

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

CONSOLIDATED LAND APPEAL NO. 25 & 36 OF 2016

MIC TANZANIA LIMITED (TIGO COMPANY).....APPELLANT

VERSUS

MAYUNGA SADUKA.....1ST RESPONDENT

MARGRETH SADUKA.....2ND RESPONDENT

MARY SADUKA.....3RD RESPONDENT

MICHAEL SADUKA.....4TH RESPONDENT

STEPHANIA JOHN.....5TH RESPONDENT

AND

STEPHEN JOHN.....APPELLANT

VERSUS

MAYUNGA SADUKA.....1ST RESPONDENT

MARGRETH SADUKA.....2ND RESPONDENT

MARY SADUKA.....3RD RESPONDENT

MICHAEL SADUKA.....4TH RESPONDENT

TIGO COMPANY (MK) LTD.....5TH RESPONDENT

JUDGMENT

30/11/2023 to 1/12/2023

E.B. LUVANDA, J

This judgment is in respect of consolidated Land Appeal No. 25 and 26 of 2016. Parties in Land Appeal No. 25 of 2016 are: MIC Tanzania Limited (Tigo Company) (Appellant) *versus* Mayunga Saduka (First Respondent),

Magreth Saduka (Second Respondent), Mary Saduka (Third Respondent, Michael Saduka (Fourth Respondent) and Stephania John (Fifth Respondent, Third Party at the Tribunal); Land Appeal No. 36/2016 parties are: Stephen John (Appellant) *versus* Mayunga Saduka (First Respondent), Magreth Saduka (Second Respondent), Mary Saduka (Third Respondent, Michael Saduka (Fourth Respondent) and Tigo Company (MK) Ltd (Fifth Respondent).

The Appellants are unhappy with the decision of the Tribunal which nullified the sale agreement entered by third party who is the Appellant in Land Appeal No. 36 of 2016; ordered the Appellant in Land Appeal No. 25 of 2016 to pay rent arrears to the First to Fourth Respondent therein as from 2001; ordered the Appellant in Land Appeal No. 25 of 2016 either to abandon the land in dispute or enter a fresh agreement with the First to Fourth Respondents therein.

The Appellant in Land Appeal No. 36 of 2016 preferred three grounds of appeal. Meanwhile the Appellant in land Appeal No. 25 of 2016 raised only two grounds of appeal.

However after both parties in respective appeal have filed their submissions in support and opposition of appeal, this Court invited parties to address on two points, namely: One, whether Land Appeal No. 36 of

2016 which was filed on 8/03/2016 being fifty three days from when the impugned judgment was delivered on 14/01/2016, is within time; Two, whether a claim by the First to Fourth Respondents in Land Appeal No. 25 of 2016, which was filed at the Tribunal on 14/04/2009 for the substantive claim of trespass and payment of arrears of rent by the Appellant therein, alleged committed and accrued from 2001 where the latter erected a tele-communication tower over the land alleged owned by the former, was lodged within time.

Regarding tenability of Land Appeal No. 36 of 2016, E.E Wamunza learned Counsel for First to Fourth Respondents therein, submitted that Land Appeal No. 36/2016 filed on 11/03/2016 by Stephanina John (sic, Stephen John), was out of time for 55 days from the date of delivery of the judgment on 14/01/2016.

On my part, going by the judgment and decree which was attached to the Land Appeal No. 36 of 2016 reveal judgment was delivered on 14/01/2016 and a decree was extracted on 5/02/2016. In that regard, counting from delivery of the impugned judgment on 14/01/2016, forty-five days ended on 27/02/2016. But counting from when the decree was extracted on 5/02/2016, forty-five days end on 20/03/2016. However, in the memorandum of appeal nowhere the Appellant pleaded exemption of

computation of time during which he was awaiting the necessary documentations for lodging the appeal. Neither stated if he formerly requested the same. Even in the records of the Tribunal file, there is no any indication suggesting that the Appellant had requested for any documentation for purpose of lodging the appeal. Therefore, at any rate Land Appeal No. 26/2016 is out of time. Consequently, it is dismissed.

