

**THE UNITED REPUBLIC OF TANZANIA**

**JUDICIARY**

**IN THE HIGH COURT OF TANZANIA**

**MBEYA SUB – REGISTRY**

**AT MBEYA**

**LAND CASE NO. 27 OF 2022**

**THE REGISTERED TRUSTEES OF BARAZA**

**KUU LA WAISLAM (BAKWATA) .....PLAINTIFF**

**VERSUS**

**REHEMA MWALWISI** (as administratrix of the estates

of the late **SAID MOHAMED MATUMULA**) .....**1<sup>ST</sup> DEFENDANT**

**THE REGISTERED TRUSTEES OF ANSAAR**

**MUSLIM YOUTH CENTRE** .....**2<sup>ND</sup> DEFENDANT**

**MBOZI DISTRICT COUNCIL** .....**3<sup>RD</sup> RESPONDENT**

**THE SOLICITOR GENERAL** .....**4<sup>TH</sup> DEFENDANT**

**THE ATTORNEY GENERAL** .....**5<sup>TH</sup> DEFENDANT**

**THE COMMISSIONER FOR LAND** .....**6<sup>TH</sup> DEFENDANT**

**RULING**

*Date of hearing: 1/11/2023*

*Date of ruling: 12/12/2023*

**NONGWA, J.**

The plaintiff has instituted the present suit against the defendants over the ownership of Plot No. 9 Block "A" located at Tunduma Urban area Sumbawanga, Unyamwanga Street Tunduma (suit premise).

In a nutshell the background of this matter is that, the plaintiff purchased the suit premise from one John Sanga who in 1972 to 1973 built a mosque, in 1980 handed the mosque to sheikh of BAKWATA. It was further narrated that the plaintiff was in peaceful occupation until on 20/3/2010 when the 2<sup>nd</sup> defendant appeared with a Wakfu prepared by the first defendant's husband denoting the suit premise to the 2<sup>nd</sup> defendant and started to claim ownership. That the plaintiff started making follow up without success until when he decided to file the present suit.

When the plaint was served to the defendants, the 1<sup>st</sup> and 2<sup>nd</sup> defendant filed separate written statements of defence in which disputed the claim of the plaintiff. The 2<sup>nd</sup> defendant also raised three points of preliminary objection (first objections). The 3<sup>rd</sup> to 6<sup>th</sup> defendants filed joint written statement of defence, they disputed the claim and also raise one point of preliminary objection (second objection). All grounds of objection are summarised ineralia;

1. That the suit is incompetent and bad in law for contravening the mandatory requirement enshrined under order XXX of the Civil Procedure Code Act (sic) Cap 33 R: E 2019;
2. The suit is incompetent and bad in law for want of proper verification clause;

3. The plaintiff's plaint is incurably defective for violating Order VII of the Civil Procedure Code Act(sic) Cap 33 R: E 2019.

As it has been the practice of this court when objection is raised, the same has to be disposed first ahead of the main suit. On the hearing date, parties had legal representation Ms. Joyce Kasebwa for the plaintiff, Ms. Mary Mgaya for the 2<sup>nd</sup> defendant, both learned counsels whereas Jerry January State Attorney appeared for 3<sup>rd</sup> to 6<sup>th</sup> defendants. Disposal of objection was through written submission.

It was Ms. Mgaya counsel for the 2<sup>nd</sup> respondent who in the first limb of preliminary objection submitted that, there was no instrument attached to the plaint introducing any of the trustees of BAKWATA to sue on behalf of the other trustee. She said that objection does not come from vacuum but from pleaded facts referring to the case of **Ali Saidi Kurungu & Others vs Administrator General & Others** Civil Appeal 148 of 2019) (Unreported). It was contended further that person who has filed the suit are neither trustees nor special appointee rather a mere group of worshipers in that mosque under the umbrella of BAKWATA. That minute sheet attached to the plaint as person who made resolution are not trustees of BAKWATA as per abstract from Administrator General. Ms. Mgaya argued that the claimant had no *locus standi* in this suit citing the

case of **Lujuna Shubi Ballonzi, Senior vs Registered Trustees of Chama Cha Mapinduzi** [1996] TLR 203 to support the argument.

