

**IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA
MWANZA DISTRICT REGISTRY
AT MWANZA**

CIVIL CASE NO.32 OF 2021

GERALD PAUL GEDI -----PLAINTIFF

VERSUS

AZAM MEDIA LTD ----- 1st DEFENDANT
SAHARA MEDIA LTD-----2nd DEFENDANT
MWANANCHI COMMUNICATION LTD-----3rd DEFENDANT
SAYIDA D. JILALA-----4th DEFENDANT
SITTA E MUSANGA -----5th DEFENDANT
SIWEMA ENOSI MSAFIRI-----6th DEFENDANT
JOSEPH LUSUSA MWANSELELE-----7th DEFENDANT
DICKSON LUKEJA SHELEMBE-----8th DEFENDANT
ANNA MSAFIRI MAONYANGA-----9th DEFENDANT
JOSEPH LWIZA KASHEKU @MSUKUMA-----10th DEFENDANT

RULING

Last Order: 14.07.2022
Ruling Date: 11.08.2022

M. MNYUKWA, J.

When the defendants were served with the copy of the Plaint, seven among ten defendants raised the point of preliminary objections. Among the preliminary objections raised is that, the suit is hopelessly time barred for being instituted out of the statutory period of three years. This point



of preliminary objection was raised by the 7th defendant while the 4th, 6th, 8th and 9th raised two preliminary objections which are;

- (i) *That the plaint is bad in law for contravening Order 1 Rule 3 of the Civil Procedure Code, Cap 33 R.E 2019 and;*
- (ii) *That the plaint does not disclose cause of action against the 4th, 6th, 8th and 9th defendants since everything that was done was in the course of official business.*

On his part, the 5th defendant filed a notice of preliminary objection which contains three preliminary objections which are;

- (i) *That, the plaint is bad in law as it is premature and the plaintiff has no locus stand to sue the defendant personally in matters which he acted in his official capacity as Assistant Secretary of the District Disciplinary Authority/ Committee,*
- (ii) *That, the plaint is bad in law for contravening Order 1 Rule 3 of the Civil Procedure Code, Cap. 33 R.E 2019 and*
- (iii) *That, the plaint does not disclose cause of action against the 5th defendant because it has personalised matters which occurred in the course of his (5th defendant) official business.*



As there were points of preliminary objections raised by the defendants, the matter was scheduled for hearing of the preliminary objections to be on 14th July 2022.

During the hearing of the preliminary objections, the plaintiff was represented by Mr. Bernard Msalaba, the learned counsel, Dr. George Mwaisondola, learned counsel represented the 3rd defendant and he was given instructions to proceed with the counsel of the 1st defendant, Ms. Neema Masame, the 2nd defendant was represented by Mr. Mathew Kija who was given instructions to proceed by Mr. Boniphace Saririo, the learned counsel of the 2nd defendant, Mr. Bernard Otieno, the learned counsel represented the 4th, 6th, 7th, 8th and 9th defendants and he was given instructions to proceed with the counsel of the 5th defendant, Mr. Donatus Nungu while Mr. Makwega, learned counsel appeared for the 10th defendant.

As the defendants who raised the point of preliminary objections were represented by Mr. Bernard Otieno, the counsel prayed to abandon the preliminary objections raised by other defendants and proceeded to argue the point of preliminary objection raised by the 7th defendant that the suit is hopeless time barred for being instituted out of the statutory period of three years.

The material fact giving rise to the suit as obtained from the court file indicate that, the main claim of the plaintiff against the defendants is payment of five hundred thousand Tanzania shillings as specific damages resulting from the defamation and suffering due to acts of the defendants. The plaintiff claimed that the 1st, 2nd and 3rd defendants on their designation as mass media without any justification on different time published defamatory words against the plaintiff to the effect that, he had committed rape to a child who was a student at Lwezera Primary School at Geita. The defamatory words were initiated jointly by the defendants on 24th January 2017, which resulted the plaintiff to be suspended from his work as a teacher and later on his employment was terminated. That, the plaintiff's allegations were cleared on 8th December 2018, which resulted the plaintiff to be reinstated to work.

