IN THE HIGH COURT OF TANZANIA

(DAR ES SALAAM SUB DISTRICT REGISTRY)

AT DAR ES SALAAM

LAND CASE NO. 04 OF 2021

BENEDICT GREGORY MKASA .....PLAINTIFF

VERSUS

MBARUKU SELEMANI.....1ST DEFENDANT

VALENCE VENDELINE MSAKI.....2ND DEFENDANT

COMMISSIONER FOR LAND.....3RD DEFENDANT

THE ATTORNEY -GENERAL.....4TH DEFENDANT

RULING

Date of last Order: 20/09/2022

Date of Ruling: 28/10/2022

E.E. KAKOLAKI, J.

The plaintiff before this court filed a land case against the defendants jointly and severally praying for among other things, a declaratory order that, he is a lawful owner of plot 481 Block E situated at Tegeta-Kibaoni Dar Es Salaam. When served with the plaint, save for the 1st defendant who could not be found whose order was made to proceed ex-parte against, the rest of the defendants filed their respective Written Statements of Defence. Further to

that, the 2nd defendant in his WSD raised preliminary objections on point of law to the effect that, the trial court has no jurisdiction to deal with this suit and that the same is an abuse of the court process.

The preliminary objection was disposed by way of written submission. The plaintiff and 2nd defendant submissions were prepared by Ms. Glory Venance and Mr. Jonathan Mbuga, both learned advocates respectively, while the ones for the 3rd and 4th defendants were prepared by Ms. Jesca Joseph Shengena, learned Principal State Attorney.

Briefly the background story giving rise to this suit can be told as follows. In March, 2006 under consideration of two houses built for 1st defendant plus Tshs. 10,000,000/- in addition to, the plaintiff bought the disputed land from the 1st defendant who handed him the file containing the original letter of offer to the plot ready for the process of transfer of title to his name. It appears the plaintiff delayed to effect transfer until January 2010, when he learnt from the 3rd defendant that, the said disputed plot was re-sold to the 2nd defendant who had already transferred the title to him following the lost report presented to the 3rd defendant by the 1st defendant and issue of certified copy of the letter of offer which necessitated the sale agreement between the 1st and 2nd defendants. Having learnt of that alleged fraudulent

transaction between the 1st and 2nd defendants, the plaintiff put in motion criminal proceedings against the 1st defendant who faced two counts of obtaining goods and money by false pretence contrary to section 302 and giving false information to the person employed in the public services contrary to section 122, both under the Penal Code, in Criminal Case No. 458 of 2010 before the District Court of Kinondoni. After full trial the 1st defendant was found guilty as charged in both counts, convicted and sentenced to serve under community services for three years on each count. Further to that, an order was issued to the effect that, plot No. 481 be owned by PW1 (plaintiff) or his two houses and Tshs. 10 million be returned to him. To execute the said order the 1st defendant applied the same court in which an order was granted for him to refund the sum of Tshs. 10 million and return the two houses to the plaintiff (Benedict Gregory).

Aware of the criminal court's order, the plaintiff knocked the doors of the District Land and Housing Tribunal for Kinondoni (the DLHT) seeking to be declared as the lawful owner of the suit premises, but lucky was not on his side as the application was struck out on account of the pending unexecuted order of the District Court of Kinondoni in Criminal Case No. 458 of 2010 which dealt with the issue of ownership as the same was never challenged

by any party. Unhappy with the said decision the plaintiff preferred an application for review vide Misc. Land Application No. 71 of 2016 which again he lost as the same was dismissed on 23/06/2017. Undaunted he is before this Court with a fresh suit over the same disputed plot of land after complying with the mandatory requirement for suing the Government department or institution under the Government Proceedings Act, [Cap. 5 R.E 2019], the suit which has met objection from the 2nd defendant as alluded to above.

