

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

LAND APPEAL NO. 275 OF 2023

(Originating from Application No. 221/2017, Kinondoni
District Land and Housing Tribunal)

EMMANUEL ZEPHANIA SWAI.....APPELLANT

VERSUS

JUMA ABDALLAH KIMBELETE.....1ST RESPONDENT

ABDALLAH SALUM KIMBELETE.....2ND RESPONDENT

WILIRK KONDRADI KIMARIO.....3RD RESPONDENT

JACKSONI ANTHONY MSULA.....4TH RESPONDENT

RAMADHANI SELEMAN MWANGONGOLWA.....5TH RESPONDENT

KAJUNA MUSTAFA6TH RESPONDENT

MOSHI HERI SATIMA.....7TH RESPONDENT

JUDGMENT

25/09/2023 to 29/09/2023

E.B. LUVANDA, J

When I was crafting this Judgment, I entertained a doubt as to whether the trial Tribunal had requisite jurisdiction to entertain the matter over specific performance of a sale agreement dated way back on 15/07/1997. Where the Appellant herein alleged purchased a land measuring four acres from the Second Respondent named above for a consideration of Tshs 200,000/=. It was alleged by the Appellant that a sum of Tshs 200,000/= was agreed to

be payable in two equal instalments, the first instalment was paid at the execution of a sale agreement and the second one paid after two months. The Appellant contended to have discharged his obligation, and upon payment of the second installment, the Second Respondent recalled back the sale agreement executed at the first instalment, for reasons that he intended to amend it to accommodate the second phase payment of Tshs 100,000/= but the alleged amended sale agreement was not forthcoming. Sequel to that, the Second Respondent changed mind and altered the size of the land from four acres to two acres. Thereafter Second Respondent changed again and their terms of sale and size of a land, scaled down to a plot measuring ninety by fifty metres, as depicted on a sale agreement dated 15/07/1997 exhibit P1. The remaining one acre the Appellant alleges was trespassed by the First, Third, Fourth and Sixth Respondents as from 2013.

At a trial, the Appellant who testified as PW1, disowned a signature in exhibit P1. The Second Respondent alleged exhibit P1 was executed by One Goodlove Swai who claimed to have full instructions to represent his father (Appellant herein) to formalize the sale agreement in respect of a piece of land measuring ninety by fifty as opposed to four or two acres claimed by the Appellant. The Second Respondent contended that a piece of land measuring ninety by fifty is currently occupied by the said Goodlove Swai.

In view of that I invited the learned Counsel to address me as to whether the Tribunal proceeded with jurisdiction to entertain the matter on merit to its finality.

In his submission, Mr. Isaac Nassor Tasinga learned Counsel for the Appellant submitted that the Appellant purchased land in 1996 and the Second Respondent reduced the the size of the land to two acres which act was condoned by the Appellant, where the two acres remained for the Appellant, one of the acre he constructed a house and a remained acre remained undeveloped. He submitted that the Appellant had no cause of action against any of the Respondents because the land was not invaded, except in 2013 when it come to the knowledge of the Appellant that it was divided into plots and sold to the Respondents. He submitted that the Appellant could not institute the suit before 2013 because had no cause of action against any person including the Respondents.

Mr. Abdul B. Kunambi learned Counsel for Respondents submitted that the dispute between the Appellant and Second Respondent arises in 1996. He submitted that a dispute between the Appellant and Second Respondent is time barred because from 1996 up to 2013 when the suit was filed, it is almost twenty one years.

As per the recap above, the facts above, in particular the impugned sale agreement exhibit P1, the alleged sale took place on 15/07/1997. The second instalment was alleged to had taken place two months later, where the Second Respondent called back the initial sale agreement and refused to formalize the sale agreement compromising a land measuring four acres. Thereafter refused to formalize the agreement for two acres. The Appellant disowned a sale agreement exhibit P1.

The claim for specific performance was filed on 06/06/2017, being after elapse of twenty years.

According to item 7 of Part 1 to the Schedule of Law of Limitation Act, Cap 89 R.E. 2002, a period of limitation to sue on suit founded on contract is six years.

For the sake of argument, assuming the Appellant claim ownership of two acres, as pleaded in the relief, still he will be caught on the web of limitation.

This is because the same emanate from non performance of an agreement for sale dated 15/07/1997. My undertaking is grounded on a fact that on cross examination the Appellant asserted that he don't have an agreement for purchasing four acres neither for down sizing from four to two acres. Importantly the Appellant avoided to plead or state a specific period on which

the alleged addendum to relinquish four acres and remain with two acres, was done.

It is elementary law that a period for suing over ownership of land is twelve years. Counting from 1997, twelve years to recover the four or two acres as the case may be, ended on 16/07/2009.

Therefore the Tribunal had no jurisdiction to adjudicate over the suit which is time barred.

The proceeding of the Tribunal below are quashed and a judgment set aside.

The appeal is dismissed. However I make no order for costs, because the point was raised at the court accord.



E.B. LUVANDA
JUDGE
29/09/2023

Judgment delivered through virtual court attended by Godlove Swai on behalf of the Appellant and Mr. Abdul B. Kunambi learned Counsel for Respondents.



E.B. LUVANDA
JUDGE
29/09/2023