

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM

LAND CASE NO. 253 OF 2022

ALWYN BOB MUTAGULWA.....1ST PLAINTIFF
LAUDEN MUGOGO.....2ND PLAINTIFF
LEONARD KISHANTO.....3RD PLAINTIFF
ANOSISYE MWAIPOPO.....4TH PLAINTIFF

VERSUS

TANZANIA ELECTRIC SUPPLY LTD 1ST DEFENDANT
THE ATTORNEY GENERAL..... 2ND DEFENDANT

RULING

Date of last Order:19/12/2022

Date of Ruling:03/02/2023

K. D. MHINA, J.

In this suit, the Plaintiffs, Alwyn Bob Mutagulwa, Lauden Mugogo, Leonard Kishanto, and Anosisye Mwaipopo, sue the respondents, Tanzania Electric Supply Limited (known for its acronymy as TANESCO) and The Attorney General, for the payments by way of interests arising from compensation for the land located at Mwanalugani, Tumbi Kibaha in Coastal Region. That Land was taken by the 1st defendant in order to pave the way for Chalinze-Kinyerezi 400 Kilovolts Power Transmission Project.

According to the plaint the claim is because the plaintiff were paid on 2021 instead of 19 March 2019, when the payments were due after valuation.

The plaint further reveals that;

- i. The 1st plaintiff is claiming TZS 197,543,570/= as interest arising from the compensation of TZS 336,603,221/=, which he was paid on 23 August 2021.
- ii. The 2nd plaintiff is claiming TZS 297,202,665/= as interest arising from the compensation of TZS 506,416,205/=, which he was paid on 21 August 2021.
- iii. The 3rd plaintiff is claiming TZS 352,241,957/= as interest arising from the compensation of TZS 600,200,000/=, which he was paid on 23 August 2021.
- iv. The 4th plaintiff is claiming TZS 331,583,992/= as interest arising from the compensation of TZS 565,000,000/=, which he was paid on 23 August 2021.

In response, the defendants countered the plaint by filing the written statement of defence and further confronted it with a notice of preliminary objection predicated on the following ground;

The suit is hopelessly time barred; hence the court has no jurisdiction to entertain it.

The preliminary objection was argued by way of oral submissions. The plaintiffs were represented by Mr. Gregory Ndanu, learned advocate, while the respondents by Ms. Debora Mcharo, learned state attorney.

In essence, Ms. Mcharo's submission was based on paragraphs 4,5,6 and 8 of the plaint, whereby the plaintiffs pray for interest accrued from the compensation.

Therefore, she stated that the cause of action is the compensation that was supposed to be paid in 2016 but was paid on 13 August 2018.

She submitted that Paragraph 1 Part 1 to the schedule of the Law of Limitation, Cap 89 R: E 2019, provides that claims for compensation and interest shall be within one year.

She prayed for the suit to be dismissed for being time-barred because six years lapsed, and she substantiated her submission with the case of **Ally Shaban and 48 others vs. TANROADS and The Attorney General**, Civil Appeal No.261 of 2020 (Tanzlii) on page 9 where the Court of Appeal held that;

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

She further submitted that the plaintiffs did not indicate if they were granted an extension of time in the matter at hand.

In conclusion, she prayed the suit to be dismissed with cost for being time-barred.

In reply, Mr. Ndanu resisted the objection and submitted that the gist of the suit was land taken by TANESCO for Chalinze- Kinyerezi power transmission project; therefore, the cited laws and cases were irrelevant to this case.

He further submitted that the land was taken in 2016, but the compensation was paid in 2021. Therefore, the issue is land and its value.

In his further submission, he argued that the issue is whether the matter can be dismissed at this stage, and in his view, he submitted that the suit should be heard on merits.

In his further submission, he raised an issue of the preliminary objection raised by the counsel for the defendants that it was not a pure question of law as per **Mukisa Biscuits Manufacturing vs. West End Distributors Ltd** (1969) EACA 696, where it was held that;

"The preliminary objection must raise a pure point of law."

In his submission, Mr. Ndanu mentioned the pure points of law, such as defective decree, right to appeal, and lack of certificate of delay.

In addition, he submitted that the preliminary objection should not be a mixed grill of facts and law and argued that in the application at hand, the p.o raised ought to give the court the time to deliberate on facts and evidence. Therefore, the p.o is prima facie legally untenable.

He concluded by citing **Karata Ernest and others vs. The Attorney General**, Civil Revision No 10 of 2010, where the Court of Appeal held that

"The improper raising points by way of preliminary objection does nothing but unnecessarily increase costs and on occasion, confuse issues."

