

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

LAND CASE NO. 238 OF 2023

EUGENIA MAEDA.....PLAINTIFF

VERSUS

THE COMMISSIONER FOR LANDS.....1ST DEFENDANT

THE ATTORNEY GENERAL.....2ND DEFENDANT

RULING

17th to 25th October, 2023

E.B. LUVANDA, J

The Defendants named above raised objections embedded into their written statement of defence, grounded that: One, the suit is hopelessly time barred; Two, the suit is *res judicata*; Three, the suit is incompetent for non-joinder of a necessary party.

Ms. Lucy Kimaryo learned State Attorney for the Defendants, submitted that the Plaintiff claim ownership of Plot No. 953 (2060) Block E, Mbezi Kinondoni which was allocated to her in 1987. She submitted that the cause of action arose in 1991 where the Plaintiff discovered that her plot was mistakenly issued to Brian Morgan. She submitted that the Plaintiff sued Brian Morgan Via Land Application No. 196/2011 which was dismissed

on 24/02/2012 for being time barred, and was not appealed against. She submitted that the same cause of action also run against the Commissioner for Lands. She submitted that since the cause of action arose in 1991 and this suit was filed on 26/07/2023 she argued it to be hopelessly time barred. She cited section 3(1) of the Law of Limitation Act, Cap 89 R.E. 2019.

In reply, Mr. Peter Kibatata learned Counsel for the Plaintiff submitted that the Defendants are relying on a completely different matter not before this Court, between the Plaintiff and Third Party, arguing they are bringing evidence on a matter of law, citing **Mukisa Biscuits Manufacturers vs West End Distributors**. He submitted that the Defendants are relying on documents pleaded in their defence, arguing ought to be tested in evidence.

The learned Counsel submitted that the Plaintiff cause of action is set out in paragraph 4.0 of the plaint, to the effect that a letter Ref. No. LD/261537/84 dated 20/10/2022 with various other letters pleaded in the plaint dated 2022 communicated to the Plaintiff that certificate of title in respect of Plot No. 953 has been changed to Plot No. 2060 Block E, Mbezi Kinondoni Dar es Salaam, arguing it is when a cause of action arose and

not in 1991. He submitted that the specific sets of facts are clear that the cause of action arose in 2022 and not 1991 contemplated by the Defendants.

On rejoinder, the learned State Attorney submitted that the preliminary objection raised are not based on evidence that need to be substantiated by evidence as alleged by the Plaintiff. She submitted that their argument is based on the ruling of the District Land and Housing Tribunal in Land Application No. 196/2011, arguing the Plaintiff admitted therein that she discovered the land was mistakenly issued to the Respondent therein in 1991. She submitted that, having filed this suit for the second time on 20/07/2023, thirty two years later, the suit is time barred. She invited this Court to take judicial notice on ruling in Land Application No. 196/2011, vide section 59(1)(a) of the Evidence Act, Cap 6 R.E. 2019.

The fact that this suit is time barred was pleaded by the Defendants in their joint written statement of defence at paragraph three, I quote,

'Furthermore, in 2011, the Plaintiff instituted a suit against the said Brian Morgan over the suit Plot, Land Application No. 196/2011, where the Land Tribunal ruled out that the Plaintiff's claims over the suit property were time barred. Apparently, said decision has not been challenged in any

Court of law as of today. (A copy of the ruling of Land Application No. 196 of 2011 is hereby attached and marked as Annexure OSG1, leave of this Court is sought so that it may form part of this Written Statement of Defense)

In the ruling annexure OSG 1 attached to the joint written statement of defence, which the Plaintiff herein sued Brian Morgan (not under impleadment herein), at page 10, the Chairman ruled, I reproduce,

'...The applicant was supposed to file and institute this application to claim the suit plot before the year 2002 and not later than that as the cause of action according to the applicant herself in the application arose in the year 1991 when she was prevented and obstructed to develop the suit land and also discovered that the same was mistakenly allocated to the respondent'

On 29th August, 2023, Ms. Faith Mwakikoti learned Counsel appeared for the Plaintiff and asked for time to file a reply to the Defendants joint written statement of defence, where she was granted leave to file the same on 5/09/2023 and along it, a schedule for disposal of the preliminary objection in written argument was made. But no reply to the joint written statement of defence was forthcoming from the Plaintiff to controverts the above pleaded facts.

By implication, it is taken as a concession that indeed this suit is time barred. Therefore, the argument of the learned Counsel for the Plaintiff that the cause of action arose in 2022, as per a letter dated 20/10/2022 Ref. No. LD/261537/84, alleged pleaded in paragraph four of the plaint, is misleading. Apart from that, the purported letter was not annexed to form part of the plaint. In other words, the Plaintiff was merely alleging.

As much the first limb of objection is sustained and suffices to terminate this matter, I will not embark deliberating on the remained grounds of objection.

The suit is **dismissed with costs.**



E.B. LUVANDA
JUDGE
25/10/2023

Ruling delivered through virtual court attended by Ms. Lucy Kimayo learned State Attorney for the Defendants and in absence of the Plaintiff.



E.B. LUVANDA
JUDGE
25/10/2023