

TANZANIA / JUDGMENT

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (LAND DIVISION) AT DAR ES
SALAAM LAND CASE NO. 23296 OF 2024 BETWEEN MARIAM AMIR
MILLINGA..... 1stPLAINTIFF CONSOLATA VALENTINE
MAIMU..... 2ndPLAINTIFF ALEXANDER MAHEMBA
MWITA..... 3RDPLAINTIFF BERRINGTON MICHAEL
SHAYO..... 4thPLAINTIFF VERSUS PETER PETER
JUNIOR..... 1st DEFENDANT ABDUL MZEE PIARA (as the
administrator of the estate of the late HAMID ABDALLAH
SHINE..... 2ndDEFENDANT IDDY
MWINYIMVUA..... 3rdDEFENDANT JAMILA
ERNEST RUTAJUKWA..... 4thDEFENDANT ABDALLAH
MOHAMED ZAE @ Abdallah Mtekenye..... 5thDEFENDANT BENEDICT
TESHA..... 6thDEFENDANT JOACHIM
ASSEY..... 7thDEFENDANT ABEID
KIBABU.....8thDEFENDANT SAID OMARY
SAID..... 9thDEFENDANT USTADH
SALEH..... 10TMDEFENDANT WAFAA
NASSORO.....11TMDEFENDANT

RULING

02.04.2025 & 03.04.2025 N.E. MAN DI A, J This is a ruling on a preliminary objection taken at the instance of the 1st defendant attacking the competence of the suit which is pending in this court. i The plaintiffs instituted a suit against the defendants, claiming among other things for a declaration that they are the lawful owners of the disputed land, an order that the defendants trespassed into the plaintiffs' land and hence, need to be evicted; the defendants be ordered to demolish all buildings and structures enacted onto the disputed land. The 1st defendant objection is to the effect that:

- i. The suit is bad in law for it contravenes the plaintiffs' pleadings in Land Case No. 21 of 2023 and the ruling of this court dated 23.07.2024 ii. That the suit is time barred. Hearing of the preliminary objection was done through written submission. The plaintiffs were represented by Mr. Benson Kuboja, learned counsel whereas the 1st defendant appeared in

person and unrepresented. Mr. Frank Killian, learned counsel represented the 2nd' 4th, 5th, 6th and 7th Defendants despite the fact that they did not file any submission on the preliminary objection. The 3rd, 8th, 9th, 10th and 11th Defendants were dully served but they have neither appeared in court no represented. The 1st defendant combined both points of preliminary objection and submitted that in order for the court to appreciate that the suit is filed out of time, it is required to look at paragraph 25 of the plaint. That the instant suit originated from Land Case No. 21 of 2023 which was ruled by this court on 23.07.2023. That at page 17 of the said ruling it is very clear that limitation of time started to run after 12 years hence, in the instant suit time started to run 2 from 2011 to 2023. He cited section 5 of the Law of Limitation Act [Cap.89 R.E 2019] to substantiate the argument that right of action in respect of any proceeding shall accrue on the date on which the cause of action arises. He submitted further that the period of limitation to file the instant suit started to run in 2011 when the 1st defendant in Land Case No. 21 of 2023 was alleged to invade the plaintiffs land and uprooted the beacon in the plaintiffs' land and not between 2014 and 2015 as alleged at paragraph 11 of the plaint. That Land Case No 21 of 2023 and the present suit involve the same parties. He was of the view that changing the period when the cause of action arose is an afterthought. He contended that counting from 2011 when the 1st defendant was alleged to trespass the plaintiffs land to 2024 when this suit was filed is exactly 13 years hence, one year more from the period of limitation. That under Part 1, Item 22 to the Schedule of the Law of Limitation Act (supra), the present suit has been brought in excess of the statutory time limit as prescribe by the law. That filing a new suit on allegation that the cause of action arose in 2015 is an afterthought and is against the plaintiffs pleading under paragraph 25 of his plaint. He contended that the instant suit has been brought contrary to the ruling in Land Case No. 21 of 2023. That the plaintiffs did not plead the exemption under Order VII Rule 6 of the Civil Procedure Code [Cap. 33 RE 2019](the CPC). He cited the 3 case of SAUM SAID MTOMEKELA VS. MOHAMED ABDALLAH MOHAMED, Civil Appeal No. 149 of 2019, TZCAT, at Dar es Salaam page 8 (unreported) to bolster his argument. That according to paragraph 25 of the plaint, the plaintiffs pleaded that the cause of action in Land Case No. 21 of 2023 arose in 2011 while in the matter at hand they have pleaded that the cause of action arose in 2015. That the plaint was filed out of time as prescribed by the Law of Limitation Act (supra) thus should be dismissed under section 3(1) of the said act as the plaintiffs have not pleaded exemption of period to file the suit out of time. He cited the case of M/S P & O INTERNATIONAL LTD VS. THE TRUSTIEES OF TANZANIA NATIONAL PARK (TANAPA), Civil Appeal No. 265 of 2020, TZCA at Tanga, (unreported) which quoted the case of ALPHONS MOHAMED CHILLI MBA VS. DAR ES SALAAM SMALL INDUSTRIES CO-POPERATIVE SOCIETY (1986) TLR 91 to bolster his argument. He prayed that the suit be dismissed with costs. I response, Mr. Kuboja contended that the submission that according to the ruling issued in Land Case No. 21of 2023 this suit is time barred is totally misconceived and the points of preliminary objection raised are supposedly be dismissed. That according to paragraph 11 of the plaint, the cause of action started to run between the year of 2014 and 2015 and not 2011. That it is apparent from paragraph 11 of the plaint that in between the year 2014 and 4 2015, the 1st defendant