Submitting in support of the preliminary objection, Mr. Mbuga categorized the 2nd defendant's point of objection into three limbs namely, **one**, the disputed plot was a subject to criminal court order in which the plaintiff was a complaint and witness as PW1, **second**, as the criminal order by Hon. Ding'ohi, RM has never been challenged by either party to-date apart from plaintiff's attempt to recovery the same land through civil actions in the DLHT, which two matters ended up being struck out and dismissed respectively, the plaintiff is not entitled to bring a fresh suit but rather would have preferred revision over that criminal order. And **third**, the sought declaratory orders are grantable in six years' time hence plaintiff's cause of action is brought outside the prescribe time limitation as provided in item 24

Part I of the Law of Limitation Act. In this ruling I am also prepared to address them one after another if need be.

To start with the first limb it was Mr. Mbuga's contention that, plot No 481 Block E situated at Tegeta - Kibaoni Dar es Salaam was subjected to various litigations, both in criminal court and the DLHT as pleaded in paragraphs 14, 15 and 16 of the plaint. He said, Criminal Case No. 458 of 2010 before the District Court of Kinondoni was initiated against the 1st Defendant, following the plaintiff's accusation founded on criminally liability before he was found guilty of the offences charged with, convicted and sentenced accordingly. He said, further to that an order was made to the effect that, the plot in dispute be owned by the plaintiff who was PW1 or the two houses and Tsh. 10,000,000 offered to the 1st defendant be returned to him. According to Mr. Mbuga, the said orders are found in the judgment and ruling annexed to the plaint as **annexure BM-3 & 4**, which he believes was made under section 341 of the Criminal Procedure Act, [Cap 20 R.E 2019] now R.E 2022, was never executed by the plaintiff nor challenged by any part by way appeal, revision or review hence remained to be valid. It is his submission therefore that, plaintiff's act of instituting a fresh suit on the same subject matter which was also dealt with by criminal court and DLHT for Kinondoni is an abuse of

court process likely to breed conflicting decisions on the same subject matter. He added, criminal court order ought to be respected and given legal effect by the plaintiff or else challenge the same successfully before bringing a fresh suit on similar subject matter (disputed plot). To cement his point, he cited the case of **JV Tangerm Construction Co. Ltd Vs Tanzania Ports Authority & Others,** Commercial Case No. 117 of 2015, **Kahumbu Vs. National Bank of Kenya Ltd** (2003) EA 475 and **Jolly Investment Ltd Vs. Tanzania Ports Authority**, Misc. Land Application No. 523 of 2018, all insisting on the importance of parties to respect valid and binding orders of the court. To him, the invitation by the plaintiff to rehear the matter on same subject matter already decided on by District Court and DLHT is risking this Court to sit as appellate Court to the said decision and render conflicting decisions in respect of the same disputed plot.

In their submissions in support of the preliminary objection by the 2nd defendant, the 3rd and 4th Defendants are of the view that, the plaintiff is trying to ride two horses at the same time which is unaccepted practice. Otherwise the rest of their submissions are the replica of the 2nd defendants' submissions.

In response to the 2nd defendant's assertion that the suit is an abuse of courts process, Ms. Venance contended that, the 2nd defendant once raised similar objection before Hon. Mgonya, J, in Land Case No. 03 of 2019, which ended up overruled. She argued that, the civil claims which were instituted by the plaintiff before the DHLT for Kinondoni were simply struck out and were never heard nor determined on merit by the said tribunal. To her since the 2nd defendant has raised the same objection for the second time, this Court is invited to apply the principle in the case of **Jolly Investment Ltd Vs. Tanzania Port Authority**, Misc. Land Application No. 523 of 2018 HC Dar es salaam (unreported) and overrule the same with costs as it was decided on merit on Land Case No. 03 of 2019. According to her, even this objection is an abuse of courts process.

Concerning the submission by the defendants that it is an abuse of court process for the plaintiff to bring this suit afresh for being bound by the order in criminal case No. 458 of 2010 against the first defendant she submitted that, the same does not bar the plaintiff to prefer civil suit as he was not a party thereto. She said, in the said criminal case parties were **Republic** versus **Mbaruku Selemani**, (1st defendant) who was found guilty of obtaining money by false pretence and giving false information to person

employed in public services which enabled that officer to procure a duplicate letter of offer to him while knowing that he had actually already sold the said plot to the plaintiff herein, hence the court gave consequential orders to the effect that, Plot No 481 to be owned by PW1 or his two houses and Tsh.10 million be returned.

