

UNITED REPUBLIC OF TANZANIA

JUDICIARY

HIGH COURT OF TANZANIA

MOROGORO DISTRICT REGISTRY

AT MOROGORO

CIVIL CASE NO. 14 OF 2022

CUTHBET MIHALO..... PLAINTIFF

VERSUS

KILOSA DISTRICT COUNCIL 1ST DEFENDANT

ATTORNEY GENERAL 2ND DEFENDANT

RULING

Date of last order: 30/05/2023

Date of Ruling: 16/06/2023

MALATA, J

The plaintiff herein claims jointly and severally against the defendants for payment of TZS. 3,085,000 being the specific damages, TZS 5,000,000 being general damages, TZS 7,000,000 exemplary and aggravated damages, interest at court's rate of 12% per annum from the date of the judgement to the date of full payment, any other reliefs this court deem fit and just to grant and the costs of the suit.

The claims are derived from a special assignment, with specific terms, payment and time for completion of works. The plaintiff was Government's employee, at the capacity of Agriculture Officer Grade I working within Kilosa District.

On 29/10/2012 through a letter with REF. No. KDC/CC.2/7/19 he was appointed by the 1st defendant to be one of the members forming the Special Committee for investigating the complaints of the sugar cane farmer's producers outside ILLOVO – KILOMBERO industry.

The assignment was with specific instructions and payment upon to all members of the committee. The same was stated in the engagement letter. The plaintiff together with his fellow members of the committee did what they were directed to do. On completion they prepared a report and submitted it to the defendant. The payment was to be paid on completion of assignment.

Upon completion of the task given to committee in December, 2012 the plaintiff started to demand for the payments of which he alleges to have been told the payment will effected in future.

When the matter came for the First Pre Trial-Conference (FPCT), the court suo motto raised the issue of time bar as the suit was found to have been filed outside the time limit prescribed by law. since the issue of time limit

touches jurisdiction of the court to entertain the matter, the court finds it necessary to ascertain the issue before going for FPTC.

The parties were invited to appear on 30/05/2023 to submit on the issue raised by the court. Both parties were represented, the plaintiff enjoys the legal services of Mr. James Mwakalosi, learned counsel while the defendant was represented by Ms. Elifrida Mutashobya, learned State Attorney.

Mr. Mwakalosi submitted that, after due consideration of the point of law raised by the court suo motto, that the matter is time barred and after having gone through the Law of Limitation Act, Cap 89 R.E 2019, particularly, item 7 of Part I to the schedule of the Law of Limitation Act, it is clear that the time limit to file such suit arising from contract is six (6) years.

He further submitted that, in this case as per the plaint, the cause of action arose on 23/12/2012. The instant case was filed on 28/07/2022 which is ten years from the date of accrual of cause of action. Based on the submitted fact, the suit was filed outside of the time limit prescribed by the law. He submitted that, the available remedy in the circumstances is to dismiss the suit under section 3(1) of the Law of Limitation Act.

On the issue of costs, the learned counsel submitted that as the issue was raised by the court suo motto, he prayed that the dismissal should be without costs.

In reply, Ms. Mutashobya submitted that, after reading the pleadings we are satisfied that the plaintiff was a public servant who was given a special task by the 1st defendant. The assignment involved payment of money on due date that is on 23/11/2012 upon completion of the task.

On completion of the assignment the money due is alleged to have not been paid. The cause of action against the defendant arose on 23/11/2012 and the suit was filed in 2022 which more than ten (10) years thus this matter is time barred. Ms. Mutashobya stated that, it is clear as submitted by Mr. Mwakalosi that, the suit is time barred. Consequently, the suit has to be dismissed under section 3(1) of the Law of Limitation Act.

Having heard the submission from the both counsels, I am now in a position to determine on whether the present suit was filed within time or not.