In the second point of improper verification clause, Ms. Mgaya submitted that verification clause was verified by a person not having *locus standi* or legal capacity rendering it defective. She said Adubakari Khaji Hajj, Suleman Hussen Kova and Abdi Makata Mbukuzi are not registered trustees of BAKWATA.

Submitting in third limb of objection on defectiveness of the plaint, it was submission of Ms. Mgaya that the plaint does not conform to format provided under order VII of the Civil Procedure Code. That paragraph 21 of the plaint on list of documents is self-formulation of the plaintiff, however was of the view that the defect was curable by amendment. From the submission of three objections raised prayed the suit to be suit truck out with costs.

Coming to second limb of objection, written submission was filed by the Office of the Solicitor General being drafted by Mr. Joseph Tibaijuka. Arguing the objection that the suit was time barred, Mr. Tibaijuka stated that according to the plaint in paragraph 9 it was on 20<sup>th</sup> March 2010 when the plaintiff discovered that the suit land was bequeathed to the 2<sup>nd</sup> defendant through *wakfu* and was legal owner. That it is that time when

the cause of action arose but it was until in October 2022 when the plaintiff filed the suit seeking to nullify the transfer.

Mr. Tibaijuka submitted that limitation of time to recover land per the first schedule to the Law of Limitation Act [Cap 89 R: E 2019] under paragraph 22 of Part I is twelve years. He said by computation the suit was filed after one year and six months had elapsed. It was argued that the suit was to be filed in 2010 or within twelve years from when the 2<sup>nd</sup> defendant presented *wakfu* and claimed ownership of the premises. He said since 2010 the suit land is registered in the name of the 2<sup>nd</sup> defendant.

Mr. Tibaijuka submitted that the effect which befalls this suit is to dismiss it under section 3 of the LLA. The argument was supported with the case of **Ali Shabani & Others vs Tanzania National Roads Agency (TANROADS) & Another**, Civil Appeal 261 of 2020 and **Nyachiya vs Tanzania Union of Industrial & Commercial Workers**, Civil Appeal 79 of 2001 (both unreported) on the principle that suit filed beyond the limitation time must be dismissed. Thus prayed the suit to be dismissed with costs.

Replying to first limb of objection, Ms. Kasebwa submitted that the objections did not meet the quality of being preliminary objection and it was based on technicality aimed to defeat justice, the case of **Cropper**

**vs Smith** (1884) Ch. D700 and **Mukisa Biscuits Manufactures Company Limited vs West End Distributors Limited** [1969] EA 696 was cited to bolster the point.

The counsel submitted further that the persons who have signed the plaint are valid trustees of the plaintiff and the objection required other evidence to ascertain the same. Ms. Kasembwa stated that the verification clause is proper and signed by trustees and if there was any defect it was curable as a suit cannot be struck out based on defective verification clause.

Regarding third point, it was submitted that was not pure point of law and could not be dealt at the preliminary stages.

Replying second objection on time barred raised by 3<sup>rd</sup> to 6<sup>th</sup> defendants, Ms. Kasebwa started with brief facts of the case which in my view is not necessary to preface here because is out of context. On merit of objection, it was submitted that it was raised prematurely because since 2013 the plaintiff was in court corridors fending for her rights. She cited the case of **Mukisa Biscuit Manufacturing** (supra) and argued that the objection was not pure point of law.

It was argued that the duty of the court is to decide on substantive issues contested by parties, holding the preliminary objection is wastage of time and resources of the litigants and court by multiplication of cases

at the expenses of technicalities. The court was referred to the case of **COTWU (T) OTTU Union and another vs Hon. Iddi Simba, Minister of Industries and Trade and Seven others** [2002] TLR 88 and **Musanga Ngandwa vs Chief Japhet Wanzagi & 8 Others** [2006] TLR 351 to the effect that the objection raised was matter requiring evidence and could not be disposed at the preliminary stage.

