

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND CASE NO. 13 OF 2023

JACKSON RWEHUMBIZA.....1ST PLAINTIFF

ABED CHRISTOPHER WASERE.....2ND PLAINTIFF

VENANCE KAVISHE.....3RD PLAINTIFF

TRYPHONE KABYEMERA.....4TH PLAINTIFF

THOMAS VEDASTUS 5TH PLAINTIFF

VERSUS

THE PERMANENT SECRETARY MINISTRY OF

NATURAL RESOURCES AND TOURISM 1ST DEFENDANT

THE PERMANENT SECRETARY MINISTRY

OF LAND HOUSING AND HUMAN SETTLEMENT

DEVELOPMENTS 2ND DEFENDANT

ATTORNEY GENERAL..... 3RD DEFENDANT

RULING

Date of last Order: 15.05.2023

Date of Ruling: 16.05.2023

A.Z. MGEYEKWA, J.

Essentially, the Plaintiffs' claims against the defendants jointly and severally to set boundaries and permanent marks (beacons) along the

Kazimzumbwi Forest Reserve, in accordance with the Government Notice No. 306 of 1954 to avoid recurring conflicts with the officers of the 1st Defendant. They averred that, they are the lawful owners of pieces of lands of different sizes located at Gogo, Kimwani, Somelo, Nzasa, and Nyeburu Village/ Street within of (*sic*) Chanika, Buyuni and Zingiziwa wards near Kazimzumbwi Forest Reserve.

The defendants disputed the claims of the Plaintiffs by filing the written statement of defence dated 23rd February 2023 altogether with a notice of preliminary objection on point of law. The same was overruled by this Court on 23rd March 2023 for want of merit.

On 11th May 2023, during the course, this Court *suo motto* raised a point of law concerning the cause of action, whether the instant suit is lodged within time before this Court. As to that, parties were summoned to address the Court.

The 1st Plaintiff took the floor, he was certain that this suit was filed within time. He added that the Plaintiffs lodged the instant suit on 15th December 2022 and the dispute started on 18th February 2011, the date when they were evicted from the suit-landed property.

In her submission, Ms. Pauline Mdendemi, learned State Attorney for the Defendants contended that the suit filed by the Plaintiffs is out of time. She uttered that, as per the submission made by the 1st Plaintiff, the cause of action arose on 18th February 2011 but under paragraph 8 of the Plaint the defendants unlawfully entered and evicted them from their lands. To say so, they are stating that the Defendants trespassed on their land and evicted the Plaintiffs.

She maintained that the statutory time limit to file a suit against tort trespass to land is three years from the date when the matter arose to the date of lodging a complaint in the Court. To bolster her proposition, she referred this Court to section 5 and Item 6 of Part 1 to the Schedule of the Law of Limitation Act, Cap.89 [R.E 2019].

She stressed that, from the date of filing this suit on 5th December 2022 the Plaintiffs' delayed for approximately 8 years to lodge the instant suit. Thus, she stressed that the suit is hopeless time barred. To bolster her submission, she referred this Court to the decision of **Elias Mwita Mrimi v North Mara Gold Mine Ltd**, Civil Case No. 8 of 2022, HC at Musoma, (unreported), and the case of **Yussuf Vuai Zyuma v Mkuu wa Jeshi la Ulinzi, TPDF & 2 Others**, Civil Appeal No. 15 of 2009, CAT at Zanzibar (unreported). In the end, she prayed for this suit to be dismissed for being filed out of time.

I have carefully considered the arguments advanced by the 1st Plaintiff and learned State Attorney for the Defendants. The bone of contention raised by this Court *suo motto* is whether the suit is properly lodged before this Court. The time starts to run from the date on which the cause of action arose. See section 5 of the Law of Limitation Act, Cap.89 [R.E 2019] which provides that: -

"Subject to the provisions of this Act the right of action in respect of any proceeding shall accrue on the date on which the cause of action arises".

It is worth noting that, in the instantaneous case, the Court's record speaks loudly that the cause of action for the claim of tort of trespass arose in 2011. This is through the Plaintiffs' Plaint dated 5th December 2022, specifically paragraph 8, and the same was acknowledged by the Defendants under paragraph 6 of their written statement of defence. Given such a stance, it follows therefore, that the suit is time-barred for being filed out of the prescribed time as per Item 6 of Part 1 to the Schedule of the Law of Limitation Act, Cap.89 [R.E 2019]. In the case of **Yussuf Vuai Zyuma** (*supra*), the Court held that: -

"By instituting the suit beyond the time allowed by the law, the appellant was time-barred".

In the matter at hand, the 1st Plaintiff agreed that the dispute commenced on 18th February 2011 which implies the date when the cause of action arose and the same occurred after the Defendants evicted the Plaintiffs from the Kazimzumbwi Forest Reserve.

Thus, as long as this suit was lodged before this Court on 15th December 2022 while the cause of action arose on 18th February 2011, it is obvious that the suit is filed out of time. Therefore, I am in accord with the learned State Attorney that the instant suit is brought out of time.

I find it apt to borrow a leaf from the decision of **Tanzania Road Agency & Another vs. Jonas Kinyangula**, Civil Appeal No. 471/ 2020, (CAT), (unreported), where it was held and stated that: -

“Where the suit is instituted after the expiration of the period prescribed by the law of limitation, the plaintiff shall show the grounds upon which exemption from such law is claimed”.

The position is contrary to the instant case at hand.

In the upshot, I find and hold that the Plaintiff's suit on the tort of trespass to land is time-barred, the Plaintiff ought to have filed the same within three (3) years on accrual of the cause of action.

Consequently, I hereby dismiss Land Case No/13 of 2023. I make no order as to costs because the issue which formed the basis of this Judgment was raised *suo mottu* by this Court.

Order accordingly.

Dated at Dar es Salaam this date of 16th May 2023.




A.Z. MGEYEKWA

JUDGE

16.05.2023

Ruling is delivered this 16th May 2023 in the presence of Plaintiffs and Ms.

Pauline Mndedemi, learned State Attorney for the Defendants.




A.Z. MGEYEKWA

JUDGE

16.05.2023

Right of appeal fully explained.