

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND CASE NO.18 OF 2023

SAID HASSAN SHEBUGHE PLAINTIFF

VERSUS

KINONDONI MUNICIPAL COUNCIL 1ST DEFENDANT

ATTORNEY GENERAL 2ND DEFENDANT

RULING

Date of Last Order: 14.03.2023

Date of Ruling: 31.03.2023

T.N. MWENEGOHA -J

The defendants, being against the instant suit, raised a preliminary objection on point of law that, the suit is time barred. Careen Masonda, the learned State Attorney, appeared for both defendants, she argued in her written submissions that, the plaintiff is claiming compensation for loss of business, following the 1st defendant's act of trespassing on the suit land by demolishing the same. That, for a person to claim compensation under **Section 3, Item 1 of the Law of Limitations Act, Cap 89, R.E 2019** he/she should file the suit for the same within 3 years. That in the present case, as seen at paragraph 17, the cause of

action arose on the 5th day of December, 2022, therefore, the plaintiff has filed this suit after expiry of 44 days contrary to **Order VII, Rule 6 of Civil Procedure Code, Cap 33 R.E 2019**. To fortify her argument, she cited the case of **Tanzania National Roads Agency and Another versus Jonas Kinyagula**, Civil Appeal No. 471 of 2020, Court of Appeal of Tanzania (unreported).

In response, thereto, advocate Hashim Mziray for the plaintiff maintained that, the cause of action in this suit arose out of short-term lease as seen under paragraphs 4,5,6,7,8,10,11,13,14,20,21 and 22 of the plaint. That the law of Limitation is clear on matters arising out of lease agreement and trespass as per Item 6 and 7 of the Schedule, the period, of Limitation is 3 to 6 years. Therefore, the case is within time.

In her brief rejoinder, the learned counsel for the defendants reiterated her submissions in chief, and submitted that the facts in the plaint are not sufficient to disclose the cause of action, unless the same are read in line with the reliefs prayed.

I have considered the submissions of both parties. The issue in need of determination is whether the objection at hand has merits or not.

In a course of answering this question, I decided to make a perusal of the plaint to see what is the cause of action in this suit and when it arose. Unfortunately, I failed to grasp exactly what is the cause of action between the plaintiff and the defendants. However, when we read the plaint as a whole, it is clear that, based on the prayers, the applicant is seeking for compensation from the defendants, following the demolition of the premises leased by the plaintiff.

It is from this basis, the defendants moved to object the suit, owing to the time at which the same was instituted. Which is on the 20th January, 2023, while the demolition of the purported premises occurred on the 4th of December, 2021(see paragraph 17 of the plaint). That, the time for claiming the said compensation lapsed on the 4th of December, 2022, as per **Section 3 (1), read together with Item 1 of the schedule, of the Law of Limitations Act, Cap 33 R.E 2019**. For quick reference, I will reproduce the said provisions. Starting with section 3 which articulates as here under; -

3.-(1) "Subject to the provisions of this Act, every proceeding described in the first column of the Schedule to this Act and which is instituted after the period of limitation

prescribed therefore opposite thereto in the second column, shall be dismissed whether or not limitation has been set up as a defence”

On the other hand, Item 1 of the schedule provides that; -

“For compensation for doing or for omitting to do an act alleged to be in pursuance of any written law”

Guided by the two quoted provisions of the Limitation Act (*supra*), I associate with the learned State Attorney for the 1st and 2nd defendants that, the instantaneous suit is time barred. The same was filed more than 40 days after the expiry of the statutory time and without exemption. The plaint should have contained the statement and grounds for exemption as required under Order VII Rule 6 of Civil Procedure Code, Cap 33 R.E 2019.

That said and done, I find the objection raised by both defendants to have merit and I sustain it accordingly. The suit contravenes **Order VII Rule 6 of the Civil Procedure Code, Cap 33 R.E 2019.**

In the end, I dismiss it with costs.

Order accordingly.



T.N MWENEGOHA

JUDGE

31/03/2023