Ms. Kasebwa submitted that the 2<sup>nd</sup> defendant has never used the suit premises and transfer of title was approved while the case was pending in court. That the court has to look on other cases, the present case being a continuation form those of 2013. Ms Kasebwa stated that the plaintiff became aware of *wakfu* in 2013 when was processing the title to be registered in her name, it is when the cases were filed in the tribunal and not 2010 as alleged by the defendant.

Further submission was that the suit cannot be dismissed while it has not been heard in merit, according the counsel, the remedy is to struck out the suit. Thus, prayed the objection be dismissed with costs.

Rejoining, Ms. Mgaya submitted that the objection raised was pure point of law. Other submission was the repeat of her submission in chief.

On his part the State Attorney submitted that the issue of time limitation is pure point of law and no further evidence was required to ascertain it. On previous cases filed by the plaintiff the state attorney

argued that it was not pleaded in the plaint as required by order VII rule 6 of the Civil Procedure Code hence no grounds for exemption.

The State Attorney complained to the act of the plaintiff's counsel attaching difference judgment of the previous cases filed by the plaintiff. He argued that it was the plaint and its annexures which has to be looked upon, he supported this argument with the case of **Babito Limited vs Freight Africa NV-Belgium & Others**, Civil Appeal No.355 of 2020 (Unreported).

On argument that cause of action arose in 2013 the State Attorney cited paragraph 8 and 9 of the plaint which enunciate on when the cause of action arose, to him it was in 2010 when the plaintiff became aware of the existence of the said *wakfu*.

In respect of striking suit instead of dismissal, the State Attorney submitted that per section 3 of the LLA, remedy for the suit which is time barred is to dismiss it.

I have considered rival argument of the counsels for and against the objections. The only issue calling for my determination is whether the grounds of preliminary objections have merits. My voyage to dispose the objection will begin with first limb of objections and then finish with second objection.



Starting with the first objection that the plaintiff has no *locus standi*, it was submitted that there was no instrument introducing any registered trustee of BAKWATA authorising to file the suit, it was added that the suit has been filed by a group of worshipers of the mosque. To the contrary it has been submitted that the suit was filed by the Registered Trustees who have *locus standi*.

From the records, this suit has been filed by the Registered Trustees of Baraza Kuu la Waislam Tanzania (BAKWATA), in terms of section 8(1) of the Incorporation Act [Cap 318 R: E 2002] upon the grant of a certificate of incorporation the trustee or trustees become a body corporate by the name described in the certificate shall have perpetual succession and a common seal and power to sue and be sued in such corporate name.

Ms. Mgaya submitted that no instrument was attached to prove that a trustee or any person is authorised to institute the suit and is has been filed by a group of worshipers. This argument is not supported by any law it is why even the counsel cited none. The plaint is clear that the suit is in the name of the Registered trustees of Baraza Kuu la Waislam (BAKWATA). The argument that the minutes was attended by person not trustees is nothing but cannot be decided as point of preliminary objection because the court will have to look for other evidence to prove the same.

all those persons referred by Mr. Mgya are not parties to the suit to make the plaintiff to lack *locus standi* to sue. The plaint is in conformity with section 8(1) and 9 of the Incorporation Act. This limb of objection is therefore dismissed.

Coming to the second point that verification clause is defective. It was submitted by Ms. Mgya that those who verified are not trustees or special appointee. In reply it was argued that it was not pure point of law, needed evidence to dispose it. From the contention, I agree with the plaintiff's counsel that the objection is not pure point of law and subscribes to the authorities cited.

The question whether Abubakari Khaji Hajj, Suleman Hussen Kova and Abdi Makata Mbukuzi are trustees or not is the question of fact because it calls for other evidence to discern it. It is for that reason Ms. Mgya referred to abstract from the Administrator General on which the verifiers are not mentioned. Indeed, it might be so but it cannot be taken at this stage because it is a matter of evidence depending on production of various documents to prove it, hence making the objection not pure point of law. The second point is also dismissed.

In respect of third point that plaint does not comply with Order VII of the CPC, Ms. Mgya submitted that paragraph 21 of the plaint was formulated by the plaintiff, in reply it was argued that it was not fatal.

