

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
MWANZA DISTRICT REGISTRY
AT MWANZA

LAND CASE No. 04 OF 2022

NYANZA FOLKLORE RESEARCH INSTITUTE
(NFRI 1985).....PLAINTIFF

VERSUS

MWANZA CITY COUNCIL.....1st DEFENDANT
ATTORNEY GENERAL.....2nd DEFENDANT
THADEUS COSMAS KOMBA.....3rd DEFENDANT

RULING

Last order: 18.08.2022

Ruling date: 11.10.2022

M. MNYUKWA, J.

This is a Ruling in respect of the preliminary points of objection raised by the 1st and 2nd defendants through the learned state attorney.

The points of preliminary objection that were raised as follows;

- 1. That, the plaintiff has no locus stand.*
- 2. That, this suit is time barred.*



3. *That, the plaint does not contain a description of the suit land sufficient to identify it.*
4. *The suit is bad in law for failure of the plaintiff to include necessary party.*
5. *The suit is premature for failure of the plaintiff to serve the 1st defendant 90' days statutory notice.*

In brief, the facts of the case are as follows; the plaintiff claims against the defendants for unlawfully allocation and encroachment of her piece of land measuring 12 acres situated at Nyabulogoya-Nyegezi within Mwanza City, with a value of Tshs. 250,000,000/=. That, the plaintiff developed the suit land by planting various species of trees which are traditional medicine. That, the 1st defendant surveyed the disputed plot and a total of 19 surveyed plots were obtained and allocated to different persons including the 3rd defendant and this was the cause of the dispute.

The plaintiff further claimed that, through a letter dated 7th January, 2004 from the 1st defendant, he was restrained from doing anything in the disputed land pending valuation which is not conducted to date. That, while the plaintiff is waiting compensation, the 1st defendant proceeded to allocate the surveyed plots to different persons. After realizing that, on 9th July 2016, the plaintiff wrote a letter to the director of the 1st defendant informing him that all 19 plots that were surveyed, are within his land. That after different correspondences, the 1st defendant



informed the plaintiff that they are in the process of revoking the right of occupancy to the person who were allocated land and the same will be allocated to plaintiff. While the plaintiff was waiting to be allocated the piece of land, the 1st defendant issued the building permit to the 3rd defendant who started construction, while he was already promised that the right of occupancy of all persons who were allocated the disputed land will be revoked. He therefore, instituted the present suit praying for this court to declare him as a legal owner of the disputed land, and a declaration that the allocation of the disputed land to different person were illegal. He also prayed the 1st defendant be ordered to give vacant possession of the disputed land and the revocation of the right of occupancy to be done, to all persons allocated the disputed land by the 1st defendant.

When the defendants were served with the plaint, as I have earlier on stated, the learned state attorney representing the 1st and 2nd defendants raised five points of preliminary objection. On the day the matter was scheduled for hearing of the preliminary objection, he abandoned the 5th point of preliminary objection and argued four points of preliminary objection.

During hearing of the raised preliminary objection, the plaintiff was represented by Dioniz Mwasi, learned counsel, while the 1st and 2nd defendants were represented by Joseph Vungwa learned state attorney



and the 3rd defendant was represented by Kelvin Mtatina also learned advocate. The preliminary objection was argued orally.

Submitting on the first preliminary objection, the learned state attorney started by citing the case of **Lujuna Shubi Balonzi v Registered Trustee of Chama cha Mapinduzi** [1996] TLR 203 that, any person who claims right in court has to show that, his right or interest has been breached. He averred that in our case at hand, the plaintiff did not show if his right has been interfered because in paragraph 7 of the plaint, the plaintiff introduced himself as Nyanza Folklore Research Trust while in our case at hand he introduce himself as Nyanza Folklore Research Institute (NFRI 1995). He claimed that, the person who filed the case is different from a person whose interest has been interfered. He added that, the plaintiff has no locus stand to appear before this court and therefore he prayed the matter to be dismissed.

