

**IN THE HIGH COURT OF TANZANIA  
AT DAR ES SALAAM  
CIVIL CASE No. 159 of 2011**

**TUMAINI S. HABIMANA.....PLAINTIFF**

**VS.**

**BULYANHULU GOLD MINE LIMITED.....DEFENDANT**

**RULING**

**Date of last Order:** 15-03-2012

**Date of Ruling:** 03-05-2012

**JUMA, J.:**

This Ruling relates to a Notice of Preliminary Objection which the defendant (Bulyanhulu Gold Mine Limited) filed on 15<sup>th</sup> October 2011 to contend firstly that this Court lacks jurisdiction to entertain this suit; and secondly that this suit is time barred.

As regards the objection on limitation period, the Leo Attorneys submitted on behalf of the Defendant that the Plaintiff was injured on 18<sup>th</sup> February 2006 when he was hit by a jack hammer, and he did not take any action to claim from his employers until 23<sup>rd</sup> September 2011 when he filed this suit seeking damages and compensation under tortuous liability.

According to the Leo Attorneys, five years separated the moment when the plaintiff was injured and the date he filed this suit is beyond the three years limitation prescribed by both the **Law of Limitation Act, Cap. 89** and the **Workers' Compensation Act, Cap. 263 R.E. 2002**. Leo Attorneys cited section 3 (1) read together with paragraph 6 of Part 1 of the Schedule to the **Law of Limitation Act** which has prescribed limitation period of three years for suits founded on tort.

Plaintiff's submissions to oppose the preliminary points of objection were drawn and filed by Didace & Co. Advocates. The learned Didace & Co. Advocates does not dispute the fact that this suit is based on tort whose limitation period is three years. But he hastened to add that the defendant has skipped to mention the important point of when the time started to run against the Plaintiff. According to the learned Didace & Co. Advocates, because the defendant had initially provided medical support to the plaintiff, the plaintiff had no reason and cause to institute any claim against the defendant till 27<sup>th</sup> October, 2008 the defendant terminated his employment. In other words, plaintiff believes that his cause of action did not accrue on 18<sup>th</sup> February, 2006 when he was injured but on 27<sup>th</sup> October, 2008 when he was terminated. In Defendant's rejoinder submissions, Leo Attorneys insisted that the

Plaintiff's right of action accrued on 18<sup>th</sup> February, 2006 when the accident occurred.

With regard to the second ground contending that this Court lacks jurisdiction over this suit, Leo Attorneys submitted that the Plaintiff's claims related as they are, to the injury occasioned under employer/employee relationship, should have been instituted at the Labour Court but not at this Court. The Learned Leo Attorneys augmented its position that Labour Court has exclusive jurisdiction over this matter by referring me to section 94 (1) of the **Employment and Labour Relations Act, 2004** as amended by the **Written Laws (Miscellaneous Amendments) Act of 2006**. In sum, Leo Attorneys asked me to dismiss this suit.

Replying the question regarding exclusive jurisdiction of the Labour Court over this suit, the learned Didace & Co. Advocates submitted that the Plaintiff in this suit is not claiming anything under employer/employee relationship. The employer/employee relationship between the Defendant and the Plaintiff having ended on 27<sup>th</sup> October 2008, the plaintiff's claim is based on tort.

On the point of objection regarding whether this court has jurisdiction, Leo Attorneys submitted that the Plaintiff's plaint (in paragraphs 3, 7 and 24) is based on alleged injury related to, and occasioned in the course of his employment to the defendant. According to the Leo Attorneys, since the Plaintiff is suing the

defendant in tort arising from employer/employee relationship; he should have filed his suit at the Labour Court but not in this Court. Defendant's Learned Counsel referred this Court to section 94 (1) of the **Employment and Labour Relations Act, 2004** as amended by **Written Laws (Miscellaneous Amendments) Act, 2006** which states,

*“94.-(1) Subject to the Constitution of the United Republic of Tanzania, 1977, the Labour Court shall have exclusive jurisdiction over the application, interpretation and implementation of the provisions of this Act and over any employment or labour matter falling under common law, tortious liability, vicarious liability or breach of contract within the pecuniary jurisdiction of the High Court”*

It is the submission of the learned Leo Attorneys that since the dispute between the plaintiff and the defendant is labour-related, this Court in terms of above-cited section 94.-(1) lacks jurisdiction to determine this dispute.

