

TANZANIA / JUDGMENT

Land case No

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TANZLIIDECIDED
1 January 2024

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* I IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (KIGOMA SUB-REGISTRY)
AT KIGOMA LAND CASE NO. 28853 OF 2024 AHMEDNOOR MOHAMED ALLY PLAINTIFF VERSUS
TANZANIA VETERINARY LABORATORY AGENCY (TVLA) 1ST defendant ATTORNEY GENERAL
2ND defendant

RULING

I 05 & 05/03/2025 i NKWABI, 3.: The plaintiff Is suing the defendants for trespass Into his allegedly house and mesne profits with an ardent alm to be availed with following reliefs:

1. An order evicting the 1st defendant, officer(s) or agent(s) of the same from the suit landed property and the same be handed over to him for his personal use.
2. An order against the defendants to pay the plaintiff a total of T.shs 21,500,000/= for mesne profits of 43 months at a monthly rate of ' T.shs 500,000/= as from 22/01/2021 to 29/10/2024 and for the 1 subsequent months thereafter as from 29/11/2024 till the date of

judgment.

3. Interest at bank rate (22%) over the claimed mesne profits In (ii) herein above as from 22/01/2021 until the date of judgment.
4. An order against the defendants to pay the plaintiff general damages as it will be assessed by this Honourable Court for trespass and inconveniences occasioned to the plaintiff.
5. Interest at Court rate (7%) over decretal sum from the date of judgment till the date of payment in full.
6. Costs of this suit be paid by the defendants to the plaintiff.
7. Any other relief be provided for the plaintiff. The defendants, along with their written statement of defence, have a preliminary objection which has three wheels. I will let the submissions of the counsel for both parties elucidate the wheels of the preliminary objection. At the hearing of the preliminary objection, the plaintiff was represented by Mr. Method R.G. Kabuguzi, learned advocate. The defendants were represented by Mr. George Kalenda, learned Senior State Attorney. I am thankful for the submissions of the counsel for both parties. Mr. Kalenda started arguing the 3rd wheel of the preliminary objection which

is that the suit is unmaintainable for failure to add three necessary parties who are 1. Tanzania Building Agency who ought to be joined as 2nd L seen in paragraphs 5 and 6 of the plaint. He explained that, that is because the plaintiff, in the plaint, claims to have purchased the house from Tanzania Building Agency. 2. Commissioner for Lands, because the plaint of the plaintiff at paragraph 5 mentions a certificate of occupancy. Mr. Kalenda pressed that it is the Commissioner for Lands who allocates land, so she is a necessary party, and 3 Registrar of Titles. Explaining the necessity of joining the Registrar of Titles, Mr. Kalenda contended that she keeps the register of all titles. To support his argument, he relied on the decision in *Nestory Msoffe & 5 Others v. The Registered Trustees of Catholic Archdiocese of Arusha*, Civil Appeal No. 254 of 2019, CAT. Flowing from those arguments, Mr. Kalenda enjoined this Court to find that the suit is unmaintainable. Thus, he encouraged this Court to strike out the land case with costs. Reverting to the 2nd wheel of the preliminary objection, Mr. Kalenda said that, this Court has no jurisdiction to entertain the matter because the suit is prematurely instituted. He went on to say no 90 days' notice of intention to sue the Defendant and the 2nd Defendant has been served to the defendants. Mr. Kalenda emphasized that section 6 (2) of the Government Proceedings Act requires 90 days' notice of intention to sue to be served to the defendant and copy being served to the Attorney General and Solicitor General. He went on to submit that the notice which was served does not show that the 2nd defendants were served and added that it is shown that the Solicitor General is not the Attorney General. The Postal receipt indicates that the defendant was not served with the notice as the name is different (Central Laboratory), underlined Mr. Kalenda. Mr. Kalenda further stated that section 6 (3) of the Government Proceedings Act was amended by Written Laws, 2020 Act which provides that the suits be instituted when notice has expired and added that the notice too had not expired. He pointed out that section 16 (4) of the Government Proceedings Act, defines government to include Executive Agencies. He prayed the suit be struck out for it was instituted prior to serving the 90 days' notice. Then, Mr. Kalenda regressed to the wheel of the preliminary object. It was all about this Court has no jurisdiction to entertain the matter because it is time barred. Mr. Kalenda disclosed that the plaint indicates at 4th paragraph, the claim of Mesne profit starts from 22/01/2021 to date, and when the suit was lodged in Court but the 8th paragraph of the plaint claims mesne profits from 22/01/2021 to 29/10/2024. It was the view of Mr. Kalenda that since the plaintiff is claiming trespass on his suit land, which is tort, time limitation is provided under the Law of Limitation Act, Part 1 of the schedule item 6 column 2 mentions that limitation is 3 years. 4 L I He said the plaint limit by tort is 3 years which ended on 21/01/2024. Mr. Kalenda added that mesne profit is claimed to 29/10/2024 which is three years, 9 months and 7 days lapsed from when the cause of action accrued. The suit was filed on 14/11/2024, therefore the suit is time barred, Mr. Kalenda lamented. Mr. Kalenda beefed up that the prayers reflect 43 of mesne profits and pointed out that section 3(1) of the Law of Limitation Act directs that the suit be dismissed with costs. He re-echoed *Karata Ernest & Others v. AG*, Civil Revision No. 10 of 2010, CAT at page 8 and *Masaka Mussa v. Rogers Andrew Lumenyela & 2 Others*, Civil Appeal No. 497 of 2021, CAT parties and the Court are bound by the pleadings at page 19 on the 3rd paragraph. Mr.

