

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(ARUSHA DISTRICT REGISTRY)

AT ARUSHA

LAND CASE NO. 16 OF 2020

LEMINDI NJUDA..... PLAINTIFF

VERSUS

THE REGIONAL COMMISSINER OF ARUSHA..... 1ST DEFENDANT

DITRICT EXECUTIVE DIRECTOR OF

NGORONGORO DISTRICT COUNCIL 2ND DEFENDANT

THE ATTORNEY GENERAL 3RD DEFENDANT

RULING

8th, June & 16th July, 2021

MZUNA, J.

Lemindi Njuda, the plaintiff herein has filed this suit seeking among others for an order for compensation of the destroyed properties worth Tshs 1,527,100,000/- /= (Tanzanian shillings one billion five hundred twenty-seven million and one hundred thousand only) resulting from the alleged destruction and demolition of the properties of the plaintiff.

According to the filed plaint, such destruction was done following the order of the Arusha Regional Commissioner who alleged that he had trespassed within the area of Samunge Primary School. It is for that reason the Attorney General, the third defendant was made a party together with The Regional

leave of the court. He adds that, the said provision must be read together with section 5 of the Law of Limitation Act, [Cap. 89 R.E 2019]. To buttress his argument Mr. Mkama cited the case of **James Olimo t/a Victoria Secondary School vs Makunja MAdede Tang'ana**, Land Application No. 80 of 2010, HC Mwanza Registry (unreported) at page 6 also the case of **Denis Alberty Malembeka versus Kibaha Town Council** land case No. 14 of 2020 HC, DSM (unreported) at page 3 when the court held that, time limit to claim compensation is one year and therefore the suit is out of time and therefore it should be dismissed otherwise the party ought to have asked for leave to file it out of time.

The learned State Attorney further submitted that, issue of time bar is a matter of jurisdiction of the court as it was held in the case of **NBC Ltd & Another vs Bruno Vitus Swalo**, Civil appeal No. 331/2019, CAT at Mbeya (unreported) at page 9. On that ground Mr. Mkama, prays to this court to dismiss the suit with costs under s. 3(1) of the Law of Limitation Act [Cap. 89 R.E 2009] herein after (Cap 89).

Responding to the first ground of preliminary objection, the plaintiff said that the suit is not time barred because the dispute arose on 4th October, 2016 when the 1st Defendant issued an order that the farm should be destroyed and further that the State Attorney told him to remain patient while the matter was still being handled.

Commissioner of Arusha as well as Ngorongoro District Council (the first and second defendants respectively).

Before hearing could proceed, Mr. Msalama, the learned State Attorney for the defendants raised two preliminary points of objections, namely:-

- 1. That this suit is hopeless time barred*
- 2. That this suit is bad in law for contravening with section 6(2) and (3) of the government proceeding Act, Cap 5, R.E 2019 as amended by the Written Laws (Miscellaneous Amendments) Act No. 1 of 2020*

During hearing which was done orally, the plaintiff appeared in person or unrepresented.

The main issue(s) are:-

- 1. Whether the suit on a claim for compensation is time barred?*
- 2. Whether notice was served to the Attorney General before the institution of the suit as per the law?*
- 3. Whether the suit should proceed on merits?*

I propose to start with the first issue of time bar. Arguing on the first preliminary objection, Mr. Mkama, the learned State Attorney said that according to paragraph 8 of the plaint the dispute arose on 10/04/2016 and the case was instituted on 1/07/2020. So, counting from 10/04/2016 to 01/07/2020 there is a lapse of 3 years and 271 days. The learned State Attorney says, the limitation period for compensation is within one year under item No. 1 part one of the schedule to the Law of Limitation Act, [Cap. 89 R.E 2019]. To him, this case was filed out of the prescribed time and without

The plaintiff goes on submitting further that, because of that order, he was once criminally charged with the offence of trespass at the Primary court in Criminal case No. 165/2016 on 2/12/2016 and was acquitted on 21/12/2016. He substantiates his claim under Article 30 of the Constitution of the United Republic of Tanzania, 1977 as amended from time to time. He therefore prayed for this court to overrule the first preliminary point of objection.

Reading from the above submissions, it is plainly clear based on the plaintiff's plaint that the cause of action arose as par paragraph 8 on "*4th day of October 2016*" not on 10th April, 2016 as alleged by Mr. Mkama. The governing provision of the law in regard to issues of compensation is item No. 1 part one of the schedule to the law [Cap. 89] as correctly submitted by Mr. Mkama. It reads;

" For compensation for doing or for omitting to do an act alleged to be in pursuance of any written law the limitation period is one year"

In view of that provision of the law, since the suit was filed on 1/07/2020 well over three years, and above the one year prescribed by law, it is justifiable to say it was filed out of time, even then without leave of the court.

The plaintiff raised a point that at one time "the State Attorney told him to remain patient while the matter was still being handled" which suggest that there was sort of negotiations which however in view of the Court of Appeal

decision in the case of **M/s. P& O International Ltd vs. The Trustees of Tanzania National Parks (TANAPA)**, Civil Appeal No. 265 of 2020 (unreported) which cited with approval the case of **Consolidated Holding Corporation v. Rajani Industriues Ltd & Another**, Civil Appeal No. 2 of 2003 (unreported) that "time taken in negotiations does not fall under the specific grounds warranting exemption from limitation." So the allegation that he was told to be patient cannot favour the plaintiff for his lateness to file the suit within time.

Similarly, the allegation that he was criminally charged with the offence of trespass at the Primary court in Criminal case No. 165/2016 on 2/12/2016, Mr Msalama was right to say, none of the parties in that case is among the defendants. It was between **Philipo Paulo vs Lemidi Njuda** and the present Defendants were not parties in that case. Put it differently, the Criminal case did not deny him his right to institute a civil case.

Upon looking at those dates and time, it is apparent that this matter has been delayed unreasonably for more than three years. It was held in the case of **NBC Ltd & Another vs Bruno Vitus Swalo** (supra) at page 8 that:-

"...courts are enjoined not to entertain matters which are time barred. Limitation period has an impact on jurisdiction. Courts lack jurisdiction to entertain matters for which litigation has expired."


Having found that the matter was filed outside the prescribe time, I need not indulge myself to deal with the remaining issue of failure to file

notice to the Attorney General in view of the provisions of S. 6(2) and (3) of the Government Proceedings Act, [Cap. 5 R.E 2009] and the case of **Natural Wood (T) Ltd vs The Attorney General** Civil Case No. 139/2014 HC DSM Registry (Unreported) specifically at pages 6 and 7 cited to this court by Mr. Makama Msalama.

That said, this ground alone disposes the suit. It cannot proceed on merits based on the finding on the jurisdictional issue emanating from time bar. This suit is hereby dismissed with costs.

Order accordingly.




M. G. MZUNA,
JUDGE.
16/07/2021