

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE DISTRICT REGISTRY OF DODOMA  
AT DODOMA**

**LAND CASE NO. 19 OF 2022**

**GEORGE MWANJILA .....PLAINTIFF**

**VERSUS**

**THE CITY COUNCIL OF DODOMA.....1<sup>ST</sup> DEFENDANT**

**THE ATTORNEY GENERAL.....2<sup>ND</sup> DEFENDANT**

**RULING**

*Date of Last Order: 09/08/2023*

*Date of Ruling: 26/09/2023*

**A.J. Mambi, J.**

This ruling emanates from the preliminary objection raised by the defendants. It is on the records that the plaintiff on the 21<sup>st</sup> of July, 2022 filed the suit against the defendants claiming for among others a compensation. The defendants raised a preliminary objection basing on time limitation. The defendants in their preliminary objection and their written statement of defense contended that "*the suit is hopelessly time barred*".

During hearing the learned State Attorneys for the defendants (by Mr. Nikodemus Agweyo and Kumbuken Kondo) contended that the plaintiff

in his suit is claiming for compensation for the cause of action that accrued on 17/09/2018 as per paragraph 11 of the plaint. The learned State Attorneys submitted that the Plaintiff filed its plaint on 20/06/2022 which is after three years and nine months contrary to item 1 column 1 of Law of Limitation Act, Cap 89 [R: E 2019]. They argued that item 1 column 1 of Law of Limitation Act, Cap 89 [R: E 2019] provides that a claim of compensation must be filed within one year. The learned State Attorneys submitted that the plaintiff was out of time for two years and nine months thus making his suit incompetent. The defendants prayed this Court should dismiss this suit under section 3 of Cap 89. The learned State Attorneys referred this court on the decisions of the court in **M/S. P & O International Ltd vs The Trustees of Tanzania National Parks (TANAPA)**, Civil Appeal No. 265 of 2020 and **Tanzania National Road Agency and Another vs Jonas Kinyagula**, Civil Appeal No. 471 of 2020.

In response, Mr. Machibya leading his fellow counsels Ms. M. Mbasha and Tumain Mmary for the plaintiff contended that the preliminary objection raised by the respondent lacks merits since the plaintiff in his plaint is claiming declaratory orders and not compensation. The leaned counsels referred this Court to paragraphs of the plaint that they

believed show the main reliefs. Mr. Machibya further submitted that item 24 part 1 of the 1<sup>st</sup> schedule of the Law of Limitation Act provides for the limitation for declaratory orders or decree is six years and not one year. He referred this court to the decision of the court in **CRDB (1996) Ltd vs Boniface Chimya (2003) TLR 413.**

In his submission, Mr. Machibya averred that the matter at hand was not on acquisition of land rather the plaintiff is complaining the conduct of the 1<sup>st</sup> defendant of marking a letter 'X' into the suit land which he claims to be his land. The learned Counsel referred paragraph 15 and 16 on the effect that the plaintiff claims are based on the fact that the 1<sup>st</sup> defendant is intending to evict the plaintiff and his tenants. He was of the view that the dispute in this matter is on ownership of the suit land. He argued that the defendants at para 6 of their joint written statement of defense appears to be admitting that there is no acquisition and the plaintiff is a trespasser. The learned counsel referred this Court on the decision of the court in **Dr. Iddiphonce Alphonse and 2 Others vs Joseph Mponda and 4 Others,** Land Case No. 5 of 2018 at page 6 and 7.

With regard to the decisions referred by the defendants, Mr. Machibya submitted that they are all distinguishable with the case at hand as

they are all involved on acquisition and compensation whereas in the case at hand, the dispute is on ownership of the suit land.

In their rejoinder, the learned State Attorneys referred this Court on Order VII Rule 1 (e) on cause of action and Order VII Rule 1 (g) on relief and submitted that the cause of action in the plaint are found under the facts and not in the relief. They further contended that paragraph 10, 11, 12 and 13 of the plaint show that the plaintiff is claiming for compensation and nothing else.

