IN THE COURT OF APPEAL OF TANZANIA
AT TANGA

(CORAM: MUGASHA, J.A., KOROSSO, J.A., And MWANDAMBO, J.A.)

CIVIL APPEAL NO. 265 OF 2020

M/S. P & O INTERNATIONAL LTD ..... APPELLANT

VERSUS

THE TRUSTEES OF TANZANIA NATIONAL PARKS (TANAPA) ..... RESPONDENT

(Appeal from the judgment and decree of the High Court of Tanzania at Tanga)

(Msuya, J.)

dated the 31st day of May 2016
in
Land Case No. 8 of 2012

RULING OF THE COURT

2nd & 9th June, 2021

MWANDAMBO, J.A.:

The appellant, M/s. P & O International Ltd was aggrieved by the decision of the High Court at Tanga (Msuya, J.) dismissing her suit against the respondent for monetary compensation and damages arising from acquisition of her land in Pangani District, Tanga Region. She is now appealing against that decision.

The facts giving rise to the suit before the High Court are not in serious dispute between the parties. On 18th July, 2005, H.E the

President of the United Republic of Tanzania made a proclamation vide Government Notice No. 281 of 2005, published on 16th September, 2005 declaring specified areas of land in Bagamoyo District, Coastal Region and Pangani District, Tanga region as part of Saadani National Park. The appellant had 76 acres in Mkwaja Village, Pangani District which formed part of the acquired areas under the proclamation. To that end, the respondent caused the valuation of the land covered by the proclamation for the purposes of establishing amounts of compensation to the land owners. By 2006, valuation of the land had already been carried out and approved by the relevant authorities before effecting compensation. It is common ground that the land owners in Mkwaja Village received their compensation except the appellant because her name did not feature in the list of the people to be compensated. It turned out the name of Akida Omari appeared in the list corresponding to the land owned by the appellant. However, according to the appellant, Akida Omary was a total stranger with no connection whatsoever to her.

As the appellant did not receive compensation along with others, she engaged the respondent for that purpose. After a series of

correspondence, the respondent agreed to cause a fresh valuation of the appellant's land which was carried out and approved by the Chief Government Valuer in December, 2011. Through the valuation report (exhibit P9), the appellant was to be paid TZS 576,708,353.00 as compensation for her 76 acres of land. However, the respondent appears to have reneged from her undertaking contending that it could not pay compensation on the fresh valuation considering that there was already a valuation on the land carried out in 2006 on whose basis other land owners received their respective compensation. According to the respondent, the appellant could only be entitled to interest on the delayed payment to which she did not agree. On 8/06/2012, the appellant made a formal demand notice through her advocates, M/s. S. L. Sangawe and Co. Advocates claiming TZS 576,708,353.00 as compensation plus damages in an amount not less than TZS 100,000,000.00. Since the respondent did not heed to the demand, the appellant instituted a suit before the High Court, Tanga Registry for an assortment of reliefs over and above the claimed compensation.

Not amused, the respondent resisted the suit contending as it did that the appellant was to blame for not getting paid her compensation in 2006 owing to her refusal to cooperate by failure to furnish some vital

information for the purposes of the valuation. Besides, it raised three preliminary objections in points of law on grounds; one, that the suit was incompetent; two, the suit was hopelessly time barred contrary to section 7(2) of the National Parks Act [Cap. 282 R.E. 2002]; and three, the appellant had no cause of action against the respondent. The High Court overruled the preliminary objections and thereafter, the suit proceeded to trial which terminated against the appellant resulting into a decree dismissing it with costs.

Dissatisfied, the appellant has preferred the instant appeal. The memorandum of appeal raises six grounds faulting the trial Judge for her failure to evaluate evidence properly on several aspects thereby arriving at wrong findings on the issues and dismissing the suit.

Like he did before the High Court, Mr. Stephen Leon Sangawe, learned advocate, represents the appellant in this appeal. He appeared before us for hearing whilst, Mr. Gabriel Paschal Malata, learned Solicitor General, represented the respondent assisted by Ms. Jenipher Kaaya and Mr. Richard Nsimba, both learned Senior State Attorneys resisting the appeal.

Prior to the commencement of the hearing of the appeal, we invited the learned counsel to address us on the competency of the suit

before the High Court and the resultant judgment and ultimately the appeal now before us. We did so mindful of the naked fact that the appellant's suit was for compensation falling under item 1 in the first schedule of the Law of Limitation Act [Cap. 89 R.E. 2019] (the Act) prescribing the time limitation on suits founded on compensation at 12 months from the date the cause of action accrued.

Addressing the Court, Mr. Sangawe argued that there is no dispute that the respondent did not pay compensation in 2006 for lack of valuation culminating into a fresh valuation conducted in 2011 after a series of exchange of correspondence. However, the learned advocate was adamant that time for claiming compensation must be reckoned from the date the appellant became aware of the valuation report which, if considered, places the appellant within 12 months prescribed under item 1 of the schedule to the Act. Under the circumstances, the learned advocate urged the Court to make a determination that the suit was not time barred and proceed to hear the appeal on merit.

