup>th</sup>, 37<sup>th</sup>, 38<sup>th</sup>, 39<sup>th</sup>, 40<sup>th</sup>, 42<sup>nd</sup>, 45<sup>th</sup>, 46<sup>th</sup>, 49<sup>th</sup>, 50<sup>th</sup>, 51<sup>st</sup>, 52<sup>nd</sup>, 53<sup>rd</sup>, 54<sup>th</sup>, 55<sup>th</sup>, 56<sup>th</sup> and 57<sup>th</sup> defendants conceded to the preliminary objection that the mentioned defendants were wrongly joined in the case as defendants.

She argued that, some of the mentioned defendants are tenants and others are students. She stated other defendants sued in the matter on the land belongs to their sisters, husband or wives and others do not completely have land or lives at the land in dispute. She submitted that, the plaintiff has no any connection or cause of action against the mentioned defendants and the said defendants have no any interest in the land which will enable the plaintiff to be granted the reliefs is seeking from the court against them.

She referred the court to Order 1 Rule 10 (2) of the Civil Procedure Code Cap 33 R. E 2019 which states the court may order the name of any party improperly joined in a suit either as a plaintiff or defendant be struck out. She based on the above stated reasons to pray the court to dismiss the plaintiff's suit with costs.

In reply the counsel for the plaintiff stated in his submission in relation to the first point of preliminary objection that, the points of preliminary objections raised by the counsel for the defendants are misconceived and not tenable in law. He argued the facts contained in paragraphs 10, 11, 12 and 13 of the plaints do not state when the cause of action against the defendants arose. He stated that, as averred at paragraphs 12 and 13 of the plaint the plaintiff is claiming for recovery of the land which the

defendants trespassed and erected their building thereon in the year 2011.

He argued that, the reference made to the year 2006 in paragraphs 10 and 11 of the plaint was in respect of the actions committed outside the boundaries of the plaintiff's land. He argued that, as it is averred at paragraphs 12 and 13<sup>th</sup> of the plaint that the defendants' trespass was noticed in 2011 then as provided under section 5 of the Law of Limitation Act the plaintiff's cause of action against the defendants is required to be counted it started to accrue from November, 2011 when the plaintiff noticed the defendants had trespassed into their land. He supported his submission with the case of **Yahya Anwar Abdallah & 18 others V. Mtemi Naluyaga & Another**, Civil Case No. 184 of 2021, HC at DSM (unreported) where it was stated the time started to run from when the plaintiff became aware of the complained actions.

He argued in relation to the second and third points of preliminary objections that, both points are not pure points of law because they attract consideration of some evidence to establish their existence. She stated the evidence is required to establish whether the mentioned defendants have buildings on the land in dispute or not and they are mere tenants. She referred the court to the case of **Mukisa Biscuit Manufacturing Co. Limited V. West End Distributors Limited**

[1969] E.A 696 where the meaning of the term preliminary objection was stated.

He submitted that the above stated position of the matter shows the second and third points of preliminary objection raised by the defendants do not meet the test of being preliminary objection. He argued in alternative that, the effect of misjoinder of parties is not to defeat the suit. He referred the court to Order 1 Rule 9 of the Civil Procedure Code which states no suit shall be defeated by reason of misjoinder or non-joinder of parties.

He submitted that, if the court will find there are parties who were wrongly joined in the case as defendants, the court can use Rule 10 (2) of Order 1 of the Civil Procedure Code to order the parties improperly joined in the suit be struck out. At the end he submitted that the plaint of the plaintiff discloses cause of action against all defendants clearly and prayed the court to find all the points of preliminary objections raised by the counsel for the defendants are devoid of merit and dismiss them with costs.

Having carefully considered the contending arguments fronted to the court by the counsel for the parties the court has found the major issue to determine in the present matter is whether the points of preliminary objections raised by the counsel for the defendants are meritorious and



deserve to be upheld. In determining those points of preliminary objections, I will deal with them seriatim as they have been argued by the counsel for the parties.

Starting with the first point of preliminary objection which states the plaintiff's suit is hopelessly time barred the court has found that, as rightly argued by the counsel for the plaintiff section 5 of the Law of Limitation Act states clearly that right of action in respect of any proceeding, shall accrue on the date on which the cause of action arises. That being the position of the law the court has found the first question to determine in the present matter is within which period of time the plaintiff's suit was supposed to be filed in the court.

