

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IRINGA SUB REGISTRY)

AT IRINGA

LAND CASE NO. 8 OF 2022

CHARLES ZUBERI MSHELE

(Legal Administrator of the Estate
of the late **ZUBERI MSHELE**)

..... **PLAINTIFF**

VERSUS

NJOMBE TOWN COUNCIL **1ST DEFENDANT**

THE HON. SOLICITOR GENERAL..... **2ND DEFENDANT**

THE HON. ATTORNEY GENERAL..... **3RD DEFENDANT**

RULING

2/09/2022 & 02/03/2023

I.C. MUGETA, J:

The plaintiff claims for Tshs 300,000,000/= as specific damages and Tshs 800,000,000/= as general damages being compensation for 55 acres at Block "U" Ramadhan area at Igima, Njombe belonging to the estate of the late Zuberi Mshale which the Government, allegedly, illegally acquired by the Government.

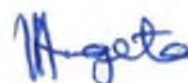
The defendants in their joint written statement of defence raised a preliminary objection consisting of two limbs as follows;



- i. That the suit is time barred.*
- ii. The plaintiff has no locus stand.*

Mr. Ezekiel Mwampaka, learned advocate, represents the plaintiff while the defendants are represented by Ms. Ansila George Makyao, learned State Attorney (SA). The preliminary objection was heard by way of filing written submissions.

In supporting the first preliminary objection, the learned SA submitted that the suit offends the provision of section 3(1) read together with Item 1, part I of the schedule of the Law of Limitation Act [Cap. 89 RE. 2019] the (LLA) which provides for the time limit for compensation claims which is one year (12 months). The learned SA supported his argument by the authorities in the cases of **Stephen Masato Wasira v. Joseph Sinde Warioba and Attorney General** [1999] TLR 334 and **John Futachai Kihenzeva v. Mufindi District Council and Attorney General**, Land Case No. 4 of 2022, High Court of Tanzania (HCT) at Iringa (unreported), **M/S P & O International Ltd v. The Trustees of Tanzania National Park**, Civil Appeal No. 265 of 2020, Court of Appeal of Tanzania (CAT) at Tanga (unreported), **Ali Shabani and 48 Others v. Tanzania Roads**



Agency (TANROADS) & Another, Civil Appeal No. 261 of 2020, CAT at Tanga (unreported).

She contended further that the plaintiff did not plead facts in the plaint which would warrant or even necessitate exemption provided by the law as it was the position in the case of **Tanzania Road Agency and the Attorney General v. Jonas Kinyangula**, Civil Appeal No. 471 of 2020, Court of Appeal at Kigoma (unreported) nor observed Order VII Rule 6 of the Civil Procedure Code [Cap. 33 R.E. 2022] which requires the plaintiff to plead in the plaint the ground upon which he seeks to rely on for the exemption where the suit is instituted after the expiration of the prescribed time.

As regards the second limb, she submitted that the suit is incompetent for the plaintiff's lack of legal status in this matter. That the plaintiff has pleaded in paragraph 4 of the plaint that he is the legal administrator of the late Zuberi Mshele without attaching the letters of administration appointing him to administer the deceased's property.

The plaintiff's advocate, by way of reply, submitted on the second limb that the plaintiff has introduced himself as the legal administrator of the estate



of the late Zuberi Mshele under paragraph 4 of the plaint. That the plaintiff is suing as an administrator of the estate of his late father duly appointed by the Njombe Urban Primary Court in Probate Cause No. 96 of 2021.

On the first limb of the preliminary objection, the learned advocate submitted that there is no dispute that the dispute over the land occurred more than twelve years ago and up to date no compensation was effected to the beneficiaries of the estate despite promises to do so as pleaded under paragraphs 8, 9, 10, 11 and 12 of the plaint. Therefore, the plaintiff could not file a case before the time set by the government to compensate. In his view, the cause of action must be counted from 2021 when the government failed to honour its promise of compensating the plaintiff.

Alternatively, he argued that the late Zuberi Mshele died in 1984 even before the acquisition of the suit property. The plaintiff was appointed in 2021. He referred the Court to section 24 of the LLA which provides for effect of death before right of action accrues that where a person dies before the right accrues, the period of limitation shall be computed from the date when there is a legal representative. The acquisition came to the knowledge of the beneficiaries in 2002 when they realized that strangers

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were erecting buildings in the land of their father thus they started making follow ups. It is his firm view that the suit is not time barred as argued by the defendants. The defendant did not file a rejoinder.

