

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

LAND CASE NO. 68 OF 2023

PATRICK SANGA.....PLAINTIFF

VERSUS

**BAKER & SONS SAFARI COMPANY LIMITED.....1ST DEFENDANT
GRAYDON BAKER.....2ND DEFENDANT**

JUDGMENT

20TH to 26TH September, 2023

E.B. LUVANDA, J

Patrick Sanga (the Plaintiff herein) who is a Tanzanian is suing Graydon Baker (Second Defendant herein) Canadian and founder and majority shareholder of Ms. Baker & Sons Safari Company Limited (First Defendant herein), complaining against the duo Defendants to have colluded with fraud to fabricate a lease agreement dated 24/07/2014 for a suit land measuring five acres situated at Mloka Village, Utete – Rufiji formerly dubbed as Ndoto Kidogo, by inventing or inviting the First Defendant who trespassed the suit land and forcefully kicked out the Plaintiff from peaceful enjoyment of the leasehold, thereby extinguishing or melting away completely investment by way of joint venture or partnership on the

part of the Plaintiff, alleged had legitimate expectations to partner with the Second Defendant.

According to the facts disclosed at the cross examination marshalled successful by the Plaintiff who fended on his self, DW1 (Second Defendant) stated that the first occasion to come across the Plaintiff who according to DW1, is a polyglot for being renowned and exalted to have an excellent English (speaking) and fluent in French and German, they met at Ndovu Camp along Rufiji River on the boat, where the Plaintiff was working on Safari as tour guide and supervision at Ndovu Camp with semi autonomous, and Second Defendant tourist but potentially determined to buy or invest on Safari Lodge along the vicinity of Selous Game Reserve this can be seen in his email address styled, crocodilegraydon@gmail.com. It is when discussions for investment or trading on Safari started, although not certain on the form of a business whether partnership, joint venture, firm, company or solo, seemingly everyone was having a dream of his own on his mind or soul without sharing, communicating or speaking out or revealing to each other.

While the Tanzanian was thinking of partnership, the Canadian on the other hand had a dream of a private or family and some how firm business. This can be evidenced by initial emails of communication and correspondence between the duo, in particular after the Canadian had

resumed back to her mother land Dominion Canada at North America. According to emails forming part of a bundle of annexure BG1 to the joint written statement of defence, the first email send by the Plaintiff to the Second Defendant on 12th December, 2013 regarding application of land, the plaintiff wrote... "The Village Government Committee will discuss **our applicatin** (sic, application) and make approval..."

On 15th December, 2013 the Second Defendant responded that "... are the chances good that they will approve **my application for the land?**"

On 19th December, 2013 the Plaintiff changed language instead of saying our application as communicated in the first email, he wrote "3: they will approve **your application for the land...**". On 20th December 2013 the Second Defendant also changed (twisted wording instead of singular form used on his first email, this time he wrote "*Ahsante sana rafiki*, keep us updated about the meetings and progress for **our land applications.**"

On 31st December, 2013 the Plaintiff wrote "...I think after 7 days and everything it will be *fine for us...Mungu akubariki sana*". On 18th January 2014, the Plaintiff send email to the Second Defendant titled "CONGRATULATION TO YOU", with contents, which it is pertinent to quote at length, and I bold portion of my interest,

*"Hi Graydon, it is a good news to tell you that the Village General meeting which was held today 18th January, 2014 gave us the area of **NGOTO KIKOGO**.*

*It was really intense competition between **our application** and another application...the main secret which made us to win the competition is our plan to do also agriculture which means we will have some tractor so I promised that we will bring the tractor which every one within the village will use it, and will belong to the Mloka Village government and another is the free English School, the first priority is tractor this can be between 3.5 up to 7 tons is okay..."*

The last email to the bundle of annexure BJ-1, is dated 6th February, 2014, which depict the Plaintiff send an attachment of a handwritten executive summary in capital letters/case somewhat skeleton report regarding the whole process of application for an approval of land, statement of account of money received from the Second Defendant to facilitate the entire process, and the second paragraph from the bottom of the executive summary report read, I quote:-

"THE TRACTOR WILL REMAIN UNDER BAKER AND SONS VILLAGERS WILL USE IT UNDER REASONABLE PRICE TO HELP THEM AND TOOLS WHICH I ANALYZED IN OUR APPLICATION

FOR THE TRACTOR TO PULL IT IS ONLY PLOUGH AND HARROW"

There is no email which was attached showing response to these two emails. Unfortunate all these emails including the executive summary mentioned above were not tendered in evidence for reasons best known to the Defendants.

