

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(LAND DIVISION)**

**AT DAR ES SALAAM**

**LAND CASE NO. 295 OF 2022**

**GILLIAN BWIRE BUKORI ..... PLAINTIFF**

**VERSUS**

**COMMISSIONER FOR LAND, MINISTRY OF LAND,**

**HOUSING AND HUMAN SETTLEMENTS DEVELOPMENT ..... 1<sup>ST</sup> DEFENDANT**

**THE REGISTRAR OF TITLES**

**MINISTRY OF LAND, HOUSING AND HUMAN**

**SETTLEMENTS DEVELOPMENT ..... 3<sup>RD</sup> DEFENDANT**

**MUNICIPAL DIRECTOR KINONDONI**

**MUNICIPAL COUNCIL ..... 4<sup>TH</sup> DEFENDANT**

**THE ATTORNEY GENERAL**

**MINISTRY OF CONSTITUTION AND LEGAL AFFAIRS .... NECESSARY PARTY**

*Date of last order: 02/05/2023*

*Date of ruling: 15/06/2023*

**RULING**

**I. ARUFANI, J**

The plaintiff filed the suit at hand in this court against the defendants jointly and severally claiming for various reliefs. He is claiming the second to fourth defendants did maliciously and wrongfully re-allocate his land located at Mji Mpya Area, Mabwepande Ward,

Kinondoni District in Dar es Salaam Region measuring 12 acres which was previously registered as Farm Nos. 3650, 3651, 3652, and 3653 (henceforth the suit land) to the 1<sup>st</sup> defendant. He stated the suit land is now re-registered in the name of the 1<sup>st</sup> defendant as Plots Nos. 1 to 181 within Block "R".

He is also claiming for payment of Tanzania Six Billion Shillings (Tshs. 6,000,000,000/=) being both specific and general damages for alleged malicious and fraudulent mis-allocation of the suit land by the 2<sup>nd</sup> to 4<sup>th</sup> defendants to the 1<sup>st</sup> defendant. In addition to that he is claiming for specific performance for the 1<sup>st</sup> defendant to be ordered to surrender to him the suit land which originally was adjacent to the 1<sup>st</sup> defendant's land.

Upon the defendants being served with the plaint, they filed in the court their written statements of defence accompanied with notices of preliminary objections. While the 1<sup>st</sup> defendant raised one point of preliminary objection which states the suit is time barred, the rest of the defendants raised the similar point of preliminary objection in their joint written statement of defence together with another point of preliminary objection which states the suit is bad in law for suing a wrong and non-existing party. Therefore, conjunctively the points of preliminary objections raised by the defendants are as follows: -

- 1. The suit before this Honourable Court is time barred*
- 2. The suit is bad in law for suing a wrong and non – existing party.*

When the matter came for hearing the stated points of preliminary objections the plaintiff appeared in the court in person and while the first defendant was represented by Ms. Mary Masumbuko Lamwai, learned advocate the rest of the defendants and the necessary party were represented by Mr. Gallus Lupogo, learned State Attorney. The plaintiff prayed the points of preliminary objections be argued by way of written submissions and as the prayer was not objected the preliminary objections were argued by way of written submissions.

The defendants' counsel argued in relation to the first point of preliminary objection that the suit at hand is time barred because it was filed in the court on 8<sup>th</sup> November, 2022 while the plaintiff was aware it had already been re-distributed by the 4<sup>th</sup> defendant to a new occupant from 2004. They argued that, paragraph 16 of the plaint states the plaintiff was informed by the Local Government Authority that the 4<sup>th</sup> defendant through the District Commissioner had re-distributed the suit land to a new occupant who is the 1<sup>st</sup> defendant in the instant suit as the plaintiff had failed to develop the suit land.

The State Attorney argued in his submission that, section 3 (1)

read together with item 1 of Part I of the Schedule to the Law of Limitation Act, Cap 89, R.E 2019 (henceforth referred as the Act) shows the plaintiff's cause of action which is seeking for compensation for mis-allocation of the suit land was supposed to be filed in the court within one year. He went on arguing that, item 24 of the same part of the law shows the claim of specific performance was supposed to be filed in the court not beyond six years from when the cause of action arose. As for the claim of recovery of the suit land he stated as provided under item 22 of the same part of the law ought to be filed in the court not later than twelve years from when the cause of action arose.

