

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**  
**MBEYA SUB-REGISTRY**  
**AT MBEYA**  
**LAND CASE NO. 6306 OF 2024**

1. ELIAS MWAKYUSA MWASAKAMALA
2. FURAHA WILSON NSELELE
3. JAILO LUCAS MWANGONO
4. JOHN SANGA NTITU
5. FRANCIS MATHIAS MWANDOSYA
6. DAUDI MALESI MWAKYOMA
7. VICTORIA MAJA SANGA
8. FEBRONIA PETER MATEMU
9. MWAFIKENI ASAJILE
10. AMANI E. SANGA
11. PETRO BENEDICTO NSEMWA
12. AMOSI KILIMBA
13. PHILIMON K. MWALINGO
14. GODLOVE JOSEPH GOLIAMA
15. NELUSIGWE MWAMASIKA
16. EZEKIEL O LWILA
17. CHIRISTINA NYAMBO
18. JUDITH KABAGA
19. ZAINA JAMES
20. KELVIN KEPSON DANIEL
21. GEORGE FANDA MWAKYEKA.....PLAINTIFFS
22. NICHOLAS S. MWAKIHABA
23. RAPHAEL SHELELA
24. PATRICK MFISI
25. YOHANA VENANSI
26. EZEKIA SAMBALA
27. NAIMAN ELIAKUNDA NAIMAN
28. KENEDY MWAZANGA
29. IBRAHIMU AYUBU
30. RODA MAKULA
31. KENED MULINDA
32. UPENDO DAIMON MALIKA
33. ALPHONCE SANGA
34. PELIDA A. KAWANJI
35. MICHAEL T. MWAZEMBE
36. STEVEN MWASOMOLA
37. MAIMUNA MSEGWA
38. LISTON L. MACKHAS
39. FATMA A. LUOGA
40. EMMANUEL JOHN KAWOGO

41. FABIAN NYONI
42. ROBERT AKIMU BANTU
43. PATRICK KASAMBALA
44. TABU FUNGO
45. NEEMA MGAWA
46. EMMA LUSAJO MWANGOGHE
47. HAWA KIWANGA MWAIKAMBO
48. CASTORY MWAKALOBO
49. GEORGE MWAMUMALE
50. JACKSON KIWONE KASAMBALA
51. EZEKIA MAHENGE
52. MONICA KAPYATA
53. IMAN SAMWEL NGAILO
54. ZAKARIA ELIAM
55. GEORGE W. SONGELA
56. KENED MWAZANGA
57. DATIVINA MOLLEL
58. SAMSON J. NTIMI
59. DANIELY SIMBEYE
60. JUNES SALYANDA
61. MENGO MWALUGALA
62. BLASS MNKENYI
63. ANDALWISYE MWANDAMBO.....PLAINTIFFS
64. LUSAJO MWASAGA
65. CHRISTINA MASASA
66. ANTONY SIMON MWANYIBANZA
67. DANFORD GODFREY MNYETAGE
68. ARON ELIA MWAKYOMA
69. ROSE ISACK MWAKYAVYALA
70. MEJA SINDE
71. FRANCIS JULIUS MWAKIHABA
72. CHRISTIAN K. KYANDO
73. ADAM SANGA
74. FRANSISCA MWAKYEMBE
75. WALBURA MGENI
76. PASTORY MATHIUS
77. EDIGAR PIUS MWAMASIKA
78. AMON CHRISTOPHER
79. NOELI MGIMBA
80. MOSES NCHIMBI
81. ELIUS WESTON NDABILA
82. DAVID MWAIPOPO
83. CHALE TASA
84. JOHN J. SUMMER
85. ONESMO KIWANGO
86. FURAHA J. LEGEMBO
87. ABDULLHALIM HAMADI
88. JAMILA HASANI MAHYADI

89. **ROGART KANYASA**
90. **ANNA AMOS KIKIMBA**
91. **SAMSON ZAMBI**
92. **NJALILA KAYETA**
93. **JOSEPHAT JEROME**
94. **MUSHY OSCAR**
95. **GEORGE SISTUS KAPOMA**
96. **LILIAN AUGUSTINO MOLLEL**
97. **FABIAN JOHN**
98. **EDWARD SIGARA**
99. **ADAM SANGA**
100. **ADERI MWALUKUNGA**
101. **ADIGER ISAH**
102. **ALEX MCHONA**
103. **ADAM M. LWILA**
104. **ANYESILE MWAMLOSO**
105. **ANDABWILE MWAIBOFU**
106. **ANNA MWAKILASA**
107. **ASHA FREDDY**
108. **ASHA F. KHALFAN**
109. **BENEDICTO NSEMWA**
110. **BENEDICTO MWAIJONGA.....PLAINTIFFS**
111. **BENETH KIPESILE**
112. **BAHATI MGENI**
113. **BATROMEO KAYETA**
114. **BOSCO NDUNGURU**
115. **BENEDICT N. MSIGWA**
116. **COSMAS MATHIAS**
117. **CILUVANUS MATEM**
118. **COSTANCE MATEM**
119. **DAINA KAGHNO**
120. **ELIEZA S. MKANA**
121. **ESEBA A. TWEVE**
122. **ELIZABETH MWANGONO**
123. **ERICA LUSEPU**
124. **FRANK MWASIFIGA**
125. **FAINES MASANGA**
126. **FROLA MGENI**
127. **FROLA P. KABIGI**
128. **FRANCIS MWANGOKA**
129. **FROLA JOSEPH**
130. **GWAKISA STAD**
131. **HOSEA NDABILA**
132. **HELENA SIMWAWA**
133. **ACKSON B. MWAIJUMBE**
134. **JACKSON P. MWAKASEGE**
135. **JACKSON W. MWAIJONGA**
136. **JAMES HADSON**