As I have earlier on indicated, the only point of preliminary objection that was argued by the parties is, the suit is hopeless time barred for being instituted out of the statutory period of three years.

Arguing on the preliminary objection, Mr. Bernard Otieno submitted that, the Civil Case No 32 is filed out of the prescribed statutory period because, tort cases are supposed to be filed within three years from the date the course of action arose. He referred to Part 1 of the Schedule in



Column 1 under item 6 and Column 2 of the Law of Limitation Act, Cap 89 R.E 2019, which provides that the suit founded on tort has to be filed within three years.

He went on to attack paragraph 8 of the plaintiff's plaint and claimed that, the course of action arose on 24th February 2017 and the present suit was filed on 30th November 2021 which is a period of four (4) years, nine (9) months and six (6) days to which, the period of three years required by the law has been expired.

He went further to attack what has been stated on paragraph 9 of the plaint. He submitted that, as the plaintiff was aware of the defamatory words which resulted to his termination on 24th October 2017, yet he did not file the suit and instead he filed it on 30th November 2021 which is exactly three (3) years, nine (9) months and six (6) days which again is out of the prescribed period of three (3) years provided by the law in filing the suit of this nature.

He retires his submission in chief by stating that, the suit which is filed out of the prescribed time deserved to be dismissed as per section 3(1) and (2) of the Law of Limitation Act, Cap 89 R.E 2019, regardless as to whether or not the limitation has been set up as a defence. He added that, the time limitation starts to be counted from the date when the plaint



was filed and since to his opinion the suit is time barred, he prays the suit to be dismissed with costs.

Joining hands from Mr. Otieno's submission, Dr George Mwaiondola started by referring to paragraph 4 of the plaint and assure that the suit before this court is defamation which falls under the law of tort. He went on to state that, according to paragraph 8 of the plaint, the course of action arose on 24th February 2017 and that the period of limitation is three years.

He further referred to section 4 and 5 of the Law of Limitation Act, Cap 89 R.E 2019 and claimed that the accrual of the course of action commence dfrom the date on which right of action arose. He supported his argument by referring the decision of this court in the case of **Isaac Siwa and 9 others v AG and 3 others**, Land Case No 25 of 2016, HCT at Mwanza of which, this court interpreted section 4 of the Law of Limitation Act, Cap 89 R.E 2019.

He added that, his calculation tells him that from 24th February 2017, when the course of action arose up to 30th November 2021 when this suit was filed is the period of four (4) years, nine (9) months and three (3) days. He concluded that the matter was filed out of the prescribed period of time and therefore deserved to be dismissed. He



enlightens that, time cannot be counted from the date when the demand notice was issued or from the date when he was terminated from employment because this is not the labour dispute. The counsel of the other defendants, Mr Mathew Kija and Makwega joined hands on what their fellow counsels submitted.

In rebuttal, the counsel for the plaintiff submitted that, the preliminary objection is baseless and misconceived and deserved to be overruled so as the matter to proceed on merit. He enlightens that the course of action arose on 8th December 2018, as stated on paragraph 8 of the plaint. He went on to refer Order VIII of the Civil Procedure Code, Cap 33 R. E 2019 on how to narrate the statement of fact and that the standard of proof in defamation cases is beyond reasonable doubt.

He further stated that, the plaintiff could not file his suit on 24th February 2017, based on the standard of proof and the defence available to defendant and therefore it was important for the defendant to be cleared in order for the cause of action to be proved. He claimed that, on that basis, section 3 of the Law of Limitation Act, Cap 89 R.E 2019 is inapplicable to our case at hand as the suit was filed within time. He insisted that the cause of action arose on 8th December 2018 and the suit



was filed on 30th November 2018 and therefore three years have not expired.

He went on to distinguish the case of **Isaac Sina and 9 others** (supra) as the facts of our case is distinguishable from the fact of the above cited case and each case has to be determined on its own facts.

Re-joining, Mr. Otieno insisted that the cause of action arose when the defamatory words were published and not from the date he was cleared. He referred to section 4 and 5 of the Law of Limitation Act, Cap 89 R.E 2019, as to when the cause of action arose and insisted that the case of **Isaac Sina and 9 others** (supra) is relevant as it interprets section 4 of the above cited law. He therefore prays the suit be dismissed with costs.