On the second preliminary objection, the learned state attorney submitted that, the suit is time barred as the plaintiff's annexures which is the letter dated 7/01/2004 shows that the valuation was done and he was supposed to be paid compensation. He added that, in 2018, the plaintiff revived his claim and complained to the District Commissioner in which 14 years lapsed without any complain. He concludes that, the suit is time barred and the only remedy is for it to be dismissed. He supported his argument by referring the decisions in the case of **Kabuya Isore v**

Mtuli Nyegeli [1989] TLR 172, **Alphonse Mohamed Chilumba v Dar es Salaam Small Industry Cooperative Society** [1986] TLR 91 and the case of **Malecela Mwita v Kibui Nzengwa** [1989] TLR 113.

On the third limb of preliminary objection, he refers to Order VII Rule 3 of the Civil Procedure Code, Cap 33 R.E 2019 that, as the dispute is on immovable property, the plaintiff shall describe and identify sufficiently the disputed plot. He said that, if the disputed land is surveyed, it shall be described by the title number. He attacked the description given by the plaintiff which describe the suit land to be situated at Nyabologoya-Nyegezi in Mwanza City to be vague and not proper for identification of the suit land. He supported his argument by referring to the decision of this court in the case of **Daniel Dagala Kinuda v Masaka Ibello and 4 others**, Land Appeal No. 26 of 2015 and the case of **Abutwalib A Shoko v John Long** and Another, Land Case No. 20 of 2017. He finalized by stating that, the plaintiff did not show if the disputed land is registered or unregistered as its boundaries were not stated.

On the fourth objection, he submitted that the suit is bad in law for failure to include the necessary party. He argued that, one of the reliefs in the plaintiff's complaint is revocation of the title deeds issued and that all the defendants in this case they don't have power to revoke the title except the Registrar of Titles who is not party to the case. He stated that, the requirement of joining the necessary party has been stated in the case



of **Efratha J Mlay (As administrator of the estate of the late William Jacob Ngowi) v Josephine Rasieli Mremi/Josephine William Ngowi and Another**, Land Case No. 31 of 2019. He also referred to the decision of the Court of Appeal in the case of **Ngerengere Estate Company Ltd v Edna William Sitta**, Civil Appeal No. 209 of 2016, CAT at Dar es Salaam where the Court of Appeal held that, it will be absurd to the court to grant order to the Registrar of Title who is not party to the case. He finalized in this point by citing the case of **Abdulatif Mohamed Hamis v Mehboob Yusuf Osman & Another**, Civil Revision No. 6 of 2017, CAT at Dar es Salaam. He retires his submission in chief by praying the suit to be dismissed since some of the preliminary objection had the effect of dismissing the suit while other striking it out.

In rebuttal, the counsel for plaintiff on the 1st and 2nd points of the preliminary objection invited this court to the famous case of **Mukisa Biscuit Manufacturing Ltd v Westhand Distributors** (1996) EALR 696 which gives guidance on the preliminary objection to be on pure point of law and not fact to be ascertained. On the first preliminary objection he submitted that, the objection need evidence because Nyanza Folklore Research Trust in which the certificate of registration is attached, has changed since the year 2000 through a letter of the plaintiff dated 1/12/2000 which resulted the plaintiff to be known as Nyanza Folklore Research Institute (NFRI 1995) that's why all the official correspondence

done by the plaintiff and the 1st defendant was done in the current plaintiff's name. He concludes that, the said objection is baseless and it should be dismissed as the plaintiff had locus stand.

On the second objection, he strongly disputed the suit to be time barred. He stated that this matter requires evidence too. He stated that the dispute arose on 04/03/2021 when the 1st defendant wrote a letter to the 3rd defendant to authorize him to start construction. He said that, the 1st defendant asked the plaintiff to wait for compensation or other directives. He therefore, prays this objection to be dismissed too.

On the third objection, the counsel submitted that, the plaint discloses the suit land as it is unregistered land, it is difficult to describe it. He stated that section 3(a) of the Civil Procedure Code, Cap 33 R.E 2019 cures that anomaly.

On the fourth objection he submitted that, the necessary party is defined according to the circumstance of each case. He added that, in the present case the suit is filed against the 1st defendant who is allocated land and not the Registrar of Title. He therefore prays the matter to be dismissed.

Rejoining, the learned state attorney stated that, the point of law is observed on the plaint and from the plaint there is no letter which shows that the plaintiff changed her name. As there are two institutions, the

locus stand is not there. He further insisted that, from 2004 up to 2018, the plaintiff delayed for 14 years.