Drafting of plaint is governed by Order VII rule 1 which provides for contents of the plaint. The complaint is that paragraph 21 which list documents annexed to the plaint is not provided by the law.

I have read the referred provision of the law and found that there no special plaint which is prescribed by the law, what the law required is that the plaint must contain matters listed in order VII rule 1 of the CPC, further rule 9 of the same order required list of documents to be annexed to the plaint. The addition of paragraph 21 which list documents attached to the plaint in my view contravened no law and was proper. The objection is therefore unmerited.

At the end the first objections are dismissed with costs.

Coming to second objection that suit is time barred, state attorney submitted that cause of action arose in 2010, the plaintiff's cause stated that it was in 2013. I will start with the preliminary issue raised by Ms Kasebwa that the objection was not pure point of law, while Mr. Tibaijuka said that it was pure point of law.

At the outset I agree with the State Attorney that the point on time limitation is a pure point of law, however it depends on how the plaint has been crafted. In some point a point of objection can be a mixed of law and fact and on those circumstances, it ceased to be a pure point of preliminary objection.

For the case at hand, to ascertain the time when the cause of action accrued against the respondent, have scrutinized the contents of the plaint and I agree with Mr. Tibaijuka State Attorney that, a look at paragraphs 8 and 9 of the plaint;

*'8. That the plaintiff for about 43 years has been in peaceful occupation of a premises located at Plot No. 9 Block "A" Tunduma Urban area sumbawanga road unyamwanga street Tunduma where the same bought it from on John Sanga and from the year 1971-1973 the mosque was built and in 1980 the same mosque was handed over by shekhe to Bakwata and ever since the plaintiff has been using the same.*

*9. That it was until the year 2010 when the second defendant appeared with wakfu dated 20/3/2010 of the 1<sup>st</sup> defendant's husband one said Mohamed matumula donating the said premises to the 2<sup>nd</sup> defendant, claiming the premises to be his that he obtained it with his own effort and money something which is not true, and that the said Said Mohamed Matumula was removed from his position at the plaintiff in 2006. A copy of the said wakfu and the letter for the 1<sup>st</sup> defendant's husband removal are hereby attached with this plaint and marked as annexure "BA-1" collectively, the plaintiff shall crave for this honourable court's leave to form part of this plaint.'*

From the above paragraphs, it is clear that the facts disclosed demonstrate that the appellant's claim or the cause of action against the 2<sup>nd</sup> defendant accrued in 2010 when the plaintiff became aware of the

*wakfu* denoting the suit premises to the 2<sup>nd</sup> defendant. I am fortified with section 5 of the Limitation Act which prescribes that the period of limitation in relation to any proceedings shall commence from the date on which the right of action for such proceeding accrues. The law is further settled that; the right of action begins to run when one becomes aware of the said transaction or act which is complained of, See: **Ramadhani Nkongela vs Kasan Paulo** [1988] TLR 56.

It was argued that the cause of action arose in 2013 when the plaintiff registrar of titles approved title of the 2<sup>nd</sup> defendant and the plaintiff filed case in the tribunal. **one**, I do not share the view that cause of action arose when the plaintiff started making follow up of the matter, but on the date the plaintiff became aware of the *wakfu* bequeathing the suit premised to the 2<sup>nd</sup> defendant. **Two**, the cases of the tribunal and that of this court as rightly argued by Mr. Tibaijuka was not pleaded in the plaint, it was therefore wrongly attached to the submission as a ground for objection of the preliminary objection raised.

If at all the plaintiff had any defence to the running of time through the cases which was filed in the tribunal and this court and dismissed for whatever reasons, then the plaintiff was required to comply with order VII rule 6 of the CPC which provides;

*'Where the suit is instituted after the expiration of the period prescribed by the law of limitation, the plaintiff shall show the ground upon which exemption from such law is claimed.'*

Confronted with similar issue in **M/S P & International Ltd vs The Trustees of Tanzania National Parks (TANAPA)**, Civil Appeal No. 265 of 2020, the Court when considering the applicability of Order VII Rule 6 of the CPC stated that:

*'To bring into play exemption under Order VII Rule 6 of the CPC, the plaintiff must state in the plaint that his suit is time barred and state facts showing the grounds upon which he relies to exempt him from limitation. With respect, the plaintiff has done neither.'* [Emphasis added].