With deep conviction and not surprisingly so, Mr. Malata argued that the suit was indeed hopelessly time barred in the light of the appellant's own pleadings in paras 6 and 15 of the plaint as well as the reliefs claimed read together with several documents in the record of

appeal. According to Mr. Malata, the plaint together with the identified documents would show that; one, the valuation of the land was done to all land owners whose land was acquired way back in 2006; two, the appellant was not paid along with others and claimed compensation in 2006 on the basis of the valuation carried out in 2005 following acquisition of her land vide Government Notice No. 281 of 2005. It was Mr. Malata's submission that the suit instituted on 25th July 2012 was hopelessly out of time warranting an order for its dismissal under section 3(1) of the Act. In response to the question on whether the plaint pleaded exemption under Order VII rule 6 of the CPC, Mr. Malata contended that no such facts were pleaded by the appellant and so she could not rely on that plea. Submitting further, Mr. Malata argued that pleading grounds on which a litigant seeks to rely is not optional. This is so since the word used in Order VII rule 6 of the CPC is **shall** denoting mandatory compliance consistent with section 53(2) of the Interpretation of Laws Act [Cap. 1 R.E. 2019]. The learned Solicitor General pointed out that the appellant did not do so in her plaint. For that matter, she cannot rely on the alleged exemption with the result that the proceedings before the High Court were irregular because the suit was time barred. For that reason, Mr. Malata invited the Court to

exercise its power of revision under section 4(2) of the Appellate Jurisdiction Act [Cap. 141 R.E 2019] (the AJA) to quash the proceedings before the High Court and set aside the judgment which will result in striking out the instant appeal for being incompetent.

Exercising his right to a final word, Mr. Sangawe had three arguments in rejoinder. One, no valuation was done in relation to the appellant's land which could have resulted in a claim for compensation. Two, the respondent is estopped from retracting from its own letter (annex 4 to the plaint) showing that valuation had not been done in relation to the appellant's land. Three, the appellant was entitled to rely on exemption from limitation having sufficiently pleaded facts in support of the exemption in pursuance of Order VII rule 6 of the CPC. It was his further submission that notwithstanding the acquisition of his client's land through Government Notice No. 281 of 2005, no compensation could have been paid in the absence of a valuation. The learned advocate reiterated his prayer urging the Court to hear and determine the appeal on merits.

We are grateful to the learned counsel for their submissions which have been useful for the determination of the issue under consideration. From the submissions, counsel for both parties agree on the applicable

limitation period for the institution of the suit prescribed under item 1 in the schedule to the Act. Likewise, there was no dispute in the counsel's submissions that it was the acquisition of the land vide G.N. No 281 of 2005 which triggered the right to compensation followed by the respondent's failure to pay compensation to his client along with the rest of the landowners in the year 2006.

Having closely considered the facts of the case disclosed in the pleadings against the submissions by counsel, there is no doubt that the cause of action arose in 2006 when the respondent failed to pay compensation to the appellant. Like Mr. Malata, we agree that a look at paragraphs 6 and 15 read together with item (c) in the relief section in the plaint will bear testimony to this aspect. We shall let the paragraphs speak for themselves as below:

> "6. *That on or around 2006, valuation of the land which was declared to be National Park, was carried out, and all people were affected with the acquisition, were paid compensation, except the plaintiff (P&O International Limited).*
>
> *15. That now the plaintiff claims a total of Tshs. 576,708,353/= being the compensation in respect of the loss of accommodation of the said shamba and loss of profit, for nonuse of the said land, since 2006, when*

compensation was affected to the rest except the plaintiff as per the valuation report. "

In para (c) in the reliefs in the plaint, the appellant claimed general damages in the sum not less than TZS 100,000,000.00 on account of the alleged financial hardship she sustained for the non-use of the land from the date it was taken over and the appellant stopped from using it.

In our view reading them together, the above mean nothing less than demonstrating that the right to claim compensation did not start in 2011 as contended by Mr. Sangawe. It arose in 2006 when the appellant was denied payment of compensation along with other owners of the land acquired vide G.N. No. 281 of 2005. Without any disrespect to Mr. Sangawe, we hold the view that whether or not the respondent had conducted valuation on the appellant's land was irrelevant for the purposes of enforcing her right to claim compensation by way of a suit. It is evident that the appellant never sought to enforce her right to claim compensation by way of suit before 2012. On the contrary, what the appellant did all along was to engage in negotiations with the respondent which turned out to be abortive by her refusal to pay

compensation on the basis of a valuation carried out in 2011 long after the period for instituting a suit for compensation had expired.

