

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND CASE NO. 29 OF 2023

TANZANIA ZAMBIA RAILWAY AUTHORITY 1ST PLAINTIFF

THE ATTORNEY GENERAL 2ND PLAINTIFF

VERSUS

MARY EXECUTIVE RESTAURANT Alias MARY EXECUTIVE

LODGEDEFENDANT

05/03/2024 & 26/03/2024

RULING

A. MSAFIRI, J

In this suit the 1st plaintiff is claiming among other things to recover from the defendant **TZS 212,768,378.58** being an outstanding rental arrears.

The 1st plaintiff claims to have landlord/tenant relationship with the defendant whereby she claims that being the landlord, on 1st September, she concluded a lease agreement with the defendant where the latter leased an area situated at TAZARA Station building.

On 30th October 2023 the defendant raised a preliminary objection to the effect that; the suit is not maintainable and bad in law for being time barred. This was the second preliminary objection after the first one which

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was also raised by the defendant on 20th October 2023 was determined and overruled by the court.

The disposal of the preliminary objection was orally whereas, the plaintiff was represented by Ms. Grace Lupondo learned State Attorney while the defendant was represented by Jonathan Mndeme, learned advocate.

On his submission Mr. Mndeme argued that the time limit to claim for rental recovery is six years as per Part I item 13 of the Schedule to the Law of Limitation Act, Cap 89 [R.E. 2019].

He further submitted that the contract period between the parties was for one year from 01/09/2015 to 31/08/2016, hence, that this suit was instituted in this court on 13/02/2023 which is beyond time limit provided by the law which six years. He said that the time limit of six years had ended on 31/08/2022. He prayed that the court dismiss the suit with costs under Section 3(1) of the Law of Limitation Act.

To bolster his point he cited the case of **M&R Agency Limited vs Mwanza City Council & another, Civil Case No. 35 of 2021, HC Mza Registry.**

On response Ms Lupondo submitted that TAZARA is the Government authority exercising power on behalf of the Government hence this is the suit by the Government. She referred to Article 6 of the Constitution of

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the United Republic of Tanzania of 1977 which defined the word "Government".

She argued that she is aware that time limitation for claim for rental arrears is six years as stated by the plaintiff's counsel, but that the suit for or against Government the time limitation is sixty years and that the proper provision for the same is Part I item 23 of the Schedule to the Law of Limitation Act. She maintained that this suit is within time until 2076.

On rejoinder, Mr. Mndeme reiterated what was submitted in chief and further stated that the issue on whether TAZARA is a Government institution or not was not supported by any provision of law beside the Constitution.

Having gone through the rival submissions of the parties, and in order to determine whether this suit is time barred, I think it is better first to determine if the 1st plaintiff is the Government authority.

I have gone through Section 2(1) of the Tanzania - Zambia Railway Act, Cap 143 [R.E. 2002] this is what it provides for the definition of the Government:-

"Government", in relation to either of the contracting states, includes any person or authority authorised to act on behalf of that contracting states."

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Since Tanzania and Zambia are contracting states with two different Regions, the Tanzania Region acts on behalf of the Government of Tanzania as the contracting state, likewise with Zambia on the other side. Therefore as per the provision above, TAZARA is the Government authority in both contracting states.

That being the case, I agree with counsel for the plaintiff that the proper provision in the suit at hand is Part I item 23 of the Schedule to the Law of Limitation Act, which provides that on suit by or on behalf of the Government, the time limit is *sixty years*. Therefore, the suit at hand is still within time, because it is undisputed that the plaintiff is claiming for rental arrears from the defendant.

On the foregoing reasons, it is my finding that the raised preliminary objection has no merit. It is overruled with costs.

It is so ordered.




A. MSAFIRI
JUDGE

26/03/2024