

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

**LAND CASE NO. 78 OF 2023**

**NAVONEIWA TUMAIN MZIRAY.....PLAINTIFF**

**VERSUS**

**COMMISSIONER FOR LANDS.....1<sup>st</sup> DEFENDANT**

**ATTORNEY GENERAL.....2<sup>ND</sup> DEFENDANT**

**MWEMA SALUMU PUNZI.....3<sup>RD</sup> DEFENDANT**

**R U L I N G**

*Date of Last Order: 11.05.2023*

*Date of Ruling: 31.05.2023*

**T. N. MWENEGOHA, J.**

Three objections are in need of determination. One from the 1<sup>st</sup> and 2<sup>nd</sup> defendants that, this Court lacks jurisdiction to hear and determine the matter at hand for contravening the provisions of Section 102(1) and (3) of the Land Registration Act, Cap 334 R. E. 2019. Also, another objection from the 3<sup>rd</sup> Defendant that, the suit is time barred.

For convenience, it was agreed by the parties that, both objections will be heard together, through written submissions. The schedule for the submissions was that, the defendants' submissions in chief was to reach the Court by 18<sup>th</sup> May, 2023, followed by a reply from the plaintiff on the 25<sup>th</sup> May 2023 and a rejoinder if any on the 29<sup>th</sup> May, 2023.

Unfortunately, the 1<sup>st</sup> and 2<sup>nd</sup> defendants failed to obey the schedule. They did not file their written submissions as ordered; therefore, their objection is dismissed for want of prosecution, see **Famari Investment (T) LTD versus Abdallah Selemani Komba (As the Administrator of the Estate of the Late Sharifa Abdallah Salama), Misc. Civil Application No. 41 of 2018, High Court of Tanzania at Mbeya (unreported)**.

On the other hand, the 3<sup>rd</sup> defendant filed his submissions as ordered. His learned Counsel, Mbuga Jonathan, arguing in favour of the objection, was of the view that, this case has been instituted after the expiry of the required period of 12 years as given under Section 9(2) of the Law of Limitation Act, Cap 89 R. E. 2019. That, the land in dispute was acquired since 1987 and a compensation was paid to the previous owner by the government. This fact is contained in paragraph 15 of the plaint and also in annexure NMT-7. If the plaintiff wanted this suit to proceed, she should have invoked the provisions of Order VII Rule 6 of the Civil Procedure Code, and provide reasons for delaying to take the required actions within time. Therefore, the court should dismiss the case for being time barred.

Replying to the submissions by the counsel for the 3<sup>rd</sup> defendant, Advocate Egid S. M. Mkoba for the Plaintiff, was of the view that, the objection by the 3<sup>rd</sup> defendant is devoid of merits. He insisted that, as per paragraph 7 of the plaint, the cause of action arose in 2002 when the plaintiff acquired the suit land. She continued to own and pay rent for the same up until the year 2010. Therefore, the allegation that the plaintiff has not been in possession of the plot for 33 years is misconceived.

I have gone through the submissions of parties for and against the objection at hand, as given by their respective counsels. The issue for determination is whether the objection has merits or not.

In order to know whether or not the suit is time barred, one must see as to when exactly the cause of action between the plaintiff and the defendants arose. The answer to this question is provided in the plaint, paragraph 16 where the plaintiff states that, the cause of action arose in 2023. It is when the defendant trespassed by demolishing the fencing wall thereby causing substantial damage to the tune of 30, 000,000/=.

Based on this paragraph, it is obvious that this suit was instituted within time. Hence, the objection is devoid of merits and it is overruled accordingly. No order as to costs.

Ordered accordingly.



  
**T. N. MWENEGOHA**

**JUDGE**

**31/05/2023**