

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF KIGOMA)**

AT KIGOMA

CIVIL CASE NO. 2 OF 2022

EVA DANIEL MTASHA PLAINTIFF

VERSUS

TANZANIA WILDLIFE MANAGEMENT AUTHORITY 1st DEFENDANT

HON. ATTORNEY GENERAL 2nd DEFENDANT

R U L I N G

12/05/2022 & 25/07/2022

L.M. MLACHA, J.

Eva Daniel Mtasha (the plaintiff), filed a suit against Tanzania Wildlife Management Authority and the Hon. Attorney General (hereinafter to be referred to as the first and second defendants respectively) claiming a total of Tshs 15,000,000/= as compensation for 15 heads of cattle which could not be returned by the first defendant as ordered by this court in (DC) Criminal Appeal No. 64 of 2019 (Mugetta, J). The judgment of this court ordered return of 61 heads of cattle to the owner. It appears that only part of the cattle was returned leaving behind the said 15 heads of cattle which are the subject of the suit. Eva Daniel Mtasha claimed to be the owner.

When service was affected to the defendants they came up with a preliminary objection that the suit is incompetent for being hopelessly time barred. Mr. Anold Simeo state attorney for the defendants and Method Kabuguzi advocate for the plaintiff presented oral submissions for and against the objection. While referring to (DC) Criminal Appeal No. 64/2019, Mr. Anold said that the plaintiff filed the case outside the prescribed period of appeal. Counsel submitted that this being a suit seeking compensation for failure to do an act in respect of *any written Law* ought to have been filed within one year in compliance to section 3(1) and (2) and item 1 of the schedule to the Law of Limitation Act, cap. 89 R.E. 2019. He added that the case was filed by Eva Daniel Mtasha who was not a party in the criminal case therefore having no locus standi. He had the view that the correct parties were Richard Mtasha and Mshihiri Mtasha who were the accused persons. He argued the court to dismiss the case with costs. Submitting in reply, Mr. Kabuguzi said that the court ordered the cattle to be returned to the owner who is Eva Daniel Mtasha. He added that if she is not the owner that is a matter of fact to be determined later in the trial, not now. Counsel proceeded to submit that the case is governed by item 16, part 1 of the schedule to the law of Limitation Act which provides that

a suit founded on a judgment has a limitation period of 12 years. Referring to para 4 of the plaint which speaks of unlawful detention or conversion of 125 heads of cattle, counsel had the view that the matter is also based on the law of tort which falls under item 6, part II which is 3 years. In both cases, counsel submitted, the case was filed in time.

Mr. Anold Simeo made a rejoinder submission and reiterated his earlier position.

I had time to read the plaint and its annexures. I could also read the cited legal provisions and consider the submissions. It is not disputed that the suit is based on the judgment of this court made in (DC) Criminal Appeal No. 64 of 2019 delivered on 6/3/2021. It is not disputed that the suit was filed on 25/2/2022 which is after one year, 11 months and 19 days. Having considered the matter carefully, I am in agreement with counsel for the plaintiff that a suit based on a judgment of a court is governed by item 16 of part 1 of the schedule to the law of Limitation Act which reads, "*Suits founded on a judgment – twelve years.*" That means that it has to be filed within 12 years. The suit was therefore filed in time.

Further, as correctly pointed out by Mr. Kabuguzi, the suit is also based on the Law of torts which falls under item 3 of part 1 of the schedule to the law of Limitation Act which has a limitation period of 3 years. That means that, even in this later case, it is still in time.

That said, with respect to Mr. Anold Simeo, the objection is found to be baseless and dismissed, costs in course.




L.M. Mlacha

Judge

25/7/2022

Court: Ruling delivered through the virtual Court Services.




L.M. Mlacha

Judge

25/7/2022