invaded the plaintiff's land the thing which triggers the institution of this suit. That nowhere in the whole plaint have the plaintiffs pleaded the year 2011 to be the time for accruing of the events of this case or otherwise. He submitted further that counting from between 2014 and 2015 to the date of institution of this suit which was on 19.09.2024, one can see that this suit has been filed within time of 10 years to 11 years which according to Part 1, Item 22 of the Law of Limitation Act (supra) is within time as the suit concerning land are limited 12 years. Mr. Kuboja replied further that the 1st defendant has created his own version of the plaint and went on to state facts which were not pleaded in the plaint. That the argument by the 1st defendant that the plaintiffs had knowledge of the trespass in 2011 is unfounded as it was not pleaded by the plaintiffs. That the only paragraph of knowledge of the plaint with regard to trespass by the 1st defendant is paragraph 11 of the plaint which specifically stated the period between the year of 2014 and 2015 to be the period where the cause of action arose. That the averments in paragraph 25 of the plaint do not suggest any plead as to the cause of action of this suit rather it is a fact concerning the struck out of Land Case No. 21 of 2023 for want of stating the value of the subject matter. Further that the ruling in the said Land Case did not disposes the matter to its finality hence, there in so final court decision as to when a cause of action 5 of this current suit arose. He was of the view that any fact against what was pleaded by the plaintiffs in paragraph 11 of the plaint, attracts matters of evidence that can only be decided after a full trial. That it is a trite law that a pure point of law does not arise if there are contention on facts yet to be ascertained by evidence. He cited the case of MUKISA BISCUIT MANUFACTURING CO. LTD VS. WEST END DISTRIBUTORS LTD [1969] EA to bolster the argument that a preliminary objection has to be on pure point of law and it is argued on the assumption that all facts are correct. He referred in the case of THE SOITAMBU VILLAGE COUNCIL VS. TANZANIA BREWERIES LIMITED & ANOTHER, Civil Appeal no 105/ 2011 (reported in TanzLII) at page 17 to substantiate the argument that where the court is to investigate facts, such an issue cannot be raised as a preliminary objection on the point of law. That what can be gleaned from the 1st defendant submission is on the fact that whether the cause of action of this current suit arose in 2011 or between the period of 2014 and 2015, a fact which attracts this court to investigate and thus disqualifies a point of law raised. That nothing in the plaint suggests any period of cause of action than the year between 2014 and 2015. That it is a trite law that every case must be decided on its own merits. 6 He prayed for the points of preliminary objection raised be dismissed with costs. No rejoinder was filed. Having gone through the written submission of the parties, the pertinent issue for my determination is whether the preliminary objection have merit. After my examination of the submission and record it is clear to me that the instant suit is a continuation of the former Land Case No. 21 of 2023 which was struck out for failure to state the value of the subject matter. It is crystal clear from the record that Land Case No. 21 of 2023 involved the same parties and the same subject matter. In the former suit, the plaintiffs pleaded under paragraph 12 of their plaint that the cause of action arose in between 2011 and 2013 when the 1st defendant invaded their land while in the instant suit under paragraph 11 of their plaint they have pleaded that the cause of action arose in between 2014 and 2015 when the 1st defendant again invaded their land. It is trite law as correctly

submitted by both counsels that according to Part 1, Item 22 of the Law of Limitation Act (supra) the period of limitation for the recovery of land is within 12 years. It is undisputed fact that after Land Case No. 21 of 2023 was struck out for failure to state the value of the subject matter contrary to the dictates of Order VII Rule 1 of the CPC, the plaintiffs have made the rectification and 7 knocked the door of this court again for the same cause of action against the same parties. However, this time they have only changed the period upon which the cause of action arose. At this point, I am persuaded by the submission of the 1st defendant that, the period of limitation to file the instant suit started to run in 2011 when the 1st defendant as alleged in Land Case No. 21 of 2023 invaded the plaintiffs land and uprooted the beacon in the plaintiffs' land and not between 2014 and 2015 as alleged at paragraph 11 of the plaint in the instant suit. The argument by Mr. Kuboja that the 1st defendant has created his own version of the plaint and went on to state facts which were not pleaded in the plaint is unfounded because under paragraph 25 of the plaint, it is stated, and I quote: - "25. That on January 2023, the plaintiffs filed Land Case No. 21/2023 which proceeded to 1st PTC, and upon prayers to amend the Plaint which was granted and an amended Plaint was filed, the first defendant filed a Preliminary objection on the tenability of the case, Judge Mwaipopo delivered her Ruling on 23rd July, 2024 striking the case for want of stating the value of the subject matter hence, this current suit. "A Photostat copy of the Ruling is attached hereto and marked annexure MM-13, Leave of this Court is craved for it to form part of this Plaint" The said Photostat copy of the ruling has also been attached as part of the 1st respondent submission. Paragraph 25 above, is in my view an admission that the present suit is a continuation of Land Case No. 21 of 2023 only that this one has stated the value of the subject matter at paragraph 26. It is my settled view that because the present suit started with Land Case No. 21 of 2023, claiming 8 that the cause of action in the instant suit arose between 2014 and 2015 is a circumvention of the facts pleaded and admitted in paragraph 25 of the plaint of instant suit and hence, an afterthought. If the cause of action in Land Case No. 21 of 2023 started in 2011, it goes without saying that the cause of action in the instant suit started to run in 2011. The instant suit was filed in 2024. In the circumstance, it is clear that the suit was filed 13 years after the cause of action started to run hence, is time barred under the provision of Part 1, Item 22 of the Law of Limitation Act (supra). Having found so, I hereby uphold the preliminary objection and proceed to dismiss the suit with costs. It is so ordered. 9

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