I shall start with first limb of objection where the issue is *whether the suit is time barred.*

Paragraph 5 of the plaint reads as follows:

"5. That on the year of 2002, government officials who introduced themselves as they from the office of Town Plan started to allocating the land to other citizens having been surveyed and baptized the name of BLOCK U at Ramadhan area."

The suit at hand was instituted on 8th June, 2022 which is a period of twenty (20) years after the accrual of the cause of action in 2002. According to paragraph 3 of the plaint, the plaintiff is claiming for compensation for the unlawful acquisition of land. I quote in verbatim the said paragraph for easy of reference:

"3. That the plaintiff claims against the defendants jointly a total of Tshs. 300,000,000/= (Three hundred million of Tanzania Shillings) being the

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compensation for the acquisition of land by the government on the year of 2002 without any compensation to the development made therein.”

It is clear from the facts disclosed in the above paragraphs that the plaintiff's claim is for compensation not ownership of land and that it arose in 2002. The prayer in the plaint for a declaration that the land belongs to the estate of the late Zuberi Mshale is untenable for not being pleaded therefore it cannot be used to determine the nature of the claim.

The law under the provisions of section 3(1) read together with Item 1 of Part 1 of the Schedule of the LLA is clear that, a claim regarding compensations is required to be made within one year (12 months). The plaintiff's contention that the cause of action arose in 2021 when the government failed to honor its promise of compensating the plaintiff is baseless. This is because it is trite law that pre-court action negotiations have never been a ground for stopping the running of time. Kalegeya, J. (as he then was) in the case of **Makamba Kigome & Another v. Ubungo Farm Implements Limited & PRSC**, Civil Case No. 109 of 2005, the High Court of Tanzania at Dar es Salaam (unreported) made the following pertinent statement:



"Negotiations or communications between parties since 1998 did not impact on limitation of time. An intending litigant, however honest and genuine, who allows himself to be lured into futile negotiations by a shrewd wrong doer, plunging him beyond the period provided by law within which to mount an action for the actionable wrong, does so at his own risk and cannot front the situation as defence when it comes to limitation of time".

Similar holding is found in the cases of **Barclays Bank Tanzania Limited v. Phylisiah Hussein Mchemi**, Civil Appeal No. 19 of 2016, CAT at Dar es Salaam (unreported) and **Fortunatus Masha & Another v. Claver Motors Limited**, Civil Appeal No. 144 of 2019, CAT at Mwanza (unreported).

In the alternative, the plaintiff's counsel has argued that the cause of action arose after the death of the owner, therefore, section 24 (2) of the LLA should apply in their favor. In my view, this section does not favor the plaintiff because under it, time starts to run when there is a legal representative. Under section 3 of the CPC, a legal representative includes the person who intermeddles with the deceased's estate. According to the

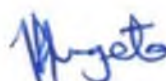
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annexures in paragraphs 8 - 12 of the plaint, the plaintiff and other family members started to intermeddle with the land in 2016 without being administrators. This is deemed to be the time of accrual of the cause of action not when the administration was appointed by the court. Counting from 2016, the suit for compensation is time barred.

Based on the above discussion, I answer the issue posed above in the affirmative that the suit is time barred. I thus uphold the first preliminary objection.

Regarding the *locus standi*, indeed, the plaintiff has not attached the letters of administration to prove that he has actually been so appointed. However, the statement in paragraph 4 of the plaint that he is the administrator makes the objection not a pure point of law and proving otherwise requires evidence. As hearing has not started, the plaintiff is not late to tender the letters of administration. The second objection is overruled.

Since I have upheld the first objection, the legal remedy for a time barred matter is to dismiss it as provided under section 3 (1) of the LLA and held by the CAT in the case of **Hezron Nyachiya v. Tanzania Union of**



Industrial Commercial Workers and another, Civil Appeal No.79 of 2001, CAT at Dar es Salaam (unreported). The suit is dismissed. Considering the circumstances of the case, I give no orders as to costs.



A handwritten signature in blue ink, appearing to read "Mugeta".

I. C. MUGETA

JUDGE

02/03/2023

Court: Ruling delivered in chambers in the presence of the plaintiff in person and Bryson Ngulo, learned State Attorney for the defendants.

Sgd: I. C. MUGETA

JUDGE

02/03/2023