On his part, Dr George Mwaisondola urged the court to disregard the issue of standard of proof and defence available to the defendant as they are not relevant for now since the issue is when the cause of action arose.

I am grateful to the learned counsel submissions. From the above submissions, the only issue for consideration and determination is whether the suit is hopelessly timed barred.



As I am going to determine the preliminary objection, I find it pertinent at this juncture to point out that there is underlying object of having the statute of limitation as a guidance as to when a claimant shall institute his suit. The object is based on two well-known legal maxims that

- i. The interest of the state requires that there should be an end to litigation (interest reipublicae ut sit finis litium)*
- ii. The law assists the vigilant and not one who sleeps of his rights (Vigilantibus non doerientibus jura subveniunt)*

It is from the above object that, the Law of Limitation Act, Cap 89 R.E 2019 is made up to ensure that suit is filed within the statutory period prescribed under the law. The aim is to ensure that justice is done to both parties of the case for avoiding the right not to be exercised or enjoyed for a long time by one party and the one who owes a duty fulfil it in a prescribed period of time.

It is a settled position of law that in determining preliminary objection the court has to look on the pleadings presented by the parties which does not need support from evidence as it was rightly held in the case of **The Soitsambu Village Council v. Tanzania Breweries Ltd and Another**, Civil Appeal No. 105 of 2011 (unreported), that: -



"A preliminary objection must be free from facts calling for proof or requiring evidence to be adduced for its verification. Where a court needs to investigate such facts, such an issue cannot be raised as a preliminary objection on a point of law. The court must, therefore, insist on the adoption of the proper procedure for entertaining applications for preliminary objections. It will treat as a preliminary objection only those points that are pure law, unstained by facts or evidence, especially disputed points of fact or evidence. The objector should not condescend to the affidavits or other documents accompanying the pleadings to support the objection such as exhibits."

It is further the trite position of the law that, an objection on account of time limit is one of the preliminary objections which courts have held to be based on pure point of law which touches on the jurisdiction of the court and whose determination does not require ascertainment of facts or evidence. To determine such an objection, the court needs only to look into the plaint and its annexures without any further facts or evidence to be ascertained in determining as to whether the suit is time barred. In the case of **Ali Shabani and 48 Others v. Tanzania National Roads Agency and The Attorney General, Civil Appeal No. 261 of 2020**, when the Court of Appeal faced with an akin situation, at page 8 of its Judgement stated that: -



"It is dear that an objection as it were on account of time bar is one of the preliminary objections which courts have held to be based on pure point of law whose determination does not require ascertainment of facts or evidence. At any rate, we hold the view that no preliminary objection will be taken from abstract without reference to some facts plain on the pleadings which must be looked at without reference examination of any other evidence.

Going by the above authorities, it is clear that to determine the preliminary objection court needs only to look into the plaint and its annexures without any further facts or evidence to be ascertained in determining as to whether the same is proved or not.

Having formed that view, reverting to our case at hand, after carefully perused the pleadings, and specifically the Plaint on paragraph 8 as well as the relief claimed in item (a) in the relief section which referred paragraph 4 of the plaint will bear testimony as to when the cause of action arose. I shall let the paragraphs speaks for themselves as below:

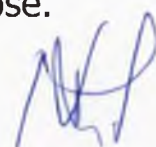
"4. That, the Plaintiff's claims against the Defendants is for payment of five hundred thousand Tanzanian shillings only (say Tsh 500,000,000/=) as specific damages due to defamation and sufferings that has been incurred by the plaintiff due to acts of the defendants.

8. That, way back on the date 24th February, 2017 defendants jointly initiated defamatory words against the plaintiff and other teachers for raping a primary school student."

In para (a) of the reliefs in the plaint, the plaintiff claimed the defendant jointly and severally pay the plaintiff the sum of Tsh 10,000,000/= as per paragraph 4.

It is my understanding that the tort of defamation is committed when there is publication of the statement that injures the other party's reputation. Therefore, the cause of action arose when the reputation is damaged. As the plaintiff claimed that on 24th July 2017, defendants jointly initiated defamatory words against him, it is my firm view that the cause of action arose on that date and not otherwise.