In her view, the decision of the criminal court in a criminal trial does not in any way bar a person from pursuing his further rights by way of civil claims. She said, criminal court is not a proper forum for determination of the party's rights on civil claims or damages such as ownership to the suit land. To fortify her stance this Court was referred to the case of **Tatu Kiungwe vs Kassim Madai**, (2005) TLR 405. In view of Ms. Venance, the criminal court which found the 1st defendant guilty of the offence he was charged with did not exhaust plaintiff's rights nor bar him from further pursuing them in civil court as the order in criminal case was optional though surprisingly the same was sought to be executed by Mbaruku Selemani (1st defendant) through his attorney. In further view of Ms. Venance, the plaintiff could not challenge criminal order as he had no locus stand to do so as the findings of the criminal case were relevant facts to prove that, the second sale was null and void ab-nitio. He thus prayed the court to overrule this limb of objection.

In brief rejoinder, Mr. Mbuga while in agreement with Ms. Venance on the issue of general rule that, a complaint in criminal case may institute a civil dispute against a convict or any accused person claiming for damage or any appropriate reliefs, he argued, that option is available where only the awarded damages in criminal court is insufficient and not when it is considered invalid and disregarded by the plaintiff as it is the case in this matter. To him, to allow the plaintiff who never executed the criminal order to pursue similar relief granted to him regardless of validity of the said order is an abuse of court process, as if the plaintiff was not satisfied with it ought to have challenged the same by way of revision, which course he failed to take. He insisted to hold otherwise is tantamount to inviting this Court to enter conflicting decisions on same subject matter, hence this limb of objection should succeed.

Having considered the fighting arguments by the parties on this limb of objection and having perused the pleadings herein, I disagree with Ms. Venance's proposition that, this limb of objection was raised and overruled by this Court in Land Case No. 03 of 2019, before my sister Mgonya, J. I so find as what was considered and decided in that case was the issue as to whether the plaintiff complied with the mandatory provision of the law for

impleading the Attorney General as necessary party as dictated under section 6(3) of the Government Proceedings Act, [Cap. 5 R.E 2019] and not the issue as to whether the suit was brought in abuse of court process or not.

Having so found, I now move to consider the ground of objection as to whether the suit is in abuse of court process on the ground that, this suit is a replica of the reliefs granted in criminal case and the already dealt with reliefs in the two civil matters before the DLHT, whose decisions were never challenged by way of appeal or revision. While Mr. Mbuga is contending that court orders have to be respected in as long as they are binding to the parties and that, instead of preferring this suit afresh, the plaintiff who seem not to be satisfied with the criminal order restoring to him the suit premises ought to have challenged it by way of revision, Ms. Venance is of the contrary view that, the plaintiff has no locus stand to challenge the said order for not being a party to that criminal case. She added that, the said criminal reliefs though entered in plaintiff's favour the same do not bar him from further pursuing his reliefs in civil courts. It is true and I agree with Mr. Mbuga that, valid and binding court orders have to be respected as rightly held in the cases of **JV Tangerm Construction Co. Ltd** (supra), **Kahumbu** (supra) and **Jolly**