Ms. Kasebwa attached to her reply submission the judgment and decree of Application No. 24 of 2013 of the District Land and Housing Tribunal for Mbeya between the Registered Trustees of Baraza Kuu la Waislam Tanzania (BAKWATA) vs Said Mohamed Matumula and the Registered Trustees of Ansaar Muslim Youth Centre, Land Case Appeal No. 45 of 2018 between Said Mohamed Matumula and the Registered Trustees of Ansaar Muslim Youth Centre vs the Registered trustees of Baraza Kuu la Waislam Tanzania (BAKWATA) of the High Court of Tanzania at Mbeya, Land Case No. 14 of 2021 between he Registered Trustees of Ansaar Muslim Youth Centre vs the Registered trustee of

BAKWATA of the High Court of Tanzania at Mbeya and Bill of Costs No. 22 of 2022 between Rehema Mwalwisi(as administratrix of the estates of late) Rashid Matumula and the Registered Trustees of Ansaar Muslim Youth Centre vs the Registered trustees of Baraza Kuu la Waislam Tanzania (BAKWATA).

With respect to the plaintiff's counsel this was not proper because to the submission it is only case law, extract of writings of prominent authors and copies of provision of the law which was referred in support of the argument which is expected to be attached to the submission and not otherwise.

I understand that under section 21 of the LLA allows exclusion of time when the case was being prosecution in another court in good faith by the same was rejected for want of jurisdiction or other cause of a like nature. See **Salim Lakhani & Others vs Ishfaque Shabir Yusufali**, Civil Appeal 237 of 2019 [2022] TZCA 504 (TANZLII). But for the plaintiff to benefit from such provision the same must be pleaded and the grounds set in the plaint.

I have perused the plaint and not been able to find any paragraph in which the plaintiff has pleaded that the suit is time barred and listed grounds upon which she seeks exemption from limitation. This was not

done and therefore the reliance by the plaintiff's counsel is nothing but misconception of the law.

With that discussion, it is now clear that from on 20/3/2010 when the plaintiff became aware that the suit premises was owned by the 2<sup>nd</sup> defendant through *wakfu*, it is when the cause of action arose. The present suit was filed on 11/10/2022, by elementary calculation the plaintiff was late for six months and nine days. Since the plaintiff did not bring her suit which was time barred within the ambit of Order VII Rule 6 of the CPC, I find and hold that the present suit is time barred.

As for the way forward, Ms. Kasebwa argued that the suit has to be struck out because it has not been heard in merits whereas the State Attorney submitted that under section 3 of the LLA the suit has to be dismissed. I agree with the state attorney that the suit filed beyond limitation of time under section 3(1) of the LLA has to be dismissed, there is number of authorities on this issue, **Kigoma Ujiji Municipal Council vs Ulimwengu Rashid t/a Ujiji Mark Foundation**, Civil Appeal No. 222 of 2020) [2023] TZCA 131 (TANZLII) and **Barclays Bank Tanzania Limited vs Phylisiah Hussein Mcheni**, Civil Appeal 19 of 2016 [2021] TZCA 202 (TANZLII). In **Barclays Bank Tanzania Limited** the court stated;



*'It is our settled view that, had the learned High Court Judge properly directed his mind, he would have sustained 14 the preliminary objection raised in that respect **and dismissed the time barred suit as required by section 3 of the LLA.**'*

In the event, the preliminary objection by the 3<sup>rd</sup> to 6<sup>th</sup> defendant is sustained, the suit is adjudged time barred and is hereby dismissed with costs.



**V.M. Nongwa**  
**Judge**  
**12/12/2023**

Dated and Delivered at Mbeya this 12<sup>th</sup> day of December 2023.



**V.M. Nongwa**  
**Judge**