IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE SUB- REGISTRY OF DAR ES SALAAM

AT DAR ES SALAAM

CIVIL CASE NO. 62 OF 2014

VOI SISAL ESTATES LIMITED

(Suing by its Attorney, FARIDA KENNEDY) ..... PLAINTIFF

VERSUS

THE PERMANENT SECRETARY,

MINISTRY OF FINANCE AND PLANNING ..... 1ST DEFENDANT

THE MINISTER OF FINANCE AND PLANNING ..... 2ND DEFENDANT

THE ATTORNEY GENERAL ..... 3RD DEFENDANT

JUDGMENT

2nd August, & 30th November, 2022

ISMAIL, J.

This suit has been preferred by the plaintiff through an attorney, Ms. Farida Kennedy. It is based on a claim of compensation, against the defendants jointly and severally, and it arises from the acquisition of a farm land, known as Himo Sisal Estate Limited, done by the Government of the United Republic of Tanzania (hereinafter "URT"), way back in 1974. The

acquisition was allegedly done in compliance with the provisions of the Specified Sisal Estates (Acquisition and Regrant) Act No. 11 of 1974.

The contention by the plaintiff is that the acquired farmland constituted what was known as Himo Sisal Estates, which was under the ownership of the plaintiff, a Kenyan establishment, since 1948. In 1974, the said estate was acquired by the URT, and that the acquisition was by way of nationalization that effectively placed the estate under the control of the URT. The plaintiff's further contention is that, since the acquisition was drastic and violent, involving forcible wrestling of control of her Arusha office, the plaintiff was not allowed entry that would enable her process the claim for compensation. This necessitated the engagement of some third party professionals an initiative that fell through, as payment of compensation through normal non-contentious legal channels bore no fruits.

In the years preceding 2015, the plaintiff enlisted the services of Ms. Farida Kennedy, and granted her a power of attorney that saw her step in the shoes of the plaintiff and negotiate on the latter's behalf. Negotiations protracted for some time and were barren. It is as a result of such failure, that on 2nd April, 2015, the plaintiff instituted the instant matter. Several reliefs have been sought, as follows:

(i) Payment of the sum of Great Britain Pounds 48,032,000.00, constituting adequate and fair compensation for unexhausted improvements of Himo Sisal Estate (including compound interest at 6% per annum) from the date of acquisition i.e. 5th March, 1974 to the date of filing the suit;

(ii) Interest on (i) above at the same rate as above from the date of filing the suit to the date of full payment;

(iii) General damages for inconveniences, time spent in following up claims, loss of use and legitimate expectation to the tune of TZS. 500,000,000/-;

(iv) Interest on (iii) above at court's rate from the date of judgment to the date of payment in full;

(v) Costs of the case; and

(vi) Any other reliefs as the Honourable Court may deem fit and appropriate.

The defendants have valiantly resisted the claims. Through a written statement of defence (WSD) filed in Court on 12th June, 2015, the plaintiff's contentions have been rebuffed. The view held by the defendants is that the plaintiff has failed to submit the requisite documents to the Treasury Registrar, this being a mandatory requirement under sections 15 and 16 of

the Act. The plaintiff further contends that the plaintiff has failed to prove the amount claimed as compensation.

The WSD came with a trio of preliminary objections which challenged the competence of the suit. While two of the objections were overruled by the Court (Hon. Mwandambo, J as he then was), the decision on the objection on time prescription was deferred, as proof of the objection depended on the factual settings which would be revealed through adduction of testimony during trial.

The view held by the defendants on this ground of objection is that, since the cause of action arose in 1974, when the Government moved in to acquire the farm land, the suit filed on 2nd April, 2015, came after 40 years, rendering the suit hopelessly time barred and, therefore, incompetent. The defendant's counsel quoted the Item 1 of Part I of the Schedule to the Law of Limitation Act, Cap. 89 R.E. 2019 (LLA), which provides as hereunder:

> *"For compensation for doing or for omitting to do an act alleged to be in pursuance of any written law the time limit is one year."*