Investment Ltd (supra). I however distance myself from his proposition that, the plaintiff when not satisfied with the order in criminal case ought to have challenged it by way of revision, hence barred from bringing a fresh civil suit on the same subject matter. I will tell the reasons. **One**, the plaintiff was not a party to the said criminal case but rather a victim and witness, hence had no locus stand to challenge any order therein as the eligible parties to so do were the Republic and the 1st defendant. **Second**, the criminal court having determined criminal liability of the 1st defendant concerning the property allegedly belonging to the victim (plaintiff) and having entered consequential orders for the 1st defendant to restore the two houses and Tshs. 10 million the victim (plaintiff), its decision was not revisable at the instances of the third party to the case (plaintiff) as claimed by Mr. Mbuga. I so find as the powers of the criminal court to issue restoration orders against the accused person found guilty of the offences under Part XXVII to XXXII of the Penal Code is provided under section 358(1) of the CPA. In the instant matter the offence under section 302 of the Penal Code in which the 1st defendant was convicted with falls under Part XXXI of the Penal Code. That being the situation I believe the said restitution order was entered by the District Court of Kinondoni against the 1st defendant

under section 358(1) of the CPA, in which the only remedy for an aggrieved party is to appeal against it as provided under section 358(5) of the CPA. As the said restitution order is appealable by the aggrieved party only and since the plaintiff herein was not a party to that criminal case hence unable to appeal against, I opine that, the only available remedy for him was to institute a civil suit to claim and ascertain his rights over the suit plot. I do not see under the circumstances as to how he could have preferred a revision application for not being party to the criminal case as Mr. Mbuga did not provide to the Court the provision of the law or case law under which such course could have been taken by him (the plaintiff) before bringing this suit afresh.

Third, the law is very clear that, a victim in criminal case is not barred from seeking further reliefs or compensatory orders in civil courts as criminal court is not a proper forum for determining rights of the party seeking for damages or other related claims. Only civil courts can do. See the case of **Tatu Kingwe Vs. Kassim Madai** [2005] TLR 405. And the law provides further that, the unsatisfied victim with compensation award or other reliefs under criminal jurisdiction is not prevented from seeking an adequate compensation or damages in civil courts. See **DPP Vs. Focus Patric**

Minishi, Criminal Appeal No. 672 of 2020 (CAT-unreported) and **Eliakimu Jonas Vs. Victoria Japhet**, PC. Civil Appeal No. 26 of 2016 (HC-unreported). In this matter it is not in dispute that criminal court orders were entered in favour of the plaintiff. Whether the same were adequate or not it is not the issue under discussion at the moment. Since the law does not bar the victim from further pursuing his rights in civil courts when finds the remedy under criminal jurisdiction is inadequate, I am satisfied and therefore of the finding that, in this matter the restitution orders in favour of the plaintiff did not bar him from further pursuing his rights under civil jurisdiction over the same suit plot. **Fourth**, since the damages or other reliefs can be sought by the victim of criminal acts separate from criminal compensation or restitution orders, then I find there is no room for conflicting decision if the plaintiff is allowed to pursue his rights in a fresh suit as Mr. Mbuga would like this Court to believe.

Next for determination is the second limb in which Mr. Mbuga argues that, the plaintiff being aware of the dismissal of the review application before the DLHT, had a right to challenge or set it aside. To the contrary he contends the plaintiff decided to bring a fresh suit and in so doing cleverly drafted the plaint by appreciating the value of the disputed plot from Tshs. 10 million in

2010 to Tshs. 500 million in 2021 in order to circumvent the bar. He said, under no circumstances the plaintiff could be allowed by the law to reinstitute a matter which was dismissed as that option would be available only if the same was struck out. He relied on the case of **Tanzania Breweries Ltd Vs. Edson Muganyizi Barongo and 7 others**, Misc. Labour Application No. 79 of 2014 (HC-Unreported) and **Tanzania Revenue Authority Vs. Kotra Company Limited**, Civil Appeal No. 12 of 2009 (CAT-unreported). As alluded to above the 2nd and 3rd defendant supported the 2nd defendant's ground of objection and travelled through his submissions.

