

**IN THE HIGH COURT OF TANZANIA**

**(DAR ES SALAAM SUB REGISTRY)**

**AT DAR ES SALAAM**

**CIVIL CASE NO. 149 OF 2020**

**SYKES TRAVEL AGENTS LTD..... PLAINTIFF**

**VERSUS**

**THE INSPECTOR GENERAL OF POLICE (IGP).....1<sup>ST</sup> DEFENDANT**

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

**RULING**

Last Order: 18/7/2022

Ruling: 19/8/2022

**MASABO, J.:-**

This ruling is in respect of a notice of preliminary objection raised by the defendants in their joint written statement of defence. The notice is premised on two limbs. In the first limb it has been averred that the suit is untenable and incurably defective for being preferred in contravention of section 6(2) of the Government Proceedings Act [Cap 5 RE 2019]. And, in the second, it has been averred that the suit is time barred as the claims originate from 2013 to 2014.

For a better appreciation of the preliminary objection, the following abbreviated factual background is of essence. The suit is for payment of a sum of Tshs 502,696,700/= being a consideration price for air tickets supplied to the 1<sup>st</sup> defendant by the plaintiff on diverse dates between

2013 and 2015. The sum has remained unpaid even after several reminders and notices.

At the hearing of the preliminary objection which proceeded in writing, Ms. Jacqueline Kinyasi, learned State Attorneys represented the respondent whereas Mr. Francis Magare, learned counsel was for the plaintiff.

Submitting in support of the first limb of the preliminary objection, Ms. Kinyasi argued that the suit contravened the mandatory requirement for a 90 days' notice as provided for under section 6(2) of Government Proceedings Act [Cap 5 RE 2019]. She exemplified that, much as it is pleaded under paragraph 8 of the plaint that the notice was issued, it was not appended to the plaint thus, it is uncertain whether it was indeed issued. She added that, the failure to use the notice or to annex it to the plaint is a fatal irregularity as it implies that the suit has been filed in violation of the above provision. Based this she implored upon the court to dismiss the suit.

On his party, Mr. Magare challenged the preliminary objection for being incompetent. In the alternative he submitted that the notice complained of by the defendant was issued and served upon the Attorney General.

With regard to the second limb, Ms. Kinyasi briefly submitted that the suit is time barred as, according to paragraph 4 and 5 of the plaints, the claims originate from the year 2013 and 2014. Hence beyond 6 years which is the time limitation for similar suits as prescribed under part I item 24 of the Schedule to the Law of Limitation Act, Cap 89 RE 2019. For the plaintiff, Mr. Magare argued that the time limitation for the present case is the one found under item 7 and not item 24. He proceeded further that, the time limitation should be computed based on the correspondences between the plaintiff and the defendants. In particular, he submitted that, on 7/8/2015 the first defendant acknowledged and promised to pay the debt. Also, he did so on 11/9/2015; 28/6/2015; 15/1/2020 and 16/3/2020. Thus, the plaintiff can not be condemned to have been barred by time.

Having considered the submissions, I will now proceed to determine the preliminary objection. Starting with the first point, section 6(2) of the Government Proceedings Act [Cap 5 RE 2019] imposes two mandatory requirements namely issuing a notice of 90 days to the Government

Minister, Department or the respective officer prior to institution of the suit against and sending a copy of the said notice to the Attorney General and the Solicitor General. These two are not mutually exclusive. Therefore, the plaintiff's duty under this provision is not discharged by issuing the notice and serving it upon the government department only. The notice so issued must be copied to the Attorney General.

In the present case, there is on record, a copy of the statutory notice of 90 days issued to the first defendant (Annexure "B" to the plaint). The same appears to have been copied to the 2<sup>nd</sup> defendant. Since the defendants' counsel does not dispute receipt of the notice, I take it to have been impliedly conceded that the notice was copied to the Attorney General as per the requirement of the law. The only problem spotted from the learned state attorney's submission is the plaintiff's omission to append the said notice to the plaint supplied to the defendants.

Whereas I agree with her that the omission constitutes an anomaly, in my considered view, the anomaly is nonfatal and incapable of rendering the suit incompetent as it can be easily cured by just supplying the copy to the counsel. Striking out the plaint on this ground would certainly

offend the principle of overriding objective as stipulated under section 3A and 3B of the Civil Procedure Code, Cap 33 RE 2019.

Regarding the second point, the plaint shows that the suit is founded on contract. Hence, as correctly argued by Mr. Magare it is subject to the time limitation of 6 years ascribed to similar suits by item 7 part I of the Schedule to the Law of Limitation Act. The question to be answered therefore, is whether the suit was filed within the duration of 6 years prescribed by the law.

From paragraph 5 of the plaint, it is gathered that the claim of Tshs 502,696,700/= is in respect of air tickets supplied to the 1<sup>st</sup> defendant on diverse dates between 2013 and 2015. Section 5 of the Law of Limitation Act state that, the right of action in respect of any proceeding, shall accrue on the date on which the cause of action arises. In the present case, the cause of action is refusal/neglect to pay the consideration price for tickets supplied between 2013 and 2015. As the specific date by which the price was supposed to be paid is undisclosed, it is presumed that the right of action accrued in 2015 when the last tickets were supplied. As the present case was filed on 19<sup>th</sup> October 2020, I find no merit in the learned State Attorney's contention that the suit is time barred as the total duration that

lapsed between 2015 when the right of action accrued and 19<sup>th</sup> October 2020 when the present suit was filed is just 5 years which is below the duration of 6 years stated under item 7 of the Part I of the Schedule to the Law of Limitation Act.

In the foregoing, the two limbs of the preliminary objection are dismissed for want of merit. Costs to be shared.

DATED at DAR ES SALAAM this 19<sup>th</sup> day of August 2022.

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Signed by: J.L.MASABO

**J.L. MASABO**

**JUDGE**