The defence has taken the view that sections 27 and 28 of the LLA are not applicable in the circumstances of this case, since the defendants never acknowledged their indebtedness to the plaintiff. This explains why the offer

given to them was merely an *ex-gratia* payment. Adopting the definition in the Oxford Advanced Learner's Dictionary, 8th Edition, learned counsel argued that such payment is given as a gift of favour and not as of right, and there is no legal duty to do it. The defendant implored the Court to apply the provisions of section 3 (1) and dismiss the matter. To buttress her argument, several decisions were cited. These included: ***Yussuf Vuai Zyuma v. Mkuu wa Jeshi la Ulinzi TPDF & 2 Others***, CAT-Civil Application No. 15 of 2009; ***M/S P & O International Ltd v. The Trustees of Tanzania National Parks (TANAPA)***, CAT-Civil Appeal No. 265 of 2020; ***Subjit Singh Barya & Another v. NIC Bank Tanzania Ltd & Another***, CAT-Civil Appeal No. 94 of 2017; ***Moto Matiko Mabanga v. Ophir Energy PLC & 6 Others***, CAT-Civil Appeal No. 119 of 2021; ***Swilla Secondary School v. Japhet Petro***, CAT-Civil Appeal No. 362 of 2019 (all unreported).

This contention is at variance with the view held by Mr. Rosan Mbwambo, learned counsel for the plaintiff, who took the view that the suit is timeous and competent. He argued that paragraph 21 of the plaint clearly stated that there were negotiations which were ongoing at the time, and that the defendants unequivocally acknowledged the plaintiff's rightful

ownership of the acquired sisal estate. It is why the defendants offered to effect an ex-gratia payment in the sum of TZS. 238,363,904.67, the sum which was considered paltry and derisory by the plaintiff. He took the view that this is a fit case in respect of which the provisions of sections 27 and 28 of the LLA are applicable.

The singular question arising from these submissions is whether the instant suit is meritorious.

As stated above, each of the actions taken by way of a suit is preferable consistent with the time prescription set out in the Schedule to the LLA. In the case of compensation, which is what the suit is all about, the time frame is one year. This is in terms of Item 1 Part I of the Schedule. This time may be enlarged pursuant to section 44, and the powers for such enlargement are vested in the Minister. Such extension would not exceed half of the time set for such action (See: ***Selemani Mohamed Mtoni v. Minister of Justice & Attorney General***, CAT-Civil Application No. 27 of 2002; ***Rajabu Hassan Mfaume (The Administrator of the Estate of the late Hija Omari Kipara v. Attorney General & 3 Others***, CAT-Civil Appeal No. 287 of 2019; and ***Apolo Lusato Bhiseko v. Tanzania Rural and***

Urban Road Agency & Another, HC-Civil Case No. 169 of 2021 (all unreported).

The plaintiff has taken the view that there were engagements that took place in trying to reach a middle ground on the matter. The term used was negotiations. The defendants' take is that, since there was no acknowledgment of indebtedness of liability then the provisions of sections 27 and 28 are non-applicable in this case.

I take note of the trite position that negotiations between the parties cannot serve as the basis for netting off time set for taking certain action. This has been accentuated in numerous decisions both in this Court and the Court of Appeal of Tanzania. Some of these include: ***Makamba Kigome & Another v. Ubungo Farm Implements Ltd & PSRC***, CAT-Civil Case No. 109 of 2005 (unreported); and ***M/S P & O International Ltd v. The Trustees of Tanzania National Parks (TANAPA)*** (supra). In the latter decision, the upper Bench quoted an excerpt from the former, in which it was held as follows:

> *"Negotiations or communications between parties since 1998 did not impact on limitation of time. An intending litigant, however honest and genuine, who allows himself to be lured into futile negotiations by way of shrewd wrong*

doer, plunging him beyond the period provided by law within which to mount an action for actionable wrong, does so at his own risk and cannot from the situation as defence when it comes to limitation of time."

In our case, the situation is a little different. What came first and could serve as the basis for discussion is that, before the parties were locked into negotiations, there were a series of correspondences which revived the claim and, at some point, the defendants admitted liability. This can be discerned from Exhibit P37, a letter that was authored by the 1st defendant to the plaintiff and dated 1st December, 2010. In that letter, the 1st defendant is quoted as saying as follows:

"Kindly be informed that after analyzing your claim cited above, it has been established that Vois Sisal Estate Limited was the rightful owner of the Right of Occupancy over the subject pieces of land at the time of acquisition. It has been further established that Voi Sisal Estate has not been compensated for the value of unexhausted improvements relating to the immovable assets on the farm at the time of nationalization."

