

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF SHINYANGA)
AT SHINYANGA**

LAND CASE NO. 5 OF 2022

MAGRETH MASTER BEBI.....PLAINTIFF

(Administrator of the estate of the late **Saada Katema**)

VERSUS

SAFIA ALLY.....DEFENDANT

RULING

08th March & 10th May, 2023

MASSAM, J

This is the ruling in respect of the preliminary objection raised by the respondent's counsel to wit:

- i. This suit is time-barred, that is; it is filed out of the prescribed time.

During the hearing of the raised point of preliminary objection, Messrs Renatus Lubango Shiduki and Bakari Chubwa, Muheza both learned counsels represented the plaintiff and defendant respectively.

With the consent of the parties, the Preliminary Objection was heard by way of written submission.

Supporting his point of PO, Mr. Bakari Chubwa argued that as per the plaintiff's pleadings, the plaintiff is claiming for compensation for trespass by the defendant on the suit land from January 1995 to January 2022, and, from January 2022 to the date of judgment.

He submitted further that as per page 10 of the pleadings, the trespass occurred on the 4th day of January 1995, and as per **Section 5 of the Law of Limitation Act**, Cap 89 R.E 2019 right of action arose when the cause of action arose.

He argued further that, as per **Item No. 22 of part I** of the Schedule to the Law of Limitation Act, the time limit to institute the suit to recover land trespass is twelve (12) years. And if the plaintiff needed exclusion of time as per **Order VII Rule 6 of the Civil Procedure Code**, Cap 33 R.E 2019 (CPC), he could have pleaded the same in his pleadings. He supported his arguments with the case of **Ali Shabani and 48 Others vs Tanzania National Roads Agency (TANROADS) and Another**, Civil Appeal No. 261 of 2020 (CAT at Tanga, Unreported), and prayed for the suit to be dismissed as per Section 3 of the Law of Limitation Act.

Responding to the submission made by Mr Bakari Muheza, the counsel for the defendant, Mr Shiduki on behalf of the plaintiff submitted that, the raised PO is not a pure point of law based on the following reasons. **Firstly**, the tort is based on the continuous breach as per paragraph 3, 10, 11, 12 and 19 of the plaint and annex "MMB" to the plaint. He argued further that, the respondent's counsel is now changing the nature of the cause of action to avoid continuous use of land since the defendant had using the suit land for business thereon as evidenced by paragraph 3 (a) and (b), 6, 10,11,12, 13 and 19 of the plaint.

It was his further submission that, the act of the defendant erecting her building therein and continue to use the trespassed land amount to continuous breach and the same can be corrected by specific orders of the court to demolish the same.

He distinguished the cited case of **Ali Shabani and 48 Others vs Tanzania National Roads Agency** (supra) alleged that it is inapplicable to this case. He supported his arguments with several cases and authorities such as **Stanbinc Bank Tanzania Limited vs M/S Tradexim Company Limited**, Civil Appeal No. 75 of 2019 and **Tanzania Electric Supply 7 Companies vs The Independent Power (T) Limited (IPTL)** (2000) TLR 324.

In the end, he prayed for the PO to be dismissed with costs for want of merit.

In his brief submission the defendant counsel insisted that the suit is time barred since the cause of action occurred in 1995 and prayed for the same to be dismissed with costs.

I have considered the submissions from the counsels for both defendant and the plaintiff and find that there is one issue for the determination of this matter, that:

i. Whether the raised point of preliminary objection has merit or not.

It is a well-known principle of law that where there is a continuing wrongdoing, fresh period of limitation shall begin to run every time during which the wrong occurred.

In our present case, the plaintiff submitted that his claim was not time barred since there was a continuous trespass and a cause of action arose each day of a trespass.

His argument was disputed by the defendant who submitted that a cause of action arose in January 1995 and it was not continued act. The

issue for determination here is whether in this case there was a continuous wrongdoing.

Section 7 of the law of Limitation Act, Cap 89 R.E 2019 provides, and I will quote:

"Where there is a continuing breach of contract or a continuing wrong independent of contract a fresh period of limitation shall begin to run at every moment of the time during which the breach or the wrong, as the case may be, continues."

The Court of Appeal in **Zaid Baraka and Two Others vs Exim Bank (Tanzania) Limited**, Civil Appeal No. 194 of 2016 (Unreported) quoted with approval the learned author of the book "Law of Limitation," 2nd Ed; 2012 Reprint, Modern Law Publishers New Delhi, Alliahabab when defining the expression as used in section 22 of the Limitation Act, 1963 which is similar to section 7 of the current Act and stated:

"This section speaks of a 'continuing breach of contract' and a 'continuing tort' without defining what those expressions mean. Therefore, one has to resort to the general law, where the expression means nothing more

*than that the 'breach' or the 'wrong' is not the result of single positive act but is **the result of a neglect or default which continues to exist over a number of days, so that fresh neglects and defaults are deemed to occur every day giving rise to fresh cause of action.***" (Emphasis is mine).

See also the case of **Stanbic Bank Tanzania Limited vs M/S Tradexim Company Limited** [2022] TZCA 757 (30 November 2022) (Tanzlii).

This court revisited the plaintiff's plaint in paragraph 13 which stated that:

"Despite of the defendant being required to vacate from the suit premises including demolition of the said building, the Defendant refused and continues the encroachment and trespass to the date of filling of this suit".

Thus, as the defendant is still using the dispute land a fresh period of limitation begins to run every day he is still in the said disputed land, therefore, the suit can not be time barred as alleged by the defendant.

According to the stated reasons above, this court find no merit on the raised point of preliminary objection and is hereby dismissed with costs for want of merit. So let this court proceed with the hearing of the main case on merit on the scheduled date.

It is so ordered.

DATED at **SHINYANGA** this 10th day of May, 2023.



A handwritten signature in dark ink, appearing to read "R. B. Massam".

R. B. Massam
JUDGE
10/5/2023