Kalenda pushed for the suit be dismissed with costs. Mr. Kabuguzi strongly resisted the preliminary objection and at the outset, beseeched this Court to overrule it with costs. He conceded, however, the three stated necessary parties ought to be joined to the suit. He agreed that they should be joined as per Msoffe's case. He was, notwithstanding, of the stance that non-joinder of parties is not fatal to the proceedings and added that those parties can be joined by the order of the Court under Order I Rule 10 (2) of the Civil Procedure Act. Mr. Kabuguzi pleaded with the Court that it acts under this Order. 5 Addressing the 2nd wheel of the preliminary objection about statutory notice, Mr. Kabuguzi contended that the pleadings indicate that the statutory notice of intention to sue was served to both defendants. He asked me to see the reply to the Written Statement of Defence as there is annexure which indicates that the defendant replied to the notice. Mr. Kabuguzi was quick to add that the pleadings indicate that the 2nd defendant received the same as per annexure AMA 2 in the plaint at page 3 of the annexure. He was steadfast that the plaintiff intended that both be served through the office of Solicitor General at Kigoma. Regarding the claim that the suit is filed outside time, which is the first wheel of the preliminary objection, Mr. Kabuguzi, maintained that there is continuous trespass so the suit is not time barred. He was thus of the view that that the wheel of preliminary objection is misconceived. He craved the first wheel of the preliminary objection be overruled. Mr. Kalenda had a witty address. In it, he touted that because non-joinder objection has been conceded, the suit be struck out. As to notice, he spotlighted that all the defendants were not served and asked the Court that the reply to the written statement of defence should not bind the I Court. Mr. Kalenda stood his ground that there should be proof of service and not the reply to the notice. He reiterated his request that the Attorney General was not served with the copy of the statutory notice. Mr. Kalenda 6 L was keen to state that there is no care of the Solicitor General to receive the statutory notice of intention to sue on behalf of the Attorney General. He suggested the suit be struck out of Court register. I Concerning the suit being time barred, Mr. Kalenda reiterated his submission in chief. About continuous trespass, he maintained that it is not stated in the pleading. He insisted the prayers that the suit be ruled to be time barred and It be dismissed with costs. On my side, since there is a claim that the suit is prematurely instituted. I start to scour It. Mr. Kalenda strongly contends that, that is the situation while Mr. Kabuguzi pushes it back by asserting that the pleadings indicate that the 2nd defendant received the same as per annexure AMA 2 in the plaint at page 3 of the annexure. He was steadfast that the plaintiff intended that both be served through the office of Solicitor General at Kigoma. I find myself unable to agree with Mr. Kabuguzi. If it were intended so, that ought to have been clearly indicated so by adding the phrase. Care of (C/O) as he did In respect of the Solicitor General. I therefore accept Mr. Kalenda's argument that the Attorney General was not served with the notice. To bring home the point, though stated on a different scenario, the need to comply with mandatory provisions of the law was stated in Catholic University of Health and Allied Sciences 7 (CUHAS) V. Ephiphania Mkunde Athanase, Civil Appeal No. 257 of 2020 where it was underscored that: 7th 25 (1) of GN No. 67 of 2007 compels a witness to testify under oath. Where the law makes it mandatory for a person who is a competent witness to testify on oath, the omission to do so vitiates the

proceedings because it prejudices the parties' case ... On the basis of the above stated reasons, we find that the omission vitiates the proceedings of the CMA. In the event, we hereby quash the same and those of the High Court." I The above said, the objection about premature filing the suit for failure to serve the Attorney General with a copy of statutory notice is sustained. Since the suit was prematurely instituted as I have indicated above, I see no need to address the objection regarding the claim that the suit is time barred and nonjoinder of parties because the suit is incompetent. Consequently, the land case No. 28853 of 2024 is struck out off the Court Register. In the circumstances of this preliminary objection, I order that each party to bear their own costs. It is so ordered. DATED at KIGOMA this 5th day of March, 2025. Ti J. F. NKWABI JUDGE 8 I

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