He went on arguing that, paragraphs 16, 17, 18, 19 and 20 of the plaint describes when and how the cause of action accrued. He stated that, counting from 2004 when the plaintiff was informed the suit land had been re-distributed to another person to 8<sup>th</sup> November, 2022 when the present suit was filed in this court it is more than 21 years had elapse for the claim of compensation for mis-allocation of the suit land to be filed in the court, 15 years beyond the limited time for the claim of specific performance and it is six years beyond the required twelve years for filing in the court the claim for recovery of land.

He submitted that, when the plaintiff filed the instant suit in this court on 8<sup>th</sup> November, 2022, he was incurably time barred for all

purpose as required by the law. He stated the plaintiff ought to seek for leave or order from the Minister responsible for Legal Affairs extending the time within which he could have filed the suit in the court. He argued that, as provided under section 45 of the Act the limitation of time provided under the Act applies to any party even if the suit is against or by the Government.

He explained that, the points of preliminary objections they have raised emanates from the plaintiff's pleadings which are plaint and its annexures. He referred the court to the case of **Ali Shabani & 48 Others V. Tanzania National Roads Agency (TANROADS) & Another**, Civil Appeal No. 261 of 2020, CAT at Tanga (unreported) where it was stated that, preliminary objection is supposed to be based on some facts pleaded on the plaint without making reference to examination of any other evidence. He argued it was stated in the above cited case that time for doing anything starts to run upon accrue of that cause of action.

It was stated in the submission of all defendants that, the remedy for the suit instituted in the court beyond the time limit as provided under section 3 (1) of the Act is dismissal of the suit. They submitted that, as the suit was instituted in the court after the elapse of twelve years and without leave of the Minister responsible with legal affairs the

suit is hopelessly time barred hence it is supposed to suffer the dismissal order. The learned State Attorney cited in his submission the case of **Barclays Bank Tanzania Limited V. Phylisah Hussein Mcheni**, Civil Appeal No. 19 of 2016, CAT at DSM (unreported) where it was stated the law of limitation knows no sympathy or equity. It is a merciless sword that cuts across and deep into all those who caught in its web.

He went on arguing that, the plaintiff may argue he was making administrative communication with the defendants but be it as it may, the plaintiff has not pleaded the stated pre-court communication in his pleadings. He stated even if it was pleaded it would have not stopped running of the limitation of time for the plaintiff's causes of action. He supported his argument with the cases of **M/S. P & O International Ltd V. The Trustees of Tanzania National Parks (TANAPA)**, Civil Appeal No. 265 of 2020, CAT at Tanga and **Consolidated Holding Corporation V. Rajani Industries Ltd & Another**, Civil No. 2 of 2003, CAT at DSM (Both unreported) where it was stated it is a trite law that pre-court action of negotiations has never been a ground for stopping the running of limitation of time.

The learned State Attorney argued in relation to the second point of preliminary objection that, the plaintiff has sued the 4<sup>th</sup> defendant by

using a wrong name of Municipal Director, Kinondoni Municipal Council who is non-existent legal person in the eyes of the law. He argued that, as provided under section 14 (1) (b) of the Local Government (Urban Authorities) Act, Cap 288 of 1982, Kinondoni Municipal Council is a corporate body capable of suing or being sued in its own corporate name. To bolster his argument, he referred the court to the case of **Dotto Dofu V. The District Executive Director**, Civil Case No. 233 of 2016, HC at DSM (unreported) where it was stated that, District Executive Director is not a legal person capable of being sued. It was stated in the cited case it is the District Council itself which ought to have been sued.

He also referred the court to the case of **Respicious Emilian Mwijage V. The Municipal Director**, Ilala Municipal Council & Another, Land Case No. 27 of 2021, HC Land Div. at DSM (unreported) in which the case of the **Director NSSF V. Consolata Mwakisu**, Civil Appeal No. 329 of 2017 [2018] TZ CA was cited. It was stated in the later that, the proper position of the law is that it is only competent application which is supposed to be dismissed and those suffering from material defects are supposed to be struck out.

