

**IN THE HIGH COURT OF TANZANIA  
(DAR ES SALAAM DISTRICT REGISTRY)  
AT DAR ES SALAAM  
CIVIL CASE NO. 12 OF 2019**

**ALICHERAUS SEPHERINE MWESIGA ..... PLAINTIFF**

**VERSUS**

**TANZANIA PORTLAND**

**CEMENT COMPANY LTD ..... DEFENDANT**

*Date of last Order: 15/11/2019*

*Date of the Ruling: 14/02/2020*

**R U L I N G**

**MGONYA, J.**

The Defendant herein **TANZANIA PORTLAND CEMENT COMPANY LTD** through her Advovates, Eagle Law Chambers Advocates raised Notice of Preliminary Objection on a point that:-

***"The instant suit is hopelessly time barred hence court has no jurisdiction to entertain it."***

Indeed, I ordered the parties herein to file their respective written submissions in support and against the point raised, the said order was adhered accordingly, hence this ruling.

I had an opportunity of going through both parties' respective submissions and in the course of determining this matter, I don't intend in any way to reproduce the same but rather to summarize the submissions and take most of the stake in determining the sole point of preliminary objection advanced by the Defendant earlier.

Submitting on the point of preliminary objection, it is the Defendant's assertion that the matter before the court is time barred as the same is tortious and from our statutes, especially from the **Law of Limitation Act, Cap. 89** which governs time limitation in this jurisdiction, the time limitation provided is **three (3) years**. It is further stated that, at the time of institution of the instant suit, time passed is **four (4) years** from the date of which the cause of action arose, which is contrary to **section 5 of the Law of Limitation Act (Supra)**.

In reply, the Defendant's Counsel was of the view that the objection is misconceived as the said tortious act is an act which is still ongoing, hence there is no limitation from the date when the cause of action arose.

The Defendant cemented his submission by directing the court to **section 7 of the Law of Limitation Act (Supra)** which states that:

***"Where there is ..... 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, continuous."***

It is from the above, the Plaintiff prays the point of preliminary objection overruled with costs.

Without utilizing much of the time in stating the parties submissions said earlier, I have to say that, apart from going through the submissions, I had an ample time of going through the Plaint before the court. It is from the contents of the same, if one reads precisely and accurately, one cannot task his brain to understand that the wrong which is the subject before this court for determination alleged to be conducted by the Defendant to the Plaintiff's property is still **continuing**.

It is from that state, despite the fact that the matter is a tortious one, cannot command the time limit under the circumstances. I do understand that Statutes of limitations are statutory mechanisms that limit the duration of a defendant's liability for all types of alleged wrongdoing. However, every case has its own merits. As I have noted that the wrong in this case is continuing tort, under these circumstances, the court is required

judiciously to approach to the exception to the general rule. In the event therefore, and according to the circumstances of the matter before us, the court have to invoke the ***continuing wrong doctrine***.

Under this doctrine, where there is a series of continuing wrongs, the statute of limitations will be tolled to the last date on which a wrongful act is committed. On this I make reference to the case of **HENRY V. BANK OF AM., 147 A.D.3D 599, 601 (1ST DEPT. 2017)**. If the continuing wrong doctrine applies, it "will save all claims for recovery of damages but only to the extent of wrongs committed within the given time. In this doctrine, we have to note that, the application of the continuing wrong doctrine must be predicated on continuing **unlawful** acts and not on the continuing effects of earlier unlawful conduct. It therefore distinguishes between a single wrong that has continuing effects and a series of independent, distinct wrongs. Thus, the doctrine is inapplicable where there is one tortious act and continuing consequential damages that arise therefrom as it has been observed in the case of **TOWN OF OYSTER BAY V. LIZZA INDUS., INC., 22 N.Y.3D 1024, 1032 (2013)**.

The above principles are fit to this case as the kind of wrong is still going on, the effects are in place whereas the

determination of the said wrong and its remedies are yet to be determined too. From this situation therefore the time limit cannot stand to praise the statutory limitation as alleged by the Defendant herein.

The concept of **continuing wrong** was clearly explained in the Indian case of **BALAKRISHNA S.P. WAGHMARE VS. SHREE DHYANESHWAR MAHARAJ SANSTHAN - [AIR 1959 SC 798]**, where it was stated:

*"It is the very essence of a **continuing wrong** that it is an act which creates a **continuing** source of injury and renders the doer of the act responsible and liable for the **continuance** of the said injury. If the **wrongful** act causes an injury which is complete, there is no **continuing wrong** even though the damage resulting from the act may **continue**. If, however, a **wrongful** act is of such a character that the injury caused by it itself **continues**, then the act constitutes a **continuing wrong**. In this connection, it is necessary to draw a distinction between the injury caused by the **wrongful** act and what may be described as the effect of the said injury."*


For the above reason, I have come to the conclusion that the Defendant has seriously misconceived the advanced point of

the preliminary raised. In the event therefore, I fully agree with the Plaintiff's submission on this matter.

Consequently, I proceed to **OVERULE THE POINT OF PRELIMINARY OBJECTION raised WITH COSTS.**

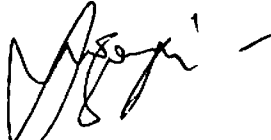
It is so ordered.



  
**L. E. MGONYA**  
**JUDGE**  
**14/2/2020**

**Court:** Ruling delivered in the presence of Mr. Robert Rutaiwa, Advocate for the Plaintiff, Mr. Francisco Bantu, Advocate for the Defendant and Ms. Janet Bench Clarke in my chamber today 14<sup>th</sup> February, 2020.



  
**L. E. MGONYA**  
**JUDGE**  
**14/2/2020**