

**THE UNITED REPUBLIC OF TANZANIA  
JUDICIARY  
IN THE HIGH COURT OF TANZANIA  
MBEYA DISTRICT REGISTRY  
AT MBEYA**

**CIVIL APPEAL NO. 14 OF 2022**

(Arising from the decision of the Resident Magistrates' Court of Mbeya at Mbeya in Civil Case No. 7 of 2020)

**JALALA SELEMAN JALALA..... APPELLANT**

**VERSUS**

**FRED EDSON MWAJUNGWE.....1<sup>ST</sup> RESPONDENT**

**SECURITY GROUP (T) LTD.....2<sup>ND</sup> RESPONDENT**

**SANLAM GENERAL INSURANCE.....3<sup>RD</sup> RESPONDENT**

**JUDGMENT**

Date of last order: 21/04/2023  
Date of Judgment: 31/05/2023

**NDUNGURU, J.**

In this appeal, the appellant one, Jalala Seleman Jalala, is challenging the ruling of the Resident Magistrates' Court of Mbeya at Mbeya (herein referred as the trial Court) in Civil Case No. 7 of 2020 delivered on 18<sup>th</sup> day of February, 2022 that sustained the 3<sup>rd</sup> respondent's preliminary objection

that the appellant's suit was time barred. At the trial Court, the appellant was filed the suit against respondents herein for tortious liability. The appellant who was the plaintiff in the instant case had claimed from the respondents jointly for Tshs. 300, 000, 000/= being compensation for permanent disability arising out of the road accident.

In defence, the 3<sup>rd</sup> respondent filed the written statement of defence and raised preliminary objection on a point of law contending that the suit was time barred. After heard the preliminary objection, the trial Court held that, the appellant's suit was time barred as exceeded four month from the date on which the time accrued.

The appellant felt aggrieved with the decision of the trial Court hence preferred the present appeal. The appellant has presented three grounds of appeal in his memorandum of appeal as reproduced hereunder:

1. That, the trial magistrate erred in law and fact by failure to judiciously analyze paragraphs of plaint presented by the plaintiff in connection with the issue of filing the plaint out of time.

2. That, the trial magistrate erred in law and fact by disregarding the fact the written statement of the 1<sup>st</sup> and 2<sup>nd</sup> respondents were filed out of time.
3. That, the trial magistrate erred in law and fact by failing to comprehend the plaint pleaded by the plaintiff and further condemning the plaintiff unjustifiably from his personal point of view on interpretation of laws.

When the appeal was called on for hearing, Mr. Peter Jacob Kiranga, learned advocate appeared for the appellant whereas the 1<sup>st</sup> and 2<sup>nd</sup> respondents appeared in person, unrepresented and the 3<sup>rd</sup> respondent had the services of Ms. Mary Mgaya, learned advocate. Upon the request of the parties, this Court allowed the parties to argue this appeal by way of written submissions and they complied with the scheduling order of this Court, save for the 1<sup>st</sup> and 2<sup>nd</sup> respondents. Therefore, I highly appreciate parties for complying with the scheduling order of this Court.

After carefully reviewing the record of the trial Court and considering the submissions of the counsel for the parties, the issue calling for determination is whether the appellant pleaded the ground for exemption

in the plaint as required by the law and if so whether such ground was capable of checking the law of limitation.

In their respective submissions, counsel for the parties have made considerably lengthy submissions in respect of 2<sup>nd</sup> and 3<sup>rd</sup> grounds of appeal. Nevertheless, for convenient purpose I will not recapitulate them all here, rather I will be referring to them in the course of determining the relevant ground. Also, I will determine the 2<sup>nd</sup> and 3<sup>rd</sup> grounds of appeal jointly as submitted by the counsel for the parties.

In essence, the counsel for the appellant's complaint here is that, the appellant's plaint provides the ground upon which exemption from such law is claimed, but the trial magistrate failed to consider the same. He referred this Court to the case of **Ally Shaban & 48 others v Tanzania National Roads Agency (TANROADS) & another**, Civil Appeal No. 261 of 2020 (unreported) and Order VII Rule 6 of the Civil Procedure Code (Cap 33 R.E. 2019) to support his submission. He went on to submit that, section 16 of the Law of Limitation Act (Cap 89 R.E. 2019) provides automatic exclusion of time in computing the period of limitation where the plaintiff suffers a disability. Also cited the case of **Director of Public**

**Prosecution v Mawazo Saliboko @ Shagi & 15 others**, Criminal Appeal No. 384 of 2017 and **Alex Senkoro & 3 others v Eliambuya Lyimo (As administrator of the Estate of Frederick Lyimo, Deceased)**, Civil Appeal No. 16 of 2017 (both unreported) to convince this Court.