Thereafter the Plaintiff initiated a formal process of requesting for allocation for land vide a letter for application for allocation of land dated 03/01/2014 exhibit D2, whereby the Mloka Village Council convened meeting to receive and evaluate the application as per exhibit P3, subsequently tabled it to the Village General Assembly which approved allocation of land as per exhibit P4. In exhibit P2 depict applicants are Patrick Sanga and Graydon Baker, equally exhibit P3 and P4 depict land was allocated to Patrick Sanga and Graydon Baker. In a minutes of Mloka Village Council exhibit P5 where the Second Defendant was formerly introduced to the villagers, the Second Defendant was referred as "investor" and Plaintiff was referred as his partner. In the minutes of the Mloka Village Council meeting dated 21/07/2014 exhibit P6, which the Plaintiff bragged to have convened to deliberate and thereafter concluded that Patrick Sanga and Graydon Baker were the tenants who could execute a lease agreement, however an addendum to it which reflect the

intended terms of a lease agreement, suggest the tractor will be under the supervision of a company and the tenant promised that the Manager of his company will be an indigenous villager. In the addendum there is no mention of partnership. In fact it was vague, in a sense that even the so called company or firm was not disclosed. On the same date to wit 21/07/2014 a general assembly meeting was convened as per minutes exhibit P7, where the villagers were informed that the land was allocated and handed over to the Plaintiff and Second Defendant.

In view of the above, the Plaintiffs contended that the First Defendant who executed a lease agreement with the Mloka Village Council (the latter is not a party to the suit) exhibit P10, are invader and trespasser to the suit land and exhibit P10 is invalid and forged one, on the ground that there is no any document indicating that the First Defendant had applied for allocation of land or any minutes for either Village Council or Village General Assembly approving the allocation of land to the First Defendant.

The Plaintiff accused and heaped blame to one Ali Rwambo (was not summoned as a witness) who is the Village Executive Officer (VEO) Mloka Village for being hypocrite and two faced person, for that he (VEO) participated to sign the disputed lease agreement exhibit P10 at the same time when the Defendants wrote a letter dated 16/08/2017 exhibit P8 requesting alteration of Village Council and General Assembly minutes to

reflect the name of the First Defendant instead of the Plaintiff and Second Defendant, the VEO turned around disallowed it, instead advised the Second Defendant to reconcile with his partner the Plaintiff, as per a letter exhibit P11.

The Second Defendant on the other had contended that all those were pre contractual arrangements, were done in his absence by the Plaintiff and accused the later for misrepresenting to the Village Council and Village General Assembly regarding allocation of land to himself and Second Defendant, money for facilitation a sum of USD 2,000 alleged to be conned, purchase of a tractor for the village and construction of free English medium school for indigenous pupil (children) which he (Second Defendant) did not promise. The Second Defendant alleged that he was not conversant in Swahili (although email above had some wordings in Swahili version, and he allege to had stayed in Tanzania at the University of Dar es Salaam for one year on missionary works or assignment); alleged he was not given a feed back, although the executive summary was emailed to him with details including updating by email), also conceded that the Plaintiff shared copies of alleged Swahili version to his best friend one Godfrey Mwakisitu, also DW1 conceded to have received a scanned copy. DW1 disowned the Plaintiff on that they are not partners, did not form any company, did not have any agreement, there is no legal

entity that exist or created between him and the Plaintiff. According to DW1, the Plaintiff was acting as an agent and broker for his (DW1) Company and was paid USD 2,000 initial payment for facilitation, paid allowance of 50,000/= per month, handed over a bodaboda worthy Tshs 2,000,000/= as per a card exhibit D9 which was appreciated by the Plaintiff and requested two more, as per the email dated 8th June, 2015 exhibit D7. DW1 contended that this company has invested over 200,000 USD on the suit land, and the Plaintiff invested nothing. DW1 stated that his company is paying land rent Tshs 1,200,000 per annum, hotel levy USD 3 per person per night, exhibit PD6, handed over a school and tractor to Mloka Village as per letter of appreciation from the District Commissioner and District Executive Officer exhibit D4 and D5, respectively. While the Plaintiff has nothing to offer.

