

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(DAR-ES-SALAAM DISTRICT REGISTRY)

AT DAR-ES-SALAAM

CIVIL CASE NO. 127 OF 2022

SOFIA FUNDIKIRA 1st PLAINTIFF

MULELA FUNDIKIRA 2nd PLAINTIFF

VERSUS

BAMM SOLUTION (T) LIMITED 1st DEFENDANT

BRIAN KIKOTI 2nd DEFENDANT

RULING

Date: 16/03 & 24/04/2023

NKWABI, J.:

In this Court, the plaintiffs are asking this the Court to grant them the following reliefs:

1. A declaration that the defendants breached the contract of 2013.
2. Order the defendants to pay a sum of 500,000,000/= as specific damages.
3. Payment of general damages of 200,000,000/= as may be assessed by the honourable Court.
4. Costs of this suit be borne by the defendants.
5. Any other relief(s) and or order(s) that this honourable Court may deem fit and just to grant.

A preliminary objection having two points of objection was raised by the defendants. The two points are as follows:

1. The plaintiffs have no locus standi to institute the suit against the 1st and 2nd defendants.
2. The present suit before this Honourable Court is time barred.

The preliminary objection was disposed of by way of written submissions. Mr. Rashidi Juma Kasisiko, learned counsel, submitted for the defendants. The plaintiffs had their submissions drawn and filed by Ms. Doreen Kalugira, learned advocate.

It was the contention of Mr. Kasisiko on the 2nd limb of the preliminary objection that the contract was entered in September, 2013 for one and a half years which in calculation ended in March 2015. When one adds six years as per the Law of Limitation Act, the plaintiffs ought to sue not later than March 2021. As the present suit was filed on 5th August, 2022 then it was filed out of time. He prayed the suit be dismissed with costs under section 3 of the Law of Limitation Act.

Ms. Kalugira was not persuaded that the suit is time barred. She stated that the preliminary objection is misplaced because the issues in the Land case

no. 145 of 2021 was breach of contract. The suit was withdrawn with leave to refile against the 1st defendant. It was contended that the cause of action is not time barred because leave to refile afresh was granted. It was prayed that the preliminary objection be overruled for being lacking in merits.

In rejoinder submission, it was insisted that Civil Case No. 127 of 2022 was brought out of time, 17 months late. It was also contended that courts have no power to extend time to file suits in courts of law as that power is vested in the Minister for Justice and Legal Affairs under section 44(1) of the Law of Limitation Act. It was added that leave to refile a fresh suit is not an automatic extension of time. Mr. Kasisiko cited **Emmanuel Eliazry v. Ezironk K. Nyakabari**, Land Appeal No. 56 of 2018 HC (unreported) and **Flomi Hotel Ltd v. Equity Bank (T) Ltd**, Civil Case No. 106 of 2021 HC (unreported). In the latter case, at page 11 it was stated that:

"The suit at hand was filed on 08th August, 2021. There is a difference of six years. Re filing a suit does not mean that the new file will be counting from the date when the older file of the same cause of action was dismissed."

The counsel for the defendants finally prayed that the suit be dismissed with costs.

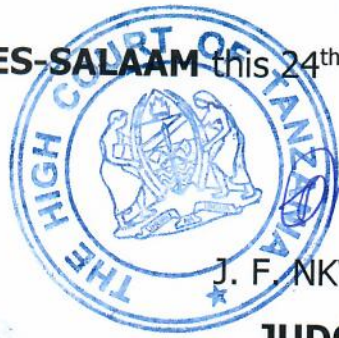
I think that the counsel for the plaintiffs admits that the cause of action is time barred in that the plaintiffs ought to sue not later than March 2021 but the present suit was filed on 5th August, 2022, instead of admitting also that the suit is time barred, the counsel tries to justify the filing of this suit by the leave to refile given by the Court. As I understand, leave to refile is always subject to limitation and other requirements of law. I therefore, side with the decision of this Court in **Flomi Hotel Ltd** (supra).

Leave to refile a fresh suit against the 1st defendant as per the decree in Land Case No. 145 of 2021 (Annexure EML 5) is not an automatic extension of time. Even amendment of parties in the former land case as stated in the 3rd paragraph of page 3 of the reply submission does not act as extension of time.

Thus, I rule that the suit is filed out of time. It is time barred. In the premises, the preliminary objection is sustained. Consequently, Civil Case No. 127 of 2022 is ruled to be incompetent and is struck out with costs as per **Mayira B. Mayira v. Kapunga Rice Project & 4 Others**, Civil Appeal No. 359 of 2019 CAT (unreported). I do not see the need to consider the objection on locus standi as it is merely a futile exercise.

It is so ordered.

DATED at **DAR-ES-SALAAM** this 24th day of April, 2023.



J. F. Nkwabi
J. F. NKWABI

JUDGE