

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

BUKOBA SUB-REGISTRY

AT BUKOBA

LAND APPEAL NO. 69 OF 2023

(Originating from Application No. 03 of 2023 District Land and Housing Tribunal for Muleba)

TRYPHONE SELESTINE..... APPELLANT

VERSUS

JONASTUS SIMON..... RESPONDENT

JUDGMENT

21st March and 5th April, 2024

BANZI, J.:

The appellant is challenging the ruling of the District Land and Housing Tribunal for Muleba (the DLHT) for upholding the preliminary objection on point of law raised by the respondent to the effect that, the application was filed out of prescribed time stipulated under section 3 (1) (2)(c) and part I item 22 of the Schedule to the Law of Limitation Act [Cap. 89 R.E. 2019] ("the LLA"). The appellant and the respondent are fighting over a piece of land located at Bugeye hamlet, Kikuku village within Muleba District (the suit land) whereby each party is claiming to be the lawful owner.

According to the pleadings before the DLHT, the appellant claimed to have acquired the suit land in 1992 by way of sale and thereafter he started

to utilize it by planting banana, coffee and other crops. However, in 2004 the respondent encroached the suit land and started to dig holes so as to plant more trees. He sued him before the DLHT which decided in his favour. However, on appeal before this Court vide Consolidated Land Case Appeals No. 10 and 11 of 2020, the proceedings and the judgment of the DLHT were quashed and set aside. The Court directed any party with interest to institute a fresh suit before the competent tribunal. With that decision, in 2023, the appellant went back to the DLHT and filed the fresh application which is the genesis of this appeal.

Although the respondent raised a total of three points of preliminary objection, the DLHT decided on one point concerning time barred as it sufficed to dispose of the matter. The learned chairman sustained the objection that the application was time barred because the dispute began in 2004 and therefore, up to 2023, it was 19 years since the cause of action arose. Eventually, he dismissed the application for being time barred. Aggrieved with such decision, the appellant lodged this appeal containing two grounds:

- 1. That, learned Chairman had grossly erred in law by dismissing the filed Application in upholding the raised Objection grounding on the limitation of time without*

considering the fact of the same dispute being the subject of the former proceedings as it was expressly pleaded in the Application.

2. *That, regardless of the pleaded new encroachment from 6th April, 2022 the trial Chairman misdirected himself by dismissing the Suit for the matter that could have been determined after the adduction (sic) of the testimonies by the parties and their respective parties.*

At the hearing, both parties appeared in person, unrepresented. In his submission, the appellant faulted the learned chairman for dismissing his application for being time barred. According to him, he filed the case within time. He further stated that, in 2004 when the respondent invaded the suit land, he sued him but when the matter reached before the High Court on appeal, it was nullified on technical ground concerning assessors. Thereafter, on 6/4/2022 the respondent entered into suit land and cut down trees and that is when the cause of action arose. He prayed for the appeal to be allowed so that the matter to be finally determined on merit.

In response, the respondent contended that, the learned chairman rightly dismissed the application for being time barred because in his application at paragraph 6 (a) (iv), the appellant stated that, the cause of action arose in 2004 when the respondent invaded the appellant's land.

Therefore, from 2004 until 2022 it is almost more than 19 years. According to him, it is not true that the cause of action arose on 6/4/2022. To his knowledge, land dispute has to be instituted within 12 years from the time when the cause of action arose otherwise, a party has to apply for extension of time which was not done by the appellant. Therefore, the chairman was right to dismiss the case for being time barred. He prayed for this appeal to be dismissed with costs.

In his brief rejoinder, the appellant stated that, he did not state about cause of action to arise in 2004, but he complained that, the respondent used to encroach his land since 2004 and he took action against him. Therefore, he was not out of time.

Having carefully perused the record of the DLHT and considered the submissions of both sides, the main issue before this Court for determination is whether the suit was time barred.

According to the pleadings, the appellant claimed that, he purchased the suit land on 15/08/1992 from Sam Bakweki Katangawizi. On the other hand, the respondent claimed to acquire the said land after being allocated by Kikuku village council in 2004. From the pleadings, it is undisputed that, the suit before the DLHT concerned recovery of land which according to item

22, Part I of the Schedule to the LLA, it must be instituted within 12 years. Likewise, according to section 4 of the LLA, the period of limitation commences when the right of action for such proceeding accrues and pursuant to section 5 of the same Act, such right is accrued date on when the cause of action arises.

In the matter at hand, the appellant at paragraph 6 (a) (i) and (iv) of his application he stated as follows:

"(i) That, I had on 15th August, 1992 purchased the Suitland from one Sam Bakweki Katangawizi at the consideration of Tshs.60,000/- (Shillings Sixty thousand only).

(iv) That, nevertheless on November 2004, the Respondent encroached into the Suitland by first digging the holes for planting more trees."

It is undisputed from the extract above that, since the appellant claimed to buy the land in question in 1992, he used it until 2004 when the respondent invaded the same. This was the same year when the respondent alleged to be allocated the suit land by the village council. It is obvious that, the time began to run in 2004 when the respondent encroached into the suit land as stated by the appellant in paragraph 6 (a) (iv) of his application. It

is also on record that, after such invasion, the appellant instituted the suit against him in 2017 vide Land Application No. 51 of 2017 whose proceedings was later nullified by this Court on appeal in 2022. By the time the appellant took action against the respondent in the first instance, he was already out of time because, from 2004 when the cause of action arose to 2017 when he filed the first suit, it was almost 13 years. The fact that, the proceedings of the first suit were nullified, it does not erase the fact that, the respondent invaded the suit land in 2004 which is the year when the cause of action arose. In that regard, the appellant's claim that the cause of action arose in 2022 when the respondent encroached the suit land for the second time and ferried the trees is unfounded. By the time when the appellant instituted the first suit in 2017, he was already out of time. Equally, when the appellant returned to the DLHT for the second time in 2023 after the proceedings in the first suit were nullified it was almost 19 years from the time when the cause of action arose which is beyond the 12 years prescribed by law.

Concerning the consequences of instituting a time barred suit, the law is very clear that, the same must be dismissed. In the case of **Fortunatus Lwanyantika Masha and Another vs Claver Motors Ltd** [2022] TZCA 433 TanzLII, the Court of Appeal adopted the statement made by the High

Court through the case of **John Cornel vs A. Grevo (T) Limited**, Civil Case No. 70 of 1998 HC at Dar es Salaam (unreported) where it was stated that:

"However, unfortunate it may be for the plaintiff; the law of limitation is on actions knows no sympathy or equity. It is a merciless sword that cuts across and deep into all those who get caught in its web."

The same statement was restated in the case of **Barclays Bank Tanzania Limited vs Phylisiah Hussein Mcheni** [2021] TZCA 202 TanzLII where it was insisted that, the law of limitation knows no equity.

For those reasons, the learned chairman was right when he dismissed the suit for being time barred as it was instituted beyond 12 years prescribed by law. Therefore, I find nothing to fault the decision of the DLHT. The resultant, this appeal is hereby dismissed for want of merit. Each party shall bear its own costs. It is accordingly ordered.



I. K. BANZI
JUDGE
05/04/2024

Delivered this 5th day of April, 2024 in the presence of the appellant,
the respondent, Mr. A.V. Kaizilege, Judge's Law Assistant and Ms.
Mwashabani Bundala, RMA. Right of appeal duly explained.



A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke at the end.

I. K. BANZI
JUDGE
05/04/2024