

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM
LAND CASE NO. 275 OF 2023**

MOHAMED JUMANNE MBAGO.....PLAINTIFF

VERSUS

DAR RAPID TRANSIT AGENCY1ST DEFENDANT

THE ATTORNEY GENERAL.....2ND DEFENDANT

RULING

28/11/2023 & 13/12/2023

A. MSAFIRI,J

The plaintiff hereinabove has instituted the suit claiming for payment of Tshs 120,000,000/= being prompt, fair, and adequate compensation for the parcel or portion of the plaintiff's property encroached and taken by the 1st defendant herein, and for payment of Tshs 500,000,000/= being the general damages for the disturbances in making a numerous follow-up for compensations, interest and costs of the suit.

Upon being served with the plaint, the defendants filed their written statement of defence and along with it, they raised a preliminary objection to the effect that;

The suit is hopeless time barred for being filed beyond one year contrary to Item 1 of part 1 to the schedule of the Law Limitation Act [Cap R.E 2019].

Alle

It is trite law that when a preliminary objection has been raised, the proceedings should be stayed until the raised preliminary objection has been heard and determined. Based on that, this Court set for the disposal of the preliminary objection by way of written submissions.

Submitting in support of preliminary objection, Mr. Mathew Fuko learned State Attorney for the defendants stated that, the suit at hand is time barred as per Section 5 of the Law of Limitation Act [Cap 89 RE 2019] which provides that the accrual of right of action starts on the date in which the cause of action arises, and as per Section 5 of the Law of Limitation Act (supra) under Item 1 part 1 of the same law, it is provided that the time limitation for suit for compensation is one year.

He further argued that according to the paragraph 5 of the plaint, the cause of action in this suit arose in September 2021, whereby the plaintiff claims to have been informed by Temeke Municipality that he was among the victims in the project that aimed at construction of the road for rapid transit along Kilwa road from Dar es Salaam City Centre to Mbagala Rangi Tatu, Temeke in Dar es Salaam.

Mr Fuko submitted further that in paragraph 9 of the plaint, the plaintiff pleaded to have issued 90 days statutory notice to the 1st defendant which was served to the 1st defendant on 12th October 2021, *Alls.*

and the copy was issued to the 2nd defendant on 11th October, 2021 claiming unfair compensation. In paragraph 10 of the plaint, it shows that the plaintiff filed a claim of compensation to the Committee at the Ward level and addressed his claim to the Chairman of Committee. The claim letter is dated 16th March 2022. He pointed that all these correspondences shows that the cause of action accrued in the year 2021.

The counsel for the defendants argued that although the cause of action accrued in 2021, the plaintiff did not set the law into motion to pursue his rights until 29th August 2023 when he filed this suit in this Court.

Mr. Fuko submitted further it is trite law that the plaintiff correspondence with the defendants claiming for compensation cannot in anyway act as exclusion in computation of time. He referred the cases of **Ali Shabani and 48 others vs Tanzania National Roads Agency and Another**, Civil Appeal No. 261 of 2020 and **Consolidated Holding Corporation vs Rajani Industries and Another**, Civil Appeal No. 2 of 2023. That in the cited cases, it was held that the time taken in negotiating for settlement is not one of the categories of instances in which time is excluded in computing the period of limitation.

He submitted further that the legal effect of suit which is filed out of time is provided under Section 3 (1) of Law of Limitation Act which

Alb

provides for the dismissal of the suit filed out of time. To cement this point, he cited the case of **Yusuph Vuai Zyuma vs Mkuu wa Jeshi la Ulinzi TPDF and 2 others**, Civil Application No. 15 of 2009(CAT) at Zanzibar. Finally, the counsel prayed that the case be dismissed with costs.


In reply thereto, Mr. Faraji Mangula, learned advocate for the plaintiff submitted in contest of the preliminary objection. He argued that the preliminary objection is not on pure point of law as it was stated in the landmark case of **Mukisa Biscuits Manufacturing Co. Ltd vs. West End Distributors Ltd** (1969) EA 700 as it needs the court to refer on some facts in the pleadings.

He stated that there are two disputed facts which need evidence for the court to determine hence the preliminary objection lacks necessary ingredient for it be pure point of law. He pointed the two disputed facts to be first; is whether the 1st defendant acts for expansion of Kilwa road to accommodate Dar es Salaam Rapid Transport Services, whether the plaintiff properties were not affected by the said project at all. Second; whether the 1st defendant offered to pay the plaintiff TZS 1,300,000/= as compensation for the part of the project affected and the plaintiff refused on account that the same is not prompt, fair and adequate compensation.

