

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

LAND CASE NO. 163 OF 2023

**THE REGISTERED TRUSTEES OF
MASJID ISLAMIC YOMBO VITUKA.....PLAINTIFF**

VERSUS

**THE REGISTERED TRUSTEES OF MADRASUT DAARU
MUNADHAMAT DAWATIL ISLAMIA.....1STDEFENDANT**

SALIM HAMUD SEIF.....2ND DEFENDANT

TEMEKE MUNICIPAL COUNCIL.....3RD DEFENDANT

THE COMMISSIONER FOR LAND.....4TH DEFENDANT

THE REGISTRAR OF TITLES.....5TH DEFENDANT

THE ATTORNEY GENERAL.....6TH DEFENDANT

R U L I N G

Date of Last Order: 18.07.2023

Date of Ruling: 31.07.2023

T. N. MWENEGOHA, J.

I have five objections in need of my determination. Both are from the 1st and 2nd defendants as follows; -

- 1. That, this court has no jurisdiction to entertain the suit.**
- 2. The suit is time barred.**

- 3. The suit is res subjudice to Misc. Land Application No. 28 of 2020, pending before the High Court of Tanzania, Dar Es Salaam District Registry.**
- 4. The suit is bad in law as it has violated Order VII Rule 1(e) of the Civil Procedure Code, Cap 33 R.E 2019**
- 5. That, the plaintiff has no cause of action against the 1st defendant in respect of the disputed Plot of which was granted on 1991, prior to its existence.**

Hearing of the objections was by written submissions. Advocate Maria C. Peno, appeared for the 1st and 2nd defendants while the plaintiff enjoyed the legal services of Advocate Alexander Kyaruzi.

In this Ruling, I will start to dispose the 2nd objection that, the suit is time barred. Advocate Maria, in her submissions in support of this objection, insisted that, according to paragraphs 13,14 and 15 of the plaint, the organization(plaintiff) was established on the 06th May 1997. The same year she applied to be allocated the land in dispute for the purposes of building a mosque. She then discovered that, the suit plot has already been allocated to the 1st defendant, an Islamic organization from Tandika. These facts show that, the suit has contravened the provisions of **Item 22, Part I of the schedule of the Law of Limitations Act, Cap 89 R. E. 2019**. The time for filing a suit for recovery of the land is 12 years. The present suit has been filed after the expiry of 26 years from the date of accrual of the cause of action. She cited the case of **Consolidated Holding Corporation versus Rajan Industries Limited & Bank of Tanzania, Court of Appeal of Tanzania at Dar es Salaam, (unreported)**.

In reply, Mr. Kyaruzi was of the view that, the suit at hand has been filed within time. The cause of action arose in 2017 when the suit land was registered in the name of the 1st defendant. The dates referred by the 1st and 2nd respondents' counsel on the accrual of the cause of action are not correct. The said dates is when the plaintiff was formed and registered, that is on the 06th May, 1997. That, the 1st defendant was allocated the suit land on the 19th of August 2008, and the plaintiff has been along challenging the allocation before the Municipal Council (3rd defendant). The plaintiff has been asking for a cancellation of the letter of offer given to the 1st defendant, however on 17th July 2017, the 1st plaintiff was officially registered with a title deed.

In my endeavor to settle the issue contested by both counsels as presented in their arguments, I relied on the pleadings, to be precise, the plaint. At paragraph 13, the plaint shows only the formation of the plaintiff, as she was registered on the 06/05/1997. However, on the next paragraph, that is where the confusion arose. The plaint states at paragraph 14 that, after registration, the plaintiff applied to be allocated the suit land, however the Application was fruitless, as the plaintiff found that said land had been allocated to the 1st defendant (see paragraphs 14 and 15 of the plaint). The plaintiff does not say expressly in her pleadings as to when exactly she became aware of the existence of the 1st defendant in the land in question.

But, if we read other paragraphs, this confusion is cleared. As argued by Mr. Kyaruzi, it is true that, the dispute between the plaintiff and the 1st defendant over the said land started long time ago. That is to say, the plaintiff has been fighting to gain ownership of that land from around

2008 and 2010, see paragraphs 18 and 19, along with annexures YV-3 and YV-4, respectively.

In 2008 the 1st defendant obtained the offer letter and the plaintiff was fully aware of that as stated at paragraph 18. Then, the 1st defendant went on to dispose the land in question to 2nd defendant, though failed to convey it absolutely to him, owing to the letter of the 4th defendant on the use of the suit land, as stated at paragraph 19.

With these facts, it is not correct to say that the cause of action arose in 2017 upon registration of the said land to the 1st defendant's name. The same arose from the moment the plaintiff attempted to acquire ownership of that particular land, only to find the same has been allocated to the 1st defendant. That is on or before 2010. I say so because she has not been clear on the exact date on her first Application to be allocated the said land. But, the fact that the presence of the 1st defendant on that particular land was known by the plaintiff from or before 2010 as I have expressed above, then the cause of action starts to run from the period when that knowledge existed to the plaintiff.

Hence, counting from 2010 to the date when this suit was filed, on the 29th May, 2023, it is more than 12 years given for suits of this nature, per Item 22 of Part 1 of the schedule of the Law of Limitations Act, Cap 89 R. E. 2019. Therefore, this suit is time barred. The Court cannot allow it to proceed in absence of the leave to extend the required time from the authorities concerned, **Consolidated Holding Corporation versus Rajan Industries Limited & Bank of Tanzania**. For these reasons, I sustain the 2nd objection for being meritorious. Indeed, allowing the 2nd objection means, the suit has met its end. There is no need to continue

discussing the remaining 4 objections. To do so is to misuse the Courts' precious time. As I have said above, the findings in the 1st objection are capable of disposing the entire suit to its finality.

In the end, the suit is dismissed with costs.

Ordered accordingly.




T. N. MWENEGOHA

JUDGE

31/07/2023