

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

LAND CASE NO.285 OF 2017

MWANAIIDI ABDALLAH JUMA..... PLAINTIFF

VERSUS

DAMIAN KIMARO.....DEFENDANT

RULING

OPIYO -J

Mwanaidi Abdallah Juma has lodged a suit against Damian Kimaro in this court. She alleged that, on May 2017, the defendant Mr. Damian Kimaro invaded her land, located at the Vikawe Village, Kibaha District at Pwani Region. When replying the claims against him through the written statement of defence, Mr. Kimaro through his learned Advocate P.R. Madaha, raised a preliminary objection against this suit to the effect that, the same is time barred. Mr. Madaha went on to raise a counter claim alleging that Mwanaidi Abdallah Juma is the one who invaded the Land of Mr. Kimaro in 2017 and sold the same to a number of persons including Mr. Mrosso, Henry Touwa, Selina Peter and others. When the reply to the counter claim from Mwanaidi Abdallah Juma reached Mr. Kimaro's Advocate, two further objections were raised that, the defendant to the counter claim (Mwanaidi Abdallah Juma) has no *locus standi* to defend the counter claim and also the written statement of defence to the counter claim is incurably defective for failure

to disclose the name of the drawer. Against that background, the court ordered the hearing of the preliminary objections raised in the main suit and to the written statement to the counter claim to proceed by way written submissions. Mr. Said Aziz appeared for the plaintiff and the defendant was represented by Peter Madaha.

Starting with the 1st objection which was raised against the main suit that it is time barred. The submissions of Mr. Madaha on this point were that, the instant suit has been filed 15 years from the date when the cause of action arose. That, the cause of action arose in 2003 while the suit was filed in 2017, therefore it should be dismissed for being filed contrary to Item 22, part 1 of the law of Limitation Act, Cap 89 R.E 2002. He also cited the case of **Ephraim Shayo versus Kassim John Mashimba and Others, Land Case No. 216 of 2013, HC, Land Div. (unreported)** to cement his point and dismissing the instant case.

Replying the 1st objection, Mr. Said Aziz, Advocate for the plaintiff submitted that, the cause of action in regard to this matter arose in 2017 when the defendant invaded plaintiffs land she has been owning since 1988 accompanied with land surveyors with aim of surveying the same and not in 2003 when the defendant allegedly purchased the land. He argued that it is not true that the defendant was in use of the land since 20103 as he alleges, instead, it is the plaintiff who developed the land in dispute by constructing a house. He also contended that after all this objection lacks the criteria of being on point of law as stated in **Mukisa Biscuits Manufacturing Co. Ltd. Vs West End Distributors Ltd. (1969) EA 696** as the same requires ascertainment by production of evidence.

Having carefully gone through the submissions of both parties through their respective Advocates. In regard to the first preliminary objection, my observation starts with the common understanding that, point of law must be that of sufficient importance apparent on the face of record, not one that would be discovered by a long drawn argument or process (**Lyamuya Construction Company Ltd versus Board of Registered Trustees of Young Women Christians Association of Tanzania, Civil Appeal No. 2 of 2010** (Unreported)) the time limitation goes hand in hand with when cause of action arises. the parties have locked horns on when the cause of action arose. Is it on 2003 when the defendant allegedly purchased the land or 2017 when alleged cross invasions or trespasses occurred. The plaintiff stated in her plaint on paragraph three that the cause of action arose in 2017. The defendant came with new facts that it arose in 2003 and not 2017. This is in itself an obvious clash of facts between the two parties which in considered opinion defeats the definition of a what a point of law is as put forward by the Court in above Lyamuya Constructions Case. As there is still a dispute on when a cause of action arose, by each claiming a different date, this matter requires string evidence to determine. Thus it does not qualify to be determined at a preliminary stage as an objection. Consequently, the first point of objection is overruled unless proved otherwise by production of evidence.

Turning to the two objections raised against the written statement of defense the counter claim, that the defendant in the counter claim (Mwanaidi Abdallah Juma) has no *locus Standi* to prosecute the plaint and defend the

counter claim. The plaintiff brushes this objection away on the ground that it is also not on pure point of law as parties are likely to be required to bring evidence to prove the need to have power of attorney or not to sue. Irrespective of that, it is true that in reply to the counter claim the plaintiff admitted to have sold part of land to other people while her claim in the plaint is for the wholesome of the disputed land, including those already sold. In the circumstances she has no locus in respect of the land she had already sold. As it is not clear from her entire claim as to how much of the land has been sold already and how much is remaining in her hand, if at all, her *locus standi* for a claim of a specific piece of land has indeed not been established against the defendant and plaintiff to the counter claim. The effect of this does not go only to her defence to the counter claim, rather to her entire claim in the plaint. I therefore proceed to struck out plaintiff's suit with no order as to costs

As this preliminary objection fully disposes the matter, I need not dwell on the remaining point of objection.



M. P. OPIYO,
JUDGE
21/12/2020