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

AT DAR ES SALAAM

CIVIL APPEAL NO. 30 OF 2022
(Appeal from the Decision of the District Court of Temeke in Civil Case No. 21 of 2019)

ABDALLAH ANWAR DOSSA ..... **APPELLANT**

VERSUS

ROAD FORCE LIMITED ..... **1ST RESPONDENT**
JULIUS ALOYCE KWAY ..... **2ND RESPONDENT**

JUDGMENT

03rd October, 2022 & 24th October, 2022

BWEGOGE, J.

The appellant herein, one Abdallah Anwar Dossa, between 24/10/2012 and 05/11/2012 had hired four (4) empty cargo containers from the 1st respondent, a limited company, for use within a prescribed period of 30 clear days. The hire agreement was witnessed by the 2nd respondent who was the 1st respondent's Transport Manager. Allegedly, to this very date, the

appellant is in possession of the said cargo containers without any colour of right. In an attempt to recover its properties, the 1st respondent commenced civil proceedings against the appellant and the 2nd respondent herein in 2019 for breach of contract, claiming rental charges at the tune of Tshs. 60,000,000/= and compensation for the lost property to the tune of 24,000 USD, among other claims. The trial Court had decided in favour of the 1st respondent. The appellant, being dissatisfied with the judgment and decree entered by the trial Court, has appealed to this Court on total eight (8) grounds of appeal which are interlinked. The preferred grounds of appeal may be condensed to four (4) grounds of appeal namely:

1. *That the trial Magistrate erred in law in presiding over and determining a suit which was time barred.*

2. *That the trial Magistrate erred in law and fact by disregarding the triable issues agreed by the parties herein.*

3. *That the trial Magistrate has failed to evaluate the evidence adduced by the parties to this case hence, entered an erroneous decision.*

4. *That the trial Magistrate erred in law and facts by granting damages which were not proved and, or otherwise contemplated by contracting parties.*

Before canvassing the aforementioned grounds of appeal preferred by the appellant herein, I find it pertinent to recapitulate the facts of this case

gathered from the pleadings and evidence adduced before the trial court as follows: The 1st respondent is a limited liability company based in Dar es Salaam. The company deals in hiring cargo containers mostly to transportation companies involved in the haulage business. On the other hand, the appellant deals in haulage transportation business based in Dar es salaam. On 24th October, 2012, 30th October, 2012 and 05th November, 2012, the appellant herein had executed written agreements with the 1st respondent for hire of four (4) empty cargo containers. Specifically, on 24th October, 2012, the appellant hired two empty cargo containers with numbers; R.F 005 and R.F 035. The agreement provided that the duration of hire was clear 30 days for payment of 400 USD only for each container whereas an extension of seven days was provided to cater for emergencies upon payment of charges at the tune of 20 USD per day.

The parties had likewise entered into the same agreement on 30th October 2012 and 05th November, 2012 whereas the appellant hired from the 1st respondent cargo containers with numbers; R.F 029 and RF.004 respectively, for payment of 400 USD for each container. In both agreements, the duration of the retention of the hired containers was clear thirty days with a grace period of seven days with a charge of 20 USD per day. It was alleged that the 2nd respondent stood as guarantor for the appellant herein.

Allegedly, as depicted by the plaint and evidence adduced by the principal officers of the 1st respondent namely, Rajesh Kumar Shivji (PW1) and Senyangwa Stanley Malechela (PW2), the appellant had breached the contract for failing to return all four (4) hired containers. It was likewise alleged that both the appellant and 2nd respondent had converted the hired containers to their own use. The 1st respondent claimed against the appellant and the 2nd respondent total 24,000 USD as the deposit amount they were obliged to pay for the hire of containers, and Tshs. 60,000,000/= being actual damages for loss incurred as a result of not renting the same. The 1st respondent had commenced the civil proceedings at the trial court having served the appellant with demand notice whereas the appellant failed to respond thereto.

