

TANZANIA / JUDGMENT

mtoro saidi mketo versus haruna yusuph mlanzi 2 others 2023 tzhclandd 16859 17 august 2023

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17 August 2023

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ir. IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (LAND DIVISION) AT DAR ES
SALAAM LAND CASE NO. 228 OF 2022 MTORO SAIDI MKETO PLAINTIFF VERSUS HARUNA
YUSUPH MLANZI 1®^ DEFENDANT TEMEKE MUNICIPAL COUNCIL 2"" DEFENDANT THE
ATTORNEY GENERAL S"" DEFENDANT

RULING

Pate ofLast Order: 07.08.2023 Date ofRuling: 1708.2023 T- N. MWENEGOHA,3. This Ruling follows an Issue raised by this Court, on the competence of the Instant case, whether or not, the same was filed within the required time. Both parties were ordered to address the Court on the raised Issue before the matter proceeds Into hearing. The Court took that direction for reasons owing to the fact that, the Issue of time limitation on cases Is crucial and touches the jurisdiction of this Court to entertain the matter at hand. All parties compiled by filling their written submissions as ordered in the schedule. Briefly, their arguments were as follows; - The plaintiff, enjoying the legal services of Advocate Godwin Muganylzl, was of the view that, this case was filed within time. That, the cause of auction arose In 2005 and Immediately thereafter, the plaintiff filed a suit against the 1=' defendant, before the Temeke District Land and Housing Tribunal, vide Land Application No. 87 of 2005, as shown by annexure HYM-2 in the Written Statement of Defense. After that, the plaintiff appealed to the High Court of Tanzania, vide Land Appeal No. 34 of 2009, followed by a leave to appeal, vide Misc. Land Application No, 550 of 2018, which was finalized on the 26^^ February 2020,(see annexures HYM-3 and HYM-4). Therefore, in computing the time, the time used by the plaintiff in prosecuting the above listed cases has to be excluded, that is between 2005 and 2020 as provided for under Section 21(1) of the Law of Limitation Act, Cap 89, R. E. 2019. Above all, the trespass continued to date as the 1^ defendant remained on the suit land, hence under Section 7 of the Law of Limitations Act, Cap 89, R. E. 2019, the cause of action commences every moment of time during which the wrong continues. To beef up his submissions, the plaintiff's counsel cited the case of Magreth Master Bebi (Adminstrator of the Estate of the late Saada Katema) versus Safia Ally, Land Case No. 5 of 2022, High Court of Tanzania, at Shinyanga(unreported). On the other hand, Mr. Jumanne Fokasi Semgomba, counsel

