

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

**AT DAR ES SALAAM**

**CIVIL CASE NO. 74 OF 2020**

**STEVEN RAULIAN ..... PLAINTIFF**

**VERSUS**

**INSPECTOR GENERAL OF POLICE.....1<sup>ST</sup> DEFENDANT**

**ATTORNEY GENERAL .....2<sup>ND</sup> DEFENDANT**

**RULING**

29<sup>th</sup> June, 2021 & 09<sup>th</sup> July, 2021.

**E. E. KAKOLAKI J**

In this matter the Defendants raised a preliminary point of objection challenging the competence of the suit before this court for being time barred. The raised objection was vehemently resisted by the plaintiff who claimed the suit is within time. As the practice of this court dictates the said preliminary point of objection was to be disposed first, and with leave of the court parties opted to be heard by way of written submission in which filing schedule orders were complied with by the parties save for the defendants who waived their rejoinder right. The facts of the case upon which the preliminary point of objection is premised are not difficult to narrate.

Before this court the plaintiff is suing the 1<sup>st</sup> and 2<sup>nd</sup> Defendants jointly and severally claiming the sum of Tanzanian Shillings One Hundred and Twenty Million (Tshs. 120,000,000/=) being damages for malicious prosecution and false imprisonment. It is contended by the plaintiff in the plaint that sometimes on 20/05/1995, together with other persons was unlawfully arrested without any reported being made against him by any person and charged with the offence of **Robbery with Violence**; Contrary to Section 285 and 286 of the Penal Code, before the District Court of Bukoba where he was found guilty of the offence, convicted and sentenced to 30 years imprisonment. Being aggrieved he attempted to appeal to this Court vide Criminal Appeal No. 64 of 1995 but the appeal was thrown out for being out of time. On securing extension of time his second appeal Criminal Appeal No. 40 of 2010 was heard and found to be meritorious thus allowed by this Court (Bukoba District Registry) in its decision handed down on 27/08/2010 whereby his conviction was quashed and sentence set aside hence freed from prison.

Before filing this suit the plaintiff on 20/07/2013 wrote the Ministry of Finance claiming for Tshs. 45,000,000/= being compensation for false imprisonment whereby the response was to the effect that his demand is being worked upon. However his patience did not pay the result of which was to issue a Statutory Notice of 90 days to the Permanent Secretary, Ministry of Home Affairs dated 08/12/2014 with intent to sue her claiming for compensation of Tshs. 120,000,000/= the notice which was followed by another letter dated 28/01/2015. In response to the said letter the Permanent Secretary vide his letter dated 31/03/2015 with Ref. No. AB

82/100/01/59 advised the plaintiff to seek further legal assistance if was thinking his office was not doing enough to work on his complaint. Since then the plaintiff was never heard until when he decided to institute this suit against the defendants on the 05/06/2020, the suit which its competence is put to question for being brought outside the prescribed time limit.

The plaintiff appeared unrepresented in this matter whereas the defendants are defended by Mr. Thomas Mahushi, learned State Attorney. Submitting in support of the preliminary point of objection Mr. Mahushi argued that under item 6 part 1 of the schedule to the Law of Limitation Act, [Cap. 89 R.E 2019] herein referred to as LLA it is provided that, the time limitation for filing a suit against malicious prosecution is three years. That in this matter the plaintiff had his conviction quashed and sentence set aside on 23/08/2010 and the suit filed on 05/06/2020, respectively, ten (10) years passed, which is manifestly out of prescribed time limitation by the law for bringing suit on malicious prosecution. As the suit is preferred out of time Mr. Mahishi submits under section 3(1) of the LLA, this Court is invited to dismiss it with cost and so prays. To reinforce his argument he cited the decision of this Court in the case of **Wilson Renald Vs. Salum Hamis Nassoro**, Civil Appeal No. 169 of 2017 (HC-unreported) where it was held a claim of malicious prosecution falls under item 6 of the LLA that provides for time limitation of three (3) years.

In riposte the plaintiff resisted the submissions by the defendants contending that the suit was within time. He argued, since the plaintiff has never received any positive response out of the Ministries of Finance and Home Affairs correspondences to him dated 02/12/2013 and 31/03/2015

respectively claiming his claim is being investigated into, the suit is still in time as time will start running against him when the two ministries will give out the outcome of investigation of his claim as promised. He said his submission is fortified by the provisions of sections 27(3) and 28(1) of LLA which provide for fresh accrual of the action. In light of the above submission the plaintiff submitted this preliminary objection lacks merit thus deserves dismissal with cost and he so prayed.