On the other hand, the appellant and 2nd respondent had vehemently refuted the claim and allegations levelled against them. They contended that the hired containers were duly returned on the agreed period and they had continued to hire the said containers from the 1st respondent in years 2015, 2016 and 2017.

The trial magistrate, having heard both parties and considered the evidence brought before the court, had found that the 1st respondent proved the case on the balance of probabilities and allowed the claim. The appellant was

found liable to pay 24,000 USD being the market value of four (4) containers unlawfully withheld; the rental charges of 6,000 USD; compensation for loss of income at the tune of Tshs. 60,000,000/=; and condemned to bear the costs of litigation. The appellant was not amused with the decision of the trial court, hence this appeal.

The appellant was represented by Ms. Dainess Simkoko whereas the 1st and 2nd respondents were represented by Mr. Bharat Chadha and Mr. Hassan Abdallah Kilule, learned Advocates. The counsel herein above named, having agreed upon themselves, had prayed to argue the appeal herein by way of written submissions. This Court granted the prayer and parties had duly complied with the schedule of this Court in filing their respective submissions.

As aforesaid, the appellant had appealed on eight (8) grounds of appeal and his submission covered each ground of appeal preferred. This Court, for a reason to be explained at the later stage of this judgment, shall only recount the submission made to validate the 1st ground of appeal in that the trial magistrate erred in law in presiding over and determined a suit which is time barred. Ms. Simkoko, the counsel for the appellant, submitted that the suit commenced by the 1st respondent at the trial Court was founded on a breach of contract. That the time limitation for instituting a suit founded on contract

in terms of item 7 of Part 1 of the 1st Schedule to the Law of Limitation Act (Cap. 89 R.E. 2019) is 6 years. The counsel contended that the contracts for the hire of the four (4) cargo containers were entered between 24/10/2012 and 05/11/2012, since the said containers were hired on a monthly basis, the last contract had expired on 05/12/2012. And the suit herein was filed on 22/03/2019, i.e., 7 years later. Hence, the suit was filed beyond the prescribed period. The counsel had referred the mind of this Court to the case of **Iga vs. Makerere University** (1972) EA 65 to bring her point home.

Otherwise, the counsel contended that there is no proof of the purported verbal renewal of the contract. That it is a rule of law that the contents of the documented agreement cannot be superseded by the oral account. The counsel cited the case of **Martin Fredrick Rajab vs Ilemela Municipal Council & Another,** Civil Appeal No. 197 of 2019 [2022] TZCA 434 (*https://tanzlii.org.*) to buttress her point.

On the other hand, Mr. Bharat Chadha, counsel for the 1st respondent, responded in his statement of arguments that there is evidence on record of the proceedings in respect of the Criminal Case No. 541 of 2017 commenced by the 1st respondent at Temeke District Court against the 2nd respondent for stealing of the said cargo containers. That the said proceeding contains

the testimony of the appellant in which he conceded the fact that he had renewed the contract for hire of the cargo containers up to March 30th, 2013. Hence, the suit filed on 27th March, 2019 was rightly within the prescribed period for bringing an action founded on contract. He prayed this Court to take judicial notice of the proceedings thereof.

Otherwise, the counsel argued that s.7 of the Law of Limitation Act, provides to the effect that where there is a continuing breach of contract; a fresh period of limitation shall begin to run at every moment of the time during which the breach of the contract continues. Based on above mentioned premises, the counsel concluded that the suit at the trial Court was instituted within time.

Contrary to the above, Mr. Kilule, the counsel for the 2nd respondent had briefly subscribed to the contention made by counsel for the appellant in that the suit at the trial Court was timely barred as there is no evidence to suggest that the purported rental agreements were renewed.

The pertinent issue to be determined by this Court, coached from the 1st ground of appeal, is whether the suit at the trial Court was filed within the prescribed period. To answer this question this Court shall revert to the evidence adduced at the trial Court. The 1st respondent's suit at the trial

Court, at large, was buttressed by the evidence adduced by Rajesh Kumar Shivji (PW1) who identified himself as the Director of the 1st Respondent. PW1 had tendered in evidence the written agreements for the rental of empty cargo containers which were admitted as follows:

(i) Agreement for rent of cargo container No. R.F. 005 – exhibit P3 dated 24/10/2012.