Responding to this limb of objection Ms. Venance resisted Mr. Mbuga's submission stating that, there was nothing to restricti the plaintiff from bringing afresh suit after DLHT decision which never determined the dispute on merit. She said, suit in Land Application No. 317 of 2015 for ownership of the disputed plot of land by the plaintiff before the DLHT was struck out on the ground technical ground that, allegations of change of ownership by fraud could not have been successfully made without joining Commissioner for Land before the competent court, which Court under section 6(4) of the Government Proceedings Act is the this Court (High Court). To him the claim

of ownership by the plaintiff was never determined on merit. As regard to the dismissal of the application for review in Misc. Land Application No. 71 of 2016, she said the reasons for dismissal are the same as there was nothing to review basing on the decision that struck out the first application. Since the plaintiff's claims on his right of ownership have never been determined on merit by any court of competent jurisdiction, it was her submission that, the plaintiff has the right to institute the suit at hand so as to get back his land. In his rejoinder submission Mr. Mbuga had nothing material to add on this limb of argument.

Having dispassionately considered both parties argument and perused the ruling of the application for review under discussion, which is Misc. Land Application No. 71 of 2016. Having so done, I think this second limb need not detain me much as the ruling is self-explanatory. In that application which was dismissed by the DLHT for Kinondoni, the plaintiff was seeking Tribunal's indulgence to review its ruling in Land Application No. 317 of 2015, which was struck out on the 03/02/2016, on the reasons that there were apparent errors on face of record. As the application by the plaintiff for determination of his right of ownership whose ruling sought to be reviewed in Misc. Land Application No. 71 of 2016, was struck out, I am satisfied and

therefore embrace Ms. Venance's submission that, the plaintiff's substantive claims over ownership of the suit plot was never determined by any competent court. I therefore hold that, the plaintiff has a right to bring a fresh suit as he did, hence the second limb of argument by the 2nd defendant lacks merit. With the conclusion in the first and second limbs above, I overrule the objection on the ground that the filing of this suit by the plaintiff is an abuse of court process.

Lastly is the third limb of the 2nd defendant's point of objection on the issue of time limitation which in essence if established affects the jurisdiction of this Court. It was Mr. Mbuga's submission on this limb that, the substantive relief sought by the plaintiff in this trial court is for his declaration as the lawful owner of the plot in dispute. According to him, the law under item 24 part 1 of the schedule to the LLA, provides for time limitation of six years from the accrual date of the cause of action to the party who wishes to file a suit for declaration order on any matter. To buttress his point, he cited the case of **CRDB (1996) Vs. Boniface Chimya** [2003] TLR 415. It was his contention that, in this matter since the plaintiff under paragraph 12 of the plaint clearly stated that, the cause of action in which this suit is premised arose in March 2010, when he commenced transfer process of the claimed

plot of land and given the fact that, this matter for declaratory orders was filed on 25/02/2021, almost 11 years after accrual of cause of action, then it was filed five (5) years outside the prescribe time, thus deserve to be dismissed under section 3 of the LLA. Basing on the above submission he invited this Court to dismiss the suit with costs for being preferred in abuse of courts process and outside the prescribe time limitation, hence this court lacks jurisdiction to deal with it. The 2nd and 3rd defendants had nothing to comment on this limb of argument.

Resisting the 2nd defendant' submission Ms. Venance submitted that, the substantive relief sought by the plaintiff herein is for his declaration as lawful owner of the plot in dispute. In that regard, the plaintiff wants to recover back his land which is in possession of another person to which time limitation is 12 years, as per **item 22 Part I** of the LLA. She said, counting from 2010 to 2021 when the instant suit was filed which is eleven (11) years only, the plaintiff's suit is properly filed and is within time. According to her, the argument that the time limitation is six (6) years as provided in item 24 part 1 of the LLA is misplaced hence misguiding as the main issue for determination in present matter will be who is the lawful owner of the plot in dispute. Concerning the case of **CRDB (1996)** (supra) relied on by Mr.

Mbuga, it was her submission that, the same is distinguishable to the present case as there were no issue of ownership of land in that case unlike in the present matter which is the center of contention. Basing on the above reasons she prayed the court to dismiss the preliminary objection with costs as the same aims at deploying delay tactics and hinder the administration of justice as they have no merit.