I say so because it is on that date when the defendants are reported to have initiated defamatory words which are communication that harm the plaintiff's reputation, and that statement is alleged to be false statement. In other words, they are defamatory in nature since that communication was publicized. Thus, since the plaintiff was aware during that time, it means his reputation was damaged from the moment when the communication was initiated by the defendants and it is from there when it can be said that the cause of action arose.



Without any disrespect to Mr. Benard Misalaba, the Law of Limitation Act, Cap 89 R.E 2019 prescribes that suit founded on claim of tort are regulated by Part 1 of the Schedule, Column 1 Item 6 and Column 2 Item 6 which provides that such suits should be instituted within three years from the date the right of cause of action accrues.

As to when the right to sue accrues, C. K Takwani on his book *The Civil Procedure with Limitations Act, 1963*, Esatern Book Company, 7th Edition published on 2015 authored that:

"Limitation starts running from the date right to sue accrues in favour of a party. "Right to sue means" right to seek relief, i.e right to approach a court of law. Thus, there can be no "right to sue" until there is an accrual of right asserted in the suit..."

What has been stated by C. K Takwani in the above quoted para, is what has been provided for under section 4 and 5 of the Law of Limitation Act, Cap 89 R.E 2019. Thus, I am still holding the view that in our case at hand the right to sue, accrual on 24th February 2017 when the defendants are alleged to have initiated defamatory words against the plaintiff. Since the Law of Limitation Act, Cap 89 R.E 2019 provides that the suit on tort to be pursued within three years from the date of accrual, and in our case at hand the plaintiff filed it on 30th November 2021, that means the



plaintiff filed his suit out of the prescribed time as he had delay for a period of one (1) year, nine (9) months and some days.

Having hold that, the cause of action arose on 24th February 2017 and the suit instituted on 30th November 2021, it is hopelessly time barred and the same deserved to be dismissed as it is provided for under section 3(1) of the Limitation Act, Cap 89 R.E 2019.

The plaintiff contention is that the suit is timeous and his main point of argument is that the right of action accrued on 8th December 2018 as stated on paragraph 8 of the plaint. He commented that the suit before this case is on defamation and the standard of proof is beyond reasonable doubt, therefore the plaintiff could not have filed suit on 24th February 2017, based on the standard of proof and the defence available to defendants.

Without any disrespect to Mr. Msalaba, I still hold the view that, defamation cases sustain if the plaintiff prove that what has been published or spoken to the third party is untrue statement which damaged his reputation. That is enough to establish that there is the cause of action against the defendant which entitles the plaintiff the right to sue as it is provided under section 4 of the Law of Limitation Act, Cap 89 R.E 2019.



The issue of the standard of proof and the defence available is irrelevant when determining when the course of action arose.

Having settled my mind on the issue of the cause of action, as I have earlier on noted, the suit which has been filed out of the prescribed time deserve to be dismissed as it is provided under section 3(1) of the Law of Limitation Act, Cap 89 R.E 2019 which states that:

"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. "

From the above provision of law, it is clear that the law of limitation goes by the notion that the right which is not enforced, enjoyed or exercised for a time provided by the law is non-existent as it may tends to do injustice to the other party.

In **Barclays Bank Tanzania Limited v Phylisiah Hussein Mchemi**, Civil Appeal No 19 of 2016 (unreported) the Court of Appeal when considering the consequences of time limitation when instituting the suit was inspired by the decision of this court in the case of **John Cornel v A. Grevo (T) Limited**, Civil Case No 70 of 1998 as it was held that:



"However, unfortunate it may be for the plaintiff; the law of limitation is on actions knows no sympathy or equity, it is merciless sword that cuts across and deep into all those who get caught in its web."

In the final analysis, since the suit is time barred this court does not have the requisite jurisdiction to entertain it. Consequently, I hereby sustain the preliminary objection raised by the 7th defendant and dismiss the suit with costs.

It is so ordered.




M.MNYUKWA
JUDGE
11/08/2022

Court: Ruling delivered on 11th August 2022 in the presence of parties' counsels.


M.MNYUKWA
JUDGE
11/08/2022