(ii) Agreement for rent of cargo container No. R. F. 035, exhibit P5, dated 24/10/2012.

(iii) Agreement for rent of cargo container No. R.F. 004 – exhibit P2, dated 30/10/2012.

(iv) Agreement for rent of cargo container No. R. F. 029 – Exhibit P4 dated 05/11/2012.

The terms of the hire contract mentioned above provided that the duration of hire was strictly thirty clear days whereas a charge of 20 USD would accrue for each day of delay not exceeding seven days unless there is a renewal of the contract at the point of hire, as per clause No. 2 of the Contract. As aforementioned, the latest agreement entered is dated 05th November, 2012 for hire of container No. R.F. 029 (exhibit P.4). This Contract, based on its express and plain wording thereof was supposed to expire on 05th December, 2012. Despite the contentious argument made by the 1st respondent's

counsel that the parties herein had orally extended the contract, there is no evidence on the record of the trial court to support the argument.

The counsel for the 1st respondent has argued that the 2nd respondent was previously charged with theft at Temeke District Court. It was argued that the appellant had testified for the prosecution and admitted to having extended the contract for renting the cargo containers until March 2013. Hence, opined the counsel, the cause of action had accrued from 30th March 2013. Strangely, the record of the trial court entails that the counsel for the 1st appellant had objected to the appellant's prayer for admission in evidence of the said proceedings. Now, the counsel prays this court to take judicial notice of the same. Most likely, the merciless dagger of time limitation staring at his face, and a painful realization of the fact that the hard-won decree might amount to nullity, have driven the counsel to change his course and find refuge in the said court document.

I have taken labour to scrutinize the referred criminal proceedings to find whether there is any fact with evidential value ascertaining the purported renewal of rental agreements between the appellant and 1st respondent herein. The record has it that the charge had collapsed for want of prosecution. Having scrutinized the said proceedings, I have the following observations: **First**, the purported admission of the appellant to the effect

that he continued to renew the rental agreement entered with the 1st respondent up to 30th March, 2013 is tainted with ambiguity. This Court finds it fit to reproduce the purported admission in verbatim for clarity.

> *"On 24/10/2012 I went to the Road Force Company Ltd to hire two containers of 40 feet. They gave me a contract ..... I signed the contract. We continued to use their containers and on 06/12/2012 we asked for two other containers .....On 05/1/2013 we added one container from the Road Force Company Ltd, ... On 30th January, 2013 we paid and continued to use their containers in February and March 2013. Sharmila called us asking if we would continue to use their containers or not. I told her that our contract had ended. On 27/03/2013 Julius came to my garage, checked for the four containers, and called lorries to carry those four containers. We continued doing business of hiring containers....."*

A leaf of the purported admission of the appellant in criminal proceedings extracted above, to my opinion, doesn't support the fact that there was a renewal of the previous rental agreements between the appellant and 1st appellant. What is apparent is the fact that there were fresh rental agreements. It must be borne in mind that each rental agreement executed by the parties herein provided for a distinct specific time in which the containers were to be returned to the owner (1st respondent) unless they

were renewed. It is a fact that the last rental agreement expired on 05/12/2012.

Second, taking into consideration the strict wording in clause No. 2 of the rental agreements (exhibits P2, P3, P4 and P5) mentioned above and the charges imposed on each day over the prescribed contractual period, it doesn't ring into my mind that the appellant would have remained with the hired cargo containers for more than the prescribed period without renewal of rental agreements. And, the renewal of the rental agreement and subsequent payment, if any, could not have been made without documentation taking into consideration the nature of the agreement previously entered.

