

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

CIVIL CASE NO. 35 OF 2019

PETER JOSEPH CHACHA.....PLAINTIFF

VERSUS

THE ATTORNEY GENERAL.....1ST DEFENDANT

THE MINISTER OF HOME AFFAIRS.....2ND DEFENDANT

RULING

08/07/2020 & 28/08/2020

GWAE, J

This ruling is arising from a Preliminary Objection canvassed by the defendants' counsel in a suit brought by the plaintiff. The defendants in this matter are sued by the plaintiff in respect of the alleged seizure of the plaintiff's properties by the 2nd defendant unlawfully. The plaintiff's plaint seeks for the following orders;

- i. Restitution of the plaintiff's studio equipment by considering the guarantee and updates.
- ii. Declaration that, the defendants did deprive the plaintiff's studio equipment.
- iii. Payment of Tshs.493, 920,000/= being specific damages.
- iv. An order for payment of general damages suffered by the plaintiff as a result of the defendant's delay in settling the plaintiff's claim.
- v. An order for the defendant to pay an interest on commercial rate on the decretal sum as the court will make from the date of judgment till the date of full payment.
- vi. Costs of the suit
- vii. Any other relief as this court may deem just to grant.

A notice of preliminary objection was given by the defendants' state attorney when presenting his amended written statement of defence, it is grounded on the following points of law;

1. That, this suit is time barred.
2. That, this court lacks jurisdiction to hear and determine the suit.

As general principle, the preliminary objection had to be disposed of first pending the determination of the main suit, hence with the leave of the court

sought by parties, the preliminary objection was disposed of by way of written submissions. The applicant appeared in person, unrepresented whereas the defendants were duly represented by **Mr. Mkama Musalama**, the learned State Attorney.

Submitting on the first point of preliminary objection, the defendants' counsel argued that the suit has been brought out of the prescribed time in filing suits founded on tort which is three (3) years from when the cause of action arose. According to the learned counsel for the defendants, the plaintiff has filed this suit after the lapse of six (6) years from when the matter before African was determined on the 30th April 2013 to 25th November 2019 when the plaintiff filed his suit.

Submitting on the second ground of the preliminary objection, the defendants' counsel argued that it is a requirement of the law that a person who is intending to institute a suit against the Government is required to submit to the Government Minister a notice of not less than 90 days and send a copy of his claim to the Attorney General. The law also requires the plaintiff to serve a copy of the plaint to the Government Minister. In the matter at hand the plaintiff neither submitted to the Government Minister a notice of intention to sue the Government nor serve a copy of the plaint to the Minister of Home Affairs. This is

contrary to Section 6 (2) and (3) of the Government Proceedings Act, Cap 5 R.E 2002.

In reply to the defendants' submission on preliminary objection, the plaintiff argued that it is not true that the cause of action arose in the year 2013, for the reason that after the determination by the African Court on Human and People's Rights in the year 2013 he has been struggling in court to enforce the court order in Criminal Case No. 712 of 2009 where he was also acquitted by the Resident Magistrate's Court of Arusha and the court ordered for the reliefs of his motor vehicle and his properties. It was until 2018 when he was advised by the court to have his matter withdrawn so that he can pursue it in a proper channel. Accordingly, the plaintiff argued that from the series of event explained above the cause of action arose in 2018 and not 2013.

In reply to the second point of preliminary objection, the plaintiff argued that, it is not true that he did not serve the Government with the notice of intention to sue. According to him he had served the plaint and the notice of intention to sue the Government to the Minister of Home Affairs (2nd defendant) and also to the Attorney General (1st defendant). The plaintiff further attached copies of notice served to the Minister of Home Affairs and to the Attorney General together with EMS receipts.

In his rejoinder the defendant's counsel focusedly stated that, with regard to the issue of time limitation what the plaintiff stated in his submission amounts to new facts which were evidently not pleaded in his pleadings. According to the plaintiff's pleadings the cause of action arose in the year 2013, the plaintiff cannot depart from his own pleadings, and to buttress this argument the counsel cited the case of **Yara Tanzania Ltd vs. Charles Alloyce Msemwa and another**, Commercial Case No. 5 of 2013, High Court Commercial Division at DSM; where the court was of the view that; parties are bound by their pleadings and that no party is allowed to present a case contrary to its pleadings.