137. JAPHET MWAKATAPA
138. JOEL MWAKILASA
139. JAMES MWAI SOBA
140. JOSEPH MATHIAS
141. JOSEPH MWASEBA
142. JOSEPH M. SANGA
143. KAPINA MNGONI
144. KASMBALA M. MWAIJONGA
145. LAINA KAGANO
146. LAITON MPOLE
147. LAMSON LYANGWA
148. LAZARO F. MWANTENGULE
149. LUZE MWAKANYAMALE
150. LUPINGO MWAKAFWILA
151. LUSAJO MWANGOGI
152. MOSES J. MWASANGA
153. MARRY SHELELA
154. MMESIA JONAS
155. MARIAM KIWONE
156. MUSSA A. LWILA
157. MWANAERAD ADAM
158. NELSON MWAITETE
159. NEEMA NYAMBO
160. NAZARETH MWASILEWA.....PLAINTIFFS
161. PASTAL MWANTENGULE
162. PAULINA ALEXANDER
163. PETER MATEMU
164. REBECA FREDY
165. RUTH KATEKELO
166. SPOLA MWANJALE
167. SARA MWAIPOPO
168. SELEMAN MWASUMBI
169. SEKELA NGOSI
170. SAIMONMWAKABELA
171. STEPHANO JOSEPH
172. SIMON MBENILE
173. SABEKI CHAULA
174. TABU ABRAHAM
175. TOLAH MWANAWAO
176. TOM SANGA
177. VENANCE ASSEY
178. VENESI KIPESILE
179. VICTORIA SIBATA
180. MWANAIDI ADAM MWABURE
181. VICTORIA JONAS

Versus

**TANZANIA AGRICULTURAL RESEARCH  
INSTITUTE (TARI).....1<sup>ST</sup> DEFENDANT  
MBEYA CITY COUNCIL.....2<sup>ND</sup> DEFENDANT  
COMMISSIONER FOR LANDS.....3<sup>RD</sup> DEFENDANT  
REGISTRAR OF TITLES.....4<sup>TH</sup> DEFENDANT  
ATTORNEY GENERAL.....5<sup>TH</sup> DEFENDANT**

**RULING**

27<sup>th</sup> August & 19<sup>th</sup> September 2024

**TIGANGA, J.**

Elias Mwakyusa Mwasakamala and other 180 plaintiffs (henceforth the plaintiffs) are suing Tanzania Agricultural Research Institute (TARI), Mbeya City Council, Commissioner for Lands, Registrar of Titles, and the Attorney General (the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, and 5<sup>th</sup> defendant respectively). The suit is on land estimated at 42 acres being part of 67 acres situated at Sae, Ituha area within the City of Mbeya the value of which is estimated to be TZS. 800,000,000/=.

In their joint plaint, the plaintiffs alleged that out of their knowledge, the defendants had prepared and issued a Title Deed in favour of the 1<sup>st</sup> defendant. That the title deed erroneously included the plaintiffs' pieces of land (the suit land). The 1<sup>st</sup> defendant had never used the same suit land while the plaintiffs had been in occupation and using it free from any interruption including any of the sort from the defendants. In 2021, the former Minister for Lands ordered the 1<sup>st</sup>

defendant to return the Certificate of Right of Occupancy to exclude the plaintiffs' land and return the same to the owners, but the 1<sup>st</sup> defendant has not honoured the order. Furthermore, it is also alleged that the 1<sup>st</sup> defendant in 2023 trespassed into the suit land started building a fence, and ordered the plaintiffs to demolish their houses and vacate therefrom.

The plaintiffs are thus, praying for a judgment and order that the suit land belongs to the plaintiffs, that the plaintiffs' land included in 1<sup>st</sup> defendant's title deed without adhering to the due process of law, the costs to be borne by the defendants, and any other relief(s) this Court might deem just and equitable to grant.

When the defendants were served with the plaint, they, through a joint written statement of defence, vehemently disputed the claims. They also raised a preliminary objection that the suit is hopelessly time-barred.

As the law and practice demand, the suit could not proceed without first determining the fate of the preliminary objection. This ruling is to resolve the said preliminary objection.

