

**IN THE HIGH COURT OF TANZANIA  
(LAND DIVISION)  
AT DAR ES SALAAM  
LAND CASE NO. 07 OF 2023**

**GIAFAR MOHAMED BEDER ..... PLAINTIFF**

**VERSUS**

**HENRY PAUL MURO (*As administrator of the Estate of the  
Late SAUL PAUL MURO*).....1<sup>ST</sup> DEFENDANT**

**HENRY PAUL MURO ..... 2<sup>ND</sup> DEFENDANT**

**NATIONAL HOUSING CORPORATION ..... 3<sup>RD</sup> DEFENDANT**

**ASSISTANT COMMISSIONER FOR LANDS**

**DAR ES SALAAM ZONE..... 4<sup>TH</sup> DEFENDANT**

**HON. ATTORNEY GENERAL ..... 5<sup>TH</sup> DEFENDANT**

**RULING**

*Date of last Order: 26/5/2023*

*Date of Ruling: 30/5/2023*

**A. MSAFIRI, J.**

The plaintiff Giafar Mohamed Beder instituted the suit against the five defendants namely therein above. The dispute is on ownership of Plot No. 140 Block "R" at Magomeni, Dar es Salaam. (herein the suit property).

The defendants filed their written statements of defence. Along with it, the 1<sup>st</sup> and 2<sup>nd</sup> defendants raised a preliminary objection on point of law to the effect that;

*Alls.*

*a) The Honorable Court has no jurisdiction to entertain the matter as the suit is time barred.*

On 02/5/2023, this Court ordered the preliminary objection to be disposed of by way of written submissions. The order was complied with by parties whereby the submissions in chief and rejoinder to support the raised preliminary objection was drawn and filed by Mr Jonathan T. Kessy, counsel for the 1<sup>st</sup> and 2<sup>nd</sup> defendants.

The reply submissions by the plaintiff were drawn and filed by Mr Mashaka Ngole, counsel for the plaintiff.

Submitting on the above preliminary objection, Mr Kessy contended that this suit is statutorily time barred and it contravenes the provisions of Section 9 (1) (2) of the Law of Limitation Act, Cap 89 R.E 2019 which provides for accrual of right of action in case of person interested in particular land.

Mr Kessy submitted that the plaintiff's cause of action as pleaded under paragraph 7 of the Plaint is statutory time barred. That, Part 1 of the Schedule to the Law of Limitation Act, Column 1, Item No. 22 provides that the limitation of time for suit to recover land is twelve (12) years.

*ALLS -*

He argued further that, the land dispute before this Court is centered at the disposition or transfer of right of occupancy from the 3<sup>rd</sup> defendant to 1<sup>st</sup> defendant Saul Paul Muro (the deceased) which was duly effected in 1979.

That, the computation of limitation period for recovery or repossession of suit property counting from 25<sup>th</sup> June 1979 to the exact date when the current suit was commenced, forty-four years (44 years) have lapsed.

Mr Kessy submitted in alternative that, if this Court computes the limitation period effective from 8<sup>th</sup> November 1999 when Certificate of Title No. 49337 was issued to Henry Paul Muro as a legal representative of the deceased Saul Paul Muro by the Registrar of Titles to replace the then Certificate of Title No. 15234 of plot No. 140 Block 'R', the time is twenty four years (24) which also exceeds statutory limitation period.

He pointed that it is established law that, a party to the land dispute who commenced such a law suit must make sure that the suit is free from any irregularity and it is brought before the Court conferred with competent jurisdiction within the prescribed statutory period of time.

That unfortunately, the matter at hand is incompetent for being statutorily time barred.

*Alle*

To cement his arguments, the counsel cited the case of **Barelia Karangirangi vs. Asteria Nyalambwa**, Civil Appeal No. 237 of 2015, [2019] TZCA 51. He prayed for the dismissal of the entire suit with costs.

On reply, Mr Ngole for the plaintiff opposed the 1<sup>st</sup> and 2<sup>nd</sup> defendants' submission and stated that, the raised preliminary objection is out of legal focus and does not quality to stand as a preliminary objection as per the test set in the famous case of **Mukisa Biscuit Manufacturing Co. Ltd vs. West End Distributors Ltd [1969] EA 696**.

He contended that, the raised preliminary objection need to be ascertained by evidence from the facts pleaded in the Plaint, but the Court should look at the entire Plaint and all the facts pleaded.

Mr Ngole argued that the present suit is not time barred in terms of Section 91 (1) and (2) of the Law of Limitation Act. That according to paragraphs 13, 14, 15, 16, 17 and 18 of the Plaint, the cause of action arose on 03<sup>rd</sup> December 2012 which is the date upon which the plaintiff discovered facts which were concealed fraudulently by the defendants.

He contended that, according to Section 9 (1), (2) of the Law of Limitation Act in suit for recovery of land such like the present suit, the cause of action begins to run on the date the plaintiff got knowledge of

*Alls.*

dispossession of ownership of suit premises which was 03<sup>rd</sup> December 2012.

That, in causes of actions of fraud that has been concealed by the plaintiff, the twelve years period stipulated under Item 22 of Part of Schedule to the Law of Limitation Act, the time begins to run on the date the plaintiff discovered the fraud.

