

TANZANIA / JUDGMENT

WILLIAM MCHAINA Scanned

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DECIDED
1 January 2025

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IN THE HIGH COURT OF TANZANIA (LAND DIVISION) AT PAR ES SALAAM LAND CASE NO. 25160 OF 2024 PLAINTIFF WILLIAM N. MCHAINA..... VERSUS1st DEFENDANT DAUD EUSTACE PAG ALE..... 2nd DEFENDANT ROBERT MUTA..... CONSTANTINE NTIMA,3RD DEFENDANT DENIS NYONI,4TM DEFENDANT ELVIS BIGIRWA..... 5TM DEFENDANT ABUBAKARY RAMADHANI OMARY..... 6th DEFENDANT JOHN MALECHELA..... 7th DEFENDANT ROBRIELLA KIWILI..... -8th DEFENDANT LETISIA E SINDI..... 9th DEFENDANT REBEKA MUMWI..... 10 DEFENDANT DENIS MHADISA.....11TM DEFENDANT JULIUS JOHABON..... 12TM DEFENDANT OSCAR MHADISA..... 13TM DEFENDANT ZENA SIKUKUU..... 14TH DEFENDANT ISAAC OMBENI WAZIRI..... ,..... 15TH DEFENDANT ISDORY FULGENCY..... 16TM DEFENDANT WILE MHAMBO..... 17TM DEFENDANT JANET JONAS..... 18TM DEFENDANT 1 UMI ATHUMANI 19th defendant FRANCIS ATHUMANI 20th DEFENDANT KULWA MDOTA 21st DEFENDANT JUMBE ALI 22nd DEFENDANT ZENA HAJI 23rd DEFENDANT PHILIPO PASCAR 24th DEFENDANT GODFREY LIMO 25TM DEFENDANT RASHID KAHIS KALYANGO 26TM DEFENDANT BAHATI ISAAC 27th DEFENDANT RASHID MTOVE 28th DEFENDANT AYOUB MACHANE 29th DEFENDANT MATHIAS JOHN 30TM DEFENDANT JULIAS MICHAEL CHENJE 31st DEFENDANT WILAMI MWILA 32nd DEFENDANT MAGRETH MKOMOCHI 33rd DEFENDANT MATHIAS DODEA 34th DEFENDANT BONIFACE CHOTA 25th DEFENDANT CHRISTINA CHARLES 36th DEFENDANT FLORA MATHIAS 37TM DEFENDANT VUMILIA MBENA 38th DEFENDANT SHECK MDOE 39th DEFENDANT EVA EMMANUEL ,40th DEFENDANT ELIZABETH DOMINICK ,41st DEFENDANT AISHA MAKASI ,42nd DEFENDANT 2 THERESIA PAUL ,43rd DEFENDANT FATUMA HALFAN ,44th DEFENDANT JOSEPH R. SIMWINGA ,45th DEFENDANT SKOLASTICA JOACKIMU 46TM DEFENDANT ABEL KAZI 47TM DEFENDANT AIDAN KASINDA ,48TM DEFENDANT ELIZABETH MAKAME ,49th DEFENDANT PAUL KOGANI 50th DEFENDANT RITHA MGENI 51st DEFENDANT ELIZABETH HABI 52nd DEFENDANT GRACE HERBERT 53rd DEFENDANT ZAKARIA DAMIAN 54th DEFENDANT SPECIOZA BONIVENTURE 55th DEFENDANT PAUL MSONGE 56th DEFENDANT ALCARD MUMWI 57TM DEFENDANT JULIUS TWOLI 58TM DEFENDANT MAGALE HEZRON 59TM DEFENDANT

TITHO NJELEKELA 60TM DEFENDANT SHABANI MAJESHI 61st DEFENDANT ALPHONCE
 MAPUNDA 62nd DEFENDANT SAID MPINZI 63rd DEFENDANT GASPAS HAULE 64th
 DEFENDANT VERONICA MUSHI 65TM DEFENDANT DANIEL ALANUS 66th DEFENDANT DANIEL
 ALANUS 67th DEFENDANT 3 FARIS MKWAYU 68TM DEFENDANT JOHN MATHIAS 69th
 DEFENDANT SILAS MAULID 70th DEFENDANT JOEL CHAULA 71st DEFENDANT UMMY SALUM
 KIMOLO 72nd DEFENDANT ESSAU PAUL MANYANZA 73rd DEFENDANT PHILIP PAUL 74th
 DEFENDANT MUSSA MLIYOMI 75th DEFENDANT CHESCO MBELWA 76th DEFENDANT
 BENADETA MATHIAS 77TM DEFENDANT DENICE MFUGALE 78TM DEFENDANT VINCENT
 MICHAEL 79th DEFENDANT CHARLES DAUD 80th DEFENDANT SUZANA BERNADO 81st
 DEFENDANT AYOUB MSIGWA 82nd DEFENDANT BENO SIKUKUU ,83rd DEFENDANT BATI MAYO
 MDOE 84th DEFENDANT DAN MORIS ,85TM DEFENDANT AMINA SALUM ,86th DEFENDANT
 DIDAS DONALD ,87th DEFENDANT GABRIELA KIHWILI ,88th DEFENDANT KELVIN MSANGI 89TM
 DEFENDANT NICHOLAUS BERNADO ,90th DEFENDANT HILDA JOHN BERNADO ,91st
 DEFENDANT 4 FILBERT ANATORY..... 92nd DEFENDANT SAMSON
 MWANJOWE..... 93rd DEFENDANT CHRISTINA
 TARIMO..... 94TM DEFENDANT SYLVESTER
 NGUO..... 95TM DEFENDANT SELGIUS
 NTECHI..... 96TM DEFENDANT SUBILAGA
 JOHN..... 97TM DEFENDANT DICKSON
 YONA..... 98TM DEFENDANT JOYCE
 YUSUPH..... 99TM DEFENDANT SAMWEL
 DOER..... 100TM DEFENDANT

