

IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

CIVIL CASE NO. 155 OF 2006

MAMPASHE MATATIZO.....PLAINTIFF

VERSUS

NATIONAL MICRO FINANCE BANK1ST DEFENDANT

WAISA ZAID.....2ND DEFENDANT

ALLIANCE INSUARANCE CO.LTD.....3RD DEFENDANT

R U L I N G

MWARIJA, J.

This ruling is in respect of the preliminary objection raised by the defendants. The objection is threefold, that;

(a) The suit is time barred

(b) The plaint is defective for not having been signed by the plaintiff's counsel without disclosing the authority under which he is enabled to sign.

(c) It is not disclosed in what capacity the plaintiff is suing

Submissions for and against the preliminary objection were made by way of written submissions. Mr.Lyimo, learned counsel filed written submissions on behalf of the 2nd and 3rd defendants.

On ground (a) of the Preliminary Objection, he submitted that since according to paragraph 7 of the plaint, the act of negligence and or recklessness which is alleged to have been committed by the 2nd defendant who was a driver of a motor vehicle which was involved in a fatal accident took place on 18/11/2002, and since the plaint was filed on 27/10/2006, the same was filed out of time. He submitted further that the claim being based on a tortious act and the cause of action having arisen on 18/11/2002, by filing his plaint on 27/10/2006, a period of 3 years 10 months and 27 days after the date on which the cause of action arose, under item 6 of part 1 of the 1st schedule to the Law of Limitation Act, Cap. 89 R.E 2002 (herein after referred to as “the Act”), the suit is time barred.

Responding to the submissions by learned counsel, the defendant who was not represented by a counsel did not, in essence, deny that the plaint was filed after a period of three years from the date when the stated act of negligence and/or recklessness took place on 18/12/2002. He argued however that the plaint was not filed out of time because the cause of action accrued on the date when negotiations between the plaintiff and the 3rd defendant

regarding the amount of compensation failed on 28/7/2005. He said that upon that failure, he filed the suit on 27/10/2006, within a period of 1 year and 3 months, and therefore the same is not time barred. He also went on to argue prematurely on the effect of the 2nd defendant's conviction in the resultant traffic case, that it is a proof of negligence. In his rejoinder submissions, the learned counsel for the 2nd and 3rd defendants re-iterated the position in his submissions in-chief that the cause of action arose on the date when the accident caused by the 2nd defendant occurred and therefore since the suit was filed after a period of three years provided by the Act for claims founded on tort, the suit is time barred and ought to be dismissed under S.3 of the Act.

From the submission by the learned counsel for the 2nd and 3rd respondents and the plaintiff; it is not disputed that the suit filed by the plaintiff is founded on tort. It is not disputed also that whereas the alleged act of the negligence which resulted into a motor vehicle accident took place on 18/12/2002, the plaint was instituted on 27/10/2006. As submitted by Mr Lyimo, learned counsel, under S.5 of the Act, the right of action in respect of any

civil proceedings shall accrue on the date on which the cause of action arises. In the present case therefore the cause of action accrued on the date when the motor vehicle accident occurred, that is on 18/11/2002.

The plaintiff has however submitted in essence that apart from the above fact, the period of limitation should commence not from the date when the cause of action accrued but from the date when the negotiations to settle the claim out of court failed on 28/7/2005. By that argument, the plaintiff is raising a ground of exemption from the period of limitation, that although the cause of action accrued on 18/11/2002, the period within which the parties were negotiating for settlement of the claim is exempted and therefore the period commences from the date when the plaintiff was formally notified failure of the negotiations.

The position of the law is that if the plaintiff believes that such is a sound ground for exemption from limitation law, then he should have shown so in his plaint. That mandatory requirement is provided for under O.VIII r.6 of the Civil Procedure Code, Cap.33 R.E. 220, in the following words;

Where the suit is instituted after the expiration of the period prescribed by the law of limitation, the plaintiff shall show the ground upon which exemption from such law is claimed.

Where a suit is filed after the time prescribed by law and the ground upon which the plaintiff claims exemption from the period of limitation is not shown in the plaint, the plaint ought to be rejected. That position is substantiated by the decision in the case of Iga v. Makerere University (1972)1,EA 65. In that case the appellant sued the respondent in tort for damages resulting for personal injuries. The action was filed out of time and the appellant did not show in the plaint the grounds for exemption to the period of limitation. Citing rr. 6 and 11 (c) of O.VII of the Uganda Civil Procedure Rules (which are in pari materia with the same Order and rules in our CPC), the East African Court of Appeal Stated that unless the appellant in this case had put himself within the limitation period by showing the grounds upon which he could claim exemption the court “shall reject” his claim’. Because the appellant failed to show any ground upon which he could claim exemption, the court held inter alia that “a plaint barred by limitation is barred by law and must be rejected”.

That position was also stated in the case of Alfons Mohamed Chilumba v Dar-es-Salaam Small Industries Development Cooperative Society (1986) TLR 91. In that case, the High Court had this to say;

“ Order 7 rule 6 CPC provides that where the suit is instituted after the expiry of the period prescribed by the law of limitation, the plaintiff shall show the ground upon which exemption from such law is claimed. In other words, where but for some ground of exemption from the law of limitation, a suit would prime facie be barred by limitation, it is necessary for the plaintiff to show in his complaint such ground of exemption. If such ground is not shown in the complaint, it is liable to be rejected under rule 11 (c) of the same order.

From the foregoing, as the complaint was filed out of time and although the plaintiff is claiming that he has a ground for exemption from the proscribed period of limitation, but did not show that ground in his complaint, the same ought to be rejected. As a result, the need to consider the other two grounds of the preliminary objection does not arise. I therefore uphold the preliminary objection and hereby accordingly reject the complaint.

Each party to bear his own costs.


A.G. MWARIJA
JUDGE
30/11/2009