In its reply on whether it is the Labour Court and not this Court that has jurisdiction over this suit; Didace & Co. Advocates submitted that the Plaintiff's claim in this suit is not labour-related since the employer-employee relationship between the Defendant and the Plaintiff had ended way back on 27<sup>th</sup> October, 2008. Further, the learned Counsel submitted that jurisdiction conferred

on Labour Court does not bar this Court from determining the dispute arising from this suit since High Court enjoys unlimited jurisdiction in terms of Article 108 (1) and (2) of the **Constitution** and section 2 (1) of the **Judicature and Application of Laws Act**.

From the submissions of the two learned Counsel on the two points of objection, my decision will turn on the ground regarding the limitation period prescribed for action in tort. I found no utility to determine whether the dispute falls under the jurisdiction of this Court or the Labour Courts. There is for example no paragraph in the Plaint where the Plaintiff questions his termination or any matter that could oblige this Court to look at possible exclusive jurisdiction of the Labour Court. Even the Learned Didace & Advocates has in the submission made on behalf of the Plaintiff pointed out that:

*“.....the Employer/Employee relationship between the Plaintiff and the Defendant ended on 27<sup>th</sup> October, 2008 and the position of the employer terminating the Plaintiff's employment has never been challenged and is not a subject of this dispute.”- [2.2 page 3 of the Plaintiff's Written Submissions.]*

This plaintiff's claim as stated in the plaint seeks for general damages/compensation amounting to TZS 300,000,000/= for the permanent impairment he sustained in the course of his

employment with the Defendant. That while working underground on 18<sup>th</sup> February, 2006 he was injured by a jack hammer. It is elementary from section 3 (1) read together with paragraph 6 of Part 1 of the Schedule to the **Law of Limitation Act** that an action founded on tort should be filed within three years. The Plaintiff had not sought any extension before filing this suit. The issue raised by the plaintiff is that because the defendant continued to provide him with medical support until on 27<sup>th</sup> October, 2008 when the defendant terminated his employment, means that his cause of action accrued much later on 27<sup>th</sup> October, 2008. The Plaintiff has raised an interesting thrust in his submissions that the initial provision of medical support by the Defendant, suspended the computation of limitation period.

In my opinion, provision of medical care by a person accused of committing the tort does not suspend the period of limitation. I am therefore not persuaded by the submissions made on the plaintiff's behalf that his cause of action in tort accrued on 27<sup>th</sup> October, 2008 when he was terminated. It accrued on 18<sup>th</sup> February, 2006 when he was injured.

As I have observed earlier, in actions in tort for damages for personal injury, the prescribed limitation period is three years. This period starts to run from the date upon which the Plaintiff was injured. The Plaintiff became aware of his injury the very

moment he was hit by a jack hammer. The injury was not so latent as to be discovered much later when he was terminated. Further, there was no continuous tort committed by the defendant on the Plaintiff within the meaning ascribed by section 7 of the **Law of Limitation Act**. The relevant section 7 of the **Law of Limitation Act** states:

*7. 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 Plaintiff has not specified the nature of legal disability which could have suspended the operation of the limitation period during that disability. Section 15 of the **Law of Limitation Act, Cap. 89** states:

*15. If on the date on which a right of action for a suit or an application for the execution of a decree accrues, the person to whom it accrues is under a disability, the action may be brought at any time before the expiry of the period of limitation prescribed for such action computed from the date when the person ceases to be under a disability or dies, whichever event first occurs.*

Under the 5<sup>th</sup> paragraph of his plaint, the plaintiff has annexed documents which do not indicate the nature of legal disability that would have suspended the period of limitation. I

find it hard to believe that his legal disability for purposes of suspension of limitation period could end on the very day when his employment was terminated.

Having found that this suit is time barred, the next question is its fate. The fate of time barred suit is to be determined by strict application of the provisions of section 3 of the **Law of Limitation Act, Cap 89** which directs dismissal whether or not limitation has been set up as a defence. The preliminary point of objection contending that this suit is time barred is hereby sustained. This suit is consequently dismissed with costs.

**DATED at DAR ES SALAAM this 3<sup>rd</sup> May, 2012**

  
**I.H. Juma**  
**JUDGE**

