

**IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)**

AT DAR ES SALAAM

CIVIL CASE NO. 47 OF 2023

DAIMA JACKSON MWASHAMBWA..... PLAINTIFF

VERSUS

JUBILEE INSURANCE COMPANY LIMITED1ST DEFENDANT

CRDB MICROFINANCE SERVICES CO. LTD	}	
alias CRDB INSURANCE BROKERS	}3RD DEFENDANT

RULING

30th June, & 22nd August, 2023

BWEGOGI, J.

The applicant herein commenced civil proceedings against the defendants claiming TZS 330,000,000/= as the insured sum and loss of business arising out of the insurance contract. Upon filing defence, each of the defendants herein, separately, advanced notice of preliminary objections on points of law. The preliminary objection raised by the 1st defendant avers as thus:

- 1. That the plaintiff's suit is not maintainable at law for suing a non-existing entity.*
- 2. That the court lacks requisite pecuniary jurisdiction to entertain this suit.*

And, the 2nd defendant raised a preliminary objection as thus:

- 1. This suit is time-barred and is in contravention of item 7 of part 1 of the schedule of the Law of Limitation Act [Cap. 89 R.E. 2019].*

The plaintiff was represented by Mr. Julius Ndanzi, learned advocate, whereas the 1st and 2nd respondents were represented by Messrs Philemon Mutakyamirwa and Kaiza Msosa, learned advocates. The preliminary objections herein were argued by written submissions. The substance of the submissions made by the counsel herein follows hereunder.

Mr. Mutakyamirwa, counsel for the 1st defendant, in substantiating the 1st preliminary objection raised herein, submitted that the proper name of the 1st defendant is Jubilee Insurance Company of Tanzania Limited. That the name, Jubilee Insurance Company Ltd, appearing in the pleadings filed by the plaintiff herein refers to a non-existent entity.

Thus, the counsel expounded, the suit has been brought against the non-existent legal entity which is incapable of suing or being sued. Hence, the suit preferred against the 1st defendant is unmaintainable. The cases;

Change Tanzania Limited vs Registrar, Business Registration and Licensing Agency (Commercial Case Number 27 of 2019) [2020] TZHC ComD41 and **Fort Hall Bakery Supply Co. vs Fredrick Muigai Wangoe** [1959] EA 474 were cited to make a point.

And, in substantiating the 2nd preliminary objection, the counsel argued that the provision of section 13 of the CPC instructs that suits should be instituted in the court of the lowest grade competent to try it. And, it is the substantive claim and not the general damages which determined the pecuniary jurisdiction of the court. The case of **Tanzania – China Friendship Textile Co. Ltd versus Our Lady of Usambara Sisters** [2006] TLR 70 was cited to buttress the argument.

Further, the counsel argued that the substantive claim in this suit is TZS 130,000,000/= only, which is within the pecuniary jurisdiction of the court of resident magistrates' court in terms of the provision of section 40 (2) (a) and (b) read together with section 41 (1) of the MCA (Cap 11 R.E 2019). The cases; **Bestom Company Ltd vs Jacob Matalitinya t/a IT Farm** (Civil Case 160 of 2012) TZHC 2176 and **Reni International Company Ltd. vs Geita Gold Mining Ltd** (Civil Appeal 435 of 2019) [2014] TZHC 2176 to bring his point home. The counsel concluded his submission by opining that it is obvious that this court lacks pecuniary

jurisdiction to preside over this matter.

On the above premises, the counsel prayed the preliminary objections to be sustained and the suit herein to be dismissed with costs.

In the same vein, Mr. Msosa, counsel for the 2nd defendant argued that this suit arose from breach of contract. That it is the law of this land that suits founded on contract are supposed to have been filed within six years from the date when the cause of action arose. That the course of action arose in June, 2015 when the accident occurred and this suit was filed on 10th March, 2023, *i.e.*, seven, if not eight years ago whereas no extension of time has been sought from the Ministry of Constitutional and Legal Affairs as required by law. That this suit contravenes the provision under item 7, Part 1 of the schedule to the Law of Limitation Act [Cap. 89 R.E2019]. The case of **Zaidi Baraka and 2 Others versus Exim Bank (Tanzania) Limited** (Civil Appeal 194 of 2016) TZCA 1933 was cited to buttress the point.

On the above premise, the counsel asserted that the suit herein is unmaintainable in law, and doomed to be dismissed with costs.

On the other hand, Mr. Ndanzi, in countering the argument made in respect of the preliminary objection raised by the counsel for 1st

defendant, contended that the purported objection advanced by the defendants herein doesn't fit in what is termed as a preliminary objection in the strict legal sense. Quoting the holding of the Apex Court in the case of **Attorney General vs The Board of Trustees of the Cashewnut Industry Development Trust Fund** (Civil Appeal 72 of 2015) [2015] TZCA 80, the counsel stated;

"A preliminary objection should raise a pure point of law based on ascertained facts from the pleadings or necessary implications not on facts which have not been ascertained, and even if ascertained if argued, a preliminary objection should be capable of disposing of the case. A preliminary objection cannot also be raised if what is sought is the exercise of judicial discretion. "

In countering the 1st preliminary objection raised by the 1st defendant, the counsel charged that the objection was misconceived. That the risk note, cover note issued by the 1st defendant herself, the report by insurance surveyor and Loss adjusters, and the annextures to the defence filed hereto, refers to the 1st defendant in the name employed by the plaintiff. Therefore, confusion, if any, was initiated by the defendant herself.