In rejoinder, Mr. Mbuga submitted that, from the plaintiffs submission it is undisputed facts that **firstly**, the plot in dispute was subject to court order issued by the criminal court in which the 1st defendant was a party therein while, the plaintiff was complainant and witness to wit PW1. And that, the above court order as per the ruling of Hon. Ding'oi RM, was to be executed or complied with by the 1st defendant. **Secondly**, the said order has not been challenged to -date by either of the party, and **thirdly**, declaratory orders are required to be granted within six years from the date of accrual of the cause of action as provided win Item 24 part 1 of the Law of Limitation. As regard to the application of **CRDB (1996) case** (supra) it was his submission that, the plaintiff did not understand the gist of the said decision by the Court of Appeal when dealing with declaratory orders. According to him the court never dealt with any type of cause of action rather reliefs in

which the High Court was moved to grant and see whether the appellant within time or not. On that note he said, the assertion that the matter is a land case required to be brought within twelve (12) years is immaterial when the court is moved for issuance of declaratory orders. In further view of Mr. Mbuga, declaratory orders are amongst the equitable remedies which ought to be sought within specified period of time, regardless of the facts in which they emanate from or facts constituting cause of action, be it either land or trade mark. To buttress his point, he cited the case of **Salma Estella Daudi Amri Vs. Joha Sahamte Mbega,** Land Case No. 84 of 2015 and the case of **Shakila Shembazi Vs. Commissioner of Prison and Another**, Land Case No. 32 of 2008 (both HC-unreported). Further to that, while citing the case of **Tanzania National Road Agency and Another Vs. Jonas Kinyagula**, TZCA Civil Appeal No. 471 of 2021, Mr. Mbuga emphasized that, the time to ask for declaratory order is within six years regardless of whether it is tort or land, and that in this matter there is no dispute that six years had already passed, hence suit under consideration is time barred.

I have deeply and serenely considered and weighed the lucid submissions from both parties on this third limb of preliminary objection. In this point, Mr. Mbuga is of the view that, plaintiff's case is preferred out of time as the

substantive claim and relief sought by the plaintiff in this case, is based on declaration that he is the lawful owner of the plot in dispute, which action ought to have been preferred within six years from 2010 when the cause of action accrued as per item 24 part I of the schedule to the LLA, while the Ms. Venance holds contrary view in that, the declaration of the plaintiff as lawful owner of the plot in dispute, has no other meaning than his need to recover back his land, thus the specified time limitation for him to bring such action is twelve (12) years as provided under item 22 of part I of the LLA, hence counting from 2010 to 2021 this suit was filed within time.

To disentangle parties controversy in this matter, I had to look at the nature of the relief sought being guided by the pleadings as well as the applicable law which is the LLA. Apart from the facts in paragraph 6 of the plaint which refer to the cause of action as declaratory orders to the effect that the plaintiff is a lawful owner of plot No. 481 Block E situated at Tegeta Kibaoni in Dar es salaam, the other part of the plaint referring to the reliefs sought by the plaintiff in this matter is the prayers paragraph which I find it apposite to quote it as I hereby do:

> *WHEREFORE; the plaintiff prays for the judgment and decree against the defendant as follows:*

i. A declaration that the plaintiff is the rightful owner of the plot No. 481 Block E situated at Tegeta Kibaoni as per sale agreement dated 28th March, 2006.

ii. The second sale agreement of the plot in dispute between the first and second defendant be declared null and void ab initio and the 3rd Defendant be ordered to cause appropriate correction be entered into the Land Register in favour of the Plaintiff.

iii. Permanent and perpetual injunction against the defendant and all people working on their behalf from interfering with the plaintiff's right of possession and ownership and quite enjoyment of the suit plot.

iv. Mesne profit as pleaded at paragraph 19 of the plaint.

v. Costs of the suit.

vi. Any other relief this Honourable Court deems fit and just to grant.