In passing, assuming the parties herein had extended their agreements until March, 2013, yet it doesn't pass muster that the appellant would have remained in possession of the cargo containers for 6 years without any legal action from the 1st respondent, taking into consideration the allegation that the appellant's wrongful possession of the said containers occasioned loss to the Company. It is obvious that there are matters which were not disclosed to the trial court pertaining to the contractual relationship of the parties herein. And, this Court has no means to unfold the same.

It suffices to point out that, notwithstanding the mysterious facts behind the curtain, one fact is apparent; there is no evidence to prove the fact that the rental agreements between the appellant and 1st respondent were extended beyond 05/12/2012. Thus, it is a fact that the suit was instituted at the trial court after the expiration of 7 years. Item no. 7 of part one of the schedule made under s.3 of the Law of Limitation Act provides to the effect that the time limitation of the suit founded on contract is 6 years. Based on this fact, it goes without saying that the action commenced by the respondent at the trial Court was commenced beyond the statutory time limit. And, in this respect, this court finds itself obliged to borrow a leaf from the holding in the case of **John Cornell vs. A. Grevo Tanzania Ltd**, Civil Case No.70 of 1998, HC (unreported) in that:

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

Upon scrutiny of the record of the trial court, I found that the appellant had raised the preliminary objection on limitation of time at the earliest opportunity, but the trial magistrate had not properly dealt with the objection and proceeded to hear and determined the suit. The rule in the case of **Iga**

vs. Makerere University (supra) in that "*a plaint barred by limitation is barred by law and must be rejected*" should have been applied by the trial court. It is likewise a rule of law that time bar touches on the jurisdiction of the court. Hence, jurisdiction is the first issue the court should ask itself before acting on any matter placed before it for determination [**Said Mohamed Said vs. Muhusin Amiri and Another**, Civil Appeal No. 110 of 2020 CA (unreported)].

In the same vein, in the case of **Tanzania Revenue Authority vs. Tango Transport Company LTD,** Civil Appeal No. 84 of 2009 [2016] TZCA 86 (*https://tanzlii.org.*) cited in **Said Mohamed Said vs. Muhusin Amiri and Another** (supra) the superior court aptly held:

> *"Principally, objection to the jurisdiction of the court is a threshold question that ought to be raised and taken up at the earliest opportunity, in order to save time, costs and avoid an eventual nullity of the proceedings in the event the objection is sustained.....*
>
> *Jurisdiction is the bedrock on which the court's authority and competence to entertain and decide matters rests."*

Based on the foregoing, I find substance in the 1st ground of appeal preferred by the appellant. The discussion made above sufficiently disposes of this appeal. I find it needless to canvass the remaining grounds of appeal. It is for this very reason I opted not to recount the submissions made by counsel on the remaining grounds of appeal.

In the upshot of the above discussion, this Court finds merit in the appeal herein. The civil action preferred by the 1st respondent was instituted in court beyond the prescribed time. The trial court had acted without jurisdiction in presiding the suit filed beyond time limitation. Consequently, the proceedings, judgment, and orders entered by the trial Court amount to nullity. The judgment and decree entered by the trial court are hereby quashed and set aside. The 1st respondent to shoulder the costs of this appeal.

Appeal allowed in its entirety.

Order accordingly.

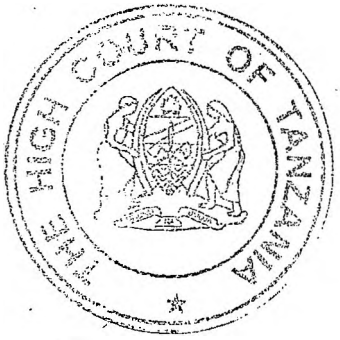
DATED at **DAR ES SALAAM** this 24th of October, 2022.

O. F. BWEGOGE

JUDGE

The judgment has been delivered this 24th October, 2022 in the presence of the appellant and his counsel, Ms. Dainess Simkoko. The respondents have not appeared in court.

The aggrieved party has the right to appeal.



O. F. BWEGOGE

JUDGE