The court has found as rightly argued by the counsel for the defendants and without being disputed by the counsel for the plaintiff the limitation of time upon which a suit for recovery of land is supposed to be filed in the court is provided under item 22 of Part I of the First Schedule to the Law of Limitation Act. The period stated in the cited provision of the law is twelve years from the date when the cause of action arises. That being the period upon which the plaintiff's suit was supposed to be filed in the court the next question to determine here is when the plaintiff's cause of action against the defendants arose.

The court has found that, while the counsel for the defendants submits the plaintiff's cause of action arose in the year 2006 when the plaintiff discovered people had started to encroach their land by building close to their fence the plaintiff argued the cause of action arose in 2011 when they discovered the defendants had trespassed into their land and erected buildings in the land in dispute. The court has found in order to understand when the plaintiff discovered the defendants have trespassed into their land it is required to see what is stated in the pleadings filed in the court by the plaintiff. The court has come to the stated finding after seeing the law as stated in the case of **Mukisa Biscuit Manufacturing Co Limited** (supra) is very clear that preliminary objection is supposed to be argued and determined by basing on assumption that all the facts pleaded by the other side are correct.

While being guided by the stated position of the law the court has found that, although it is true that the plaintiff averred at paragraphs 10 and 11 of their plaint that the people started appearing to encroach their land in the year 2006 by building close to the their fence but that cannot be taken is the year when the plaintiff's cause of action against the defendants arose. The court has come to the stated view after seeing there is nowhere in the mentioned paragraphs the plaintiff states is the

year the defendants trespassed into their land. For clarity purpose, the stated paragraphs state as follows: -

*"10. That sometimes in 2006, people started appearing to encroach the land in dispute by building very close to the fence, creating steep inclined slopes which caused soil erosion, destroying the fence and beacons which marked the borders of the land in dispute.*

*11. That in the same year in February 2006 the plaintiff vide a letter moved the Local Government Authorities (Temeke Municipal Council) seeking for a stop order against the encroachers who were demolishing the fence from the land in dispute."*

From the wording of the above quoted paragraphs of the plaintiff's plaint it is crystal clear that there is nowhere the plaintiff states the defendants trespassed into their land in the year 2006. To the contrary the plaintiff avers in the quoted paragraphs that people started appearing they were encroaching their land by building close to their fence and creating steep slopes which caused soil erosion, destroying their fence and beacons which were marking their boundaries without mentioning the defendants were the one who were doing the alleged encroachment. The above quoted paragraph 11 of the plaint of the plaintiff shows after the plaintiff discovered the alleged encroachment, he sought for stop order

from the Local Government Authorities and there is nowhere stated the stated people continued to encroach on the plaintiff's land thereafter.

The court has found the plaintiff avers at paragraph 12 of their plaint that, after requesting for the stop order from the Local Government Authorities their Principal Officer was appointed in the year 2006 to be the Secretary General of the Tanzania Association of Managers and Owners of Non- Government Schools and Collages (TAMONGSCO). He stated between the year 2008 and 2011 he went to the foreign countries to perform his duties. He avers in the same paragraph that, after returning to the country on November, 2011 he noticed the defendants had trespassed into their land and made some developments on their land. It is stated further in paragraphs 13 to 20 that, after the stated discovery the plaintiff took various steps to recover their land without success and thereafter, they filed the present suit in the court.

Basing on the facts pleaded by the plaintiff in the above referred paragraphs of their plaint the court has found the date when the plaintiff discovered the defendants have trespassed into their land was on November, 2011 and not in 2006 stated by the counsel for the defendants. Now counting from November, 2011 until when the present suit was filed in the court on 8<sup>th</sup> December, 2021 it is crystal clear that the limitation

period of twelve years upon which the plaintiff ought to have filed the suit in the court against the defendants had not elapsed.

