

IN THE HIGH COURT OF TANZANIA

LAND DIVISION

AT DAR ES SALAAM

LAND CASE NO. 322 OF 2022

AFRICAN MARBLE COMPANY LIMITED PLAINTIFF

VERSUS

SELEMANI MENENGALI 1st DEFENDANT

CHARLES LAWRENCE MAKAKALA 2nd DEFENDANT

OMARY CHUO 3rd DEFENDANT

MANASE KIPINGU4th DEFENDANT

ISAACK KESSY 5th DEFENDANT

KASEJA BARAKA6th DEFENDANT

RICHARD URASA 7th DEFENDANT

GODLOVE MBISE 8th DEFENDANT

GODBLESS TARIMO 9th DEFENDANT

FELICIAN ISHEMO 10th DEFENDANT

EMANUEL NSESE 11th DEFENDANT

AYOUB KAATA 12th DEFENDANT

PANTALLI 13th DEFENDANT

CHARLES M 14th DEFENDANT

HYASINT PETER 15th DEFENDANT

SIMON GERVAS 16th DEFENDANT

FORD MARO 17th DEFENDANT

Alle

ISSA AHMED	18 th DEFENDANT
KULWA MVANGA	19 th DEFENDANT
MOHAMED SHEIKH	20 th DEFENDANT
SIMON KULWA	21 st DEFENDANT
STEVEN MNUBI	22 nd DEFENDANT
GASPER TEGA.....	23 rd DEFENDANT
NADHIFA ABDUL	24 th DEFENDANT
SUNFLOWER ABOUBAKARY	25 th DEFENDANT
MELVIN MWANKENJA	26 th DEFENDANT
SOMOE SAID	27 th DEFENDANT
PULKERIA GABRIEL	28 TH DEFENDANT
DAUDI K ELIYA	29 TH DEFENDANT
ELISARIA PALLANO	30 th DEFENDANT
FRANSICICA KATAGIRA	31 st DEFENDANT
ZAINAA JANGAME	32 nd DEFENDANT
MARSHAM KIMARO	33 rd DEFENDANT
ALLY ZUBERI	34 th DEFENDANT
BUPE SAMWELI	35 th DEFENDANT
MASJID SHURA MOJA	36 th DEFENDANT
AISHA MASOUD	37 th DEFENDANT
DIANA ASAJENE	38 th DEFENDANT
SHAFII JUMA	39 th DEFENDANT
ROMANUS MLANGALANGA	40 th DEFENDANT

Alle.

MARTIN SUFANGA	41 st DEFENDANT
MOHAMED KISESA	42 ND DEFENDANT
FAITH MWANUKE	43 rd DEFENDANT
HUSNS MGANGA	44 th DEFENDANT
BERNALD WAMBOGA	45 th DEFENDANT
MOSES KAJEJO	46 th DEFENDANT
HENRY MASEKO	47 th DEFENDANT
HASSAN GHASSIR	48 TH DEFENDANT
YUDA KIPINGU	49 TH DEFENDANT
JAMES KIMARO	50 TH DEFENDANT
MARCEL SAFARI	51 ST DEFENDANT
PITER MUSHI	52 ND DEFENDANT
PAULO KITINDI	53 RD DEFENDANT
CLAUDIANA KAJWA	54 th DEFENDANT
ABISAY NGOMALE	55 th DEFENDANT
DR. ANDREW MWENDAPOLE	56 th DEFENDANT
DR. AYOUB RIOBA	57 TH DEFENDANT
PAULO MBAYA	58 TH DEFENDANT
FORD MURO	59 TH DEFENDANT
EDWIN KILIMBA	60 TH DEFENDANT
BAKARI ZIGOLA	61 ST DEFENDANT
KIMOSO	62 ND DEFENDANT
SUNGURA	63 RD DEFENDANT

Alls

MARY JUMBE MANYAMALI 64TH DEFENDANT

STANLEY MARIKI65TH DEFENDANT

RULING

Date of Last Order: 23.03.2023

Date of Ruling 25.04.2023

A.MSAFIRI, J.