Having considerably gone through the parties' pleadings the submission in support and against the point of preliminary objection that was raised by the defendants, the main issue for determination is whether the suit before this court is time barred or not. Before determining as to whether the matter is time bared, this court need to briefly address when the cause of action arose. For easy refence worth highlighting the legal concept on cause of action. Briefly a cause of action is the legal right on which a claimant sues. The claimant must indicate clear facts which will justify a court to award a legal remedy. It follows that, the cause of action can be the fact or combination of facts that give a person the right to seek judicial redress as a result from some wrongful act or breach that has caused a person loss or

damage. In other words, the cause of action is the heart of the complaint, which is the pleading that initiates a law suit. In this regard, a cause of action gives a person a right to sue or standing to sue or "locus standi" (or "locus" for short, from the Latin "A place to stand on"). See also the decision of the court in **JOHN M. BYOMBALIRWA v AGENCY MARITIME INTERNATIONALE (TANZANIA) LTD** 1983 TLR 1 wherein the court considered Order VII Rule 1 of the Civil Procedure Code, Cap 33 [R.E.2019]. See also **K v Paddington, Valuation Officer, ex-parte Peachey Property Corpn Ltd [1966] 1QB 380 at 400-1 and Ex-parte Sidebotham** case [1880] 14 Ch D 458, [1874-80] All ER 588].

Having highlighted the legal concept of cause of action, the question is; did the plaintiff in the case at hand indicate a cause of action against the defendants? The answer is obviously **YES**, since the plaintiff categorically stated in his plaint that he claims the defendants jointly and/or severally for the payment of Tsh. 357,000,000/= as a compensation of his land and its developments. My thorough perusal from the plaint it is clear that paragraph 4 is a foundation of the plaintiff's claims against the defendants. Indeed, that particular paragraph 4 of the plaint reads as follows;

*'That, the plaintiff's claims against the defendants jointly and/or severally is for **the payment of Tsh 357,000,000/= being the compensation of his parcel of land** of width 24 metres and length 32 metres with its developments at Sabasaba grounds, viwandani ward and Dodoma City and the payment of general damages". Emphasis Supplied.*

Reading between the lines on the above paragraph, it is clear that the cause of action for the plaintiff is mainly based on the claim for compensation. To show that the plaintiff's main claim is based on compensation, the plaintiff in the preceding paragraphs of his plaint is still insisting and demonstrating the reasons as to why he is claiming such amount and when the said cause of action arose. It is also on the records that the plaintiff in his plaint alleges that he owns a landed property which lies on the land at Sabasaba Grounds, Viwandani Ward within Dodoma City (*the suit land*) having bought it from the Registered Trustees of the Organization of Tanzania Trade Unions (OTTU) in 1996. The plaintiff in his plaint is further alleging that on that very year, that is 1996 the 1<sup>st</sup> defendant surveyed the suit land and shifted petty traders on that particular land. The plaintiff further states that it was until 17<sup>th</sup> September, 2018 that was when the 1<sup>st</sup> defendant marked the suit land with letter "X" ordering him to demolish his buildings without notice. The plaintiff further states that

despite his protest, the 1<sup>st</sup> defendant went ahead with re-surveying the suit land and obtained a certificate of title for 99 years from 1<sup>st</sup> July, 2019. It appears the plaintiff was complaining compensation from the defendant for demolishing his alleged property. Reference can also be made to the part of the plaint where the plaintiff is seeking relief and several orders. Under the relief part the plaintiff is among others praying to this Court for an order of this Court to declare that the suit land belonged to him and he is entitled to payment of compensation at the tune Tsh. 357,000,000/= . The plaintiff is further claiming that where the defendants fail to pay him the compensation, they should be permanently restrained from dealing with the suit land.

