

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

LAND APPEAL NO. 25972 OF 2023

(Originating from Application No. 50 of 2021, Mkuranga District Land and Housing Tribunal)

HONORATA MDICHEY.....APPELLANT

VERSUS

S.A.K. INTERNATIONAL LIMITED.....RESPONDENT

JUDGMENT

15th to 24th April, 2024

E.B. LUVANDA,

The Appellant named above sued the Respondent above mentioned for a claim of breach of an oral agreement dated January 2008 for sale of the landed property located at Kiparang'anda Village/Ward, Misasa Area, Mkuranga along Kilwa Road.

On 14/06/2023 the Respondent filed a formal notice of preliminary objection pleading that the suit is time barred. The Tribunal sustained the objection and dismissed the suit with costs.

Aggrieved, the Appellant raised the following grounds: One, the trial Chairperson grossly erred in law and fact to rule that the Tribunal has no jurisdiction; Two, the trial Chairperson grossly erred in law and fact to rule out

that the Appellant sold her land to the Respondent; Three, the trial Chairperson grossly erred in law and fact to rule out that there was a written agreement signed before the village leaders; Four, the trial Chairperson erred in law and fact to rule out that the time right of action (sic) accrue from 2008 as from when the Appellant received money from the Respondent as purchase price for the disputed property.

Mr. Abdul Azizi learned Counsel for Appellant combined grounds of appeal number one and four into a single ground, that the trial Chairperson erred to rule out that the Tribunal has no jurisdiction for that there is an expiry of time since the cause of action arose. He submitted that the trial Chairperson misdirected herself by ruling that the time when the cause of action accrued was from 2008 when the Appellant received purchase money while there is nowhere the Appellant pleaded that she received purchase price. He submitted that under paragraph 6(c) of the application, the money which the Appellant received was for her not to change her mind of selling the farm commonly "*kishika uchumba*", arguing the two had terms of their agreement which was yet to be fulfilled. He submitted that the same cannot be termed as purchase price or a cause of action arose. He submitted that from there, no one was using the land, arguing the Appellant was awaiting for Mahmood and Gulam Sarwar to contact her and finalize their agreement and handle the original

property deed which is still in possession of the Appellant. He submitted that the findings of the Tribunal that the Respondent started using the suit property in 2008, was a matter of evidence which the Respondent was supposed to prove.

Ground number two, the learned Counsel submitted that going by paragraphs 6(a) to (h) nowhere shows that the Appellant sold the disputed property to the Respondent in 2008. He submitted that the trial Chairperson went further to rule on merit by pronouncing that the sale was correct and the Appellant was paid the agreed amount, arguing she was supposed to deal with the raised preliminary objection only.

Ground number three, the learned Counsel submitted that going by the pleadings nowhere the Appellant pleaded that there was a written agreement before the village leaders, arguing the Appellant pleaded that there was no written agreement between her and the Respondent.

Mr. Martin Frank learned Counsel for Respondent opposed the appeal. He submitted that the Chairperson was moved to what has been pleaded under paragraph 6(e) and (f) of the application, arguing the Appellant was discontinued her possession in 2008 upon receiving the agreed payment which according to paragraph 6(c) she accepted the offer to dispose the property at the consideration of Tsh 11,500,000 which is what exactly she received from

the Respondent. He submitted that the Appellant claimed relief for breach of contract and vacant possession. He submitted that the claim on contract ought to have been instituted within six years from 2008 where she discontinued her possession (sic) on the disputed land, citing item 7 of the Schedule to the Law of Limitation Act, Cap 89 R.E. 2019. He submitted that for a claim of vacant possession she ought to claim within twelve years counting from when the cause of action arose, citing item 22 of the Schedule to and section 9(2) Cap 89 (supra). He submitted that the cause of action arose in 2008 when she accepted offer and received consideration and handed possession of the suit land to the Respondent as stated under paragraph 6 of the application. He submitted that from February 2008 to 1/10/2021 when the suit was instituted is more than twelve years, arguing it was correct for the Tribunal to sustain the objection. He submitted that *kishika uchumba* was not pleaded, arguing it is misleading. Ground number two, the learned Counsel cited paragraph 6(c) and (f) of the application, arguing that the Appellant disposed her land to the Respondent, as they have sale agreement, faulted the argument by the learned Counsel for Appellant who opined that the Appellant never disposed the land to the Respondent.

Ground number three, the learned Counsel submitted that there is no dispute that the Appellant disposed her land to the Respondent, arguing that is why in

the application the Appellant did not plead relief for trespass, specific performance, rather pleaded breach of the terms of the contract and vacant possession, arguing they were time barred.

Generally, this appeal is wholly unmerited. Under paragraph 6(a) of the application the Appellant pleaded breach of an oral agreement on the part of the Respondent; at subparagraph (c) the Appellant asserted acceptance of offer by the Respondent to purchase the suit land and pleaded to had entered into oral agreement for sale of the disputed land for a consideration of Tsh 11,500,000 along a promise for buying a farm for her, building for her a house and purchasing a bull and heifer; under subparagraph (e) the Appellant pleaded receiving from the Respondent a cheque worthy 11,500,000 at the end of February 2008; at sub paragraph (f) the Appellant pleaded receiving from the Respondent cash a sum of Tsh 3,000,000 as a commission pending final agreement and handing over of original deed.

In the written statement of defence, the Respondent asserted that a title of the suit land passed to her following execution of a sale agreement dated 29/01/2008, payment by cheque a sum of Tsh 11,500,000 and receipt for payment of village levy a sum of Tsh 500,000 as commission for sale of a *shamba* all forming a bundle of annexure SAKI1.

It is elementary knowledge that a suit founded on contract and suit to recover land its period of limitation is six years and twelve years, respectively, see item 7 and 22 of the Schedule to Cap 89 (supra).

Herein, the Appellant pleaded in her application that the alleged acceptance for purchasing the suit land and oral agreement thereof were contracted sometimes in early January 2008 and acceded receiving a cheque worthy Tsh 11,500,000 at the end of February 2008.

According to the application, a claim for breach of a purported oral agreement and to recover land by way of vacant possession was presented for filing on 1/10/2021, being after expiry of thirteen years and nine months.

Therefore, the Tribunal was justified to rule that it lacked jurisdiction to entertain the matter for account of being time barred.

The learned Counsel for Appellant submitted that neither party was using the land after the alleged pre-contractual arrangements and oral agreement dated February 2008. One could wonder if neither of the parties was in actual possession or using land as alleged, why the Appellant was claiming for relief of an order for vacant possession against the Respondent.

To my view all what was ruled by the learned Chairperson were born out of pleadings.

The appeal is dismissed with costs.



E.B. LUVANDA
JUDGE
24/04/2024

Judgment delivered in the presence of Mr. Abdul Azizi learned Counsel for the Appellant and Mr. Martin Frank learned Counsel for the Respondent.



E.B. LUVANDA
JUDGE
24/04/2024