

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

MISC. LAND APPLICATION NO. 526 OF 2023

(Originating from the Land Case No. 27 of 2023)

ABDALLA MOSI JEMEDARI (Administrator of the estate of the late Mwaka Mtoro..... **APPLICANT**

VERSUS

MOYO MMOJA TRUST

REGISTERED TRUSTEES.....1ST RESPONDENT
MAJALIWA BURAHAN NYENZI.....2ND RESPONDENT
RULIA MUHIDIIN KIMARO.....2ND RESPONDENT
KOKUSIMA KASHOGAKI.....2ND RESPONDENT
FATUMA MOHAMED ABDALLAH.....5TH RESPONDENT
AMOS LAMECK BAKEYE.....6TH RESPONDENT
IDRISA MUSSA BAKARI.....7TH RESPONDENT
BRENDA CHARLES MKONYI.....8TH RESPONDENT
ALIYA AHMED SHARIF.....9TH RESPONDENT
ELVIS EMMANUEL MAGANGA.....10TH RESPONDENT
RASHIDA ALLY SHARIFF.....11TH RESPONDENT
ROBER WENSELAUS KIBWEKO.....12TH RESPONDENT
ELDWARA VUMILIA ALFRED.....13TH RESPONDENT
MURUA CLARA KIHORE.....14TH RESPONDENT
GRACE MKANDE MTUNGUJA.....15TH RESPONDENT
HUSSEIN ALLY KOMBE.....16TH RESPONDENT
MRISHO KINEGA MRISHO.....17TH RESPONDENT
COMMISSIONER FOR LANDS.....18TH RESPONDENT
THE HON.ATTORNEY GENERAL.....19TH RESPONDENT

RULING

23/02/2024 & 14/03/2024

GWAE, J

This ruling emanates from a preliminary objection canvassed by the 1st respondent's Counsel one Allen Mchaki Mchaki, which is to the effect that;

"The instant application is hopelessly time barred, thus liable for dismissal."

Essentially, the applicant in this application is after being joined in the main case filed in this court through Land Case No. 27 of 2023, still at preliminary hearings.

On 23rd February 2023 when this application was placed before me for hearing of the Preliminary Objection, Ms. Fatuma Mlonja and Mr. Mussa Daffi appeared for the applicant and 1st respondent respectively. The hearing was consensually disposed by way of written submission by the parties present.

It is the submission by the 1st respondent's counsel that, this application is time barred since the applicant withdrew his Application registered as Application No. 21 of 2023 on 29th May 2023 whereas this application was filed on 28th August 2023 with a view of being joined in Land Case No. 27 of 2023 pending before the court. Hence, after lapse of three months since the withdrawal order was issued. He cemented his

argument with item 21 of part III to the schedule of Law of Limitation Act, Cap 89, R. E. 2019. He also cited **Daniel Kivambe vs. Rahma Liganga**, Misc. Land Application No. 415 of 2017 (unreported) where this court held that, time limit is merciless sword, which catches everyone who is found in its web.

On his part, the applicant's counsel argued that, the PO raised by the 1st respondent is not a pure point of law and that, the application is not time barred since period of twelve (12) has not expired taking into account the respondents invaded the suit land in 2023. He then referred to item 22 of Part I to the Schedule of the LLA. He also argued that, the case cited by the 1st respondent is irrelevant since the 1st respondent was not sued before DLHT where the same was withdrawn. Similarly, the applicant's counsel challenged the 1st respondent's written submission on the reason that, the same is neither signed by his advocate nor by the applicant. He then cited the case of **Bansons Enterprises Limited vs. Mire Artan**, Civil Appeal No. 26 of 2020 (unreported) where the Court of Appeal of Tanzania held and I quote;

"Where a plaint is not duly signed and verified in accordance with the law, there is no suit which the court can legally try. It is also out of place if we restate that the object of duly signing a plaint is not only to prevent fictitious suits but also prevent suit as to whether the suit

was instituted with the plaintiff's knowledge and authority"

The applicant's advocate also sought invocation of principle of overriding objective in order his application can be heard on merit instead of technicalities.

In his brief rejoinder, the 1st respondent stated that the point raised, limitation of time is pure point of law. He further stated that, there is a distinction on limitation for suits and application as provided for under the LLA. He thus states that item 22 of Part I to the Schedule of LLA cited by the applicant's counsel is applicable for recovery of land. Similarly, the learned counsel for the 1st respondent stated that, the contention that, the 1st respondent was not party to the application before DLHT has no legal bearing.

Having briefly outlined the parties' argument for and against the PO, it is now the duty of the court to see whether the PO raised by the 1st respondent has merit or not. Before tackling the preliminary objection, it is apposite if I briefly respond to the applicant's issues raised in the course of his submission.

Firstly, if the PO is a pure point of law or not, ordinarily, issues on jurisdiction and limitation of time ought to be dealt as soon as possible in order to prevent wastage of time in cases where PO may possibly

dispose of the matter if argued. Of course, a determination of such PO must be predicated on a pure point of law emanating from the parties' pleadings and annexures thereto or which arises by clear implication out of pleadings. In other words, court's determination of POs should not require other pieces of evidence or facts not made within the parties' pleadings. I am alive of the malpractice of litigants and or their advocates, which abhors our courts as was rightly articulated in the most famous case of **Mukisa Biscut Manufacturing Co. Ltd vs. West End Distributors Ltd** [1969] E.A. 696 cited by the applicant's counsel where it was stated;

"The first matter relates to the increasing practice of raising points, which should be argued in the normal manner, quite improperly by way of preliminary objection. The improper raising of points of preliminary objection does nothing but unnecessarily increases costs and on occasion, confuses issues. This improper practice should stop".

