

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(DAR ES SALAAM DISTRICT REGISTRY)

AT DAR ES SALAAM

CIVIL CASE NO. 29 OF 2022

FREDICK ANTHONY MBOMA PLAINTIFF

VERSUS

BAMM SOLUTION LIMITED 1ST DEFENDANT

TANZANIA RURAL AND

URBAN ROADS AGENCY (TARURA) 2ND DEFENDANT

THE ATTORNEY GENERAL 3RD DEFENDANT

RULING

Date: 03 & 07/10/2022

NKWABI, J:

The plaintiff is claiming against the defendants for general and punitive damages at the tune of T.shs 70,000,000/=, interest on the decretal amount at the Court rate from the date of judgment to full settlement. He is also claiming for costs and any other reliefs this Court may deem just and equitable to grant. It was due to the act of the 1st defendant whose agents clamped the plaintiff's motor vehicle make Vits with registration No. T. 164 CVF at Ursino street which is situated in Regent Estate area in Dar-es-Salaam city, allegedly for wrong parking. The alleged wrongful act happened on 06th day of March 2019.

While lodging the joint written statement of defence, the counsel for the 2nd and 3rd defendants, preferred a preliminary objection, which I am now called upon to determine. The preliminary objection on point of law it is as follows:

"That the suit is hopelessly time barred as it has been filed after three years contrary to the statutory requirement of section 3, 4 and item 6 of Part 1 of the schedule of the Law of Limitation Act [Cap 89 R.E. 2019]."

The hearing of the preliminary objection was carried out by way of oral submissions. The plaintiff appeared in person, unrepresented. The 2nd and 3rd defendants were represented by Mr. Ayub Sanga, learned advocate.

In submission in chief, Mr. Sanga contended that the suit is time barred under the **Law of Limitation Act**. He said paragraph 6 of the plaint is all about tortious liability (wrongly obstruction and negligent act) which caused loss).

Since the incidence happened on 06/03/2019, then it was filed out of time as per the Law of Limitation Act, item 6 of part one, the suit ought to be filed within three years. Section 5 of the Law of Limitation Act shows when

the accrual of the cause of action takes place. Then by 03/03/2021 ought to have been the last date for filing. But the matter was filed on 09/03/2022. Mr. Sanga thus, he maintained, the suit is clearly filed outside the prescribed time. For that position of the law, he relied on the case of **Moto Matika Mbaga V. Ophir Energy PLC & 6 others**, Civil Appeal No. 119/2021, Court of Appeal of Tanzania (Unreported). He prayed that this suit be found to be time barred and the same be dismissed.

In a robust reply submission, the plaintiff rejected the computation by the counsel for the 2nd and 3rd defendants while urging that a year is a period of 12 month as per Section 4 of the Law of Limitation Act. He further noted that section 61(3) of the Interpretation of Laws Act provides a day should be deducted. Then the deadline for filing the suit was 05/03/2022 which was a Saturday which under Section 60 (2) of the Interpretation of Laws Act a day is excluded. Section 60(i)(e) of the Act, provides that the limitation has to be deferred to a working day which, then in this case is 07/03/2022.

The plaintiff asserted further that the date written on the plaint that is 09/03/2019 (which is the date the plaint was presented in the Court for

filing) is not correct. He otherwise contended that in this preliminary objection parties shall be required to examine and ascertain facts. The correct date is as per the statute. He referred this Court to section 21(1) of the Judicature and Application of Law (Electronic Filing Rules, 2018) GN No. 148/2018. He argued that then the document (plaint) was filed on time. On Rule 9 of the rules, he argued, it is provided that the official record of the Court shall be electronic file and other documents filed in conventional manner.

The plaintiff reasoned that it is a precedent that establishes the date of filing is the date of payment of filing fee, but there is a lacuna on the Electronic Filing Rules. He added that when there is a conflict between the statute and the precedent, then the statute will prevail, he referred me to **Mselem Ali Mselem and others v. Attorney General**, Misc. Civil cause No. 25 of 2017, **GCN Construction Limited v. George Johanson T/I Magefe Timber Supply**, Misc. Civil Application No. 33 of 2002 (HC) and **JUWATA V. KIUTA** [1988] TLR 15 of Page 8 among other case laws and prayed that the preliminary objection be overruled.

Reinforcing his position by way of rejoinder submission, Mr. Sanga maintained that their preliminary objection on point of law, is a pure point of law, since it is a preliminary objection on time limitation.