Hence, according to Mr Ngole, the cause of action arose on 03<sup>rd</sup> December 2012 when the plaintiff discovered through and or upon being served with a copy of Land Application No. 457 of 2012 lodged by the 2<sup>nd</sup> defendant, where the plaintiff was the 2<sup>nd</sup> respondent to the said application.

He argued further that Section 26 (b) of the Law of Limitation Act provides that where in the case of any proceeding for which a period of limitation is prescribed, the right of action is concealed by the fraud of any such person, the period of limitation shall not begin to run until the plaintiff has discovered the fraud or the mistake.

Mr Ngole submitted further that, the plaintiff could not have discovered that the ownership of the House No. 20B in which he is residing has been transferred from the 3<sup>rd</sup> defendant to the 1<sup>st</sup> defendant, because during all the material time, the Title Deed was in possession of the 3<sup>rd</sup> defendant and after the sale of the House No. 20B to the plaintiff by the 3<sup>rd</sup> defendant

*Alle*



the plaintiff was advised to wait for the 3<sup>rd</sup> defendant to surrender Title Deed to the 4<sup>th</sup> defendant for re-survey of the plot.

That, the time of accrual of cause of action should be computed from the date the 4<sup>th</sup> defendant registered the suit land in the names of the 1<sup>st</sup> defendant.

To buttress his points, the counsel for the plaintiff cited various cases including the case of **Idrissa Ramadhani Mbondera (administrator of the Estate of the late Ramadhani Ally Mbondera vs Allan Mbaruku and Akili Abdallah Mkopi (administrator of the estate of the late Abdallah R. Abdallah @ Malipula)** in Civil Appeal No. 176 of 2020.

He concluded by praying that the preliminary objection be overruled and the suit be heard on merit.

The 1<sup>st</sup> and 2<sup>nd</sup> made a rejoinder through their counsel by which they reiterated their submissions and prayers. They added that according to the contents of paragraph 9, 10, 11 and 12 of the Plaint, it is clearly revealed that the plaintiff had knowledge of alleged disposition of ownership of the suit premises since 24<sup>th</sup> December 2003 up to 08<sup>th</sup> December 2004, hence the plaintiff slept over his alleged right and has failed to act diligently within the specified period of time. *Alls.*

Having gone through the submissions by the parties, the centre issue for my determination is whether this suit is time barred.

The 1<sup>st</sup> and 2<sup>nd</sup> defendants have raised a preliminary objection pointing that this suit is time barred. They contend that the dispute is centred at the disposition or transfer of right of occupancy from the 3<sup>rd</sup> defendant to 1<sup>st</sup> defendant which was effected in 1979. That, counting from 1979, the suit is time barred.

They contended further that even if the cause of action arose in 1999 when the Title Deed was issued to the 2<sup>nd</sup> defendant Henry Paul Muro, still the suit is time barred.

The plaintiff argued that the cause of action accrued on 03<sup>rd</sup> December 2012 when the plaintiff discovered that the 1<sup>st</sup> defendant with the help of the 3<sup>rd</sup> defendant had fraudulently procured a Title Deed into the name of the 1<sup>st</sup> defendant on the suit premises.

It is a principle of law that a period of limitation starts to count from the date of accrual of the cause of action. However, having gone through the pleadings, it is clear that the date of cause of action is a question of fact which cannot be resolved in an argument on a preliminary objection.

*Adle.*

When did exactly cause of action accrued in this matter? Was it in the year 1979 as the 1<sup>st</sup> and 2<sup>nd</sup> defendants claims when the transfer of right of occupancy from the 3<sup>rd</sup> defendant to 1<sup>st</sup> defendant was effected? Or was it in November 1999 as claimed also by the 1<sup>st</sup> and 2<sup>nd</sup> defendants when certificate of Title No. 49337 was issued to Henry Paul Muro by the Registrar of Titles to replace Certificate of Title No. 15234?

Or did the cause of action accrued in 2003 – 2004 when the plaintiff was copied with a letter from the 4<sup>th</sup> defendant informing that the 3<sup>rd</sup> defendant has discovered that suit property is possessed by Saul Paul Muro?

Or was it in 03<sup>rd</sup> December 2012 when the plaintiff claims to discover the fraudulent actions of the defendants over the suit premises?

I find the submissions by the parties involves more clash of facts than the points of law.

I agree with the contention of the counsel for the plaintiff that the preliminary objection raised by the 1<sup>st</sup> and 2<sup>nd</sup> defendants need to be ascertained by evidence.

*Alle.*



I find that, the question as to when the cause of action arose is a matter of being ascertained by evidence. It is not a point of law which can be disposed of summarily.

Having observed that, I find that the preliminary objection raised by the 1<sup>st</sup> and 2<sup>nd</sup> defendants is not on pure point of law as per the principle set in the case of **Mukisa Biscuit Manufacturing Co. Ltd (supra)**.

For the foregoing reason, I find that the preliminary objection has no merit and I overrule it with costs.

  
.....  
**A. MSAFIRI**  
**JUDGE**  
**30/5/2023**

