

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

LAND CASE NO. 24 OF 2023

MARY YOHANA SAGARA.....PLAINTIFF

VERSUS

THE RUFJI DISTRICT COUNSEL.....1ST DEFENDANT

THE HONOURABLE ATTORNEY GENERAL.....2ND DEFENDANT

JUDGMENT

30/11/2023 to 07/12/2023

E.B. LUVANDA, J

A substantive claim of the Plaintiff above against the First and Second Defendants named above, is for payment of compensation at a tune of Tshs 50,000,000/=, payment of special damages at a tune of Tshs 200,000,000/=, a declared that she is the lawful owner and occupier of the disputed land located at Umwe Village cum Ward, Rufiji District, Pwani Region, under customary right of occupancy and vacant possession and or eviction from thereat.

Mary Yohana Sagara (PW1) asserted that on 29/06/2000 she purchased four acres of land from Kassim Saidi Maupa as per sale agreement exhibit P1. On 18/02/2003 she purchased one acre farm from Fatuma Seifu

Alfalani as per exhibit P2. PW1 asserted that after purchasing, she used to cultivate food crops. According to PW1 cashewnuts trees were there at the time of purchasing. It was the evidence of PW1 that on 3rd May, 2010 her farm was acquired by the First Defendant without her consent or permission as per a letter exhibit P3, for construction of water project and uprooted fifty trees of cashewnuts each worth 25,000/=, time life span of cashewnuts tree which is forty years multiplied by fifty trees got a sum of Tshs 50,000,000/=. Also she claim for Tshs. 200,000,000 for physical and mental disturbance. A fact that cashewnut trees were uprooted was supported by Shamte Salehe Mmipi (PW2), but said only twenty trees were damages. PW1 asserted that on 23/12/2019 she filed a case at the Tribunal as per a plaint (application) exhibit P4, but later she was advised to sue at the High Court as per ruling exhibit P5. PW1 asserted to have issued and served a notice to sue the government exhibit P6.

On defence, Omari Sadati Mkwya (DW1) valuer, asserted that the Plaintiff was informed regarding the process of acquisition, but was uncorporative for what he heard from local leaders that the Plaintiff was unwilling for her area to be acquired. DW1 asserted to have served the Plaintiff with a formal letter for acquiring her land dated 03/05/2010 exhibit D1, where the Plaintiff did not respond. DW1 asserted that they

crafted another letter dated 03/09/2010 exhibit D2 as a reminder. DW1 stated that later on 07/10/2010 the Plaintiff responded that a sum of Tshs 275,250 was little, and asked to be considered in view of a fact that she was having an obligation of paying school fees for children, which proposal was out of their (DW1) scope. DW1 tendered a valuation report for compensation purposes dated April, 2010 exhibit D4. A fact that the Plaintiff solo refused compensation for reasons that it was a small amount was supported by Omary Mohamed Mng'obwa (DW2) erstwhile Village Executive Officer at Umwe Kati Village and Ag Ward Executive Officer Umwe ward in 2010, who supervised an exercise of payment of compensation to citizens who were affected by acquisition of their land for the project of water construction. Also PW2 said the Plaintiff refused compensation because the amount was small and not because of non compliance of procedures.

Issues framed: One, whether the Plaintiff is the lawful owner of the suit property. Two, in the alternative, whether the suit was brought in time; Three, whether the Plaintiff deserve compensation as claimed; Four, in the alternative, whether a claim for compensation was brought within time; Five, to what reliefs are the parties entitled to.

It is in record that the Plaintiff demonstrated to be the lawful owner of the disputed land, as evidenced by sale agreements exhibit P1, P2, along a letter for acquisition exhibit D1 and D2, which acknowledged that the District Council of Rufiji acquired a portion of an area of a farm of the Plaintiff measuring a size of 4500 square metres and four cashewnuts, as depicted in exhibit D2. However, the question is whether her claims are within time.

Among the reliefs claimed by the Plaintiff, is for a declaration that she is the lawful owner of the suit land and an order for vacant possession.

It is common ground that a limitation period for suits to recover land, is twelve years, see item 22 of Part I to the Schedule of Law of Limitation Cap 89 R.E. 2002.

Herein, the Plaintiff farm was acquired on 03/05/2010, the plaint was presented for filing on 02/02/2023, well after elapse of twelve years and nine months. In paragraphs eight and nine of the plaint, the Plaintiff pleaded facts showing that she previously filed a suit in the District Land and Housing Tribunal for Mkuranga, alleged was withdrawn, and tendered a plaint/application exhibit P4 and a ruling exhibit P5 depicting a suit was struck out. However, the Plaintiff, did not plead on express terms that she is pleading those facts for purpose of grounding exemption from

limitation law period. It is a settled rule that grounds for exemption from limitation period must be specifically pleaded and grounded. Order VII rule 6 of the Civil Procedure Code, Cap 33 R.E. 2019, provide,

"Where the suit is instituted after the expiration of the period prescribed by the law of limitation, the plaintiff shall show ground upon which exemption from such law is claimed"

In the plaint, the Plaintiff did not even disclose a fact that her claim was limited by time.

The second cluster of the Plaintiffs claims are payment of compensation of Tshs 50,000,000/= and specific damages a sum of Tshs 200,000,000/= The two claims or relief pertain to suits founded on tort, whose period of limitation is three years, see item 6 of Part I to the Schedule of Cap 89 (supra). Therefore counting from 2010 when the Plaintiff allege her cashewnut trees were uprooted and mowed by the First Defendant, three years literally ended in 2013. Therefore even at the time of suing at Mkuranga District Land and Housing Tribunal on 23/12/2019, when a plaint/application was filed, already a claim for compensation, general and special damages pleaded therein, was time barred. In other words, the Plaintiff is debarred to plead exemption under Order VII rule 6 Cap 33 (supra). This is because for the Plaintiff to be eligible for exclusion

of time during which she was prosecuting another civil proceedings at the Tribunal, she must demonstrate that she was prosecuting under bonafide with due diligence in the court without jurisdiction, but importantly the prosecution must have been mounted or instituted within the period of limitation prescribed for the particular suit and time thereof expired post filing or in the course of prosecuting. To my view exclusion of time under section 21 of Cap 89, cannot be reckoned to harbours suits or claims filed to a wrong court after expiry of time. In other words, exclusion under the said provision is not retrospective.

That said, I hold a view that the suit and claim by the Plaintiff is hopelessly time barred and therefore I am debarred to entertain or deliberate the merits docket.

The suit is dismissed. I make no order for costs.



E.B. LUVANDA
JUDGE
07/12/2023

Judgment delivered in the presence of Mr. S.K. Madulu learned Counsel for Plaintiff and Mr. Mathew Fuko learned State Attorney for Defendants.



E.B. LUVANDA
JUDGE
07/12/2023

A handwritten signature in blue ink, written over the typed name and date. The signature is a stylized, cursive representation of the name E.B. Luvanda.