

IN THE HIGH COURT OF TANZANIA

TANGA DISTRICT REGISTRY

AT TANGA

PC. CIVIL APPEAL NO. 11 OF 2020

(Arising from Civil Appeal No. 2 of 2020 of Lushoto District Court)

IBAHATI RICHARD YEKENYA.....APPELLANT

VERSUS

SAMWELI MADENI..... RESPONDENT

JUDGMENT

MKASIMONGWA, J

Sometime in July 2011 the Respondent one Samwel Madeni borrowed a sum of Tshs. 2,000,000/= from Richard Yekenya undertaking to pay it back fully by December, 2012. The money was not however paid back save for a sum of Tshs. 200,000/= which the Respondent paid sometime in July, 2018 to the lender. Later the lender became sick and when he was sick, he mentioned to his family members, among others, that the Respondent owed him the money.

The lender (Richard Yekenya) unfortunately died later on 09/09/2018 in Muhimbili National Hospital where he was admitted. Following the death the Respondent admitted to the deceased's family members of the debt.

He did so even to Jackson Richard Yekenya (PW3). Later on, Ibahati Richard Yekenya was appointed an Administrator of the Estate of the late Richard Yekenya. Under such a capacity Ibahati Richard Yekenya went to Bumbuli Primary Court in Lushoto District where he successfully sued the Respondent claiming for the sum of Tshs. 2,000,000/=. Being aggrieved by the decision of the Primary Court, the Respondent, Samwel Madeni appealed to Lushoto District Court challenging it. In determining the appeal, grounds of which, among others, was that; *"The trial Primary Court erred in law and in facts by entering judgment in favour of the Respondent in which the matter was time bared,"* the District Court allowed the Appeal on that ground. The Appellate Court found in terms of the Fifth Column of the Schedule to the Magistrates' Courts (Limitation of Proceedings under Customary Law) Rules, G. N. No. 311 of 1964 the suit was time barred for the same was instituted beyond the limitation period of six years without leave of the Court to do so.

The Respondent therein the appeal was dissatisfied by the decision. He therefore preferred this appeal challenging the same. Mainly the Appeal is based on the following ground:

"That the trial (I think the Appellate) District Court erred in law and fact by entering judgment in favour of the Respondent in which the matter was not time barred".

When the Appeal came for hearing before me, the parties appeared in person. In their submissions they had nothing material leading to the determination of this Appeal. Going by the records it is evident that sometime in July, 2011 the Respondent obtained from Richard Yekeny (Deceased) a sum of Tshs. 2,000,000/= which was to be fully paid by later in December, 2012. The Agreement the two had entered to that effect was reduced in writing. It is clear that the Respondent did not timely pay for the loan. The later in July, 2018 paid a sum of Tshs. 200,000/= to the deceased. He further acknowledged the debt immediately after the deceased's death to the deceased's family members. The issue is whether or not the suit was time barred. It is important to note that, the period of limitation runs against a person starting from when the cause of action accrues. A cause of action, the facts that give a person a right to judicial relief, usually accrues on the date that the injury to the plaintiff is sustained. When the injury is not readily discoverable the cause of action accrues when the plaintiff in fact discovers the injury. In the case at hand,

the parties to the loan agreement agreed that the loan should be fully paid by December, 2012.

In that premise, failure to pay for the loan could not be a fact that gave the Appellant a right to judicial review until when it reached December, 2012. As such, the cause of action in this case accrued sometime in December, 2012. Counting from that date, six years of period of limitation for suits relating to written contracts, expired sometime in December, 2018. One could definitely contend that when this matter was first instituted in Court on 04/06/2019, it was time barred. We leave ample evidence that the Respondent did sometime in July, 2018 pay to the Deceased father a sum of Tshs. 200,000/= in serving the loan. There is again ample evidence that immediately after the death of Richard Yekenya, the Respondent did acknowledge the debt the deceased owed him. He did so to the deceased family members and to PW3. In my view although the acknowledgement or part payment did not create any legal right, it extended the period of limitation. For the acknowledgment or part payment to extend time limited, it must be done before when the period of limitation expires. In this case, the Respondent did acknowledge the debt or even partly paid for it prior to when the limitation period expired. As such they

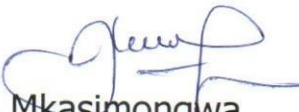
had the effect of extending the period. When therefore the suit was instituted on 04/06/2019, the same was within the limitation period.

In that premise, it was not proper when the first appellant Court dismissed the Appeal for the reason that the suit was instituted after expiration of the limitation period prescribed by the law. I am inclined, in the circumstances, to quash the decision of the District Court and set aside the orders made consequent to the findings of the District Court. As the District Court did not consider and determine the other five grounds of appeal before it, I order that the record be returned before the District Court for it to consider and determine the Appeal.

In the circumstances of the case wisdom claims it that the matter should be dealt with by another Resident Magistrate. No order as to costs is made in this appeal.

DATED at TANGA this 4th of November, 2020.




E. J. Mkasimongwa

JUDGE

14/11/2020