

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

**LAND CASE NO. 99 OF 2023**

**ESTHER FREDERICK SUMAYE.....PLAINTIFF**

***VERSUS***

**JIMMY PETER MUSHI.....DEFENDANT**

**RULING**

10-14 July, 2023

**E.B. LUVANDA, J**

In the written statement of defence, the Defendant named above raised three points of preliminary objections: One, the suit is hopelessly time barred; Two, the plaintiff abuse the court process; Three, this suit is res – subjudice.

Mr. Mashaka Mfala learned Advocate for the Defendant submitted that under paragraph 9 of the plaint, it is stated that the cause of action in this matter arose in August 2015 when the Defendant alleged trespassed the suit land and this suit was instituted on 14/04/2023 which is seven years later from the date when the cause of action arose. He submitted that, trespass is tort, and time limitation for suit founded on tort is three years, citing section 3(1)

and item 6 of the First (sic) Schedule to the Law of Limitation Act, Cap 89 R.E 2019. He submitted that this matter is out of time for four (4) years.

Arguing the second and third point, the learned counsel for Defendant submitted that there is no order for withdrawing a dispute transferred from Ward Tribunal to Kinondoni District Land and Housing Tribunal, arguing that the matter at hand is also pending at Kinondoni District Land and Housing Tribunal, contrary to section 8 of the Civil Procedure Code Cap 33 R.E. 2019.

In reply, Ms. Ashura Mansoor Salum learned Advocate for the Plaintiff, submitted that the Plaintiff claim against the Defendant for vacant possession on the landed property described in the plaint over a cause of action arose in August 2015. She submitted that limitation of the disputes involving land matter is twelve years, citing item 22 of the First (sic) Schedule Cap 89 (supra), also the case of **Bhoke Kitang'ita vs. Makuru Mahemba**, Civil Appeal No. 222 of 2017 C.A.T. at Mwanza.

For the second and third objections, the learned Counsel submitted that no part of a plaint suggest an existing of a suit before the tribunal, on that the District Land and Housing Tribunal directed them to this court which has power to adjudicate the matter.

In rejoinder submission, the learned Counsel for Defendant submitted that paragraph 3 of the plaint read that the cause of action is trespass and paragraph 9 states that the cause of action arose in August 2015, the suit was instituted on 14/04/2023 seven years later from the date the cause of action arose.

Essentially, all three points of objections are unmerited. The alleged suit on tort is not reflected anywhere in the pleadings, be it on the plaint or written statement of defence. Reliefs claimed by the plaintiff to wit a declaration that the Defendant is a trespasser to the suit land; an order for vacant possession against the Defendant to the land in dispute; permanent injunction restraining the Defendant from entering or trespassing suit land, vi-a-vis a defence by the Defendant that he own and posses land since 2005; all suggest that parties are lingering over ownership of the suit land. Therefore, twisting it to the action of tort is a misconception and legally untenable.

In paragraph 16 of the plaint, the Plaintiff pleaded that the ward tribunal transferred the matter to the district land and housing for want of jurisdiction. In paragraph 18 the Plaintiff attached a letter from the Chairman District Land and Housing Tribunal at Kinondoni, annexure Sumaye 11, informing the Plaintiff that it had no jurisdiction over the matter worth 500,000,000 and advised parties to file a plaint at the High Court Land

Division. In the said letter annexure Sumaye 11, the learned Chairman did not say or mention any matter which is pending before it. Indeed the Defendant's Counsel did not mention a case number of the matter alleged pending at the District Land and Housing Tribunal. Therefore his argument was based on speculation. In the context, the doctrine of subjudice doesnot exist and there is no abuse of court process or forum shopping committed by the plaintiff.

All objection are overruled, costs will abide to the outcome of the main suit.



E.B. LUVANDA  
**JUDGE**  
14/07/2023