He argued that, if the suit would have not been suffering from being time barred the proper remedy would have been to strike out the

same for suing a wrong party but as the suit is time barred it is required to be dismissed. The first defendant's counsel referred the court to section 3 (1) of the Act and the case of **M/S French & Hastings V. National Insurance Corporation (T) Ltd & Another**, Civil Case No. 104 of 2008, HC at DSM (unreported) where it was stated any proceedings which is instituted in court after the period of limitation should be dismissed. The counsel for the defendants prayed the court to dismiss the suit as it was filed in the court beyond the prescribed period of limitation of time and the counsel for the first defendant prayed the suit be dismissed with costs.

In his reply the plaintiff started with the second point of preliminary objection which states the 4<sup>th</sup> defendant has wrongly been sued in the present suit. He appears not to dispute the stated objection as he joined hand the submission of the counsel for the defendants but stated that, the remedy available for the stated defect is to strike out the suit. He however referred the court to Order I Rule 10 (1) and (2) of the Civil Procedure Code, Cap 33 R.E 2019 and argued the error of citing the name of the 4<sup>th</sup> defendant wrongly is a bona fide mistake which can be corrected under that provision of the law.

He argued in relation to the first point of preliminary objection that, the counsel for the defendants have wrongly misdirected



themselves in the issue of limitation of time for the suit at hand. He argued the cause of action before the court is in respect of the land dispute and the remedies claimed by the plaintiff which includes compensation is not a cause of action. He stated the term cause of action as defined by **Mulla in the Code of Civil Procedure** 12<sup>th</sup> Edition, Vol. 1 at page 120 is a set of facts sufficient to justify a right to sue someone and upon proof attract remedies. He said it is because of the above stated reason he submitted that, a claim of compensation as a remedy cannot be the basis of determine limitation of time as argued by the State Attorney.

He argued that, although he has given the history of the matter from when he lost the suit land but he got the knowledge of the 1<sup>st</sup> defendant to be in possession of the suit land sometime after the year 2015. He stated prior to the mentioned period of time, he was not aware the 1<sup>st</sup> defendant and the 2<sup>nd</sup> to 4<sup>th</sup> defendants had taken possession of the suit land. He submitted the 1<sup>st</sup> defendant kept silence until when he re-applied for a new certificate of title in the year 2015 is when he became aware of the 1<sup>st</sup> defendant's occupation of the suit land illegally.

He submitted that, the cause of action against the 1<sup>st</sup> to 4<sup>th</sup> defendants accrued when he became aware of the 1<sup>st</sup> defendant was in

occupation of the suit land which was sometimes between the year 2014 and not in 2004 when he was totally unaware of the 1<sup>st</sup> defendant possession of the suit land. He went on submitting that, there is a mixture of law and facts and misinterpretation as from when the plaintiff's cause of action against the 1<sup>st</sup> defendant arose. At the end he prayed the points of preliminary objections raised by the defendants and the necessary party be dismissed in totality with costs for lack of merit and the suit allowed continue with hearing on merit.

In his rejoinder the counsel for the 1<sup>st</sup> defendant stated that, paragraph 15 and 18 of the plaint explain the effort made by the plaintiff in various offices in respect of what he called was the act of trespass done by the 4<sup>th</sup> defendant which technically lead to allocation of the suit land to the 1<sup>st</sup> defendant. He stated paragraph 18 and annexure GB2 shows the plaintiff became aware of the trespass on 26<sup>th</sup> December, 2005 as shown in the stated letter.

He stated paragraphs 15, 16 and 18 together with annexure WSD 1 to the first defendant's written statement of defence shows the certificate of title in respect of Farm No. 3650 was in possession of the 1<sup>st</sup> defendant and it was registered to him since 29<sup>th</sup> November, 2005. He argued that, the stated information was available in the land registry and no search was conducted by the plaintiff though he was aware

about the alleged trespass from the stated period of time. Finally, he prayed the suit be dismissed with costs.