In respect of Section 61 of the Interpretation of Laws Act, he conceded that they must deduct one day, but he was quick to point out that yet, the suit was filed while time barred. It ought to have been filed on 05/03/2019 but it was filed on 09/03/2019.

Mr. Sanga pointed out that the plaintiff is admitting that there is a lacuna in the Electronic Filing Rules, therefore it cannot be conflicting. He stressed that both the Electronic Filing Rules and Court Fees Rules were enacted under the same Law. Court Fees Rules are GN No. 189/2015 while the Electronic Filing Rules is GN No. 148/2018. He was of the view that the Electronic Filing Rules did not abolish Rule 7 of the Court fees Rules. He added, they complement each other and referred me to **Kimwel Bukumbukiza and 9 others V. Aloycia Rutaibilwa**, Land Case Appeal No. 26/2020 of Page 9.

It was a further contention of Mr. Sanga that there is no conflict of Rules and Precedents. He insisted that the Court will look at the mischief anyway.

He fortified his argument by the case of **Alexander v. Barunguza V. Law School of Tanzania and Attorney General**, Misc. Cause No. 12 of 2022 High Court (Main Registry).

Mr. Sanga further maintained that the cases cited by the plaintiff which rule that electronic filing without payment of filing fee is complete all were decided in 2020. It is the law that the latest decision of the Court prevails. So, he pointed out, their case laws that he cited must prevail. Even a recent decision of the Court of Appeal states that payment of court fees competes the filing process. He referred me to **Mohamed Said and 3 others v. Mohamed Said**, Civil Application No. 12/2017 of 2019 Court of Appeal of Tanzania (Unreported). Mr. Sanga sought to distinguish the cited case of **JUWATA** (supra) as there are no conflicting rules. He was of the view that parties are bound by their own pleadings. He then insisted on his prayer that the suit be dismissed with costs as it is time barred.

Forsooth, and it is trite law that parties are bound by their pleadings see **Pravin Girdhar Chavda v. Yasmin Nurdin Yusufali**, Civil Appeal No. 165 of 2019 CAT (unreported). Further, this Court is enjoined to look into the pleadings in order to determine the preliminary objection on point of

law. Truly, a preliminary objection cannot be entertained where the Court will be called upon to determine a fact or facts which are to be ascertained as per **Musika Biscuit Manufacturing Co. Ltd v. West End Distributors Ltd. [1969] EA**. At a preliminary objection stage a court of law has power only to look at the pleadings and see whether the preliminary objection is maintainable. At this stage while, the plaintiff is claiming that there are facts to be ascertained, the counsel for the 2nd and 3rd defendants is asserting that this is a pure point of law in respect of limitation of time. I have attentively considered the arguments of both parties, I am satisfied that this is a pure point of law which is to be ascertained only by looking at the pleadings and does not require to ascertain facts.

Be that as it may, in this preliminary objection, I am called upon to decide whether this suit is time barred. Now, the plaint indicates that the cause of action arose on 06/03/2019. The plaintiff admits, in his reply submission, so does the counsel for 2nd and 3rd defendants in rejoinder submission that one day must be deducted from the computation of time on the 3rd year, hence the plaint ought to have been filed by 05/03/2022. But 05/03/2022 was a Saturday which is not a working day, so the limitation ought to be

deferred to 07/03/2022 which the State Attorney did not dispute. Yet, the pleading that is the plaint clearly shows that the same was presented for filing on 09/03/2022. The exchequer receipt too indicates that fees for filing this suit were paid and received on 09/03/2022. I did not end there, I also visited the case file on the JSDS to ascertain as to when it was indicated that it was filed on the JSDS. The JSDS indicates that the case was filed on 09/03/2022. Since the suit ought to have been lodged by the plaintiff on 07/03/2022 as it is a tortious liability litigation, but it was filed on 09/03/2022 according to the pleadings (plaint), this suit is ruled to have been time barred at the time it was filed in this Court.

For avoidance of doubt, I find no reason to determine as to whether the Electronic Filing Rules have a lacuna on the question as to whether the filing process should be regarded to be complete when filing fee was paid as per **Mohamed Said & 3 others v. Mohamed Said** (supra) because it is glaring clear that the suit was filed outside the prescribed time hence it is timed barred.

In the circumstances, the preliminary objection is sustained. I dismiss the suit with costs for being time barred.

It is so ordered.

DATED at **DAR-ES-SALAAM** this 7th day of October 2022.



A handwritten signature in blue ink, appearing to read "J. F. Nkwabi", is written over the printed name.

J. F. NKWABI

JUDGE