It is a principle of law that, a suit that is time barred by statute must be rejected by the court because in such a suit, the court is barred by law

from granting any remedy or relief, **see the case of Iga vs. Makerere University (1972) EA 65.**

Indeed, the Law of Limitation Act knows neither sympathy nor equity. Emphasising on this point the Court of Appeal of Tanzania in the case of **Barclays Bank Tanzania Ltd vs. Phylisiah Hussein Mchemu**, Civil Appeal no. 19 of 2016(unreported) cited with approval the decision in the High Court of Dar es Salaam Registry in **John Cornel vs. A. Grevo (T) Limited**, Civil case no. 70 of 1998, the court had these to say;

"However unfortunate it may be for the plaintiff, the law of limitation is on actions knows neither sympathy nor equity. It is a merciless sword that cuts across and deep into all those who get in its web."

It goes without saying that, the issue of time limit touches the jurisdiction of the court/tribunal. In ascertaining the issue time, the court looks into the plaints and its annexures without any further facts or evidence. In the case of **Ally Shabani and 48 others vs. Tanzania National Roads Agency and The Attorney General**, Civil Appeal no 261 of 2020, when the court was faced with akin situation it stated that

"It is clear that an objection as it were on account of time bar is one of the preliminary objections which courts have held to be

based on pure point of law whose determination does not require ascertainment of facts or evidence. At any rate, we hold the view that no preliminary objection will be taken from the abstract without reference to some facts plain on the pleadings which must be looked at without reference examination of any other evidence."

In determining whether the suit is time barred or not, the court has to look at the plaint as whole. In the case of **Lucy Range vs. Samwel Meshack Mollel and 2 others**, Land case no. 323 of 2016, HC, Land Division.

"in determining whether the suit is time barred or not, the court normally looks at the plaint to see as to when the cause of action arose, in other words when the right of action started to accrue"

It should be noted that the plaint must be read together in their totality including the annextures attached thereto.

The point for determination now is when exactly did the cause of action arose.

In the case at hand, having perused the pleadings and specifically the plaintiff's plaint and its annextures. Looking at paragraph 9 of the plaint,

it is clear that, the cause of action arose on 23/11/2012 when the 1st failed to discharge his obligation under the letter of engagement. Despite several demands the defendant failed to pay. In 2022 the plaintiff decided to institute a case claiming the outstanding sum.

I am of a considered view that, the case at hand relates to the breach of contract. The limit is six (6) years as per item 7 of the Schedule to the Law of Limitation Act. The accrue date as provided for under section 5 of the Law of Limitation Act, is the date on which the cause of action arises.

"Subject to the provision of this Act the right of action in respect of any proceeding, shall accrue on the date which the cause of action arises."

The accrual date is the date on which breaches commenced, that is on 23/11/2012. By filing the suit in 2022 which is more than ten (10) years signifies nothing but that, the suit was filed beyond time limit of six years which ended in 2018. Thus, the suit is time barred.

This being an issue touching jurisdiction, this court/tribunal lacks legal mandate to adjudicate the case which is time barred.

Guided by decision by the Court of Appeal in the case of **NBC Limited and another vs. Bruno Vitus Swalo**, Civil Appeal no. 331 of 2019

where the Court of Appeal held that, the suit which is filed out of time has to be dismissed in terms of section 3(1) of the Law of Limitation Act.

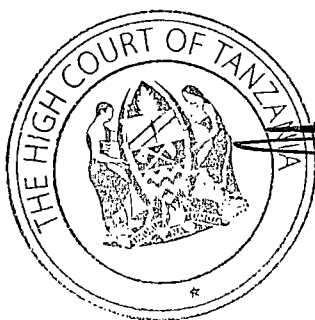
Further, guided by the court of appeal wise words that, the law of limitation knows neither sympathy nor equity and that it is a merciless sword that cuts across and deep into all those who get in its web, and bearing in mind that, the issue touches jurisdiction, I hereby hold that, this court has no jurisdiction to entertain the matter which is time barred.

Since, the hands of this court are tied, then I have no other remedy but to dismiss the matter as mandatorily directed by section 3(1) of the Law of Limitation Act, Cap. 89 R. E. 2019. I hereby dismiss it.

Owing the circumstances, I make no orders as costs.

IT IS SO ORDERED.

DATED at **MOROGORO** this 16th June, 2023.



G. P. MALATA

JUDGE

16/06/2023