Instructively, realization of this reality is what triggered the action taken by the defendants, including composition of a special task team that went to carry out a verification of the assets and the condition they were in,

and subsequent negotiations by the parties. In my considered view, the right of action is deemed to have accrued on the date of such acknowledgment i.e. 1st December, 2010. This is the date on which the one-year time frame, set out in Item 1 of Part I of the Schedule to the LLA, began to run. My position is predicated on section 27 (3) of the LLA, which stipulates as hereunder:

> *"Where a right of action has accrued to recover a debt or other pecuniary claim, or to recover any other movable property whatsoever, or to recover any sum of money or other property under a decree or order of a court and the person liable or accountable therefor acknowledges the claim or makes any payment in respect of it, the right of action in respect of such debt, pecuniary claim or movable property, or as the case may be, the right of action in respect of an application for the execution of the decree or the enforcement of the order, shall be deemed to have accrued on and not before the date of the acknowledgement or, as the case may be, the date of the last payment:*
>
> *Provided that a payment of a part of the rent or interest due at any time shall not extend the period for claiming the remainder then due, but a payment of interest shall be treated as a payment in respect of the principal debt."*

It follows that, what the plaintiff has christened as a **resuscitation** of the suit is the shifting of the accrual of the right of action from within a year from the acquisition of the plaintiff's assets i.e. March 1974 to within a year from the date such resuscitation was done. Effectively, this would last until 1st December, 2011. Review of the exhibits has taken me to Exhibit P41, a communication sent by the plaintiff to the 1st defendant, informing the latter that the offer given was considerably lower than what the plaintiff considered to be the fair value. While remaining amenable to an amicable settlement of the matter, the plaintiff was unequivocal in her position that the sum claimed as compensation was justified and an irreducible minimum beyond which the plaintiff would not accept. This means that closure of this communication opened the plaintiff's right of action.

The plaintiff has contended in paragraphs 35 and 36 of the amended plaint that further efforts were employed by the plaintiff to have the sum paid by serving a demand notice on the Government (on 12th September, 2012), followed by what was alleged to be the government's undertaking to invite the plaintiff to yet another round of discussion. None of the said correspondences were tendered as evidence to support the assertion. It turns out to be a mere allegation that is unproven.

It is my conclusion that, even where negotiations would be factored in and be considered as having no impact on the time lapse, and even assuming that there was a communication by the government dated as late as 15th March, 2013, and that accrual of action was to run from the said date, the suit instituted on 27th August, 2014 would still be considered to have been filed outside the time prescription of one year, thus making it time barred.

I must also state that I am not oblivious to the fact that the law provides a leeway that can accommodate delayed actions by a litigant i.e. the plaintiff. The leeway is provided under Order VII rule 6 of the CPC that grants an exemption from the application of the law of limitation. For ease of reference it is apt that the said provision be quoted. It states:

> *"Where the suit is instituted after the expiration of the period prescribed by the law of limitation, the plaint shall show the ground upon which exemption from such law is claimed."*

It is worth of a note, however, that the condition precedent for invocation of this window is that the plaintiff must demonstrate that by pleading the ground for such exemption in the plaintiff. This legal prescription has been underscored in many a decision, including the case of ***Consolidated Holding Corporation v. Rajani Industries & Another***,

CAT-Civil Appeal No. 2 of 2003 (unreported). In the case of ***Alphons Mohamed Chilumba v. Dar es Salaam Small Industries Cooperative Society*** [1986] TLR 91, this Court (Mapigano, J.,) held as hereunder:

> *"Order 7 rule 6 CPC provides that where the suit is instituted after expiration of the period prescribed by law of limitation, the plaint shall show the ground upon which exemption from such law is claimed. In other words, where but for some ground of exemption from the law of limitation, a suit would prima facie be barred by limitation, it is necessary for the Plaintiff to show in his plaint such ground of exemption. If no such ground is shown in the plaint, it is liable to be rejected under rule 11 (c) of the same order …"*

See also: ***M/S P & O International Ltd v. The Trustees of Tanzania National Parks (TANAPA)*** (supra)

My scrupulous review of the plaint did not lead me to any semblance of impression that such exemption was sought or claimed by the plaintiff. This provides an unflustered assurance that beds well with the contention raised by the defence that the suit was marred by wanton procrastination in its institution, rendering it time barred and incompetent.

Consequently, I uphold the objections and order dismissal of the suit with costs.

Order accordingly.

DATED at **DAR ES SALAAM** this **30th** day of **November, 2022.**

M.K. ISMAIL

JUDGE

30/11/2022