Having found the plaintiff's cause of action against the defendants arose on November, 2011 the court has found the argument by the counsel for the defendants that the plaintiff has more than one Directors and there are other officers who would have been given power of attorney to deal with the matter when the plaintiff's Managing Director was out of the country has no merit. The court has come to the stated view after seeing there is nowhere else stated the defendants trespassed into the land in dispute on which date so as to say the limitation period for bringing the case to the court against the defendants had elapsed. In the premises the court has found the first point of preliminary objection raised by the counsel for the defendants that the present suit is hopelessly time barred is devoid of merit.

Coming to the second and third points of preliminary objections where the counsel for the defendants argued the suit contain misjoinder of the parties and the plaintiff has no cause of action against some of the defendants the court has found proper to start with the point of misjoinder of some of the defendants in the suit. The court has found that, while the counsel for the defendants argues the mentioned defendants were

wrongly joined in the suit, the plaintiff avers in their plaint that all the defendants trespassed into their land.

To the view of this court the stated issue of misjoinder of the mentioned defendants in the suit cannot be determined without requiring evidence from the parties to prove whether the mentioned defendants were wrongly joined in the suit or not. If the stated issue cannot be determined without requiring evidence from the parties it is crystal clear that, as stated in the case of **Mukisa Biscuit Manufacturing Co. Ltd** (supra) the stated point of preliminary objection cannot meet the qualification of being point of preliminary objection which can be used to dispose of the matter at this preliminary stage.

The court has also found that, even if it will be stated the mentioned defendants were wrongly joined in the suit but the court has found as rightly argued by the counsel for the plaintiff, Order 1 Rule 9 of the Civil Procedure Code states categorically that a suit shall not be defeated by reason of misjoinder of parties. The court has also found as rightly argued by the counsel for the plaintiff Order 1 Rule 10 (2) of the Civil Procedure Code states categorically that where it appears a party has been improperly joined in a suit the court on its own motion or upon an application of either party can strike out the name of the party improperly joined in the suit. That being the position of the law the court has found

the point of preliminary objection that some of the defendants were wrongly joined in the suit cannot be upheld to move the court to strike out the plaintiff's suit as sought by the counsel for the defendants.

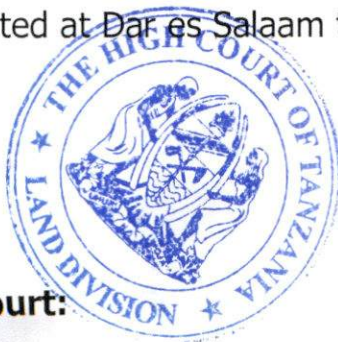
As for the point of the plaintiff to lack cause of action against the mentioned defendants the court has found the position of the law in relation to the issue of cause of action has been stated in number of cases. One of those cases is **Soud Break Salum V. Manager wa Bank PBZ Zanzibar & Another**, [2014] TLR 598 where it was stated that, when considering whether a plaint discloses a cause of action against a defendant or not the court is required to take into consideration what is averred in the plaint and not the defence set up in the written statement of defence.

If that is what the court is required to take into consideration in determining the plaintiff has cause of action against the mentioned defendants the court has found it is required to look into what is averred in the plaintiff's plaint against the mentioned defendants. The court has found the plaintiff avers at paragraphs 4, 12, 13, 18 and 19 of their plaint that all the defendants trespassed into their land and the effort to require them to give vacant possession failed to yield fruits. That being the allegations of the plaintiff against all the defendants the court has failed

to see how it be said the plaintiff has no cause of action against the mentioned defendants.

In totality of all what I have stated hereinabove the court has found all points of preliminary objection raised by the counsel for the defendants cannot be upheld. Consequently, all points of preliminary objection raised by the counsel for the defendants are hereby overruled in their entirety for being devoid of merit and the costs to be within the suit. It is so ordered.

Dated at Dar es Salaam this 1<sup>st</sup> day of March, 2023



  
I. Arufani

**JUDGE**

01/03/2023

**Court:**

Ruling delivered today 1<sup>st</sup> day of March, 2023 in the presence of Ms. Rose Sanga, advocate for the plaintiff and in the presence of Ms. Christine Katala, advocate for all defendants save for the 10<sup>th</sup> and 24<sup>th</sup> defendants who are not represented in the matter and they are not present in the court. Right of appeal to the Court of Appeal is fully explained.



  
I. Arufani

**JUDGE**

01/03/2023