

IN THE HIGH COURT OF TANZANIA

MUSOMA DISTRICT REGISTRY

AT MUSOMA

CIVIL CASE NO 3 OF 2020

HAMIS RAMADHANI CHUMA _____ PLAINTIFF

VERSUS

THE REGISTERED BOARD OF TRUSTEES OF TANZANIA NATIONAL PARKS
AUTHORITY (TANAPA) _____ DEFENDANT

RULING

Date of last order; 16.07.2020

Date of ruling; 14.08.2020

GALEBA, J.

This ruling is in respect of a preliminary objection based on two points of law that, the suit is time barred and secondly that the case is misconceived because the plaintiff did not join to the suit Hon. the Attorney General as a party to it following amendment of **section 16 of the Government Proceedings Act [Cap 6 RE 2019]** by the **Written Laws (Miscellaneous Amendments) Act No. 1 of 2020**.

The plaintiff's cause of action which summarizes the background of the case in the plaintiff's perspective can be gathered from paragraphs 6 and 4 of the plaint. Those paragraphs starting with paragraph 6 are as follows;

"6. THAT on 14/02/2012 at 20:30pm night at Kyambai village, Uwanja wa Mbuzi Ward in the District of Serengeti Mugumu- Mara Region, a group of unknown people identifying themselves as Game Wrden Rangers of TANAPA namely (David Chasama, CPL JOB, John Kijazi) and unknown others invaded the Plaintiff

at his premises where they assaulted and tortured him to the state of being unconscious and serious body injuries on implication that he was unlawfully possessing a Government Trophy claimed to be One Dry Skin of Cheetah the property of Tanzania Government valued at Tshs. 2,850,000/= (Two Million Eight Hundred Fifty Thousand Only). After this incidence took him to the Police Station. (see photocopies of the Medical prescription cards and photographs of the victim respectively, and leave f this Court is craved to form part of this plaint attached as annex K/02/(i-iv) and K/03 (i-iii)."

In the above paragraph it is evident that the cause of action arose in at night on 14/02/2012. Paragraph 4 shows the civil wrongs allegedly committed. That paragraph states;

"4. THAT, on account of the atrocious acts of vexatious and frivolous, tortuous offences of trespass to chattels and trespass to the person (battery and assault) committed by the staff of the Defendant to the plaintiff, the plaintiff hereby claims to be compensated by the Defendant for both General and Specific damages to the tune of Tanzania Shillings two hundred and fifty five million, seven hundred thousand only (255,700,000/=)."

Based on the above claims in the plaint as stated above the defendant at paragraph 1 (i) of the written statement of defense raised that issue as a point of preliminary objection.

When the case was called for hearing of the preliminary objections on 16.07.2020, the plaintiff prayed that the objections be heard orally although the Mr. Samwel Ochina learned advocate for the defendant preferred to argue the objections by written submissions. I allowed parties to argue for and against the objection orally instantly as both the plaintiff and Mr. Ochina were ready to proceed. At the start Mr. Ochina prayed to abandon grounds 1 (iii), (iv), (v) and (vi) of the objection thereby retaining grounds 1 (i) and (ii).

Arguing the 1st ground based on the suit being barred by limitation, he submitted that according to paragraph 4 of the plaint, the case



was based on tort and all causes of action based on tort, the time limit to institute a case is 3 years in terms of **paragraph 6 of Part I of the Law of Limitation Act [Cap 89 RE 2002] (the Law of Limitation Act)**. He added that in terms of paragraph 4 of the plaint the tortious acts if any were committed on 14/02/2012 in which case, three years lapsed in February 2015. He submitted that this case having been filed on 05.06.2020 the case is out of time by about 5 years.

He submitted that according to section 3(1) of **the Law of Limitation Act** where a case is filed out of time the remedy is to dismiss it. He cited **CIVIL CASE NO 7 OF 2019 BETWEEN ABDALLAH ATHUMANI MASURULI VERSUS RUBONDO ISLAND NATIONAL PARK AND THE REGISTERED TRUSTEES OF THE TANZANIA NATIONAL PARKS** in support of his last point. Mr. Ochina finally moved this court to follow suit and dismiss the case with costs.