From the above relief paragraph no doubt the plaintiff's cause of action and reliefs sought are in declaratory orders. It is also not in dispute as also stated in paragraph 12 of the plaint that, plaintiff's cause of action arose in March 2010 when allegedly he sought to transfer the title over the disputed land to his name from the 1st defendant's name, seemingly after part performance of the agreement. This no doubt is the reason as to why he sought for declaratory orders. Ms. Venance's submission that by the said declaratory order the plaintiff is seeking to recover his land and not merely declarared as lawful owner. With due respect to the learned counsel this is an argument

form the bar and not what is reflected in the plaint. It is the law that, parties are bound by their pleadings unless the same are amended. See the cases of **Charles Richard Kombe t/a Building Vs. Evarani Mtungi and 2 Others**, Civil Appeal No. 38 of 2012 (CAT-unreported) and **Yara Tanzania Limited VS. Charles Aloyce Msemwa**, Commercial Case No. 5 of 2013 (HC-unreported). It is also trite law submissions by advocates are mere argument as do not constitute evidence. See the case of **Tina & Co. Limited and 2 Other Vs. Eurafrican Bank (T) Ltd Now known as BOA Bank (T) Ltd**, Civil Application No. 86 of 2015 (CAT-unreported) when cited with approval the Ugandan Court of Appeal case of **Trasafrica Assurance Co. Ltd Vs. Cimbria (E.A) Ltd** (2002) E.A. In this case since there is no single paragraph either in the cause of action or reliefs sought painting a picture that, the plaintiff was seeking to recover the land by vacant possession, I hold the cause of action remains to be for declaratory orders.

Now the law of Limitation is very straight forward and clear concerning time limitation for filing of all matters premised on declaratory orders. Under item 22 part I of the LLA, all matter seeking for declaratory orders are to be filed within six (6) years. It being the position, I am in the same line of argument with Mr. Mbuga that, this case ought to have been filed within six years from

when the cause of action accrued on 23rd March 2010 meaning before 22nd March, 2016. To the contrary the same was filed on 25th February 2021, which is a period of almost five (5) years outside the prescribed time limitation. I so hold as it does not matter whether the relief sought was incidental or ancillary to the substantial claim by the plaintiff which is a plot of land. This legal stand was settled in the case of **CRDB (1996)** (supra) at page 416 -417 when the Court of Appeal was discussing the issue of time limitation within which to file declaratory orders, had this to say:

> *Under the act we are clear in our minds that a declaratory decree falls under item 24 in part 1 of the first schedule to the Act. The prescribed period of limitation is six years. From 24th March 1994, when the motor vehicle was seized to 21st July 1996, the time when the suit was instituted, it is a period well within six years prescribed by law. As the basis of the claim was a declaratory order,* ***we think it does not matter whether the relief sought was ancillary or incidental to the substantial relief claim as claimed by Rweyongeza. We think the period of limitation prescribed under the law is the same.*** *viz six years. We are satisfied that the learned Judge was correct in holding that the limitation period was six years.*

Now what is the remedy for filing suit outside the prescribed time limitation?

It is settled law that, the remedy for such omission as per section 3 (1) of the Law of Limitation Act is to have the matter dismissed. This legal stance was stated in the case of **John Cornel Vs. A. Grevo (T) Limited**, Civil Case No. 70 of 1998, where the Court roared that, the law of limitation on action knows no sympathy nor equity, its a merciless sword that cuts across and deep into those who get caught in its web.

In the event I find that the plaintiff's suit is time barred hence sustain the preliminary objection by the 2nd defendant. Consequently, I dismiss the suit without an order as to costs.

It is so ordered.

Dated at Dar es Salaam this 28th day of October, 2022

E. E. KAKOLAKI

JUDGE

28/10/2022.

The Ruling has been delivered at Dar es Salaam today 28th day of October, 2022 in the presence of Mr. Alfred Rweyemamu, advocate for the 2nd Defendant who is also holding brief for advocate Frank Kilian for th Plaintiff, Mr. Stanley Mahenge, State Attorney for the 3rd and 4th Defendants and Ms. Asha Livanga, Court clerk and in the absence of the 1st defendant.

Right of Appeal explained.

E. E. KAKOLAKI
JUDGE
28/10/2022.