

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

LAND CASE NO. 683 OF 2024

SALOME EINHARD HAULE.....PLAINTIFF

VERSUS

JUMA ALLY TAMALAU.....1ST DEFENDANT

SELEMAN S. KAMBANGWA.....2ND DEFENDANT

HAMIS SEIF MZUZURI T/A KAMBODIA.....3RD DEFENDANT

IDD ALLY MTANDIKA.....4TH DEFENDANT

EINHARD DOMIC HAULE.....5TH DEFENDANT

**BINGWA AUCTION & GENERAL SUPPLIES
LIMITED TRIBUNAL AND COURT BROKER.....6TH DEFENDANT**

MBARAKA BAKARI KIHAME.....7TH DEFENDANT

R U L I N G

Date of Last Order: 15.04.2023

Date of Ruling: 30.04.2024

T. N. MWENEGOHA, J.

The 1st and 7th defendants in this suit have raised a Preliminary Objection against it, that the case is time barred.

Advocate George Kato Mushumba, submitting in favour of the Objection, maintained that, the suit at hand contravenes the provisions of **Section 5 of the Law of Limitations Act, Cap 89 R. E. 2019** which provides for the date of accrual of a course of action. That, this suit is based on

the landed property, sold in a public auction on the 14th September 2016 for execution of a Decree entered in Civil Case No. 13 of 2015. These facts were pleaded by the plaintiff in her plaint. That, the instant case was filed on the 15th January, 2024, about 8 years or 2679 days. That, this is against the provisions of **item 4 of the Schedule of the law of Limitations Act, Cap 89 R. E. 2019**, which requires a suit to set aside a sale in execution of a Decree of Court be instituted within 2 years. That, the plaintiff was supposed to seek leave of the Minister before instituting this case, as stated under **Section 44(1) of the Law of Limitations Act, Cap 89 R. E. 2019**. In cementing his position, the counsel for the 1st and 7th defendants cited the case of **Mugisha Enterprises Ltd versus Consolidated Investment Ltd & 2 Others, Land Case No. 183 of 2020**

In reply, Advocate Mluge Karoli Fabian, for the plaintiff, maintained that, the case is within time. The counsel for the 1st and 7th defendant did not go through paragraph 12 of the plaint to see the efforts taken by the plaintiff in a bid to rescue her property. That she filed multiple cases, and the last one ended on the 16th September 2023, vide Land Appeal No. 14 of 2020, before B. K. Philip, J. Hence, as per **Section 21(1) of the Law of Limitations Act, Cap 89, R. E. 2019**, this time should be excluded when computing the time for instituting this case.

Having heard the submissions of both parties for and against this Objection, the issue for determination is whether the Objection has merits of not.

It is well settled that, for a Preliminary Objection to be meritorious, the same should be on a pure point of law, see **Mukisa Biscuits Company versus Westend Distributors Limited (1969) EA 696**. It was further stated in **Lyamuya Construction Company Limited versus Board of Registered Trustees of Young Women Christian Association of Tanzania, Civil Application No. 2 of 2010 (unreported)**, that, a point of law should be apparent on the face of it. It does not need evidence or long drawn arguments to ascertain it.

The centre of contention in this case is based on the fact that, the cause of action arose in 2016 when the suit property was sold in a public auction, as shown in paragraph 4 of the plaint. This case was filed 8 years later as argued by the Mr. Mushumba, contrary to **item 4 of the Schedule of the Law of Limitations Act, Cap 89 R. E. 2019**. Mr. Mluge, relied on paragraph 12 of the plaint and insisted that the time used in prosecuting the other cases by the plaintiff should be excluded when computing the date from which the cause of action arose, as per **Section 21(1) of the Law of Limitations Act, Cap 89, R. E. 2019**.

I agree with Mr. Mluge, as that is the position of the law. However, the question is whether the exclusion operates automatically. The answer is in the negative. The plaint should state facts showing the plaintiff needs such exemption or exclusion, as per **Order VII Rule 6 of the Civil Procedure Code, Cap 33 R. E. 2019**, which provides; -

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

The plaint at hand has failed to comply with the above quoted provision, rendering the plaintiff's case be untenable for being time barred.

For these reasons, I sustain the Objection for being meritorious.

In the end, the suit is dismissed with costs.

Ordered accordingly.



T. N. MWENEGOHA
JUDGE
30/04/2024