In reply to Mr. Ochina's submission the plaintiff who appeared unrepresented but preferred to argue the objections orally, was very brief. He submitted that after his arrest, he stayed in jail without bail from 14.02.2012 up to 21.03.2013 and after that he was imprisoned for 1 year and 6 months. He submitted that he was released on 21.08.2014 when he filed civil case no 4 of 2016 although the same was struck out. He told the court that the point is that he did not manage to file this case in time because he was in prison. He prayed that this ground of objection be overruled. In rejoinder to this point Mr. Ochina submitted that if the applicant was late to file the case,



the plaintiff ought to have filed an application to this court for him to seek extension of time before he could file the present case, and that as this case was filed without first seeking and obtaining time to file it out of time, the case is due for dismissal.

It is now opportune for this court to consider the contending submissions of parties. First there are matters that are not disputed. These are, the fact that the case is based on tort, the fact that the case was filed well over 3 years from the time when the plaintiff was abused if at all and that the plaintiff was criminally prosecuted and he spent time in custody and later in prison.

Mr. Ochina submitted that this case should be dismissed because it is a tort case and it was filed after 3 years of the cause of action. I will first look at the law cited. Item 6 of Part I of Schedule to the **Law of Limitation Act** relating to the time within which to file a law suit based on tort provides that;

"6. Suit founded on tortthree years"

That means from the date when a tortious act is committed to the date of institution of a civil action, it must be not later than 3 years. In this case the tortious acts complained of having been caused on 14.02.2012, legally the case was supposed to be filed not later than 13.02.2015 when three years expired, but that was not done until 05.06.2020, which means that the case was filled out of time by 5 years and 3 weeks. In both law and practice, when a plaintiff is unable to file a law suit within the time limited by statute, he must

apply from the Cabinet Minister responsible for Justice for the latter to grant the extension before he can file a suit under section **44 of the Law of Limitation Act**. That section provides that;

"44. Minister may extend period of limitation.

(1) Where the Minister is of the opinion that in view of the circumstances in any case, it is just and equitable so to do, he may, after consultation with the Attorney-General, by order under his hand, extend the period of limitation in respect of any suit by a period not exceeding one-half of the period of limitation prescribed by this Act for such suit."

In other words, the plaintiff would have applied under the above section and in case he obtained an extension he would then legally file this suit. The reasons to cite to the Honourable Minister are those he was citing to this court. It is also not true, as submitted by Mr. Ochina, that this court has jurisdiction to extend time of filing a suit where such time is limited by the **Law of Limitation Act**. It is the Minister who has such mandate. In the circumstances, this court has no jurisdiction to extend such time and it also does not have jurisdiction to entertain a matter filed out time.

The next issue is what the court should do now that it does not have jurisdiction to entertain this case. Mr. Ochina moved this court to dismiss it under section 3(1) of **the Law of Limitation Act** and also he cited the case of **ABDALLAH ATHUMANI MASURULI (supra)** in supporting his point. Section 3(1) of **the Law of Limitation Act**, provides as follows;

"3. Dismissal of proceedings instituted after period of limitation.

(1) Subject to the provisions of this Act, every proceeding described in the first column of the Schedule to this Act and which is instituted after the period of

limitation prescribed therefor opposite thereto in the second column, shall be dismissed whether or not limitation has been set up as a defence."

This court, Mdemu J, in **ABDALLAH ATHUMANI MASURULI (supra)** dismissed the case before him because it had been filed out of the time set by the **Law of Limitation Act**. The practicing obtaining in the high court is that courts should avoid giving conflicting decisions over similar issues unless it is absolutely necessary see **ULC (TANZANIA) LTD VERSUS NATIONAL INSURANCE CORPORATION AND ANOTHER [2003] TLR 212** and **JS MTUNGI VERSUS THE UNIVERSITY OF DAR ES SALAAM [2001] TLR 261**.

Since I find no compelling reasons to differ with what this court in **ABDALLAH ATHUMANI MASURULI (supra)** held, and because this case was filed out of time without obtaining extension from Honourable the Minister responsible for Justice under section 44 of the **Law of Limitation Act**, this case stands dismissed under Section 3(1) of the **Law of Limitation Act** without any orders as to costs.

As this ground of objection has disposed of the whole case, this court deems it academic to engage into the second ground of objection.

DATED at MUSOMA this 14th August 2020



Z. N. Galeba
JUDGE
14.08.2020

Court; This ruling has been delivered today the 14th August 2020 in the absence of parties but with leave not to enter appearance.



Z. N. Galeba
JUDGE
14.08.2020