On the issue of proper identifying the disputed land, he rejoins that, in the plaint attached, it is shown that, the land is surveyed while the plaintiff's counsel submitted that the land is unsurveyed, still there is need to describe the suit premises by location and boundaries to differentiate it from other piece of land.

He concludes that, as the 1st defendant is the one who allocated land, the duty to conduct survey and revoke title is to the Registrar of Title who is not joined as the necessary part. He thus prays the matter to be dismissed with costs. On his part the 3rd defendant did not add anything from the submissions of the other defendants.

Upon hearing the rival submissions of both parties, this court is now placed to determine the preliminary objection raised by the 1st and 2nd defendants and argued by the plaintiff as to whether they are meritorious. Since one of the preliminary points of objections touched the issue of jurisdiction, as it challenges the suit to be time barred, wisdom requires this issue to be disposed first as the question of jurisdiction goes to the very root of the matter, and determining the other issues would depend on the determination of jurisdictional issue.

It is a settled position of law that in determining preliminary objection the court has to look on the pleadings presented by the parties which



does not need support from evidence as it was rightly held in the case of **The Soitsambu Village Council v. Tanzania Breweries Ltd and Another**, Civil Appeal No. 105 of 2011 that: -

"A preliminary objection must be free from facts calling for proof or requiring evidence to be adduced for its verification. Where a court needs to investigate such facts, such an issue cannot be raised as a preliminary objection on a point of law. The court must, therefore, insist on the adoption of the proper procedure for entertaining applications for preliminary objections. It will treat as a preliminary objection only those points that are pure law, unstained by facts or evidence, especially disputed points of fact or evidence. The objector should not condescend to the affidavits or other documents accompanying the pleadings to support the objection such as exhibits."

It is further the trite position of the law that an objection on account of time limit is one of the preliminary objections which courts have held to be based on pure point of law which touches on the jurisdiction of the court and whose determination does not require ascertainment of facts or evidence. To determine such an objection, the court needs only to look into the plaints and its annexures without any further facts or evidence to be ascertained in determining as to whether the suit is time barred. In the case of **Ali Shabani and 48 Others vs Tanzania National Roads Agency and The Attorney General**, Civil Appeal No. 261 of 2020, when



the Court of Appeal faced with an akin situation, at page 8 of its Judgement stated that: -

"It is clear that an objection as it were on account of time bar is one of the preliminary objections which courts have held to be based on pure point of law whose determination does not require ascertainment of facts or evidence. At any rate, we hold the view that no preliminary objection will be taken from abstract without reference to some facts plain on the pleadings which must be looked at without reference examination of any other evidence."

Going by the above authorities, it is clear that, to determine the preliminary objection court needs only to look into the plaints and its annexures without any further facts or evidence to be ascertained in determining as to whether the same is proved or not.

In looking at the plaints and its annexures we abide to the principle of law that parties are bound by their own pleadings as it was also held in the case of **Barclays Bank (T) LTD V Jacob Muro**, Civil Appeal No. 357 of 2019 when the Court of Appeal stated that:

"It is a cardinal principle of law that the parties to the suit should always adhere to what is contained in their pleadings."

Having closely scrutinize the plaint and what has been stated therein and the submissions of the parties when arguing the second point of the

preliminary objection, there is no doubt that, the cause of action arose when the 1st defendant surveyed the land and allocated it to different persons. When looking at paragraph 11 and 13 of the Plaint read together with the Item (a) to (e) in the relief section in the Plaint, will bear testimony as to when the cause of action arose, let the said paragraph speak for themselves:

"11. That the 1st Defendant surveyed the area and a total of 19 plots were surveyed and allocated to different peoples including the 3^d defendant and this was the cause of the dispute.

*13. That, after arose of this dispute, through a letter with reference no L. 22017/250/HUK from Mwanza City Office, the Plaintiff was restrained from doing anything in the disputed land pending valuation which was not take place to date. **A copy of a letter which is attached, marked Annexure BCL-3 for which leave of this Honourable Court is craved to refer to it as part to this Plaint.**"*

In his prayer, the plaintiff prays against Defendants herein jointly and/or severally for judgment and decree of this honourable court in the following reliefs;

(a) That this honourable court be pleased to declare the plaintiff as the legal owner of the disputed land of 12



acres located at Nyabulogya Nyegezi within Mwanza City.

