

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(DODOMA DISTRICT REGISTRY)

AT DODOMA

LAND CASE NO. 14 OF 2023

YORAM PAULO.....1ST PLAINTIFF
REV.PETRO JACKSON MPOLO.....2ND PLAINTIFF
SAMSON CHISWAGALA MGONHWA3RD PLAINTIFF
JULIUS CHISWAGALA MGONHWA4TH PLAINTIFF
ELIAS YAKOBO MHANDO 5TH PLAINTIFF
ASHERI CHI WALIGO MGONHWA6TH PLAINTIFF

VERSUS

THE PERMANET SECRETARY MINISTRY OF DEFENCE AND

NATIONAL SERVICE1ST DEFENDANT

ATTORNEY GENERAL2ND DEFENDANT

RULING

29/8/2023 & 3/10/2023

KHALFAN, J.

The Plaintiffs named herein above (being the representatives of 511 other villagers living at Ihumwa and Makulu areas within Dodoma City), have sued the Defendants over a land dispute claiming that they have been using the suit land since time immemorial but the same has been illegally taken by the 1st Defendant. The Defendants have filed their joint Written Statement of Defence along with a notice of preliminary objection, thus:

“The suit is hopelessly time barred.”



The preliminary point of law was heard on the 29th day of August, 2023 where the Plaintiffs were represented by Mr. Fred Kalonga the Learned Counsel, while the Defendants were represented by Ms. Kumbukeni Kondo, Ms. Agnes Makubha and Mr. Omary Ngatanda, the Learned State Attorneys.

The Defendants submitted in support of the preliminary point of law that the suit is time barred contrary to item 1 in the First Schedule to the Law of Limitation Act [Cap 89 R.E 2019]. That, according to paragraphs 9, 10 and 15 as read with Roman I of the reliefs claimed by the Plaintiffs the dispute is about compensation; hence it ought to have been filed within twelve (12) months' time since the cause of action arose.

Nonetheless, the Plaintiffs instituted the suit in April 2023 which is past twelve (12) months' time counting from 2013. To fortify their submissions, the Defendants implored the Court to be guided by the decisions in the cases of **Ali Shabani and 48 Others v. Tanzania National Roads Agency (TANROADS) and Another** (CAT) Civil Appeal No. 261 of 2020, Tanga Registry (unreported) and **M/S. P & O International Ltd v. The Trustees of Tanzania National Parks (TANAPA)** (CAT) Civil Appeal No. 265 of 2020, Tanga Registry



(unreported). The Defendant prayed the Court to dismiss the suit with costs pursuant to section 3(1) of the Law of Limitation Act [Cap 89 R.E 2019].

The Plaintiffs contested the preliminary point of law arguing that the suit was not time barred because it emanates from a dispute to recover land (as evident in paragraphs 2, 4 and 16 of the Plaint). Hence it falls within item 22 in the First Schedule to the Law of Limitation Act [Cap 89 R.E 2019] which prescribes twelve (12) years to be the time limit for its institution.

That, their allegation is that the 1st Defendant has illegally acquired their lands as glanced in paragraphs 10 and 15 of the Plaint. That, the Court needs to determine who was the initial owner of the suit land hence award even compensation in the end. That, the Plaintiffs have throughout ended in fruitless conversations and meetings demanding to be either compensated their lands or re-allocated other lands.

In this regard, the case of **M/S. P & O International Ltd** (*supra*) cited by the Defendants they argued that it is distinguishable under the circumstances since in the instant dispute, the valuation has not yet been done hence time has not yet lapsed. Also they cited, the case of

A handwritten signature in blue ink, appearing to read 'Khalid', is located in the bottom right corner of the page.

Ali Shabani and 48 others (*supra*) and maintained to be distinguishable because the instant case is purely a conflict of land dispute and not compensation of land.

In rejoinder, the Defendants referred the Court to page 9 in the case of **Ali Shabani and 48 others** (*supra*) where the Court of Appeal of Tanzania stated that the issue of whether or not valuation of land has been conducted is irrelevant in a claim for enforcement of a right of compensation by way of a suit. That, the Court is in the instant dispute limited to assessment of what has been pleaded by the Plaintiffs where by a look at paragraphs 1-19 of the Plaint, the Plaintiffs have nowhere stated that they claim ownership of land rather than compensation.

When all is said and done by the parties, the Court is of the considered position that the Plaint in the instant case reveals that the Plaintiffs are claiming for, among other reliefs, majorly compensation of their alleged previous owned lands. Going by the Plaint together with its annexures, it is evident that the Plaintiffs have been in communications and negotiations for years claiming for their alleged compensation of their lands, an act that has caused delay for them in timely filing the instant suit. The same is not justifiable under the law as explained by the Court of Appeal of Tanzania in the case of **M/S. P & O**

A handwritten signature in blue ink, appearing to be 'A. Shabani', is written over the page number.

International Ltd (*supra*) in its page 9 to 10 of the decision. Further, it is the Court's finding that the Plaintiffs have not pleaded to any facts/ grounds for exemption from time limitation, if any, in their Plaint pursuant to Order VII Rule 6 of the Civil Procedure Code [Cap 33 R.E 2019]. Hence it suffices to state here that the instant dispute involves compensation and not ownership of land as so argued by the Defendants. The suit is time barred; it would have otherwise been instituted within twelve (12) months' time since the cause of action arose.

That said, the meritorious preliminary point of law is hereby sustained accordingly. The suit is hereby dismissed under section 3(1) of the Law of Limitation Act [Cap 89 R.E 2019] for being time barred contrary to item 1 in the First Schedule to the Law of Limitation Act [Cap 89 R.E 2019]. In the circumstances, the parties shall bear their own costs.

I order accordingly.



F. R. KHALFAN

JUDGE

03/10/2023