

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

LAND CASE NO. 245 OF 2022

JAMAL A. NASSORO (Suing as an Attorney of
ASMA S. SALUMU)PLAINTIFFS

VERSUS

JAMILA A. MNEKEA.....1ST DEFENDANT
ABDALLAH KHALFAN WANGOMO.....2ND DEFENDANT
JOHN HAMPHREY TEMBA.....3RD DEFENDANT
RAJAB MTOMAYE SAID.....4TH DEFENDANT
HASSAN KADEWELE.....5TH DEFENDANT
MAIKO BONIFACE LOGAN.....6TH DEFENDANT
MANZI ATHUMANI MATEWELE.....7TH DEFENDANT
HAMIS SHABAN JUMA.....8TH DEFENDANT

R U L I N G

Date of Last Order: 09/11/2022
Date of Ruling: 24/11/2022

T. N. MWENEGOHA, J.

The defendants herein have been sued jointly for trespassing into the plaintiff's land, described as Plot No. 124 with a Certificate of Title No. 36963, located at Mbagala Service Area, Dar es Salaam. The 2nd – 8th defendants on their part, have raised a preliminary objection against this suit that, the same is time barred.

In their joint written submissions, Advocates Deus Singa and Khadija Tweve for the 2nd – 8th respondents maintained that, based on paragraphs 6 and 7 of the plaint, it is obvious that the cause of action arose in 2009. That, the plaintiff had a full knowledge of the existence of that trespass since the year 2009. Hence, he cannot file this case in the year 2022, because the time to lodge the same has already expired. That, it is beyond the 12 years period given by the law of Limitations Act, Cap 89 R. E. 2019 under Section 3. That, above all, there is no single word, phrase, clause or paragraph in her plaint showing the grounds for her to plead exemption under Order VII Rule 6 of the Civil Procedure Code, Cap 33 R. E. 2019. Therefore, this suit should be dismissed. They cited several cases to support their arguments, including the case of **M/S P&O International Limited vs. The Trustees of Tanzania National Park, Civil Appeal No. 265 of 2020, Court of Appeal of Tanzania (unreported)**.

In reply, Mr. Christopher Kajituel for the plaintiff maintained that, the rules are settled that, the period used by the plaintiff to prosecute the other cases in gratis are to be excluded when computing the time for commencing an action. That is the requirement of section 21(1) of the Law of Limitation Act, Cap 89 R. E. 2019. That, in the case at hand, the plaintiff knocked on the doors of the court immediately after the action of

trespass occurred. That was in 2009, when he instituted a Land Application No. 119 of 2009, before the District Land and Housing Tribunal for Temeke, claiming ownership of the suit property. Therefore, this suit is not time barred and the plaintiff is entitled to the reliefs sought. To support his arguments. Mr. Kajituel cited the case of **Salimu Lakhani & 2 Others vs. Ishfaque Shabiri Yusufali, Civil Appeal No. 327 of 2019, Court of Appeal of Tanzania at Dar es Salaam (unreported)** In their rejoinder, the counsels for the 2nd to 8th defendants, reiterated their submissions in chief.

I have given the submissions by parties the consideration they deserve. The issue for determination is whether the objections have merits or not. I am in line with the counsels for the 2nd to 8th defendants that, this suit has been preferred after the expiry of the required period within which the same was to be instituted. The arguments of the plaintiff however are derived from the provisions of Section 21(1) of the Law of Limitation Act, Cap 89 R. E. 2019. The learned counsel has asked this Court to exclude the period used by the plaintiff in pursuing the Land Application No. 119 of 2009, before the District Land and Housing Tribunal for Temeke, be excluded.

On the other hand, the counsels for the 2nd to 8th defendants did not dispute this fact, however, they were concerned with the procedure for exclusion of the said period. They insisted that, the plaint should have contained the facts upon which the plaintiff is relying for exemption of the period they spent in court as provided for under Order VII Rule 6 of the Civil Procedure Code, Cap 33 R. E. 2019.

Again, I agree with the counsel for the plaintiff, that we should exclude the period used by the plaintiff in prosecution of Land Application No. 119 of 2009, before the District Land and Housing Tribunal for Temeke. As per the submissions by the plaintiff's counsel, the said case came to an end on the 6th August 2010. The matter at hand was instituted on the 22nd September, 2022, about 12 years and 46 days from the date when the previous case, vide Land Application No. 119 of 2009, was concluded. Therefore, even if we exclude that period from 17th July 2019, when the case was instituted at Temeke District Land and Housing Tribunal, to 6th August, 2010 when it was finalized, I still find this suit to be barred by time. There is a period of about 46 days, exceeding from the 12-year period required by the law, for suits of this nature to be instituted. That period is the one which need to be exempted, if the plaint was written in accordance with the provisions of Order VII Rule 6 of the Civil Procedure

Code, Cap 33 R. E. 2019. That, it should have contained a phrase, statement, or paragraph showing the grounds for delay for the plaintiff to plead exemption. Since the provisions of Order VII Rule 6 of the Civil Procedure Code, Cap 33 R. E. 2019 was not complied with, I find the objection by the 2nd to 8th defendants have merits and sustain it accordingly.

The suit is hereby struck out with costs




T. N. MWENEGOHA

JUDGE

24/11/2022