Having carefully considered the rival submissions from both sides the court has found the issue for determination in this matter is whether the points of preliminary objection raised by the defendants deserve to be upheld. The court has found the position of the law in relation to the raising and determination of a point of preliminary objection as stated in number of cases including the case of **Mukisa Biscuit Manufacturing Co. Ltd V. West End Distributors Ltd**, [1969] EA 696 and **COTTWU (T) OTTU Union & Another V Hon. Idd Simba, Minister of Industries and Trade & Others**, Civil Application No. 40 of 2000, CAT at DSM (Unreported) is very clear as stated in the later case that: -

*"A preliminary objection must, first, raise a point of law based on ascertained facts not on evidence. Secondly, if the objection is sustained, that should dispose of the matter."*

While being guided by the position of the law stated in the above quoted cases, the court has considered what is stated in the submissions filed in the court by both sides and it has also gone through the plaint filed in the court by the plaintiff and its annexures and find it is proper to start with the point of preliminary objection raised by all defendants which states the suit before the court is hopelessly time barred.

The court has found the suit filed in the court by the plaintiff is based on three different causes of actions. The first cause of action is in respect of the claim of compensation for misallocation of the suit land to a new occupant which it is alleged was done by the 4<sup>th</sup> defendant through the District Commissioner. The second cause of action is in respect of the claim for specific performance of requiring the court to order the 1<sup>st</sup> defendant to revert the suit land to the plaintiff and the 2<sup>nd</sup> to 4<sup>th</sup> defendants be ordered to revoke the ownership of the suit land granted to the 1<sup>st</sup> defendant. The third cause of action is in respect of the claim for recovery of the suit land.

That being the causes of actions comprised in the claims of the plaintiff against the defendants, the court has found the issue to determine here is whether the stated causes of actions were instituted in the court within or out of the time prescribed by the law. The court has found as rightly argued by the State Attorney, proceedings relating to the stated causes of action have different limitation of time within which they ought to be instituted in the court.

The court has found as rightly argued by the State Attorney the limitation of time for instituting in court a proceeding for a claim of compensation for an act alleged to be done in pursuance of any written law as provided under item 1 of Part I of the Schedule to the Act is one

year. The court has also found the limitation of time for the claim of specific performance as provided under item 24 of Part I of the Schedule to the Act is six years and the claim for recovery of land as provided under item 22 of Part I of the Schedule to the Act is twelve years.

The computation of the stated period of time as provided under section 5 of the Act is supposed to be counted from the date on which the cause of action arises. The position of the law as to from which date the cause of action in respect of a claim for an immovable property is supposed to be said it has arisen was elaborated in the case of **Sultan Abdalla Gulam Hussein V. Mahmood Hussein Parkar, et al**, 2010 TLR 438 where it was held that: -

*"The claim of the immovable property should be within the limitation period which is 12 years. But the plaintiff has to have the knowledge of the dispossession of the same. If the plaintiff or claimant is not aware of the dispossession of the disputed property, the limitation period is not counted and the time starts to count properly when the claimant got knowledge of the dispossession of the ownership."*

That being the position of the law the court has found the claims of the plaintiff as pleaded at paragraph 7 of the plaint and sought in the reliefs clauses shows they are based on the cause of action which as averred at paragraph 16 of the plaint arose in 2004. The court has come

to the stated finding after seeing that, as rightly argued by the counsel for the defendants that is the year when the plaintiff was informed by the 4<sup>th</sup> defendant that he was no longer in possession of the suit land as it had already been redistributed to a new occupant following his failure to develop the same.

The court has found that, as rightly argued by the State Attorney, if you count from 2004 when the plaintiff was informed the suit land had already been redistributed to a new occupant to 8<sup>th</sup> November, 2022 when the suit at hand was filed in the court you will find it is about seventeen years beyond the period of one year within which the plaintiff was required to file in the court his suit for the claim of compensation for malicious and wrongful redistribution of the suit land to the first defendant which was done by the 2<sup>nd</sup> to 4<sup>th</sup> defendants. The court has found it is about twelve years beyond six years he ought to have filed in the court the claim of specific performance is claiming against the defendants and six years beyond the period of twelve years he ought to have filed in the court the claim for recovery of land.

The court has considered the argument by the plaintiff that he became aware the suit land had been redistributed to the 1<sup>st</sup> defendant in the year 2014 and not in the year 2004 and the argument that he was completely unaware of the 1<sup>st</sup> defendant being in possession of the suit

land and his association with the 2<sup>nd</sup> to 4<sup>th</sup> defendants but failed to see any merit in his argument. The court has come to the stated finding after seeing the plaintiff stated at paragraph 16 of his plaint and the letters annexed in his plaint as annexure GB2 that he was informed by the 4<sup>th</sup> defendant from the year 2004 that the suit land was no longer in his possession and it had already been redistributed to a new occupant.