In our instant application, since the preliminary objection is based on limitation of time and since the parties' pleadings are clear as to when the applicant became aware and when he filed this application. It follows therefore, the PO raised is on a pure point of law for the reasons that, I shall demonstrate hereinafter.

Secondly, the applicant's objection that, the 1st respondent's written submission in support of the PO is neither signed by the 1st respondent nor his advocate, therefore, the same should be expunged. From outset, this objection is unfounded since the 1st respondent's counsel has duly signed indicating that he is the one who drafted it. However, it is as contended by the applicant or his advocate omitted to sign at the end of his written submission. Failure to sign at the end of the written submission does not carry the same blame as used in the plaint when plaintiff does not sign it or his advocate. In my considered, the principle enunciated in the case of **Bansons Enterprises Limited vs. Mire Artan** (supra) is distinguishable with omission done in the present written submission in chief. In consequence, I hold the firm view that, it was necessary for the applicant or his advocate to sign at the end of the written submission, however such omission cannot invalidate the submission duly signed by the advocate who drafted it and who is actually representing the present applicant.

Now, coming to the PO raised by the 1st respondent. It is the version of the applicant that his application would be timed barred if the period of twelve years has elapsed whereas it is the stand of the 1st respondent's counsel is that, the application is governed by the item 21 Part III to the

schedule of the LLA. The position of the law best told by reproducing relevant item 22 Part III to Schedule of LLA

"Application under the Civil Procedure Code, the Magistrates' Courts Act or other written law for which no period of limitation is provided in this Act or any other written law."

Basing on the provision of law cited above and taking into account that the matter at hand is an application for leave to enable the applicant to be joined in the said main case, I deliberate and it so, that the item applicable is item 21 Part III to the Schedule of LLA. The applicant's attempt to persuade application of item 22 Part I to the schedule of the Act is nothing but a kick of a dying horse.

It is plainly clear that limitation of time in filing a suit for recovery of land is twelve years since accrual of action as envisaged by item 22 of Part I to the Schedule. Nevertheless, the said items does not cover also applications on the bare assertions that the same are land related matters. That being the case, it is now duty of the court to closely examine if this application was filed after lapse of sixty day from the date the cause of action accrued or not.

It is clear that, from the applicant's affidavit at paragraphs No.17 and 18 Which are for the easy of reference are reproduced herein under;

"17. That, after make (sic) follow up concerning to my claim to the first respondent concerning to the land in dispute in 2003 and after got the pleading in the land case No. 27 of 2023 before your honourable court, I discovered the land in dispute sold (sic) to the respondents except 14th, 18th and 19th respondents illegally nothing more.

18. That, as result because I am the administrator of the deceased Mwaka Mtoro since 2014, I decided on 2023 sue Douglas William Mtoro since 2014, Mor|yo Moja Trust (The first respondent and Mrisho K. Mrisho in the Land Application before Bagamoyo district land and housing tribunal at Bagamoyo.

The land application No. 21 of 2023 before Bagamoyo district land and housing tribunal at Bagamoyo was struck out after the first respondent there is a pending case land case No. 27 of 2023 before your honourable court due to the same disputed land."

Similarly, despite the above averment yet there is an order of DLHT at Bagamoyo dated 29th May 2023 withdrawing the applicant's application whereby advocate Adam with instruction of advocate Mkanyale prayed for withdrawal. The prayer, which was granted with no orders as to costs. Hence, the applicant was aware or acquainted of the existence of the Land Case No.27 of 2023, which he is now after obtaining leave to be joined since 29th May 2023 whereas this application was electronically filed physically filed on 28th August 2023. Thus, cause of action started accruing

not later than 29th May 2023 after he had been acquainted or informed of the existence of the dispute before the Court. In my view, this application was clearly filed after lapse of sixty days as rightly raised and argued by the 1st respondent learned advocate.

Therefore, the applicant's application, for leave to be joined in the Land Case No. 27 of 2023 before the Court, was filed after expiry of sixty days as earlier allude. The being the court's finding as demonstrated above, the next question is, what is the consequential order after the application being filed out of the prescribed period. As the law currently stand, the application barred with limitation of time is subject to a dismissal in terms of section 3 (1) of the Law of Limitation Act, Chapter 89, Revised Edition, 2019.

This position of the law has correctly been stressed in various judicial decisions, for instance in **Soza Plastic Industries v. Scolastica Chawalla**, Labour Revision No. 73 of 2012 (unreported) where it was held inter alia:

"The remedy for a time barred application filed without leave is dismissal."

Law of Limitation was essentially enacted to prevent a party from coming to a court at any time of his or her own choice. Therefore,


maintenance of speedy administration of justice in our country and the world at large (See courts' decisions in **Daphne Parry vs. Murray Alexander Carson**, (1963) EA 546) and **Tanzania Fish Processors Limited vs. Christopher Luhangula**, Civil Application No. 161 of 1994 (unreported).

Consequently, this application is hopelessly timed barred. I thus proceed dismissing it pursuant to section 3 (1) of LLA with costs.

It is so ordered

DATED and delivered at **DAR ES SALAAM** this **14th March 2024**




M. R. GWAE,
JUDGE