Regarding Land Appeal no. 25/2016, E.E. Wamunza learned Counsel for First to Fourth Respondents therein, submitted that before the Tribunal the First to Fourth Respondents sued the Appellant for trespassing into their land and installed a cellular equipment within the Respondents premise, arguing the Respondents claimed for the relief of rent to the lawful owners of the premises to date at the rate of 350,000 per month. She submitted that the application was filed within time at the Tribunal, arguing trespass alleged to have been made in 2001, while the Respondents filed their case eight years later in 2009. She cited Part (sic, item) 22 Schedule 3 (sick) of the Law of Limitation Act, Cap 89, for a proposition that suit to recover land is twelve years. She cited the case of **Romino Athanase vs Mukamudam Benedicto** (1983) TLR 370; **Yusuf Same & Another vs Hadija Yusuf** (1996) TLR 348.

The learned Counsel cited section 3 and rule (sic, item) 13 of Part 1 (sic) Schedule to Cap 89 (supra), that it provides that limitation for a suit to recover arrears of rent is six years. However, the learned Counsel submitted that the trial Chairman in the judgment granted the Respondents arrears of rent from 2001 and ordered the Appellant to enter into a fresh tenancy agreement with the lawful owners of the suit premises, for reasons that the Appellants had trespassed into the land in 2001 and were in continuous occupation of the same even after the High Court judgment in 2018. She cited section 7 of Cap 89 (supra), for a proposition that where there is a continuing wrong, a fresh period of limitation shall begin to run at every moment of the same time during which the wrong as the case may be continues.

On the other hand, Sinare Zaharan learned Counsel for Appellant submitted that the content of paragraph 6(a) of the application which was filed before the Tribunal on 14/04/2009 contains tortuous claims for trespass to the suit land by the Appellant alleged to be committed sometimes in 2001 by erecting a telecommunication tower. He submitted that tortuous actions is provided under item 6 of the First (sic) Schedule to the Law of Limitation Act, time limitation is three years. He submitted that this case the suit was instituted in 2009 while the cause of action

arose in 2001, arguing there is delay of five years computing from the date when the cause of action arose. He cited a case of **John Cornel vs Grevo (T) Ltd** (HC) Civil Case No. 70/1998; **Loswaki Village Council & Others vs Shibesh Abebe**, Civil Application No. 23/1997; **Dr. Ally Shabbay vs Tanga Bohora Jamaat** [1997] TLR 305.

Going by the pleadings and the evidence presented, suggest that the nature of a substantive claim, reflect some elements of a tortuous claim, as trespass is founded on tort.

It is elementary that a period of limitation to sue for a claim/suit founded on tort of trespass, is three years, see item 6 Part I of the Schedule to the Law of Limitation Act, Cap 89 R.E. 2002.

Another claim by the Respondent was payment of rent. As submitted by the learned Counsel for Respondents, the limitation period to sue for recovery of arrears of rent is six years, see item 13 of Part I to the Schedule of Cap 89 (supra). Therefore, a claim for arrears of rent which accrued in 2001, the time available to sue ended in 2007.

It is the law that suits instituted after expiry of a period of limitation, the remedy is dismissal. Section 3(1) Cap 89 (supra), provide, I quote,

"Subject to the provisions of this Act, every proceeding described in the first column of the Schedule to this Act and which is instituted after the period of limitation prescribed therefor opposite thereto in the second column, shall be dismissed whether or not limitation has been set up as a defence"

According to the above provision of law, any suit presented after the period of limitation, the only remedy available, is to dismiss without regard as to whether limitation was set as defence by the Defendant at the trial.