At the centre of controversy between the plaintiff and 65 defendants in the Plaint filed on 06.12.2022 before this Court, is a landed property described as Plot No. 199, Mbezi Industrial, Kinondoni Municipality, Dar es Salaam (herein as suit premises). The Plaintiff is a private limited liability company incorporated under the Companies Act Cap 212 [R.E. 2019]. It claims to be the lawful owner of the suit premises and that the defendants have trespassed and unlawfully occupied the suit premises. Among the reliefs the plaintiff is seeking is a declaration that the 1st to 65th defendants' invasion to the suit premises is unlawful and illegal *ab initio*.

The defendants filed their defence through their Joint Written Statement of Defence (WSD) in which they vehemently disputed the plaintiff's claims. In their WSD, the defendants raised the preliminary objection on points of law to the effect that;

- 1. The plaintiff suit is time barred on account that the plaintiff since the year 2001 was aware with the defendant's occupation of the suit land and he attempted to evict them through Civil Case No. 81 of 2001 through the defendants' community known as Kambarage Community.*

Adls

2. The case is res judicator against the 1st, 4th and 5^{9th} defendants in respect of land Application No.314 of 2017 between the plaintiff and the defendants.

The hearing of the preliminary objection was by way of written submissions whereas the plaintiff had the legal service of Mr. Heri Kayinga learned advocate while the respondents enjoyed the legal service of Living Raphael learned advocate. The defendants abandoned the second limb of the preliminary objection and opted to submit on the first limb only.

Mr Living submitting in support of the preliminary objection was of the view that the plaintiff's suit is time barred suitable for dismissal as per Section 3 of the Law of Limitation Act Cap 89 [R.E. 2019] read together with 1st Schedule Part I paragraph 12 which provides that a suit to recover land is 12 years and that the remedy for the suit caught with limitation is dismissal.

Mr Living stated further that the issue of time limitation is pleaded by the plaintiff in paragraph 6 of the Plaint where it shows that the cause of action arose in 2001. He pointed that from the year 2001 to 2022 when this suit was instituted is 22 years. That, in that regard, this suit is time barred and that the plaintiff has not stated any ground for bringing this suit out of time.

Mr Living contended that the plaintiff's claims that he was following proceedings of Civil Case No. 81 of 2001 after he has issued a notice of appeal have nothing to do with this suit because this is not an appeal of the Civil Case No. 81 of 2001, but this is a separate suit. That this fact cement the fact that the plaintiff was aware of the invasion of the defendants since 2001 when he instituted a case against them.

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He added that the limitation of time does not stop running while an intending litigant is pursuing the extra judicial means of solving disputes. To cement this point he referred this Court to the case of **Israel Solomoni Kivuyo vs. Waijana Longoi and Another** Application No. 35. of 1993 Court of Appeal.

Mr Living pointed that, the remedy for the current situation is dismissal of the suit with costs as it is provided under Section 3 of the Law of Limitation Act (supra).

In reply. Mr. Kayinga submitted that the defendants' objection on time limitation is misconceived and devoid of merits.

That, the plaintiff has pleaded fraud on paragraphs 10, 11 and 19 of the Plaintiff that the defendants jointly and severally and fraudulently encroached into suit premises under a disguise of unknown and unregistered community which defendants self-claimed to be named "Kambarage Community and Members and Officers".

Mr Kayinga stated further that Civil Case No. 81 of 2001 between the plaintiff and the so called Kambarage Community and Members and Officers, has nothing to do with the present case. And that the plaintiff became aware of the actual names of the trespassers on 16.02.2018 as per paragraphs 10, 11, and 19 of the Plaintiff.

He argued that Section 26(a) of the Law of Limitation Act, states that the limitation of time begins to run from when the plaintiff discovered the fraud, or ought to have discovered the fraud. That, the plaintiff detected the fraud and actual names of the defendants on 16 February 2018 at so that was when the cause of action against the defendants arose. To cement his points he cited the case of **Isaack & Sons Limited**

Atts.

vs. North Mara Gold Mine Limited, Commercial Case No. 3 of 2020, CAT at Mwanza (unreported).