Having investigated the matter by perusing the pleadings and considered the conflicting arguments from both parties, it is clear to me that both parties are at one that the plaintiff had his conviction quashed and sentence set aside on the 23/08/2010 and that this suit filed on the 05/06/2010. It is also not controverted fact that the time limitation within which the claim or suit on malicious prosecution can be preferred as prescribed by item 6 part 1 of LLA is three (3) years. They only lock heads when it comes to the issue as to when the right of action accrued, in which the Mr. Mahushi for the defendants submits it was from 23/08/2010 when the plaintiff's conviction was quashed and the sentence set aside. Contrary view is aired by the plaintiff in that his right of action will accrue when the Ministries of Finance and Home Affairs will respond to his letters by providing the outcome of his investigated claim as provided under section 27(3) and 28(1) of LLA. Since there is no response or acknowledgment of his claim from the defendants then the suit is within time. I disagree with the plaintiff's submission. It is a principle of law under section 27(3) of LLA, that where a right of action to pecuniary claim has accrued and there is an acknowledgment of the claim by the person who is accountable or liable thereof, then the right to sue in

respect of such claim shall be deemed to have accrued on and not before the date of the acknowledgement. It should be noted however such right is subjected to the condition under section 28(1) of LLA that the alleged acknowledgment must be in writing and signed by the person making it. To appreciate this point I find it apposite to cite the said two provisions. Section 27(3) of LLA provides:

*27(3) **Where a right of action has accrued to** recover a debt or **other pecuniary claim**, or to recover any other movable property whatsoever, or to recover any sum of money or other property under a decree or order of a court and **the person liable or accountable therefor acknowledges the claim** or makes any payment in respect of it, **the right of action in respect of such debt, pecuniary claim** or movable property, or as the case may be, the right of action in respect of an application for the execution of the decree or the enforcement of the order, **shall be deemed to have accrued on and not before the date of the acknowledgement** or, as the case may be, the date of the last payment:*

And section 28(1) of LLA reads:

*28.-(1) Every acknowledgement under section 27 shall be in writing and signed by the person making it, or by his agent duly authorised in that behalf.*

Applying the above principle to the facts of the matter at hand as the plaintiff suggests, this court is not convinced at all that the same is applicable to him

as for the one to rely on it must have his claim(s) acknowledged by the person accountable or liable in writing and have it signed by him/her. In other words the principle does not apply to the person awaiting for the response or acknowledgement of his claim(s) from the person responsible or accountable for it, as it is the case to the plaintiff in this matter. Since the suit preferred by the plaintiff is founded on claim of malicious prosecution, I hold the right of action accrued on the date on which the plaintiff was acquitted or the prosecution was otherwise terminated as provided under section 6(c) of LLA. The said section reads:

*6. For the purposes of this Act-*

*(a) to (c) N/A*

*(d) in the case of a suit for malicious prosecution, the right of action shall be deemed to have accrued on the date on which the plaintiff was acquitted or the prosecution was otherwise terminated;*

In this matter as rightly submitted by Mr. Mahushi the plaintiff's conviction and sentence were quashed and set aside on the 23/08/2010. The three years in which the plaintiff could have preferred his suit lapsed on the 23/08/2013 and this suit was filed on 05/06/2020 almost seven years out of time. Even where we are to apply common sense to reckon the time of accrual of the right of action from the period when the appellant was still communicating with the defendants or would be defendants which is 31/03/2015 when the Ministry of Home Affairs communicated him lastly, in which the three years would have lapsed on 30/03/2018, still I would hold

he was out of time for more than two years when instituted the suit on 05/06/2020. It is the plain fact that, no extension of time was ever sought by the plaintiff as required under section 44(1) of the LLA to entitle him institute this suit outside the prescribed time limitation. In view of the foregoing I am inclined to agree with Mr. Mahushi's submission that, this matter was filed out time and proceed to sustain the preliminary point of objection raised.

Having so done and found, what is the effect of filing the suit out of prescribed time limitation. Mr. Mahushi on this submits the remedy is to dismiss the suit while the plaintiff made no any response to the point. It is the law under section 3(1) of the LLA that, any proceedings instituted after the period of limitation prescribed opposite in the second column of the Schedule to the LLA, shall be dismissed. The said section provides:

*3.-(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 therefore opposite thereto in the second column, shall be dismissed whether or not limitation has been set up as a defence.*

With that clear position of the law, I remain without any other option than to dismiss the suit which I hereby do for being preferred outside the prescribed time limitation. The plaintiff is at liberty to institute a fresh suit subject to compliance with Law of Limitation Act.

Considering the circumstances of this case, I order that each party has to bear its own costs.

It is so ordered.

DATED at DAR ES SALAAM this 09<sup>th</sup> day of July, 2021.

  
E. E. KAKOLAKI

**JUDGE**

09/07/2021



Delivered at Dar es Salaam in chambers this 09<sup>th</sup> day of July, 2021 in the presence of the plaintiff in person, Mr. Thomas Mahushi, State Attorney for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants and Ms. Asha Livanga, court clerk.

Right of appeal explained.

  
E. E. Kakolaki

**JUDGE**

09/07/2021