At the hearing of the preliminary objection, the plaintiffs were represented by Advocate Barnaba G. Pomboma, whereas the defendants

appeared through Ms. Edina Mwamlima, learned State Attorney, and Ms. Selina Mloge, the head of the Legal Service Unit of the 1<sup>st</sup> defendant. By the consent of the parties and order of this Court, the preliminary objection was disposed of by way of written submissions.

It is argued in support of the preliminary objection that the suit is time-barred since the plaintiffs plead under paragraph 8 of the plaint that the defendants included the suit land into the title deed issued to the 1<sup>st</sup> defendant in 1991. The learned State Attorney also argues that the plaintiffs claim that the defendants acquired the Indigenous (plaintiffs') land by neither following the procedure nor paying compensation. To her, the time limit to claim for compensation is one year while it is 12 years for suits to recover land. The reference is made under items 1 and 22 of the first schedule to the Law of Limitation Act, [Cap. 89 R.E 2019].

She went on to argue that since section 5 of the Law of Limitation Act, provides that the limitation period for any proceedings commence from the date on which the right of action accrues, and since the plaintiffs claim that the suit land was included in the 1<sup>st</sup> defendant's title deed in 1993, then the time limit for compensation expired in 1994 and for suit to recover it expired in 2005. She urged this court to dismiss the

suit as it is only a remedy to a time-barred matter according to section 3 (1) of the Law of Limitation Act.

In response, Mr. Pomboma while noting the time limit available to claim compensation and the suit to recover land to be one and twelve years respectively, resisted the preliminary objection submitting that, counsel for the defendants has added her own words in paragraph 8 of the plaint. He argued that the plaintiffs do not plead if they had knowledge of the inclusion of the suit land into the 1<sup>st</sup> defendant's title deed since 1993.

To argue as to when the plaintiffs became aware of that fact would require proof by evidence which renders the preliminary objection to lack qualities as it becomes not a pure point of law, Mr. Pomboma argued. To that effect, he cited many cases including that of **Ibrahim Abdallah (the Administrator of the Estate of the late Hamisi Mwalimu) vs. Selemani Hamisi (Administrator of the Estate of the Late Hamisi Abdallah)**, Civil Appeal No. 314 of 2020 CAT at Arusha (unreported).

According to Mr. Pomboma, paragraph 9 of the plaint is plain that the plaintiffs had no knowledge of the 3<sup>rd</sup> and 4<sup>th</sup> defendants to issue the title deed to the 1<sup>st</sup> defendant in 1993. Also, the plaint indicates under



paragraph 14 that the cause of action arose in 2023 when the plaintiffs' peaceful use of the suit land was disturbed. He argues that the right of action begins to run when one becomes aware of the said act which is complained of. To strengthen his argument, he cited the case of **The Registered Trustee of Baraza Kuu la Waislamu Tanzania vs. Bodi ya Wadhamini ya Jumuiya ya Waislamu Kumwelulo and 4 others**, Civil Appeal No. 629 of 2022 CAT at Kigoma (unreported). Mr. Pomboma held the view that the submissions by the learned State Attorney are lacking in merits as they are matter of facts to be ascertained. He, therefore, prayed that the preliminary objection be overruled.

From the submissions by the counsel for the parties, the only issue here is whether or not the suit is time-barred. It is the law from the famous precedent of **Mukisa Biscuits Manufacturing Company Limited vs. West End Distributors** [1969] E. A. 701, that preliminary objection should emanate from the pleaded and agreed fact, and should not need evidence to prove it.

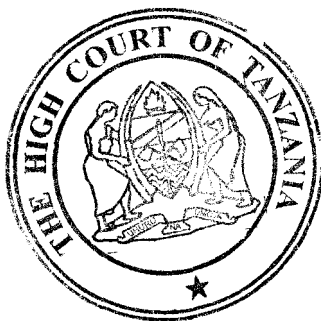
In the instant case, however, the defendant's preliminary objection was raised from the assumption that since the plaintiffs have averred in the plaint that the defendants erroneously included their land into the 1<sup>st</sup>

defendant's title deed issued to him in 1993, then the cause of action arose in that same year. This kind of fact is nowhere to be found in the plaintiffs' plaint. So far, they claim that the cause of action arose in 2023 when the 1<sup>st</sup> defendant trespassed into the suit land by erecting a fence and expelling them therefrom.

If it is in the defendant's knowledge that the cause of action arose in 1993, then it is a disputed fact that needs evidence to be proved. In that regard, the preliminary objection is short of qualities to be determined at this very stage. In the premises, I overrule the preliminary objection and order the matter to go on merits.

It is accordingly so ordered.

**DATED** and delivered at **MBEYA** on this 19<sup>th</sup> of September 2024.



A handwritten signature in black ink, appearing to read "J.C. Tiganga", is written over a horizontal line.

**J.C. TIGANGA**

**JUDGE**