It is the opinion of this court that, as the plaintiff had already been informed from the year 2004 that his land had already been redistributed by the 4<sup>th</sup> defendant to another occupant, then he was required to take the necessary step of claiming for his land within the time prescribed by the law against the 4<sup>th</sup> defendant and other person he thought had participated in the exercise of redistributing his land to a new occupant. To state he failed to institute the suit in the court from when he was informed the suit land had been redistributed to another occupier because he was not aware as to who was the new occupier of the suit land while he has not stated why he didn't file the suit in the court against the rest of the defendants has caused the court to fail to see any merit in his argument.

The court has arrived to the above finding after seeing that some of the claims of the plaintiff like that of compensation for malicious and wrongful misallocation of the suit land is sought against the 2<sup>nd</sup> to 4<sup>th</sup>

defendants and not against the 1<sup>st</sup> defendant. Therefore, there is no reason has been given as to why the plaintiff did not institute the stated claim in the court within the prescribed period of time. Even if it would have been taken as argued by the plaintiff that the claim of compensation and that of specific performance are stemming from the claim of land but the claim for recovering the suit land has already been found it is out of time for six years.

The court has also found that, even if it will be said the plaintiff was seeking for his rights through various Government offices as averred at paragraph 18 of the plaint and seeking to be informed to whom the suit land was redistributed but as rightly argued by the State Attorney it was stated in the case of **M/S. P & O International Ltd** and **Consolidated Holding Corporation** (supra) that, pre-court action of negotiations has never been a ground for stopping running of time. The court has found the further argument by the plaintiff that there is misinterpretation and mixture of the facts and law in relation to when the cause of action in his case arose has no merit because he has not expounded the stated argument to show the existence of the alleged misinterpretation and mixture of facts and law.

It is the opinion of this court that, even if it will be said the plaintiff would have not been able to institute his suit in the court before



knowing to whom the suit land had been redistributed, but as rightly argued by the learned State Attorney, the plaintiff was required after becoming aware to whom the suit land had been redistributed to seek for extension of time from the Minister responsible with legal affairs to institute his claim in the court out of time as provided under section 44 (1) of the Act.

Since the plaintiff instituted the present suit in the court after the elapse of the time prescribed by the law for all the causes of actions involved in his case and as there is no extension of time sought from the Minister responsible with legal affairs for instituting the suit in the court out of time as required by the law, the court has found the point of preliminary objection raised by the defendants is meritorious and deserve to be upheld. Having found the first point of preliminary objection deserve to be upheld the court has found the next question is what the remedy available for the plaintiff's suit is. The remedy for the suit filed in the court out of time as rightly argued by the defendants is provided under section 3 (1) of the Act which states as follows: -

*"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 thereof opposite thereto in the second column, shall be dismissed*

*whether or not limitation has been set up as a defence”.*

The foregoing provision of the law was restated by the court in the case of **Ali Shabani & 48 Others** (supra) where it was held that, the suit for claim of recovery of land which was instituted in the court beyond 12 years from the date on which the limitation of time accrued was time barred. It was further held in the above cited case that, as the suit was time barred, the only appropriate order to be made was to dismiss the same pursuant to section 3 (1) of the Act. The above finding makes the court to come to the view that, there is no need of continuing to deal with the second point of preliminary objection as the first point of preliminary objection is enough to dispose of the present suit.

In the final result the points of preliminary objection raised by the defendants that the suit is hopelessly time barred is hereby upheld and the defendant's suit is dismissed pursuant to section 3 (1) of the Law of Limitation Act and the costs to follow the event. Order accordingly.

Dated at Dar es Salaam this 15<sup>th</sup> day of June, 2023



I. Arufani

**JUDGE**

15/06/2023

**Court:**

Ruling delivered today 15<sup>th</sup> day of June, 2023 in the presence of the plaintiff in person, in the presence of Ms. Mary Masumbuko Lamwai learned counsel for the first defendant and in the presence of Mr. Julius Yosia, Principal State Attorney for the rest of the defendants and the necessary party. Right of appeal to the Court of Appeal is fully explained.



I. Arufani  
**JUDGE**  
15/06/2023