In a brief rejoinder, apart from reiterating what she submitted in her submission in chief, Ms. Mcharo added that the matter was time-barred and the law of limitation ousts the court's jurisdiction to deal with this matter.

Further, in calculating the time limit, the starting point is when the cause of action arises, and that does not need evidence.

In her further rejoinder, she submitted that the central issue in the suit at hand is not a land dispute but rather a claim for compensation whereby the law provides that should be instituted a period within one year.

She concluded by distinguishing the cited case of **Karata Ernest (Supra)** is distinguishable because it does not deal with extension of time.

Having gone through the submissions from both parties, the issue before me is whether or not the suit is time-barred.

But before going to the merits or demerits of the preliminary objection, I have to deal with an issue raised by Mr. Ndanu that the objection raised is not a pure point of law, as per **Mukisa Biscuits Manufacturing** (Supra).

What was raised as a preliminary objection is that the suit is time-barred. Therefore, the question is whether time-barred is a pure point of law. The issue should not detain me long because there are several authorities by the Court of Appeal already set out a principle on whether or not time-barred is a pure point of law.

In **Yusuf Khamis Hamza vs. Juma Ali Abdalla, Civil Appeal No. 25 of 2020** (Tanzlii), the Court held that:-

"We are alive with the settled position of the law that time limitation goes to the Jurisdiction issue of the Court, and it can be raised at any time."

Therefore, as it touches and goes to the jurisdiction of the court, then it is a pure point of law.

Flowing from above, it is, therefore, the preliminary objection raised is a pure point of law, and it qualifies the conditions set out in **Mukisa Biscuits Manufacturing (Supra)**, and it was properly raised.

Coming back to the issue on whether the suit is time-barred or not.

Ms. Mcharo submitted that the payments for compensation were supposed to be paid on 2016 but were paid on 13 August 2018; therefore, she submitted that according to Paragraph 1 Part 1 to the schedule of the Law of Limitation, Cap 89 R: E 2019 such claims for compensation and interest shall be claimed within one year.

On his part, Mr. Ndanu stated that the land was taken in 2016, but compensations were paid in 2021. He did not respond on whether the suit is time-barred or not.

Looking at the plaint, the plaintiff stated that they were supposed to be paid compensation on 16 March 2016 but paid on 21 and 23 August 2021. Based on that, it means their claims is the interest on the compensation paid to them on 21 and 23 August 2021.

Therefore, the plaintiffs are claiming for inordinate delay in the payment of compensation. According to paragraph 10 of the plaint and annexure B to the plaint, the plaintiffs are claiming that they were only paid the principal sum without the interest, and they were supposed to be paid the same because the payments were due on 15 April 2015, but they were not paid until 26 August 2021. Therefore, the claims are part of compensation.

Paragraph **1, Part 1 of the schedule of the Law of Limitation, Cap 89 R: E 2019**, provides that compensation claims shall be within twelve months.

This brings me to the issue of when the course of action arose. I have considered the submission of both parties and the plaint and resort that since the plaintiffs knew the non-payment of interest as a part of compensation on 21 and 23 August 2021, those are the dates where the accrual of rights of action commence to run as per section 5 of the Law of Limitation Act.

Therefore, the 1st, 3rd, and 4th plaintiffs started on 23 March 2021, while the 2nd respondent was on 21 March 2021.

On the other hand, the suit was filed on 28 September 2022. Therefore from 21 and 23 March 2021 to 28 September 2022, the period is beyond 12 months for almost 35 days.

In civil trials under Order VII Rule 6 of the Civil Procedure Code, Cap 33 R: E 2019, the law provides for an exemption of time limitation if a party pleads in the plaint the facts which would justify such an exemption. That provision reads that;

"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".

The Court of Appeal cemented that position in the cited case of **Ally Shaban and 48 others (Supra)**, where the Court of Appeal held that;

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

In the matter at hand the plaint does not show the any ground. Upon the plaint is silent on that issue of limitation and its exemption.

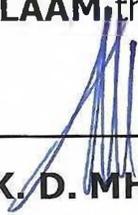
Therefore, since the suit was lodged beyond the prescribed time and because the limitation goes to the jurisdiction of this court, then this court lacks the jurisdiction to proceed with this suit.

Flowing the above observations and holding it is therefore, the arguments by Mr. Ndanu that the suit should not be dismissed at this stage and should be heard on merits are unmeritorious since the court cannot proceed with the suit, which is time-barred.

In the event, I sustain the preliminary objection that the suit is time-barred, and consequently, I dismiss it with costs.

I order accordingly.

DATED at DAR ES SALAAM this 03/02/2023.



K. D. MHINA
JUDGE