Alls

Mr Mangula added that the plaintiff claims are based on land matter therefore the same can be termed as suit to recover land together with claims for adequate and prompt compensation. That the plaintiff has to recover land first and the time for land recovery suit is 12 years.

Mr Mangula sought the wisdom of this Court to see that the 1st defendant was the one who advise the plaintiff to claim for compensation to the committee at the ward level and municipal authorities. The plaintiff followed the advice of 1st defendant and he had expectations that the matter will be amicably settled by amicable dispute resolution. That, the plaintiff wrote to the 1st defendant as per attached letters dated 16.03.2021 and 01.07.2022, the 1st defendant replied on 25th November 2023 after a year and 1st defendant rejected the plaintiff as one of the victims.

Mr Mangula insisted that the case was filed within time as per Item I of part 1 of the schedule to the Law of Limitation Act (Cap 89 R.E 2019]. He argued that each case has to be decided on its own set of facts. To bolster his argument he cited the case of **Charles Matonya & Maleya Matonya vs Makson Lungwa**, Land Appeal No .21/2021 at page 10. He prayed for the Court to overrule the raised preliminary objection with costs. 

In rejoinder, Mr. Fuko reiterated his submission in chief and insisted that the plaintiff's action of communicating with the 1st defendant officially cannot be taken as exemption to time limitation. He prayed the court to dismiss the suit with costs.

Having considered the rival submissions and pleadings by the parties, the issues is whether the preliminary objection raised has merits? As it is a trite law that parties and courts are bound by pleadings, it is also the law that preliminary objection must be construed from what parties have pleaded and not otherwise as held in cases of **Ali Shabani and 48 others vs Tanzania National Roads Agency and the Attorney General**, Civil Appeal No. 261 of 2020, and **Moto Matiko Mahanga vs Ophir Energy Plc and 6 others**, Civil Appeal No. 119 of 2021.

Having carefully gone through the Plaint, I found that the cause of action revolves around paragraph 5 of the plaint which reads thus;

5. That sometimes in September 2021 the plaintiff was officially informed by the Land Authority in Temeke Municipality that he was among the victims of the project aimed at the construction of a road for rapid transport along Kilwa road- from Dar es Salaam City center to Mbagala Rangitatu Temeke in Dar es Salaam, and in the course thereof and by virtue of the demand under the said project, the 1st defendant was obliged to cause the acquisition of land adjacent to the project line

Alls-

and thereafter a number of house and structures were earmarked for demolition to pave way for the project. Annexure MJ1 is a copy of the notification for it to form part of the pleadings.

From the above quoted paragraph, it is unequivocally clear that the cause of action on the land disputed arose in September 2021, when the plaintiff was informed by Temeke Municipality that he was among the victims in the project that aimed at construction of the road for rapid transit along Kilwa road from Dar es Salaam City Centre to Mbagala Rangi Tatu, Temeke in Dar es Salaam. The plaintiff prayed for compensation.

This suit being founded on relief for compensation, the period within which to institute a suit for compensation is one year as provided in Item 1 part 1 of the Law of Limitation Act, which provide thus:-

"....For compensation for doing or for omitting to do an act alleged to be in pursuance of any written law.....one year...."

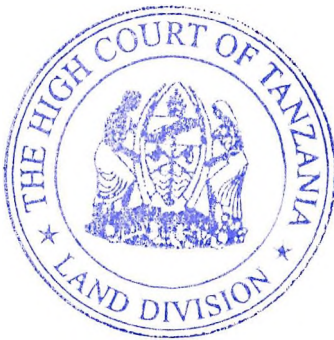
I have noted that the instant suit was presented for filing on 26/8/2023. From the year September 2021 to August 2023 it is almost two (2) years. The argument that the plaintiff was corresponding with the defendants lacks merits as the time spent in negotiation is excluded in computing the period of limitation, as it was held in the case of **Consolidated Holding Corporation** (*supra*). *Alle.*

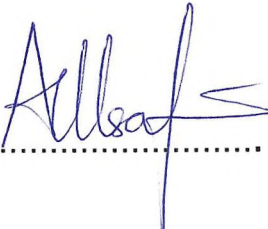
Therefore, the matter being for an order for compensation, it is hopelessly time barred. The question is what is the remedy of the suit which is found to be time barred? The answer is found under Section 3(1) of the Law of Limitation Act, which provides thus:-

"... 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 therefore opposite thereto in the second column, shall be dismissed whether or not limitation has been set up as a defence..."

In view of the above provision, the only remedy for the suit which is time barred is dismissal. I hereby dismiss the entire suit with costs.

It is so ordered.




A. MSAFIRI
JUDGE
13/12/2023.