It is trite that pre- court action negotiations have never been a ground for stopping the running of time. Our decision in **Consolidated Holding Corporation v. Rajani Industries Ltd & Another**, Civil Appeal No. 2 of 2003 (unreported) cannot be more relevant in this appeal for the proposition that negotiation do not check the time from running. The Court sought inspiration from a book by **J.K Rustomji** on the **Law of Limitation,** 5th edition to the effect that the statute of limitation is not defeated or its operation retarded by negotiations for a settlement pending between the parties. We draw a similar inspiration from a decision of the High Court at Dar es salaam in **Makamba Kigome & Another v. Ubungo Farm Implements Limited & PRSC,** Civil Case No. 109 of 2005(unreported) whereby Kalegeya, J (as he then was) made the following pertinent statement:

> "*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 a shrewd wrong doer, plunging him beyond the period provided by law within which to mount an action for the*

actionable wring, does so at his own risk and cannot front the situation as defence when it comes to limitation of time." (at page 16)

In our recent decision in **Barclays Bank Tanzania Limited v. Phylisiah Hussein Mchemi**, Civil Appeal No. 19 of 2016 (unreported), we cited with approval a statement from another unreported decision of the High Court, Dar es salaam Registry in **John Cornel v. A. Grevo (T) Limited**; Civil Case No. 70 of 1998 thus:

> *"However unfortunate it may be for the plaintiff; the law of limitation is on actions knows no sympathy or equity. It a merciless sword that cuts across and deep into all those every who get caught in its web."*

It follows thus that, having held that the cause of action arose in 2006, the suit instituted on 25/07/2012 was hopelessly time barred. It should have been dismissed under section 3(1) of the Act.

Next, we shall consider whether the appellant pleaded facts to exempt her from limitation. In terms of Order VII rule 6 of the CPC, a party who seeks to rely on exemption from time limitation has an obligation to plead grounds for such exemption. The grounds which are permitted for the purpose of exemption are specified under sections 20,

21, 22 and 23 of the Act. Mr. Sangawe, albeit half-heartedly, maintained that the plaint contains such grounds to which Mr. Malata did not agree. Be it as it may, mindful of the holding in **Consolidated Holding Corporation v. Rajani Industries Ltd & Another** (supra), the time taken in negotiations does not fall under the specified grounds warranting exemption from limitation.

Assuming negotiations fell within the specified grounds for seeking exemption, we do not think that the appellant has succeeded in surmounting this hurdle. Apart from narrating the factual background and what transpired between 2006 to 2012, there is nothing in the plaint supporting Mr. Sangawe's contention and this is not a surprise to us. It is clear from the pleadings that the appellant never considered that she was time barred so as to plead exemption from limitation. To bring into play exemption under Order VII rule 6 of the CPC, the plaintiff must state in the plaint that his suit is time barred and state facts showing the grounds upon which he relies to exempt him from limitation. With respect, the plaint has done neither. We are, yet again, inspired by what Mapigano, J stated in **Alphons Mohamed Chilumba v. Dar es Salaam Small Industries Co-operative Society** [1986] T.L.R 91 thus:

"Order 7 rule 6 CPC provides 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. 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...' (at p.92).

We respectfully share the same view with the learned High Court Judge being satisfied that it reflects a correct legal position relevant to the instant appeal. The net effect is that since the appellant did not bring her suit within the ambit of Order VII rule 6 of the CPC, we agree with Mr. Malata that the suit should have been dismissed under section 3(1) of the Act for being time barred. As the suit was time barred, the trial court had no jurisdiction to adjudicate it and pronounce judgment from which an appeal could lie to this Court.

In the exercise of our revisional jurisdiction under section 4 (2) of the AJA, we quash the proceedings of the High Court in Land Case No. 8 of 2012 and set aside the judgment and decree from it. In the upshot,

the purported appeal is incompetent having been preferred from a non-existent judgment and decree. The incompetent appeal is accordingly struck out. Owing to the fact that the issue on which the appeal has been disposed was raised by the Court itself, we make no order as to costs.

Order accordingly.

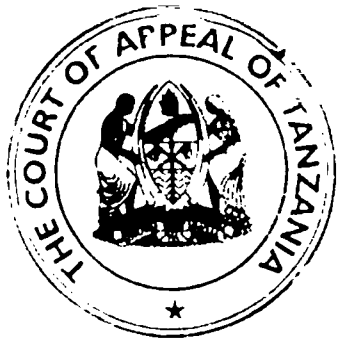
DATED at **TANGA** this 9th day of June, 2021.

S. E. A. MUGASHA
JUSTICE OF APPEAL

W. B. KOROSSO
JUSTICE OF APPEAL

L. J. S. MWANDAMBO
JUSTICE OF APPEAL

The Ruling delivered this 9th day of June, 2021 in the presence of Mr. Stephen Leon Sangawe, learned counsel for the Appellant and Ms. Luciana Kikala, learned State Attorney for Respondent, is hereby certified as true copy of the original.



F. A. MTARANIA
DEPUTY REGISTRAR
COURT OF APPEAL