for the 1st defendant, maintained that, the present case is time barred. He insisted in when the Land Application No. 87 of 2005 was being filed against the 1st defendant, it was already barred by time for 23 years, counting from the date when the plaintiff was given the latter offer by the 2nd defendant here in above. That, even if we go by the plaintiff, that the cause of action arose in 2005, still the plaintiff failed to comply with the order of the District Land and Housing Tribunal of Temeke, by Hon. S.K. Mwandu, vide Land Application No. 87 of 2005. He deliberately decided to file an appeal (Land Case Appeal No. 34 of 2009) against the said decision instead of filing a fresh suit as advised. However, the said appeal was also struck out for being incompetent by Hon. J. S. IWgeta on the 20th March 2023. This proves that the plaintiff did not act in good faith and diligently when prosecuting his cases, when opted to pursue an appeal instead of a fresh case. Further, that, had the plaintiff intended to invoke the provisions of Section 21 of the Law of Limitations Act, Cap 89 R. E. 2019 and obtain an automatic exclusion of the said time, he should have stated in his plaint by including such facts causing him to delay as stated under Order VII Rule 6 of the Civil Procedure Code, Cap 33 R. E, 2019. His failure to include the facts causing a delay in his plaint, has rendered the entire case to be incompetent, fit of dismissal as stated in Geita Gold Mining Limited versus Anthony Karangwa, Civil Appeal No. 42 of 2020, Court of Appeal of Tanzania (unreported). Therefore, counting from the date of decision of the Land Application No. 87 of 2005, that is on the 09th January 2009, up to the date of filing of the instant suit, it is about 13 years, hence the same is time barred. His arguments were supported by that of the learned State Attorney for the 2nd and 3rd defendants, Leonia B, Maneno. Both agree that, the case at hand is time barred. Having gone through the submissions of the learned counsels, on behalf of their parties, it is time to decide on the competence of this suit, whether the same was filed within time or not. I have taken note of the arguments by Mr. Muganyizi, plaintiff's counsel that, the time taken by the plaintiff to prosecute the Land Application No. 87 of 2005, before the District Land and Housing Tribunal of Temeke, Land Appeal No. 34 of 2009, and Misc. Land Application No. 550 of 2018, both before the High Court of Tanzania, which were both on the same subject matter and same cause of action as in the instant case, should be excluded in computing the time for filing this case. In fact, I agree with him as that is what the law requires under Section 21(1) of the Law of Limitation Act, Cap 89, R. E. 2019. For easy reference, let me reproduce the said provision as follows; - 21-(1) "In computing the period of limitation prescribed for any suit, the time during which the plaintiff has been prosecuting, with due diligence, another civil proceeding, whether in a court of first instance or in a court of appeal, against the defendant, shall be excluded, where the proceeding is founded upon the same cause of action and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is incompetent to entertain it. However, the exclusion of that time is not automatic. The plaintiff has to show that he acted diligently when prosecuting the former cases and further, he did so in good faith. On his part, Mr. Semgomba for the defendant, has argued that, the plaintiff acted in bad faith and was negligent, when he ignored the advice given in Land Application No. 87 of 2007, by Hon. S. K. Mwandu. His decision, to file an appeal against the decision of Hon. S. K. Mwandu, vide Land Case Appeal No. 34 of 2009, followed by a Misc. Land Application No. 550 of 2018 was unwarranted. Therefore, he cannot be favoured by the provisions of section 21(1) of the Limitation Act, (supra). Indeed, I agree with Mr. Semgomba. The actions or conducts of the

plaintiff as far as his case is concerned are highly questionable. It is hard to tell if his actions were being done with due diligence and in good faith 4 good faith when prosecuting the cases above mentioned. In fact, he was always being barred by time in all the cases he preferred after the Decision of Hon. Mwandu vide Land Application No. 87 of 2005. To prove further of this negligence, he filed another case with the same parties, before the. same tribunal. Land Application No. 195 of 2021 while aware of what transpired in the former case. Land Application No. 87 of 2005. In my opinion, the applicant knew what he was doing. For the past 13 years, counting from the date when the decision of Hon. Mwandu was delivered, on the 9th of January, 2009, to the date of filing this case, on the 12th September, 2022, the plaintiff intentionally ignored what he was told to do to pursue his rights over the suit property. He made a choice to sail against the currents, and later realized that his boat is going nowhere other than where the currents direct. To me, I find this case to be nothing but a story of a person who spends years pursuing wrong remedies all the while refusing to take the right solution which was offered to him. He finally came to terms that, the solution was the right path for him to take to get justice, however by then he was already barred by time. Even though the plaintiff in these circumstances had a room for praying for extension of time, he did not do so; And the same is not automatic given. The Plaintiff has to show the Court the reasons for delay and that he has acted diligently in prosecuting former case. Hence this case is Incompetent for being filed out of the statutory period of 12 years, as given under Item 22 of the schedule. Part I of the Law of Limitations Act, Cap 89, R. E. 2019. See also Geita Gold Mining Limited versus Anthony Karangwa (supra). In the end, this case is dismissed. Since the issue discussed above was raised by this Court, I make no order as to costs. Ordered accordingly. T. N..MWENEGOHA JUDGE //W 17/08/2023 ' -I > /O -- x'>

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