RULING

17/12/2024 & 18/02/2025 A.MSAFIRI, J This is a Ruling on the preliminary objections raised by all the defendants save for the 1st,5th,6th,7th,8th, 10th, 11th, 12th, 13th, 15th, 16th, 18th,20th,21st,22nd,23rd,24th,26th,32nd,57th,58th,66th,70th,71st,74th,80th,81st,91st, and 96th defendants while filing their joint written statements of defence pertaining this suit. The rest of the defendants raised a point of objection to the effect that;

- (a) The suit is time barred.
- (b) The plaintiff does not disclose cause of action. The preliminary objection was argued by way of written submissions. In the submissions, the defendants who raised the preliminary objection 5 were represented by Mr Maganya N. Eliah, learned Advocate, while the plaintiff was represented by Mr. Goodchance R. Lyimo, learned Advocate. The counsel for the defendants submitted on both points of objection that the plaintiff does not disclose cause of action and the suit is time barred. That it is the wording of Order VII Rule 1(e) of the Civil Procedure Code, Cap 33 R.E 2019 that the plaintiff must contain the cause of action and show when it arose. That, it is trite law that, determination of time limitation and cause of action of the suit is dependent upon considering the plaintiff with its annexures. To cement this, he cited the case of Babito Limited vs Freight Africa NV-Belgium, Civil Appeal No. 355 of 2020, CAT at Moshi. The counsel for the defendants argued that, the plaintiff discloses at paragraph 6

that the defendants invaded the land in dispute in 2020. He pointed that Annexure WNM-4 which is attached to the plaint in paragraph 10, is the ruling and order of the District Land and Housing Tribunal for Bagamoyo in Application No. 89 of 2018 between Msakuzi Hamisi Msakuzi (as Attorney of William N. Mchaina) vs. Daud Eustard Pagale and 30 others which was instituted before the said Tribunal on 24/11/2020 and struck out on 6 The counsel for the defendants stated that in the said Application No. 89 of 2018, the plaintiff (who was the applicant), alleged that the cause of action accrued in 2005 and 2007 when he became aware of the eviction. Mr Maganya, the counsel for the defendant was of the view that since the plaintiff have pleaded in Application No. 89 of 2018 before the District Tribunal that the cause of action arose in the years 2005 and 2007, the ruling of the said Application being attached to the plaint as annexure WNM-4, then the plaintiff I bound by his own pleadings and this suit is time barred. Mr Maganya argued that the plaintiff is not allowed to depart from the previous pleadings and hence h e cannot change the year of the accrual of the cause of action. He added that the plaint does not disclose the cause of action because the year in which the cause of action arose is not certain. He prayed to the court to strike out the suit with costs. Mr Lyimo, counsel for the named defendants responded that at paragraph 10 the plaint clearly shows when the cause of action arose. That the claim by the counsel for the defendants that there are changes to the year as to when the cause of action arose, it is a matter of evidence which defeats the whole notion of the principle set in the case of Mukisa Biscuits Manufacturing Company Ltd. vs. West End 7 Distributors Ltd [1969] EA 296. He called for the dismissal of the objections with costs. Having gone through the submissions by the rival parties, the issue for my determination is whether the raised preliminary objections have merit. The named defendants through their counsel Mr Maganya have raised preliminary objection that the suit does not disclose the time of accrual of cause of action and that the suit is time barred. Mr Maganya has admitted that the plaint at paragraph 6 shows that the defendants have invaded the land in 2020. However, he quickly pointed that there were previous proceedings before the District House and Land Housing Tribunal for Coast Region in Application No. 89 of 2018 between the parties whereby the plaintiff 9then the applicant), pleaded that the trespass occurred in 2005 and 2007. That the plaintiff is not allowed to change the years of the cause of action and that he is bound by the previous pleadings. Indeed, there was Land Application No. 89 of 2018 between Msakuzi Hamisi Msakuzi (As holder of Power of Attorney of William N. Mchaina) vs. Daud Eustard Pagale &32 others, before the District Land and Housing Tribunal for Coast Region at Kibaha. The Application was however struck out with costs. The defendants in the objection claims that the cause of action arose between 2005 and 2007 as per the 8 plaintiff's pleadings before the District Tribunal. The plaintiff claims that the cause of action arose in 2020 as he has pleaded in the plaint in the present suit. Regarding the claims by the parties, it is my view that at this stage, this court cannot determine and ascertain exactly when did the cause of action arose. The whole issue invites the evidence to prove it as correctly put by the counsel for the plaintiff. Therefore, the issues as to when the cause of action arose between the claimed dates 2020, 2005 and 2007, and whether the suit is time barred will be determined by the court after each party has adduced evidence to ascertain its claim. In addition, it is

my belief a party is not bound by previous pleadings as submitted by the counsel for the defendants but by previous competent court's decisions, judgements, or any orders and directions. For the above reason, I find that the raised preliminary objections raised by the defendants does not meet the principle set in the famous case of Mukisa Biscuits Manufacturing Company Ltd. vs. West End Distributors Ltd (supra). The objections are overruled. The suit to proceed on merit. Costs to follow the events. It is so ordered. 9 18/02/2025 io

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