In other side, counsel for the 3<sup>rd</sup> respondent contended that, the appellant ought to have sought an extension of time to the minister responsible for constitution and legal affairs. She cited section 44 of the Law of Limitation Act (Cap 89 R.E. 2019) to cement her submission. She went on to submit that, Order VII Rule 6 of the Civil Procedure Code does not carter or provide room for extension by the Court in the filing or institution of the suit out of time. It was also submitted by the counsel for the 3<sup>rd</sup> respondent that, the case of **Ally Shaban & 48 others v Tanzania National Roads Agency (TANROADS) & another, Director of Public Prosecution v Mawazo Saliboko @ Shagi & 15 others**, and **Alex Senkoro & 3 others v Eliambuya Lyimo (As administrator of the Estate of Frederick Lyimo, Deceased)** are all distinguishable under the circumstances of this matter. She further relied on the case of **Fidelis**

**Fernandes v National Insurance Corporation of (T) Limited & another**, Civil Case No. 26 of 2006 to the effect that, however, unfortunately it may be for the plaintiff the law on limitation of actions knows no sympathy or equity, it is a mercy less sword that cuts across deeply into all those who get caught in its web.

On my part, having considered the submissions made by the counsel for the parties in respect of the issue under consideration, the record of the trial Court and the law, it is clear to me that both learned counsel for the parties are at one that the appellant's suit was filed out of time. Again, I am in line with Mr. Kiranga that, on the requirement under VII Rule 6 of the Civil Procedure Code as far as a suit which is instituted out of the prescribed time. On other side, I am not in line with Ms. Mgaya that, Order VII Rule 6 of the Civil Procedure Code does not carter or provide room for extension by the Court in the filing or institution of the suit out of time. I hold so because it is settled law that, for a suit which is instituted out of the prescribed time the plaintiff is required to plead exemption or exclusion of limitation period in his plaint. See the case of **Ally Shaban & 48 others v Tanzania National Roads Agency (TANROADS) & another** (supra).

For ease of reference, I see is very crucial to reproduce Order VII Rule 6 of the Civil Procedure Code which provides that:

*"Where the suit is instituted after the expiration of the period prescribed by the law of limitation, the plaint shall show the ground upon which exemption from such law is claimed".*

In my understanding, the Order VII Rule 6 of the Civil Procedure Code provide the automatic exclusion of time in computing the period of limitation where the plaintiff shows the ground upon which exemption from such law is claimed. In doing so, it is does not means that, the plaintiff has to seek extension of time to the Court, rather the plaintiff is required to informed the Court the ground upon which exemption from the limitation prescribed by the law. Indeed, the section 16 of the Law of Limitation Act provides exemption to the plaintiff under disability before expiration of the period of limitation prescribed by the law, the same is relied by the counsel for the appellant to cement his submission.

Next, the question is whether the appellant pleaded the ground for exemption in the plaint as required by law. In his submission, the counsel

for the appellant referred this Court to paragraph 8 of the plaint which state that:

*"The following as said road accident the plaintiff sustained very serious injuries to his face/fracture left forearm, low back and several bruises throughout his body, which necessitated the surgical medical assessment which was conducted under the close supervision of the Head of surgical department of Mbeya Zonal Referral Hospital as from the day accident until 9<sup>th</sup> day of March 2018 when Mbeya Zonal Referral Hospital decided to refer the plaintiff to Muhimbili Orthopedic Institute for resuscitation surgical debridement and cystostomy something which cause the plaintiff not take legal action promptly".*

Having examined the paragraph 8 of the plaint reproduced above, it is clearly from the plain meaning that, the appellant did not show the ground upon which exemption from the limitation period. Further, it is my view that, the said paragraph does not show step by step how the appellant pleaded exemption for the limitation of time to file the suit out of prescribed time. I hold so because paragraph 8 of the plaint does not show



how long the appellant's treatment at the Muhimbili Orthopedic Institute took place since the date of 9<sup>th</sup> day of March 2018 when Mbeya Zonal Referral Hospital decided to refer the appellant to Muhimbili Orthopedic Institute. On that regards, I am satisfied that paragraph 8 of the plaint did not plead facts sufficient to show exemption from limitation on which the learned trial magistrate could have held otherwise.

In the case of **Ally Shaban & 48 others v Tanzania National Roads Agency (TANROADS) & another** (supra) the Court of Appeal of Tanzania inter alia stated that:

*"At any rate, guided by the LLA and decisions of this Court, we agree with Ms. Kaaya that the grounds of exemption in paragraphs 6 and 7 were incapable of checking time limitation in favour of the appellants."*

In the spirit of the wording of the Court of Appeal of Tanzania, it is my settled view that, the ground of exemption in paragraph 8 of the plaint was incapable of checking time limitation in favour of the appellant.

From the reasons and authorities cited above, I concur with the learned trial magistrate and I see no any reason to fault his decision. He rightly

held that the appellant suit was time barred it being instituted beyond 3 years from the date on which the time accrued. On that regards, the suit was time barred, the order was to dismiss it as per section 3 (1) of the Law of Limitation Act and accordingly, I find this appeal be bereft of merit. In fine, this appeal is hereby dismissed with costs.

It is so ordered.



*D. Ndunguru*  
**D.B. NDUNGURU**

**JUDGE**

**31/05/2023**

ORIGINAL