In determining the first point of preliminary objection, it is quite clear from the law that, all suits founded on tort must be brought in court within three years from the time the cause of action arose as per Part I of the schedule item 6 of the Law of Limitation Act (supra). This suit being founded on allegations of trespass to property it is therefore bound to comply with the requirement provided under Part I of the schedule item 6 of the Act.

The defendants allege that, the cause of action in the present suit arose in the year 2013 as opposed to what the plaintiff alleges on the reason that since 2013 when his case was determined by the African Court on Human and People's Rights he has been struggling in court prosecuting different cases to enforce the order of the court in Criminal Case No. 712 of 2009 where he was also acquitted

by the Resident Magistrate's Court of Arusha and the Resident Magistrates' Court ordered for the release of his motor vehicle and his properties.

However it is evident that, the plaintiff filed a constitutional case in this court through Miscellaneous Civil Cause No. 20 of 2014 which was withdrawn in 2015 relying on the advice given to him by the court nevertheless it is depicted that the plaintiff was availed with a copy of the order on 31st October 2018.

It is the position of the law under section 21 of the Law of Limitation Act Cap 89 Revised Edition, 2002 that the court, in computing the time limit in filing a case, shall exclude the time of proceedings conducted bonafide in a court of law without jurisdiction. From the circumstances surrounding this case I am of the considered view that the plaintiff is covered by this section as there is also attached copy of the court order withdrawing the matter in Misc. Civil Cause No. 20 of 2014. Conversely, the time is deemed to have started running from the time the plaintiff obtained the order in 31/10/2018 (Section 19 of the Act), as it could be improper for him to file this suit without the certified copy of the order, therefore the present suit has been filed within time. To that effect the first point of preliminary objection is overruled.

On the second point of preliminary objection, I fully concur with the defendant's counsel that it is indeed the requirement of the law under section 6 (2) & (3) of the Government Proceedings Act, Cap 5 R.E 2002 that no suit

against the Government which shall be instituted and heard unless the claimant previously submitted to the Government Minister Department or office concerned a notice of not less than **thirty (90)** days of his intention to sue the Government, specifying the basis of his claim against the Government and shall send the copy of his claim to the Attorney General. The question is whether the plaintiff has complied with the requirement under section 6 (2) & (3) of the Government Proceedings Act. The answer is obvious "NO" for the reason that the pleadings shows that the plaintiff neither issued a ninety (90) days' notice to the defendants nor copies of the plaint except in the submission of the plaintiff where he also attached a copy of the EMS receipts to prove that notice and copy of the plaint were served to the defendants.

It is worthy to remind the plaintiff that, he is bound by his own pleadings which he duly filed in this court, See: James **Funke Gwagilo vs. The Attorney General** [2004] TLR 161. The plaintiff ought to have clearly indicated that he had complied with the mandatory requirement of section 6 (2) of the Government Proceedings Act (supra) in his plaint. The copies deemed to have been served have been attached to the plaintiff's written submission, I am of the considered view as rightly submitted by the counsel for the defendants that, written submissions are not part of the pleadings (see **Registered Trustees of the Arch Dioceses at Dar es salaam vs. The Chairman Bunjo Village**

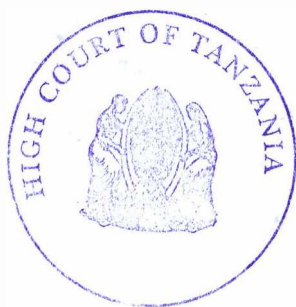



Government and 11 others, Civil Appeal No. 147 of 2006 (unreported-CAT at DSM).

Moreover, the EMS receipts establish the statutory notice dated 6th February 2019 were served to the defendants through EMS on 10/12/2019 whereas this suit was duly filed on the 25th November 2019. The EMS receipt justifies this court to boldly hold that, the plaintiff prematurely filed this suit. Due to the defect so observed I cannot even be entitled to judicially invoke provisions of order vi rule 5 of the CPC to order further and better particulars of the plaintiff's plaint.

Consequently, the plaintiff's suit is struck out for non-compliance with mandatory provision of section 6 (2) of the Government Proceedings Act (supra). In the circumstances of this case, I shall refrain from making any order as to costs of the plaintiff's suit.

It is ordered.




M.R.GWAE
JUDGE
28/08/2020