

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

CIVIL CASE NO. 5 OF 2020

ANNA RAMADHANI MRISHO.....PLAINTIFF

VERSUS

TANZANIA NATIONAL ROADS AGENCY.....1ST DEFENDANT

NUTMEG ACTIONEER & PROPERTY

MANAGERS CO.....2ND DEFENDANT

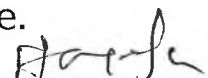
ATTORNEY GENERAL.....3RD DEFENDANT

RULING

14.03.2022 & 24.03.2022

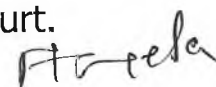
N.R. MWASEBA, J.

The plaintiff, Anna Ramadhani Mrisho, filed an action against the defendants for a claim of Tshs.164,100,000/= being the amount caused by the actions of the 1st defendant on the 30th November, 2014 authorizing the 2nd defendant to illegally auction the plaintiff's motor vehicle with registration No. T 327 CTD make Toyota Hiace.



The plaintiff alleged that, the 1st defendant herein appointed the 2nd defendant to auction her vehicle with registration No. T 327 Toyota Hiace despite her efforts of writing letters to the 1st defendant to be given back her motor vehicle which was impounded illegally at a Petrol Station located in Kwa Morombo area within Arusha City. Aggrieved, the plaintiff decided to file this case and prayed for judgment, orders and decree against the defendants as follows:

- a) Declaration that the procedure for sale of the plaintiff's motor vehicle was illegal.
- b) An order compelling the defendants herein to remit or pay back the plaintiff's motor vehicle and loss suffered at the tune of Tshs. 164,100,000/= (One Hundred Sixty Four Million one hundred thousand Tanzanian Shillings only) being the total claim by the plaintiff herein.
- c) Interest on (b) above at 30% commercial rate from the due date of 30th November 2014 up to the date of judgment.
- d) Interest on the decretal amount at court's rate from the date of judgment to the satisfaction of the decree.
- e) General damages to be assessed by the court.
- f) Costs of the suit.



g) Any other reliefs this court may deem fit and just to grant.

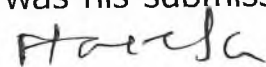
On the other hand, the 1st and 3rd defendants, in their written statements of defence, disputed the plaintiff's claims contending that the said motor vehicle was auctioned by the 2nd defendant after being abandoned on the road reserve. Therefore, the plaintiff has no lawful claim against the 1st and 3rd defendants.

Prior to the hearing of the suit, the 1st and 3rd defendants raised one point of preliminary objection, to wit:

- i. That, the suit is hopelessly time barred.

At the hearing of the preliminary objection, **Mr. Manyota**, learned counsel appeared for the plaintiff while **Mr. Mkama Msalama and Ms. Gulisha Mwanga**, both State Attorneys, appeared for the 1st and 3rd defendants.

Submitting on the first point of objection, Mr. Mkama argued that paragraph 5 of the plaint shows that the cause of action is illegal auction of the motor vehicle with registration No. T 327 CTD make Toyota Hiace. Further to that, under para 5 (b) of the plaint the plaintiff alleged that she was making 75,000/= per day via the said motor vehicle which was impounded illegally and sold in auction. It was his submission that,



illegal impoundment means trespass to person's property and for them the said claim has the nature of tort. As per **item 6 of the 1st schedule of the law of Limitation Act** as revised 2019, a time limit for a tort claim is three (3) years.

Moreover, as this action arose on 13/11/2014 then the matter is time barred and the remedy for the matter which was filed out of time is a dismissal, see **Section 3 (1) of the law of Limitation Act**. The same was clarified in a case of **Mbezi Mgaza Mkomwa vs Permanent Secretary, Prime Minister's Office and AG**, that time limit for a tort action is three years. Therefore, they prayed for the suit to be dismissed with costs.

Responding to what was submitted by the 1st and 3rd defendant's counsel, Mr. Manyota told the court that, the reasons submitted by Mr. Mwanga did not substantiate why they directed this claim as a tortious liability. They did not elaborate the elements of tort to direct this case as a tort case. It was his further submission that the plaintiff's claim based on illegal auction of his motor vehicle not impoundment as alleged by the counsel for the 1st and 2nd defendant. Further to that, they did not elaborate elements of trespass to direct this claim as a trespass claim. He added that this claim falls under **item 24 of the schedule of Law**

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of Limitation Act and not item 6 as submitted by the learned state attorney for the 1st and 3rd defendant.

Further to that, he told the court that the cited case of **Mbezi Mgaza Mkomwa** (supra) is distinguishable as the cited case was for unlawful imprisonment, a cause of action which differs from the ones in our case and prayed for the court to ignore the said case. Additionally, so long as this is not a tortious case, time limitation for it is six (6) years, so, they prayed for the Preliminary Objection to be overruled with costs and to proceed with the determination of the main suit.

In his brief rejoinder, Mr. Mkama reiterated what they submitted in their submission in chief and insisted that according to paragraph 5 (b) and 10 of the plaint the suit falls under tort and therefore it is time barred as per **item 6 of the law of Limitation Act**, it does not fall under item 24 of the same Act and prayed for the suit to be dismissed.

Having heard the submissions of both parties, in support of and against the raised point of objection, I will now determine whether the preliminary objection raised has merit or not.

It is a trite law that he who asserts a claim, must prove it. This principle of the law is sourced from Section 110 of **the Evidence Act**, [Cap. 6 R.E 2019] which provides:

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"110. (1) *Whoever desires any Court to give judgment as to any legal right or liability dependant on the existence of facts which he asserts must prove that those facts exist.*

(2) When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person".

The same was held in a case of **Berelia Karangirangi vs Asteria Nyalwambwa**, Civil Appeal No. 237 of 2017 (CAT-unreported) at pg. 7, where the Court of Appeal had this to say:

"... we think it is pertinent to state the principle governing proof of cases in civil suits. The general rule is that, he who alleges must prove...."

In this case, the state attorney for the 1st and 3rd defendant asserts that based on the word "impounded" the claim of the plaintiff herein means the defendant has illegally trespassed to a person's property which is a tort claim. And being a tort claim it is time barred as per item 6 of Cap 89 R.E 2019 which provides time limit for tort action to be three (3) years.

However, despite their allegation that the claim is a tort in nature, they failed to prove that the claim of the plaintiff falls under a tort case. No

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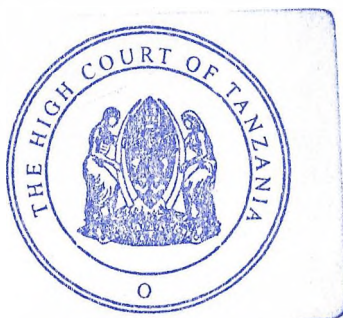
elements of trespass in a person's property were adduced to see whether the claim falls under tort claims. State attorney for the 1st and 3rd defendant were supposed to read the whole paragraph instead of picking a word and translating it to justify a claim of tort of trespass in a person's property illegally.

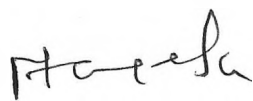
Therefore, this court joins hands with the plaintiff's counsel that their claim fall under **item 24 of Cap 89** R.E 2019 which provides that: The time limit for any other suit which has not been provided for is six years.

And not a trespass in a person's property as alleged by the 1st and 3rd defendant's counsel. For that reason, the plaintiff was still within the prescribed time to file her suit against the defendants.

Therefore, from the foregoing reasons, the preliminary objection has no merit and therefore it is hereby overruled. The matter to proceed on merit.

It is so ordered.




N. R. MWASEBA

JUDGE

24.03.2022