He prayed that the preliminary objection be dismissed with costs.

In rejoinder the defendants reiterated what was submitted in chief and added that, despite the fact that the plaintiff has pleaded fraud, the law of limitation does not protect it because the time started to run when the fraud was discovered which is on 27 January 2001 when the plaintiff alleged the defendants severally, and fraudulently trespassed into the suit premises.

Having gone through the submission of the parties and the pleadings, the pertinent issue for determination is whether the suit is time barred.

Without taking more time, I would like to reproduce paragraph 6 of the Plaintiff which disclosed when the cause of action arose.

*"That on 27th day of January 2001, **the 1st and 50th defendants jointly and severally, fraudulently, and without any colour of right, trespassed into a piece parcel of suit premises under a disguise of unknown and unregistered community which they self - proclaimed to be named "the Kambarage Community and Members and or officers. Following the said trespass, they severally erected two separate residential structures in the suit premises to plaintiff's detriment. The said three Defendants namely the 1st and 50th defendants, prevented the plaintiff from complying with terms and conditions attached to the above referred Certificate of Title". (emphasis added).***

Adls.

It is very clear from paragraph 6 of the Plaintiff that at least the 1st and 50th defendants have trespassed into the plaintiff's alleged suit land in 2001, and the plaintiff became aware of such trespass and was aware that it was the said defendants who has trespassed. The plaintiff did not institute a case to recover his trespassed land against the defendants until on 06.12.2022 when this suit was instituted. I say so because this suit is neither an alternative nor appeal of Civil Case No. 81 of 2001. This is a fresh disseminated Court against the defendants.

The fact that the plaintiff was trying to resolve the matter through the office of the Regional Commissioner in Dar es Salaam on 16.02.2018 in which list of names was given to him, cannot protect the plaintiff when it comes to issue of limitation of time. This is so because it is a cardinal principle that the time does not stop running while an intending litigant is pursuing the extra judicial means of solving disputes.

Furthermore, it is trite law that parties are bound by their own pleadings, hence, once the plaintiff has alleged that the defendants have trespassed into the suit premises on 27th January 2001 as pleaded under paragraph 6 of the plaintiff, then the cause of action has arisen in 2001. The plaintiff is bound by its own pleadings and cannot at this juncture, be allowed to depart from the said pleadings.

See the case of **YARA Tanzania Limited vs. Charles Aloyce Msemwa and 2 others**; Commercial Case No5 of 2015, High Court Commercial Division DSM (unreported), where it was held that;

"it is a cardinal principle of law of civil procedure founded upon prudence that parties are bound by their pleadings. That is, it is

Alle.

settled law that parties are bound by their pleadings and that no party is allowed to present a case contrary to its pleadings”.

Further, I agree with counsel for the defendants that seeking intervention of the Regional Commissioner was an extra judicial effort which could not stop the time to run as per the law of limitation, however it is apparent that the effort was also taken after lapse of 17 years from 2001, again out of 12 years if this Court had to agree with the plaintiff's submission.

To be precise the cause of action arose in 2001, the plaintiff instituted this suit in 2022, being 22 years lapse out of 12 years permissible by the law of limitation in this country. See also the case of **Rhode Sobe (As Administratrix of the Estate of the late Sobe Masiror vs James Fredy Sagaria (As Administrator of the Estate of the late Willson Manusu** HC, Mwanza District Registry (Unreported) which ruled among other things that a suit to recover landed property must be filed within 12 years.

Basing on the above analysis, the issue for my determination is answered into affirmative that this suit was instituted completely out of time hence it is incompetent before this Court for being time barred.

Section 3(1) of the Law of Limitation Act reads;

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.

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Having said that, it is my finding that this suit was filed out of time, thus the same is dismissed with costs under Section 3(1) of the Law of Limitation Act.

It is so ordered.



A. MSAFIRI
JUDGE
27/04/2023

The seal of the High Court of Tanzania is circular, featuring a central emblem with a scale of justice and a book, surrounded by the text "THE HIGH COURT OF TANZANIA" and "ND DIVISION" with a star.