

**IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY OF DODOMA
AT DODOMA**

LAND CASE NO.32 OF 2022

EDWARD ZEPHANIA NYEMBA

JOSEPH LAURENT BOMBAPLAINTIFFS

VERSUS

MAYAMAYA VILLAGE COUNCIL

BAHI DISTRICT MUNICIPAL COUNCIL

THE ATTORNEY GENERAL

CHICO

}DEFENDANTS

RULING

4th May & 5th June, 2023

MDEMU, J:.

On 5th of October, 2022, the two Plaintiffs instituted this suit praying for judgment and decree against the four Defendants as follows:

- a) For an order that the Plaintiffs are the legal owners of the suit land.*
- b) For an order that 1st and 4th Defendants have illegally trespassed to the Plaintiffs land.*

- c) Alternative to reliefs (a) and (b) herein above, for an order for payment of Tanzanian shillings thirty million (TZS 30,000,000/=) only as compensation for 1st and 4th Defendants to trespass into the plaintiffs' land illegally as per paragraph 22 hereinabove.*
- d) An order for payment of Tanzanian shillings forty million only (TZS.40,000,000/=) being damages to plaintiff for mental anguish caused by the 1st and 4th Defendants for all disturbances and for non-use of their land as per paragraphs 19, 20, 21 and 22 hereinabove.*
- e) Costs be provided for plaintiffs.*
- f) Any other relief(s) as this Honourable Court may deem fit to grant.*

On 9th of November, 2022, the first, second and third Defendants filed a joint written statement of defence comprising of a notice of preliminary objection to the effect that:

- 1. The suit is time bared.*

2. That the suit is bad in law and incompetent for contravening section 6 (2) of the Government Proceedings Act, Cap.5 R.E 2019.

On 4th of May, 2023 parties appeared before me for hearing of the two preliminary objections. The Plaintiffs were represented by Ms. Maria Ntui, learned Advocate whereas the first, second and third Defendants were represented by Ms. Jenipher Kaaya, Senior State Attorney and Ms. Agness Makuba, State Attorney. The Defendants abandoned the 2nd preliminary objection on incompetency of the suit.

Submitting on time limitation comprising of the 1st preliminary objection, Ms. Agness Makuba stated that, as the suit is on compensation, cause of action pleaded in paragraph 8 of the plaint traced in 2014 indicates that, this suit filed on 5th of October, 2022 is out of time. She cited Item 1 in Part I of the 1st Schedule to the Law of Limitation Act, Cap. 89 requiring a suit for compensation to be filed within twelve (12) months from the date the cause of action is registered. She also cited the case of **Ally Shaba and 48 Others vs. TANROADS and Another, Civil Appeal No.261 of 2020** (unreported) to bolster that assertion.

As to efforts would be deployed in pursuing compensation to comprise grounds for delay, Ms. Makuba banking on **M/S. P&O International Ltd. vs. The Trustees of Tanzania National Parks (TANAPA), Civil Appeal No. 265 of 2020** (unreported), was of the view that, the same may not be the basis. On her part, Ms. Kaaya concluded by saying that, the main claim is compensation and not claim of ownership of the suit land stated in the reliefs prayed for of which, to her, it is misplaced as a person may not establish cause of action in reliefs. She thus asked me to dismiss the suit under the provisions of section 3 (1) of the Law of Limitation Act, Cap.89.

In reply, Ms. Maria Ntui maintained the suit to have been filed in time. Her position hinges on the understanding that, this being a dispute on land ownership, limitation period is twelve (12) years as per the law of Limitation Act, Cap.89. She faulted the Defendants in their construction that, the suit is on compensation and that the Defendants have failed to indicate if a suit on compensation in land matters is to be filed within twelve (12) months. She thus cited the case of **Samwel Mtema vs. Habel Malyampa, Land Case Appeal No.04 of 2014** (unreported) insisting that, as the plaintiff was in occupation of the suit land for over twelve (12) years, then he be

left to enjoy quite possession. She thus urged me to dismiss the said preliminary objections.

I have heard submissions from both the Defendants and the Plaintiff on the raised preliminary objection. As the objection is on time limitation, it has first be determined whether the suit is on ownership of the land in dispute or is one of compensation. I am saying so because, in terms of the law of Limitation Act, Cap. 89 a suit for claiming ownership in land, the limitation period is twelve (12) years whereas that of compensation has to be instituted within twelve (12) months. For clarity, the relevant parts of the law is reproduced as hereunder: In Part I item 22 of the schedule to the Law of Limitation Act,

Suit to recover land, twelve years.

As to compensation, Part I item 1 of the Schedule to the Law of Limitation Act provides;

For compensation for doing or for omitting to do an act alleged to be in pursuance of any written law -one year.

In resolving this, paragraph 9 of the plaint reads as hereunder:

9. That, the Plaintiffs' claim is not for the 1st defendant and 4th defendant to drill the well and construction of water reserve tank for Mayamaya Villagers, but their claim is for compensation for their plots from the 1st Defendant who unlawfully took their plots of land for public service with neither their prior consultation nor compensation thereof.

From the quoted paragraph of the plaint above, it is clear from the outset that, the two Plaintiffs claim compensation from the 1st Defendant who acquired their land without consultation and compensating them. The reliefs clearly hinges on compensation in two fold. **One** is for acquisition of the land and **two** is for payment of damages the plaintiffs suffered due to disturbances caused and also for non-use of the said land. It is therefore settled that, this suit is for compensations and not for recovery of the suit land. This being the case, in terms of the law as cited above, a suit for compensation filed on 5th of October, 2022 from 2014 when the Defendants allegedly to have acquired the said land is well beyond the time limit of twelve (12) months prescribed by the law. It was stated in **Ramadhani Nkongela vs. Kasan Paulo** [1988] TLR 56 that, the plaint is what comprises facts as to cause of action and that, the right of action begins to

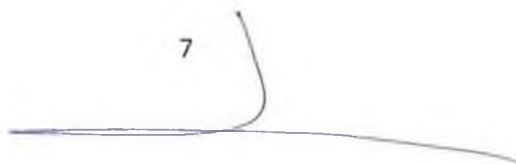
run when one becomes aware of the said transaction or act complained of. This is also the position in the provisions of section 5 of the Law of Limitation Act, Cap. 89 which provides specific on accrual of cause of action that:-

Subject to the provisions of this Act, the right of action in respect of any proceeding, shall accrue on the date on which the cause of action arises.

As stated in paragraph 10 of the plaint, it was on 8th of December, 2014 when the plaintiffs started making follow-ups of their compensation. For sure, coming to court in 2022 was beyond the period of one year required by the law. The remedy therefore is to dismiss the said suit, as I hereby do in terms of section 3(1) of the Law of Limitation Act, Cap.89 which reads as hereunder:

3.-(1) Subject to the provisions of this Act, every proceeding described in the first column of the Schedule to this Act and which is instituted after the period of limitation prescribed therefore opposite thereto in the second column, shall be dismissed whether or not limitation has been set up as a defence.

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Each part to bear own costs

It is so ordered.



~~Gerson J. Mdemu~~

JUDGE

05/06/2023

DATED at DODOMA this 5th day of June, 2023.



~~Gerson J. Mdemu~~

JUDGE

05/06/2023