IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND CASE NO. 05 OF 2018

DR. IDDIPHONCE ALPHONCE.....1ST PLAINTIFF

DR. GERALD YUBAHA.....2ND PLAINTIFF

THERESIA EMMANUEL (As administratrix of the of the estate of Dionis Stephano Huma).....**3rd PLAINTIFF**

VERSUS

JOSEPH MPONDA.....1ST DEFENDANT
ATHUMAN MNUBI.....2ND DEFENDANT
YAKOBO PIUS.....3RD DEFENDANT
CHARLES MLAWA.....4TH DEFENDANT
ALOYCE ISAAK NGOWI.....5TH DEFENDANT

Date of the ruling 04/12/2020

Date of the last order 07/10/2020

RULING

I. MAIGE, J

1. The dispute herein pertains to ownership of landed properties described as Plots numbers 53,54,55,56 and 57 Block 19 Bunju within the municipality of Kinondoni ("the suit properties"). The suit properties constitute of five plots. There are three plaintiffs and five defendants in this matter. The suit has been filed by the plaintiffs jointly as against the defendants jointly. They are claiming to be

declared lawful owners of the suit properties and for vacant possession of the same.

2. From the factual allegations in paragraphs 9, 10 and 11 of the plaint, it would appear to me, the plaintiffs rely on a copy of a survey plan in annexure "B" of the plaint and exchequer receipts in annexure "C" to establish their ownership interests on the **suit properties**. While the receipts in annexure C would on the face of them suggest that, the five plots are not owned collectively by the plaintiffs, there is no factual clarification in the plaint as to who own what. There is more so, no factual clarification of whether each of the defendants trespassed unto the entire suit properties or part thereof. The plaintiffs just accuse the defendants for trespassing unto the suit properties in 2015.

3. In their written statement of defense, the fourth and fifth defendants through their counsel Mr. Rajabu Mrindoko, have questioned the maintainability of the suit for being time barred and for non-joinder of necessary parties.

4. By the direction of the Court, the argument for and against the preliminary objections was made by way of written submissions. I thank the counsel for their very informative submissions.

5. On the first ground, Mr. Mrindoko constricted his submissions to the claim of compensation. He submits that, in terms of Item (1) of Part 1 of the First Schedule to the Law of Limitation Act, the time limit for pursuing an action for compensation is one year from the date of the accrual of cause of action. In here, he submits, the suit has been brought more than three years from the date of accrual of cause of action. He submits therefore that, in terms of section 3 of the Law of Limitation Act, the suit should be dismissed notwithstanding that the relief involved in merely ancillary. He places reliance on the authority in **CRDB 1996 VS. BONIPHANCE CHIMYA (2003) TLR 413**.

6. In support of the second limb of the preliminary objection, it is the submissions of Mr. Mrindoko that, since one of the complaints in the plaint relates to non issuance of certificates of titles to the plaintiffs by

the relevant authorities, the suit is bad in law for non-joinder of necessary parties. The attention of the Court was drawn to the authorities in **SHAIBU SALIM HOZA VS. HELENA MCHACHA (as legal representative of AMERINA CHACHA), Civil Appeal No. 7 of 2012 (Unreported)** and **FARIDA MBARUKU AND ANOTHER VS. KAGARUKI, CIVIL APPEAL NO. 136 OF 2006, (Court of Appeal, DSM-Unreported).**

7. He submits further that, though the defect would have been cured by ordering for amendment of pleadings to include the said authorities, that would not be practicable because of the 90 days statutory notice requirement imposed by the provisions of the Government Proceedings Act. He therefore invited the Court, in the alternative to strike out the suit with costs.

8. Reacting on the first limb of preliminary objection, Mr. Abrahams Mwakifuma, learned advocate for the plaintiffs while did not remark on the position of law exposed in the written submissions for the forth and fifth defendants, was of the contention that the plaintiffs' cause of

action is not based on compensation but *mesne profit*. With deepest respect to the counsel, I cannot buy his view. The reason being that, the same is not only unfounded from the pleadings but contradictory thereto. Item (iii) of the prayers clause in the plaint is self explanatory. It clearly and unambiguously mention compensation as one of the substantive reliefs sought.

9. On the second point, the counsel for the plaintiff, while does not dispute of there being a non- joinder of necessary parties, it is his submission that, the defect is curable in as long as the suit can proceed notwithstanding the absence of such a party. He has cited the case of **ABDI M. KIPOTO VS. CHIEF ARTHER MTOI, CIVIL APPEAL NO. 75 OF 2017** where the Court of Appeal held as follows:-

> *What we can discern from the above is that non joinder of a party does not defeat the proceedings of a suit as long as the dispute between the parties to the suit can be resolved without that party and without affecting the party's interest.*

10. I will start my discussion on the first ground as to time limitation. I have held elsewhere in this ruling that, one of the reliefs sought in the plaint is compensation. I agree with Mr. Mrindoko that, the time

limit for pursuing such an action is one year from the date of the accrual of cause of action. Therefore, since the cause of action is claimed to have accrued in 2015, the suit to the extent of the claim for compensation, is hopelessly time barred.