In **Barclays Bank Tanzania Limited vs Phylisiah Hussein Mchemi**, Civil Appeal No. 19 of 2016, the apex Court when considering the consequences brought by time limitation to institute a suit, cited with approval the decision of this Court in **John Cornel vs A. Grevo (T) Limited**, Civil Case No. 70 of 1998, HC Dar es Salaam (also cited by the Counsel for Appellant), propounded that,

'However, unfortunate it may be for the plaintiff; the law of limitation is on actions knows no sympathy or equity. It is a merciless sword that cuts across and deep into all those who get caught in its web'

Before the Tribunal, the First to Fourth Respondents' claim was pleaded to be trespass by MIC (T) LTD Company by erecting or installing cellular equipment within the Respondents' premises without their knowledge or consent sometimes in 2001 and claimed for payment of rent of Tsh 350,000/= per month. In the relief, there is no specific relief for ownership or recovery of the suit property. Therefore, an argument by the learned Counsel for Respondents that the claim fall under the cluster of twelve years, under the heading of recover of land, is misleading. This is for obvious reason that, nowhere the First to Fourth Respondents claimed to be lawful owners neither claimed for recovery of land. Their substantive claim as aforesaid is trespass and payment of rent. In the case of **Sixmund Luambano vs Vodacom Tanzania Limited & Others**, Miscellaneous Land Case Appeal No. 2/2020, High Court Songea, this Court speaking through Honorable Moshi, J as she then was, had this to say at pages 6 and 7,

*"The Court of Appeal in the case of **Avit Thadeus Massawe vs Isdory Assenga** (supra), defined the concept of trespass to mean;*

"entering, remaining or causing an object to fall on the premises/land in the possession of another without permission and/or without justification cause"

This Court went on to say, at page 7,

*"The ingredients of the tort of trespass are entering (physical or through an object) or remaining on the land, possession of premises. In the case of **Avit Thadeus** (supra) the Court of Appeal held that trespass to land is a tort and the remedies available to the claimant are perpetual injunctions and monetary compensation"*

Herein, the wrongful acts complained of, were committed in December 2001 (as put by Magreth Pasikali Saduka, PW1, on cross examination by Patricia learned Counsel) and the suit was instituted at the Tribunal on 14/04/2009. In my respective view, the Respondents ought to have lodged their claim or suit for trespass before the December, 2004. But as it transpired in the record of the proceedings, this suit was instituted on 14/04/2009 well after the elapse of almost eight years.

Similarly, the First to Fourth Respondents ought to have sued for arrears of rent in December 2007. Therefore, when the Respondents sued on

14/04/2009, it means the Respondents were out of time for more than seven years.

The argument by the learned Counsel for Respondents that there was a continuous wrong for reason that the Appellant were in occupation even when the judgment of this court was delivered or that the Tribunal ordered Appellant to enter into a fresh lease agreement with the lawful owner, is irrelevant. This is because a claim for arrears of rent was interwoven with trespass. Above all, a verdict of the Tribunal giving the Appellant an option to enter into a fresh tenancy agreement with the First to Fourth Respondents or quit, was the invention by the Tribunal at its own accord, because nowhere the First to Fourth Respondents pleaded for such reliefs.

In the case of **Loswaki Village Council** (supra), the apex Court ruled,

"...those who seek the aid of the law by instituting proceedings in court of justice must file such proceedings within the period prescribed by the law and those who seek protection of the law in a court of law must demonstrate diligence"

It is crystal clear that, the suit before the Tribunal was barred by the law of limitation as it was filed after the expiry of the period of limitation prescribed by the law. In my view, the suit before ought to be dismissed.

That said, I find that the suit before the Tribunal was incompetent for it is barred by the period of limitation. I therefore nullify all proceedings, quash the judgment and set aside the decree and all orders emanating therefrom.

The appeal is allowed. However, I make no order for costs.



E.B. LUVANDA
JUDGE
01/12/2023

Judgement delivered in the presence of Mayunga Saduka and Michael Saduka in person, in absence of the rest parties.



E.B. LUVANDA
JUDGE
01/12/2023