Nevertheless, the counsel opined that the defect if any, may be cured by the provisions of Order VI rule, 17 of the CPC. The case of **Christian Mrimi vs Coca-Cola Kwanza Bottles Ltd**, Civil Application No. 113 of 2011, CA (unreported) was cited to bolster the point.

On the above premises, the counsel prayed the preliminary objections raised by the 1st defendant be dismissed with costs.

And, in respect of the 2nd preliminary objection, the counsel argued that the claim of loss of business and, or profit falls under the specific claims and not general damages. Hence, the total claim herein is TZS 330,000,000/= which is within the pecuniary jurisdiction of this court. The case of **Jonathan Kalaze vs Geita Gold Mining Limited** (Civil Appeal 360 Of 2019) [2022]TZCA 312 was cited to validate the point.

Otherwise, the counsel opined that even if the principal claim would remain TZS 130,000,000/= this being the commercial case, this court, not the subordinate court, has jurisdiction to preside the same in view of the provisions of section 40 (3) (b) of the MCA.

In addressing the preliminary objection advanced by the 2nd defendant in that the suit herein is hopelessly time-barred, the counsel contended that the previous suit herein was withdrawn with leave to refile on technical ground. That the leave to refile was granted on 10/02/2023 in the presence of both parties herein. That paragraphs 12 (a) to (f) of the plaint, the plaintiff has clearly shown the grounds upon which exemption from the law of limitation is claimed.

On the above grounds, the counsel for the plaintiff prayed this court to find the preliminary objection advanced herein bereft of substance and overrule the same with costs.

The issue for determination is whether the preliminary objections advanced herein are substantiated.

Having scrutinized the preliminary objection advanced, I find myself constrained to delve into the pertinent preliminary objection advanced by the 2nd defendant herein in that this suit is time, of which I find has capability, if found with substance, to depose this suit on its entirety.

Primarily, it is common ground, as conceded by the counsel for the plaintiff, that this suit was reinstituted in this court beyond the time of limitation. In fact, paragraph 13 of the plaint affirmatively avers that the cause of action arose on 14th June, 2015, about eight years ago.

Likewise, it is common ground that the justification to institute this suit advanced by the counsel for the plaintiff is that the leave to refile was granted on 10/02/2023 in the presence of both parties herein. That paragraph 12 subparagraphs (a) to (f) of the plaint, the plaintiff has clearly shown the grounds upon which exemption from the law of limitation is claimed. I have gone through the averment of paragraph 12

of the plaint. Subparagraph “d” to “f” of the same provides details of the counsel’s assertion.

In substance, it is averred that the court found that the case before the court was beyond the time prescribed in the speed track, having expired on 31/09/2020. And, parties were called upon by the court to address the issue and way forward. Then the court found that some evidence was taken by the court beyond the speed track set, and extending the time of the speed track would not alleviate the situation. Hence, the court granted the prayer of the plaintiff to withdraw the suit with leave to refile.

If I comprehend well the argument of the counsel for the plaintiff, the order of this court allowing the plaintiff to withdraw the suit with liberty to refile, amounted to an extension of time of limitation to sue. With due respect, the order of this court granting the prayer to withdraw the suit with leave to refile has no capacity to extend the time of limitation to sue. Likewise, this court has no power to exempt a litigant to sue beyond the prescribed period. Therefore, the prayer made in paragraph 12 of the plaint for an exemption to sue beyond the prescribed period is manifestly untenable in law. It is unfortunate that the counsel opted to withdraw the suit without foreseeing the consequential effect, especially on time limitation. It is the law of this land that withdrawal of suit with leave to

refile is subject to the law of limitation, not exemption to file a suit beyond statutory time. The provision of Order XXIII, rule 2 of CPC speaks volumes in this respect.

Therefore, I am constrained to align with the bitter truth that the suit herein was filed beyond the time limitation prescribed under item 7 of part 1 of the schedule to the Law of Limitation Act which provides for a period of six years to sue on contract.

In view of the provision of section 3 of the Law of Limitation Act [Cap. 89 R.E. 2019], the suit instituted after the period of limitation prescribed in the Act is bound to be dismissed, as I hereby do.

As both parties herein had no objection to the prayer made by the plaintiff's counsel for withdrawal of the suit with leave to refile, I find that entering the order for costs, in tandem with dismissal order entered above, would be repugnant to justice.

I so order.

DATED at DAR ES SALAAM this 22nd day of August, 2023.




O. F. Bwego

JUDGE