- (b) That this Honourable Court to declare the allocation of the dispute land made by 1st defendant is illegal and the title deed issued to different people is illegal.*
- (c) That the 1st defendant be ordered to hand over the disputed land to the plaintiff and vacant possession.*
- (d) Revocation order of right of occupancy of persons allocated by the 1st defendant.*

It is evident from paragraph 11 and 13 in the plaint that, the dispute arose in 2004. I say so because, in his attached letter MCL3, the plaintiff was restrained by the 1st defendant from doing anything on the disputed land and he was promised to await compensation. It is that promise which made the plaintiff to relax and slept on his right as he had never claimed his right of compensation by way of suit. Sad enough, the plaintiff initiated the process of claiming back his piece of land on 2018 when he engaged the District Commissioner to investigate on the disputed piece of land. However, at the time when he engaged the District Commissioner he was already out of time, as the claim on piece of land has to be brought within twelve (12) years from the date when the cause of action arose.

The Law of Limitation Act, Cap 89 R.E 2019 prescribes that, suit founded on claim of land are regulated by Part 1 of the Schedule, Column


1 Item 22 and Column 2 Item 22 which provides that, such suits should be instituted within twelve (12) years from the date the right of cause of action accrues. The right of cause of action is also meaning the time when the right to sue accrues.

As to when the right to sue accrues, C. K Takwani on his book *The Civil Procedure with Limitations Act, 1963*, Eastern Book Company, 7th Edition published on 2015 authored that:

"Limitation starts running from the date right to sue accrues in favour of a party. "Right to sue means" right to seek relief, i.e right to approach a court of law. Thus, there can be no "right to sue" until there is an accrual of right asserted in the suit..."

What has been stated by C. K Takwani in the above quoted paragraph, is what has been provided for under section 4 and 5 of the Law of Limitation Act, Cap 89 R.E 2019.

Reverting now to our case at hand, as I have indicated earlier on, the plaintiff's right to sue, accrues the moment the 1st defendant surveyed his piece of land and allocated it to different persons including the 3rd defendant as he alleged, and not from the time when the 1st defendant issued the building permit to the 3rd defendant as the permit was issued after he was being allocated the land. As the 1st defendant restrained the plaintiff from planting trees on the disputed land, it means he was denied



the right to use the disputed land. It is from that moment when the right to sue accrues because, his right to use and enjoy his land was curtailed.

As it is evident on paragraph 13 and Annexure BCL 3, the plaintiff was restrained on 7th January, 2004 from doing anything on the disputed land and yet he did not file a suit until on 28th March 2022 which is the period of 18 years and 2 months, that means the plaintiff filed his suit out of the prescribed time as he had delay for a period of six years (6) years, and two (2) months.

Having hold that, the cause of action arose on 7th January, 2004 and the suit instituted on 28th March 2022, it is hopelessly time barred and the same deserved to be dismissed as it is provided for under section 3(1) of the Limitation Act, Cap 89 R.E 2019.

In the case of **M/S P & O International Ltd v The Trustees of Tanzania National Parkes (TANAPA)**, Civil Appeal No. 265 of 2020, the Court of Appeal of Tanzania buying inspiration from the decision of this court in **John Cornel v A. Grevo (T) Limited**, Civil Case No. 70 of 1998 held that:

"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 who get caught in its web."



It follows thus that, since the suit before this Court is time barred, this Court had no requisite jurisdiction to adjudicate the matter. In the upshot, I find the 2nd point of preliminary objection has merit and consequently sustained. As this point of preliminary objection dismiss the suit, I find no good reason to proceed with disposing other points of preliminary objection.

In the event, the suit is accordingly dismissed with no order as to costs.

It is so ordered.



A handwritten signature in blue ink, appearing to be "M. Mnyukwa".

**M. MNYUKWA
JUDGE
11/10/2022**

Court: Ruling delivered on 11th day of October, 2022 in presence of all parties.

A handwritten signature in blue ink, appearing to be "M. Mnyukwa".

**M. MNYUKWA
JUDGE
11/10/2022**