At the final pre trial conference the following issues were framed: One, whether the Plaintiff has furnished any consideration to Mloka Village to entitle him to be a lessee along with the First Defendant; Two, whether the Court can step into the shoes of Mloka Village and create a lease for the Plaintiff; Three, whether the First Defendant trespassed to the disputed land; Four, whether the Plaintiff suffered any general damages; Finally, reliefs entitled by the parties.

As it transpired at the trial and also reflected in the pleading, the Plaintiff is suing the Defendants over the impugned lease agreement executed on 24th July, 2014, exhibit P10, whose tenure is only fifteen years, expiring on 23rd July, 2029. In other words the tenor of the lease is currently running on the second half, as at the time of inception of this matter. The predominant claim of the plaintiff is trespass and invasion to the suit land alleged committed by the First Defendant at the invitation of the Second Defendant vide a lease agreement exhibit P10. In paragraph eleven of the plaint, it is pleaded by the Plaintiff that shortly after the allocation of land, the Plaintiff was barred assessing (sic, accessing) the suit land by the Defendants for reasons that he was a broker and that his duty had been officially terminated after successful acquiring of the suit land.

When the last witness for defence was testifying, one Bakari Hassan Mwesimba (DW3), after he was asked the last question on cross examination by the Plaintiff, DW3 stated that, I quote

"Your ought to query on time, the leas agreement was signed in 2014 it is now 2023.

I picked from there and asked myself if this suit was preferred competently within time.

It is common knowledge that suits founded on the tort of trespass to the land, the available period to sue is three years, see item 6 Part I of the Schedule to the Law of Limitation Act, Cap 89 R. E. 2002.

Herein, the act of trespass is alleged to have occurred upon execution and implementation of the lease agreement exhibit P10, signed on 24th July, 2014. Therefore the three years expired on 24th July, 2014.

In the case of **Sixmund Luambano vs Vodacom Tanzania Limited & Others**, Miscellaneous Land Case Appeal No. 2/2020, High Court Songea, this Court speaking through Honorable Moshi, J as she then was, had this to say at pages 6 and 7,

*'The Court of Appeal in the case of **Avit Thadeus Massawe vs Isdory Assenga** (supra), defined the concept of trespass to mean;*

"entering, remaining or causing an object to fall on the premises/land in the possession of another without permission and/or without justification cause"

This Court went on to say, at page 7,


*'The ingredients of the tort of trespass are entering (physical or through an object) or remaining on the land, possession of premises. In the case of **Avit Thadeus** (supra) the Court of Appeal held that trespass to land is*

a tort and the remedies available to the claimant are perpetual injunctions and monetary compensation'

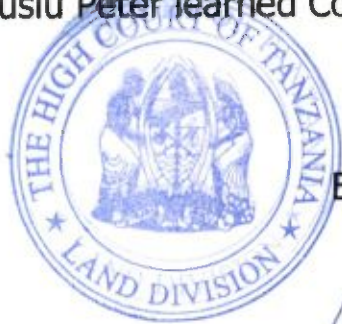
Herein, the wrongful acts complained of, were committed 24th July, 2014 and this suit was instituted on 17th March, 2023. In my respective view, the Plaintiff ought to have instituted this suit before the 24th of July, 2017. But as it transpired in the record of the proceedings, this suit was instituted on 17th March, 2023 as aforesaid well after the elapsed of six years. It is crystal clear that, this suit is barred by the law of limitation as it was filed after the expiry of the period of limitation prescribed by the law. In my view, the suit is liable to be dismissed.

Therefore, I agree with the argument of Mr. Senen Mponda learned Counsel for Defendants that this suit is incompetent for it is barred by the period of limitation.

The suit is dismissed. However, in view of the circumstances of this suit it is undesirable to order costs. Therefore, each party to shoulder his or her costs.


E.B. LUVANDA
JUDGE
26/09/2023

Judgment through video conference attended by the Plaintiff in person and Mr. Lusiu Peter learned Counsel for First and Second Defendants.



E.B. LUVANDA
JUDGE
26/09/2023