

THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY OF MBEYA
AT MBEYA
CIVIL APPEAL NO.21 OF 2019

(From Ruling un Civil Case No.44 2019, Mbeya Resident Magistrates Court)

KISHORE KOMALDAS PABARI t/a

HIGHLAND MOTORS..... APPELLANT

VERSUS

MBOZI DISTRICT COUNCIL.....RESPONDENT

JUDGMENT

Date of last Order:30.5.2020

Date of Ruling: 23. 06. 2020

DR. MAMBI, J.

In the District Court of Mbozi, the appellant unsuccessfully filed a suit case against the Respondent. The District Court dismissed the suit on the ground that the plaint was filed out of time contrary to the law. This means that the Court upheld the preliminary objection raised by the defendant (respondent). The appellant was aggrieved and filed his appeal basing on four grounds of appeal.

In his submission, the appellant briefly submitted that the District Court wrongly held that the suit was time bared. He argued that he

agreed that the time limit for filing the suit for contract is six years but that time limit must be calculated from the date of breach of the contract.

I have thoroughly gone through and considered the submissions and argument by both parties including the documents. In my considered view, the main issue here is whether the trial court was right in its decision for holding that the plaint filed by the appellant was time bared. While the appellant submitted that he filed his suit timeously, the respondent submitted that the trial court was right in its decision for holding that the suit was time bared for being filed beyond six years.

Before addressing the other point of preliminary objection I will first focus on the key legal point of time limitation which may determine whether this appeal can proceed or disposed of at this stage. The legal question that need to be answered at this time is whether the matter at the trial court was filed within or out of time. I have gone through the trial court records and it is clear that the appellant filled his suit related to contract after six years. The law requires any dispute arising out of contract must be filed within six years but the records reveal that the appellant filed his action after eight years and eleven months. This was indeed out of the required time limit by the court, The records speak themselves that the parties entered into contract in 2008 and the contract was alleged to have been breached on the same year but the appellant filed his suit after appeal and the appellant filled his appeal after eleven years. I am of the considered view that, in the absence of really sufficient reasons and application

for extension of time, this was too long for any court to entertain his action or claim.

Indeed the time limit within which to appeal in matters related to contract is 6 years as provided under the Law of Limitation Act Cap 89. The question is, was the appellant out or within time limit?. In this regard I will refer section Schedule one Item 6 the Law of Limitation Act Cap 89 which provides that:

“Suit founded on contract not otherwise specifically provided for ... six years:

Similarly section 6 (f) the Law of Limitation Act which deals with accrual of rights of action in certain cases, provides that:

“For the purposes of this Act– (f) in the case of a suit for damages for inducing a person to breach a contract, the right of action shall be deemed to have accrued on the date of the breach”

Now if the six years requirement are counted from the day when the contract was breached or even from the day the appellant filed his suit then this will mean that the appellant filed his suit after six years that is almost nine years after the breach of the contract. This in my view the appellant was definitely out of time required by the law. The appellant submission that he filed his appeal within time has no merit since the suit at the trial court was filed out time.

Since my findings have revealed that the suit is time bared, I don't see any rationale for addressing the other point of preliminary objection by both parties. All in all the records clearly show that the

appeal was not brought timeously before this court since it was brought beyond the legal requirements of six months. This means that the application is in any event hopelessly time-barred

Having found that the plaintiff wrongly filed his suit to this court, the only remaining question before me will now be, whether there is any suit before this court. In my considered view, since the plaintiff did not comply with the mandatory requirements of the agreement, it is as good as saying there is no suit at this court. I wish to refer the decision of the court in **Joseph Ntongwisangue another V. Principal Secretary Ministry of finance & another Civil Reference No.10 of 2005** (unreported) where it was held that:

“... Experience shows that the litigations if not controlled by the court, may unnecessarily take a very long period and deny a party in the litigation enjoyment of rights granted by the court.

Reference can also be made to the decision of the court of Appeal of Tanzania in **The Director of Public Prosecutions v. ACP Abdalla Zombe and 8 others** Criminal Appeal No. 254 of 2009, CAT (unreported) where the court held that:

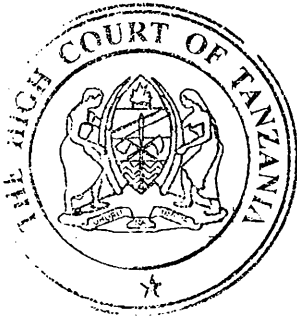
“this Court always first makes a definite finding on whether or not the matter before it for determination is competently before it. This is simply because this Court and all courts have no jurisdiction, be it statutory or inherent, to entertain and determine any incompetent proceedings.”

The Law of Limitation Act under section 3 has put a general provision on time limitation for instituting suits or any action. This section provides that:

*"3 -(1) Subject to the provisions of this Act, every proceedings described in the first column of the Schedule to this Act and **which is instituted after the period of limitation prescribe therefore opposite there to in the second column, shall be dismissed** whether or not limitation has been set up as a defence."*

All in all the records clearly show that the suit was not brought timeously before the trial court since it was brought beyond the legal requirements of six years. This means that the suit at the trial court was in any event hopelessly time-barred.

From my analysis and observations, I find the appellant's grounds of appeal are non-meritorious and I hold so. In the premises and from the foregoing reasons, I have no reason to fault the findings reached by the District Court rather than upholding its decision. In the event as I reasoned above, this appeal is non-meritorious hence dismissed. I make no orders as to cost. Each party to bear his own costs.




DR. A. J. MAMBI

JUDGE

23.06. 2020

Ruling delivered in Chambers this 23rd day of June, 2020 in presence of both parties.


DR. A. J. MAMBI

JUDGE

23.06. 2020

Right of appeal fully explained.



DR. A. J. MAMBI

JUDGE

23.06. 2020