11. Mr. Mrindoko has urged me to dismiss the entire suit notwithstanding that what is time barred is the claim as to compensation. He has based his contention on his understanding of the principle in **CRDB (1996) LTD VS. BONIFACE CHIMYA, [2003] 413.** The said authority is a decision of the Court of Appeal. It no doubt a binding precedent to me. I have taken time to carefully read and understand the decision. I am afraid that Mr. Mrindoko did overlook the rationale behind the decision. In the said decision, the respondent's action at the trial court was based on torts of tress pass and conversation. The appellant attacked the whole suit for being time barred, the objection which was not accepted by the trial court and hence the appeal. In its judgment, the Court of Appeal partly sustained the appeal in so far as it related to the tort of tress pass. In its own words, it remarked at page 419 of the report as follows:-

In this case, we are satisfied that the respondent's right of action for the proceedings in this case accrued on 24th March 1994 as submitted by Mr. Rweyongeza. In that situation, the period of limitation of the years prescribed under the Act for the tort of trespass commenced on this date i.e. 24 march 1994. It follows therefore that by 21st July 1996, when the suit was filed, the period of limitation in regard to the tort of trespass had elapsed. I the event, we agree with Mr. Rweyongeza, for the appellant that the learned judge erred in holding that the suit was not time barred in respect of the tort of trespass. The ground pertaining to the tort of trespass thus succeeds.

12. On the issue of tort of conversion, the Court of Appeal, it would appear to me, did not fault the trial court in holding that it was not time barred. The Court further remarked at pages 419 and 420 as hereunder:-

In this case, it was on 4th October 1996, when the appellant indicated its refusal to hand over the motor vehicle to the respondent. Applying this general principle to the instant case, we are satisfied that learned judge cannot be faulted in his finding that the cause of action in regard to tort of conversation arose on 4th October 1996. In that case, we agree with the learned judge that the suit was timeously instituted. We find no merit in this ground, it is dismissed.

13. Guided with the above principle of law therefore, I will as I hereby do, dismiss the suit to the extent of the claim for compensation for being time barred.

14. This now takes me to the second limb as to non-joinder of necessary parties. As I said above, the plaintiffs' basis of the claim as to ownership of the suit properties is basically on the survey plan in annexure "A" of the plaint. It is expressly clear in paragraph 11 of the plaint that despite applying to the Commissioner for Lands, the plaintiff had, as on the date of the institution of the suit, not issued with any certificate of titles. This is reflected too in a letter written on their behalf by the counsel on 15th September 2015 attached in the plaint as "annexure D". A quick perusal on annexure D would suggest that, before the plaintiffs had applied to be allocated with the suit properties, the same were under the ownership of some third parties who had abandoned the same or failed to make development thereon. In the circumstance of this case, I am in agreement with Mr. Mrindoko that the Kinondoni Municipal Council and the Commissioner for Land are necessary parties without whom this dispute cannot be resolved.

15. I do not agree with the counsel for the plaintiff that a suit can proceed in the absence of a necessary party. I do not also agree with him that the said proposition is founded on the principle in the case of

ABDI M. KIPOTO VS. CHIEF ARTHER MTOI *(supra).* I have taken time to read the authority. The submissions of Mr. Ngudungi for the appellant in the above case was that the Mleni Village Council ought to have been joined as a necessary party. The Court of Appeal dismissed the submissions not, as wrongly submitted for the plaintiffs, on account that non-joinder of a necessary party is not fatal but that the said village was not a necessary party. At page 9 of the judgment, the Court of Appeal remarked as follows:-

Secondly, even if we were to agree with the appellant that the village council ought to have been joined, we have serious doubts if it was a necessary party. A party becomes necessary to the suit if its determination cannot be made without affecting the interest of that necessary party.

16. In this case, the plaintiffs have not pleaded any document of title other than the survey plan and exchequer receipts dated between 2015 and 216 suggesting that the relevant authority had among others received fees for certificate of title in an understanding that certificate of titles would be issued within 90 days from the date thereof. In the circumstance, I agree with Mr. Mrindoko that the allocating authorities are necessary parties in this suit in the absence of whom it cannot be

established if the plaintiffs are entitled certificates of titles and why the same had not been issued within the agreed time.

17. Assuming, without deciding that I was wrong, this application would be bad in law for misjoinder of parties and causes of action as per my discussion in paragraph 2 herein.

18. In the final result and for the foregoing reasons therefore, the suit save for the claim for compensation which is dismissed for being time barred, is hereby struck out for being incompetent.

Dated this 4th day of December, 2020.

I. Maige

JUDGE

04/12/2020

Date: 04/12/2020

Coram: Hon. S.H. Simfukwe - DR

For the 1st Plaintiff
For the 2nd Plaintiff — Mr. Ted Mwakifuna, Advocate
For the 3rd Plaintiff

For the 1st Defendant: Present in person

For the 2nd Defendant: Mr. Daudi M. Advocate

For the 3rd Defendant: Absent

For the 4th Defendant
For the 5th Defendant — Mr. Daudi M. Advocate holding brief for Rajabu Mrindoko

RMA: Bukuku

COURT: Ruling delivered this 04th day of December, 2020.

S.H. Simfukwe

DEPUTY REGISTRAR

04/12/2020