Basing on the facts and narration of the plaintiff in his plaint, I am of the settled view that the main claim for the plaintiff is compensation. It is clear from the plaint that the plaintiff is seeking a compensation from the defendants for having acquired and demolished his land as he claimed. As alluded above the plaintiff in his plaint is also submitting that in case the defendants fail to compensate him, this Court should bar the defendants from dealing with the disputed property. As I further observed that paragraph 4 of the plaint by the plaintiff is very clear where the plaintiff is stating that on 17<sup>th</sup> September, 2018 when

he was ordered to demolish his buildings on the suit land. Now if one computes the time from the date of 17<sup>th</sup> September, 2018 when the course of action arose as per the plaint till the 21<sup>st</sup> July of 2022 when the matter was first filed, it is clear that more than one year (the time limitation under the law) has elapsed. This in my view the plaintiff filed his case out of the time required by the law. Indeed, the provision of the law that is Item 1 of Part 1 of the 1<sup>st</sup> schedule to the Law of Limitation Act, Cap 89 [R:E 2019] provides for the time limit within which to claim compensation that is one year from the day when the land was taken. For easy reference Item 1 of Part 1 of the 1<sup>st</sup> schedule to the Law of Limitation Act, Cap 89 [R: E 2019] which deals with the period of limitation for suit provides that;

*“ Period of Limitation For compensation for doing or for omitting to do an act alleged to be in pursuance of any written law is one year”*

My plain interpretation of the above provision of law or any other written law on time limitation is that where the law puts a time limit to a cause of action or time to claim any right in the court of law or any organization dealing with dispute settlement, that limit cannot at any rate be waived even if the opposite party does not raise any issue of time limitation”. Whether the plaintiff had knowledge or not on the



time limitation, this court cannot dispense the mandatory requirement of the law. I am constrained to hold that whether the suit land was legally acquired or not by the defendants but since the plaintiff claims are mainly based on compensation, such claims has not been timeously brought before the court as per the requirements of the law of limitation.

The Law of Limitation Act, Cap 89 under section 3 of has put a general provision on time limitation for instituting suits or any action.

This section provides that:

*"3 -(1) Subject to the provisions of this Act, every proceeding described in the first column of the Schedule to this Act and which is instituted after the period of limitation prescribed therefore opposite there to in the second column, shall be dismissed whether or not limitation has been set up as a defence".*

Addressing the consequences of filing an appeal out of time was underscored by the court in The Court in **TANZANIA DAIRIES LTD v CHAIRMAN, ARUSHA CONCILIATION BOARD AND ISAACK KIRANGI 1994 TLR 33 (HC)**. In this case the court observed that:

*"Once the law puts a time limit to a cause of action, that limit cannot be waived even if the opposite party desists from raising the issue of limitation"*

Reference can also be made to the decision of the court of Appeal of Tanzania in ***the Director of Public Prosecutions v. ACP Abdalla Zombe and 8 others*** Criminal Appeal No. 254 of 2009, CAT (unreported) where the court held that:

*"this Court always first makes a definite finding on whether or not the matter before it for determination is competently before it. This is simply because this Court and all courts have no jurisdiction, be it statutory or inherent, to entertain and determine any incompetent proceedings."*

I therefore agree with the defendants that that the suit was filed out of time limit required by the law. With due respect I find the point of preliminary objection by the respondents has merit. Since my findings have revealed that the suit is time barred. All in all, the records clearly show that the suit was not brought timeously before this court since it was brought beyond the legal requirements of one year.

For reasons I have given above, I am of the settled view that the preliminary objection beforehand is meritorious and is accordingly sustained. Since the purported suit is incompetent for being filed out of time it means there is no proper suit before this court.

From the foregoing brief discussion, I am of the settled mind that the suit before this court is unsuitable and untenable and it could not have

founded a proper claim before this court. Consequently, the suit filed by the plaintiff is hereby dismissed. I make no order as to costs.

It is so ordered.



A handwritten signature in blue ink, appearing to be "A. J. Mambi", written over the seal.

**A. J. MAMBI**

**JUDGE**

**29/09/2023**

Ruling delivered in Chambers this 29<sup>th</sup> of September 2023 in presence of Kumbukeni Kondo and Agness learned State Attorneys for defendants and Lilian Kimaro learned counsel for the plaintiff.



A handwritten signature in blue ink, appearing to be "A. J. Mambi", written over the seal.

**A. J. MAMBI**

**JUDGE**

**29/09/2023**

Right of Appeal explained.



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**A. J. MAMBI**

**JUDGE**

**29/09/2023**