

TANZANIA / JUDGMENT

charles ryoba 33 vs permanent secretary of land and human settlement urban planning development another 2022 tzhclandd 12737 17 november 2022

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17 November 2022

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (LAND DIVISION) AT PAR ES
SALAAM LAND CASE NO. 208 OF 2022 CHARLES RYوبا MACHANGO, FELITYO LUNOGILO KI
BANGA LI, IBRAHIM SAID MFAUME & 34 OTHERS..... PLAINTIFFS VERSUS
PERMANENT SECRETARY MINISTRY OF LAND AND HUMAN SETTLEMENT, URBAN PLANNING
AND DEVELOPMENTS..... 1st DEFENDANT THE ATTORNEY
GENERAL..... 2nd DEFENDANT

RULING

Date of Last Order: 03.11.2022 Date of Ruling: 17.11. 2022 T. N. MWENEGOHA, J. Two preliminary objections as raised by the 1st and 2nd respondents jointly, are in need of determination. They are as follows:-

1. The suit is time barred.
2. The suit contravenes the provisions of Section 6(2) of the Government Proceedings Act, Cap 5 R. E. 2019. The objections were to be argued by way of written submissions. Narindwa Sekimanga, learned State Attorney represented the 1st and 2nd respondents while the plaintiffs enjoyed the legal services of Advocate Irene Maira. i On the 1st objection, the learned State Attorney for the respondents maintained that, the plaintiffs were supposed to file this case in 2014 when the cause of action arose and not now. That, although in their plaint they contend that from the year 2014 to 2022, they were in courts prosecuting other cases, vide, Land Case No. 95/2014, Misc. Land Cause No. 778/2015, Misc. Land Case No. 1082/2016, Land Case No. 452/2017 and Land Case No. 9/2020, but the plaint does not contain facts upon which the plaintiffs are relying for exemption of this period they spent in court. Hence their plaint offends Order VII Rule 6 of the Civil Procedure Code, Cap 33 R. E. 2019 and makes the suit to be time barred. The learned State Attorney referred the Court to the case of M/S P&O International Limited versus The Trustees of Tanzania National Park, Civil Appeal No. 265 of 2020, Court of Appeal of Tanzania (unreported). On the 2nd objection, it

was contended that, this suit should fail for being instituted without giving a 90 days' statutory notice to the government. This is a mandatory requirement of Section 6(2) of the Government Proceedings Act, Cap 5 R. E. 2019. The said position was cemented in the case of Gwabo Mwansansu & 10 Others versus Tanzania National Roads Agency and the Attorney General, Land Case No. 68 of 2020, High Court of Tanzania at Mbeya(unreported). In reply, Ms. Irene for the plaintiff maintained that, the rules are settled that, the period used by the plaintiff to prosecute the said cases be excluded. That is the requirement of Section 21(1) of the Law of Limitation Act, Cap 89 R. E. 2019. Therefore, this suit is not time barred. 2 As for the institution of this suit without issuing a 90 days' statutory notice, the plaintiffs' counsel insisted that, the objection is on factual issues. That, evidence is needed to justify the existence or nonexistence of the said notice. Therefore, this objection is defeated by the rules given in Mukisa Biscuits Company versus West End Distributors Limited (1969) EA 696 at 701. In rejoinder, the learned State Attorney for the 1st and 2nd respondents reiterated his submissions in chief. I have given the submissions of the parties the consideration they deserve. The issue for determination is whether the objections have merits or not. Starting with the 1st objection, there is no doubt that this suit has been preferred after the expiry of the required period within which the same can be instituted. The arguments of the plaintiffs are centered on the provisions of Section 21(1) of the Law of Limitation Act, Cap 89 R. E. 2019, and they asked the court to exclude the period they used in pursuing other cases in court for the same subject matter. The defendants' counsel on the other hand does not dispute this fact, rather she questioned on the appropriate procedure for exclusion of the said period. To her a plaint must contain the facts upon which the plaintiffs are relying for exemption of this period they spent in court as provided for under Order VII Rule 6 of the Civil Procedure Code, Cap 33 R. E. 2019. For quick reference I will reproduce the said provision as follows: - "Where the suit is instituted after the expiration of the period prescribed by the law of limitationf the plaint shall show the ground upon which exemption from such law is claimed" 3 I am in line with the learned State Attorney for the 1st and 2nd defendants that the plaint must contain facts which show the suit is time barred and the grounds upon which the plaintiffs are relying for exemption. "Plough, the plaint at hand does not have any express statements showing the suit is time barred, it has facts communicating the same and reasons why it was not instituted within time, see paragraphs 17-20 of the plaint. To me, the said paragraphs suffice to inform the court that the suit is time barred and why it is time barred for an exemption to be given. Having so observed, I find the 1st objection to be devoid of merits and the same is overruled. On the 2nd objection, I made a perusal of the plaint and its annexures. I failed to see any notice of intention to sue the government subject to Section 6(2) of the Government Proceedings Act, Cap 5 R. E. 2019. Therefore, its obvious that the suit contravenes the mandatory provisions of the law giving procedure for suing the government. The objection has merit and it is not on facts as claimed by the advocate for the plaintiffs. The same is sustained. On the basis of the findings in the 2nd objection, it is dear that the instant suit has been filed prematurely. Its competence is wanting. 17/11/2022 4

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