

TANZANIA / JUDGMENT

Mwombeki

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1 January 2024

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (LAND DIVISION) AT PAR ES SALAAM MISC. LAND CASE APPLICATION NO. 6690 OF 2024 APPLICANT CRISPIN PROSPER MWOMBEKI VERSUS 1ST respondent JUMA KWANGAYA 2nd RESPONDENT THE REGISTRAR OF TITLES

RULING

Date of Last Order: 07.05.2024 Date of Ruling: 30.05.2024 T. N. MWENEGOHA, I, The applicant is seeking for an Order of this Court to call the respondents for them to show cause as to why the Caveat lodged by the respondent at the Land Registry in 22nd February 2016, in respect of a land, with Certificate of title N0.26118, located at Plot No. 225, Block 'A' Sinza Area, Kinondoni Municipality-Dar es Salaam, should not be removed. Further, this Court should direct the respondent above named to the said Caveat lodged by the 1 respondent. The Application was made under Section 78(4) of the Land Registration Act, Cap 334, R. E. 2019 and accompanied by the affidavit of the applicant, Crispin Prosper Mwombeki. The same was heard by written submissions, where the counsel for the respondent, while replying to the submissions in chief, raised a point of law, touching the competence of this Application, that it is time barred. As the rules issue of law is raised, direct in administration of justice, that, whenever an regardless of the stage at which the case is, it should be dealt with first, before proceeding with the main case. Therefore, I prefer to deal with the said issue of time limitation as far as the Application at hand is concerned, In his submissions. Advocate Dickson Venance Mtogesewa for the respondent, maintained that, the instant Application is time barred, as it was preferred after the expiry of 60 days, given under item 21 of the 1st schedule of the Law of Limitations Act, Cap 89, R. E. 2019. That, as stated in paragraph 9 of the applicant's affidavit, he became aware of the existence Caveat in question on 01/06/2023. The case at hand was filed on 27/03/2024. This is beyond the 60 days given by the law to challenge the caveat under Section 78(4) of the Law of Limitations Act, Cap 89 R. E.

2019. He further referred this Court to the case of Amos Gisunte Sererya versus Tarime District Council and Another, Land Case No. 10 of 2018, High Court of Tanzania at Mwanza(unreported). When making his rejoinder, Advocate Irene Mchau for the applicant, insisted that, the Application is within time. She insisted that, under Section 78(4) of the Land Registration Act, which is the enabling provision in this case, the word which has

been used is an "Application". And that is an Application in the protection of one's ownership right or interest in land. It never refers to an Application envisaged under section 2 of the Law of Limitations Act, Cap 89 R. E. 2019. The same is protected by Item 22 of Part I of the Schedule of the Law of Limitations Act. Hence it enjoys a time of 12 years and not 60 days for the Application to be filed as contended by the counsel for the 1st respondent. Therefore, the cited case of Amos Gisunte Sererya versus Tarime District Council and Another, (supra), is distinguishable to the matter at hand. As I have noted above, I am supposed to dispose this legal issue touching the root of the case at hand, before proceeding into looking on the merit or otherwise of the instant Application. The issue for determination at this point is whether the Application is time barred or not. Both parties have done their best, through their learned counsels, to convince this Court that either the matter is within time, as for the case of the applicant and time barred for the case of the respondent. However, upon considering the submissions, I have reached to the settled conclusion that, this Application is time barred. The same was filed after the expiry of sixty days, hence, the jurisprudence stated in Amos Gisunte Sererya versus Tarime District Council and Another, (supra) applies in this case. For clarity, the applicant's interest is on the removal of the caveat entered by the respondent and registered by the 2nd respondent. This matter, as it is, is brought before this Court at this stage, not to deal with who owns the land or otherwise. It is brought so as to determine why the caveat should not be removed. So, the respondents are to explain to the Court by giving reasons as to why the said caveat is there and why it should continue to be there. Under these circumstances, the arguments by Advocate for the applicant, that an Application to remove the caveat be preferred within 12 years are unfounded. Therefore, I find this Application is time barred as observed by the counsel for the 1st respondent. In the event, this Application is dismissed with costs. Ordered accordingly. ■! ^ / T; 4;;mweNEgoha IS M':f \ ■ JUDGE

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Prepared on 14 October 2026 · Esheria