

**IN THE HIGH COURT OF TANZANIA  
(DAR ES SALAAM DISTRICT REGISTRY)**

**AT DAR ES SALAAM**

**CIVIL APPEAL CASE No. 24 OF 2019**

**VENANCIA BENEDICT MUHULE** (Suing as Administratrix of the late  
**JOHN CLEMENT Clement KILANGA.....PLAINTIFF**

Versus

**THE PRINCIPLE SECRETARY PRESIDENT'S OFFICE/CABINATE  
SECRETARY.....1<sup>st</sup> DEFENDANT**

**THE ATTORNEY GENERAL.....2<sup>nd</sup> DEFENDANT**

**JUDGEMENT**

12<sup>th</sup> September - 21<sup>st</sup> November, 2019- 10<sup>th</sup> March, 2020.

**J. A. DE- MELLO J;**

The suit before this Court is for General damages to the tune of **TShs. 65,000,000/=** for compensation following the 1<sup>st</sup> Defendant's employees negligence. The Plaintiff sued the Defendants jointly, as they raised two Preliminary Objections on Points of Law to the effect that;

**1. The suit is Time Barred**

**2. The Complaint is defective for contravening Order VII Rule 1(f)  
Cap. 33 R.E 2002.**

Based on the cardinal principle of law and, practice, whenever a **Preliminary Objection on Point of Law** is raised, the main suit is put to rest, so as to pave a way for its determination with a view of ascertaining whether or not it disposes the suit in its entirety. On **12<sup>th</sup> September, 2019**, hearing schedule was granted and to be disposed by way of written submissions in which he **1<sup>st</sup> Defendant** one who raised the same file his, on **27<sup>th</sup> September, 2019**, reply by the Plaintiff on **18<sup>th</sup> October, 2019**, and, Rejoinder if any, on **25<sup>th</sup> October, 2019**. However, record reveals presence of the 1<sup>st</sup> Defendant's submissions only with nothing from the Plaintiff as ordered. Following this, I will continue hearing the Defendant Ex-Parte. Consequences of non compliance can not be overstated as the defiant party loses not only his rights but even right to be heard. Why this is so has been enumerated in a series of listed authorities from this Court of the land but, for the sake of thus I will borrow from the case of **Director of Public Prosecutions vs. Said Saleh Ali, Criminal Appeal No.476 of 2017** [Unreported]. At **page 18**, the last paragraph, the Court Of Appeal of Tanzania sitting at Zanzibar observed that;

**"Before we conclude our decision, wethink, it is worthy note that arguing on application/appeal by way of written submission is synonymous with presenting oral application before the Court. Thus, if a party fails to file his/her submission on a scheduled date, it is equated as if he/she has failed to appear on a hearing date with consequence of dismissing the matter before the Court."**

In her submissions, **Lillian Machage, State Counsel**, while addressing the first point of objection reiterated among other things that, the cause of action

arosed on **21<sup>st</sup> January ,2016** when the deceased had an accident that led to his death, whereby the Plaintiff instituted this matter before this on **8<sup>th</sup> February, 2019**. On computation therefore, leads into three years (3) years and eighteen (18) days lapse, since the Cause of Action arosed in 2016. This she further contends and in accordance to **Item 1 f Part I** of the **Schedule of The Law of Limitation Act Cap. 89 R.E 2002**, which provides for suits of similar nature for compensation as a result of doing or omitting to do an act within **one (1) year**. In case of Tortious liability, the same law limits them to three (3) years as per **item 6**In all cases, this matter therefore is time barred. She then prayed for dismissal under **section 3 (1)** of the **Law of Limitation Act (supra)**, cementing her arguments she cited the case of **Yusuf Vuai Zyuma vs. Mkuu wa Jeshi la Ulinzi TPDF & 20 Others, Civil Appeal No. 15, Court of Appeal of Tanzania**, sitting at **Zanzibar** in stressing the position. Arguing on the second she spine herself on the provision of **O. VII Rule 1(f)** of **Cap. 33 R.E. 2002**for disclosing facts that shows that, the Court has jurisdiction.

Having heard the said Ex-Parte submissions, and starting with the first point of objection that, the suit is **Time Barred**, it does not require rocket science to agree with **State Counsel** that the suit is not only late but horribly so. Since 2016... when the cause of action arosed damages claim for alleged negligence is unfounded, it being a **Tortious claim**. A list of authorities subscribes to this principle namely;

In the case of **Hashim Madongo & Others vs. Minister for Industrial & Trade & 20others, Civil Appeal No. 27 of 2003 (Unreported)** the Court of Appeal at page9 of the judgment of the Court **Msofe J. A.** observed that;

**“Under section 3 of the Law of Limitation Act, a proceeding which is instituted after the prescribed period has to be dismissed”.**

Toward this end, I find no merit going to the **2<sup>nd</sup> point of objection**, the first having determined the matter fully. This suit is hereby dismissed for being **Time Barred**.

No orders as to costs considering the Plaintiff, being a legal aid beneficiary

  
**J. A. DE-MELLO**

**JUDGE**

**10/03/2020**