

IN THE HIGH COURT OF TANZANIA
DAR ES SALAAM DISTRICT REGISTRY
AT DAR ES SALAAM
CIVIL CASE NO. 32 OF 2019

TANZANIA NATIONAL ROADS AGENCY.....1st PLAINTIFF

ATTORNEY GENERAL2nd PLAINTIFF

VERSUS

UJENZI STORE LIMITED DEFENDANT

ICEA LION GENERAL INSURANCE

COMPANY (T) LIMITED..... 3rd PARTY

RULING

Date of Last Order: 10/6/2021

Date of Ruling: 12/04/2022

S.M. KULITA, J.

In his Written Statement of Defense (WSD) the Defendant, **UJENZI STORE LIMITED** through her Advocate, Mr. Erick Rweyemamu raised a Preliminary Objection on point of law that the suit is time bared.

The matter was argued by way of written submissions. While Counsel for the Defendant complied with the scheduling orders by filing the written submissions in time, Counsel for the Plaintiffs Mr. Hangi M. Chang'a, Principal State Attorney never filed the submission in reply. The Preliminary Objection was therefore entertained *ex-parte*.

In his written submission in support of the Preliminary Objection Advocate for the Defendant, Mr. Erick Rweyemamu stated that the cause of action, that is damage of the traffic signal controller by the Defendant occasioned on 29th December, 2015 but the Plaint for this matter was presented for filing at High Court on the 18th February, 2019. He said that, counting from the date of the cause of action on 29th December, 2015 to 18th February, 2019 when the suit was filed, the period that had passed was 3 (three) years and 45 (forty five) days.

The counsel stated that the damage of the traffic signal controller is a tort case. According to Item 6 of Part 1 of the Schedule to the Law of Limitation Act [Cap 89 RE 2019] the period of limitation for suits found on torts is three years, hence the matter is time bared. He said that as the suit has been filed 49 (forty nine) days later after the lapse of the prescribed period of 3 (three) years, under

section 3 of the Law of Limitation Act [Cap 89 RE 2019] the suit should be dismissed.

Having gone through the above submission and pleadings of the case I have noticed that after the occurrence of the road accident on the 29th day of December, 2015, Driver for the vehicle involved in the accident, lorry/truck with registration No. T 689 AED with a trailer No. T 881 AFD, one Shabani Salehe Kiluwa was charged for *Reckless Driving* and *Causing Damages to Traffic Signal Controller*. He was convicted upon plea of guilty and sentenced accordingly by the Resident Magistrate's Court of Kivukoni at Kinondoni on the 5th day of February, 2016 through Traffic Case No. 198 of 2016.

Following the estimates assessed by the 1st Plaintiff's Engineers, on the 11th day of October, 2018 the Plaintiff issued a Demand Note to the Defendant for the payment of Tsh. 40,700,000/= being the costs for replacement of traffic signal controller that had been damaged by the Defendant's truck.

The Defendant replied the Demand Note on 26th day of October, 2018. In the said reply the Defendant stated that the motor vehicle involved in the accident was comprehensively insured by ICEA LION Insurance Company, the 3rd Party herein.

Further it was averred in the WSD that the Defendant did all necessary steps for the 1st Plaintiff to recover its money from the insurer, unsuccessfully. The Defendant alleged that the 1st Plaintiff willfully neglected to heed the said procedure as it was stated in her (Defendant's) letter to the 1st Plaintiff dated 26/10/2018 which is annexure U-4 to the WSD.

The above scenario gives me a picture that, after the accident there were legal steps followed by both parties prior to the filing of this case. The aim was to resolve the matter amicably, which includes enabling the Defendant's insurer to indemnify the Plaintiff for the loss that she had incurred, ie. payment of the costs for replacement of the traffic signal controller damaged by the defendant's truck on the 29th December, 2015.

Basically, the Defendant, as the one who caused the accident was required to compensate the 1st Plaintiff, the one who has been affected for his (Defendant's) wrongful act. If the Defendant's vehicle that has been involved in the said accident is legally insured, the principle is that the insurer is the one who is responsible to indemnify the victim (1st Plaintiff) upon compliance of the procedures necessary for that purposes. Among the procedures is that the person who caused the accident has to notify his insurer about the accident. There must be a proof that the

alleged accident has actually occurred and the real loss has been known upon the estimates being assessed. Upon the accident being reported at the police station, it can be followed by litigation before the court in which it will be ascertained as to whether the said vehicle has been involved in the accident.

Such information can make the victim (1st Plaintiff) to be in a position to claim for compensation against the Defendant by instituting a suit before the court regarding the damages she (1st Plaintiff) has suffered, if the claim is not promptly settled or if the claim is disputed by the Insurer (3rd party). In a situation where the claims are ignored by the Defendant and/or the Insurer the victim (1st Plaintiff) may file a suit against the Defendant. He can do so after serving her with the notice of intention to sue. On her side the Defendant may seek leave of the court to join the Insurer as a 3rd party so that she can be ordered to indemnify the Plaintiff instead of her (Defendant).

The fact that all necessary procedures which are the prior stages towards the effect of compensation/indemnification had been complied with before the Defendant had refused/neglected to effect the compensation, the date for accrual of the cause of action accrues from 26th day of October, 2018, the date that Defendant neglected or showed an intention of not fulfilling the 1st Plaintiff's

demand. It is the date that the Defendant had replied the 1st Plaintiff's letter/notice on her intention to sue regarding her failure to compensate the Plaintiff Tsh. 40,700,000/= being the costs for replacement of traffic signal controller damaged by the defendant's truck on the 29th December, 2015.

In that sense, the 1st Plaintiff was not obliged to file this suit immediately after the accident as there was a venue for the Defendant to compensate her (Plaintiff) by herself or through her Insurer, ICEA LION Insurance Company, the 3rd Party. As that was not done, the 1st Plaintiff rightly notified the Defendant to settle the claimed sum of Tsh. 40,700,000/= in fourteen days period from the 11th day of October, 2018 otherwise she would drag her to court.

Therefore, the fact that the 1st Plaintiff was in progress to make a follow up and waiting for response from the Defendant on the indemnification, the time for accrual of the cause of action should be computed from 26th day of October, 2018, the date that the reply to the demand notice was authored by the Defendant and supplied to the 1st Plaintiff. From that date to 31st December, 2018, the date that this suit was filed, a period that had passed was about 66 (sixty six) days.

This being a tort matter, the suit is regarded to have been filed within the prescribed period of 3 (three) years, hence Item 6 of Part 1 of the Schedule to the Law of Limitation Act [Cap 89 RE 2019] has been fully complied with.

In upshot, I find the **Preliminary Objection** with no legal weight, hence **overruled with costs**. The suit to proceed on merit.



S.M. KULITA

JUDGE

12/04/2022

