

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(DAR-ES-SALAAM SUB-REGISTRY)
AT DAR-ES-SALAAM**

MISC. CIVIL. CAUSE NO. 334 OF 2021

IN THE MATTER OF COMPANIES ACT (ACT NO. 212 OF 2019)

AND

**IN THE MATTER OF SENKONDO'S EXPORT AND IMPORT COMPANY
LIMITED**

AND IN THE MATTER OF AN APPLICATION BY;

DANNY G. KWAYU PETITIONER

VERSUS

ROSELYNE GODWIN TARIMO 1st RESPONDENT

NEEMA GODBLESS LEMA 2nd RESPONDENT

GODBLESS JONATHAN LEMA 3rd RESPONDENT

NELSON LIELIBARIKI LEMA 4th RESPONDENT

SENKONDO'S EXPORT AND IMPORT CO.LTD 5th RESPONDENT

RULING

S.M. MAGHIMBI J:

This ruling is on preliminary objections raised by the 1st, 4th and 5th respondent while filing their joint reply to the petition, challenging the competency of this petition on two grounds that:

1. The petition is hopelessly time barred.
2. That the petition is incurably defective for citing a non-existing law namely The Company Act (Cap 212 R.E 2019)

Hearing was by way of written submissions. At the hearing of the objection, the 1st, 4th, and 5th Respondents enjoyed the service of Mr. Saraja Mangula learned counsel, while the Applicant was represented by Ms. Catherine Charles.

In support of their objection, Mr. Mangula submitted that the petition is time-barred because the cause of action arose on 15th September 2014. He argued that counting from the date the course of action arose to the 12th of July, 2021 when this petition was filed is 6 years, ten months and 3 days since the dispute arose. That there is no dispute that the Applicant filed this petition under Section 233(1) of the

Companies Act, Cap 212 R.E 2002, (Cap. 212) whereby the same is silent on the issue of time limitation to file the petition of this nature. He then argued that every cause of action should have a time limit. That since no time limit has been provided, then the relevant provisions are the provisions of Part III Item 21 of the Law of Limitation Act, Cap 89 R.E 2019 which provides that an application under the Civil Procedure Code, the Magistrates' Courts Act, or other written law for which no period of limitation is provided in this Act or any other written law is -sixty days.

In reply, Ms. Charles for the petitioner submitted that the preliminary objection raised by the Respondents is a mixture of matter of law and facts which must be ascertained by proof. Her argument was that a preliminary objection should only be raised on a pure question of law, supporting her argument by citing the case of **Ms. Safia Ahmed Okash (As administratrix of the Estate of the late Ahmed Okash vs Ms. Sikudhani Amheiri & 82 others, Civil. Appeal No. 138 of 2016, CAT, (Unreported)**, whereby on page 24-25, the Court stated that:

"...its facts on the point of preliminary objection were subject to a contest, and so the High Court could not

determine the point at the preliminary stage. We are thus, minded to find the allegations contained in paragraphs 88 and 89 as facts calling for proof at the trial”

She then alleged that the previous application was filed on 29th June 2020 which was within the prescribed time of 6 years since the claims of cause of action by Respondents started to accrue. That the application was struck out on 29th March 2021. She further contended that the cause of action arose from 15th December 2015 and not 15th September 2014 as claimed by the counsel for the Respondents. That the point on which the cause of action started, to the date of filing the petition which was 12th July 2021 is 5 years and 7 months hence the petition is filed within the prescribed time of 6 years.

In his brief rejoinder, Mr. Mangula reiterated to his submission in chief that the petition is hopelessly time-barred, citing Section 5 of the Law of Limitation Act, in which the provision is coached with the word “shall” meaning mandatory compliance.

On my part, I have perused the affidavit and the submissions of parties as well as the companies’ board resolution which was marked as

annexure DK4 to the petition, the resolution shows that the subscribed shares of the two members, the petitioners herein and one Roselyne G. Tarimo, were forfeited and returned to the company, having been signed by members and chairman of the company on 15th September 2014. I have also revisited the petition and in paragraph 12, the petitioner deposes that on 15th September 2014, a date unknown to him and without notice, the Respondents purported to have extracted the board resolution to forfeit the 2,499 shares of the petitioner.

It is further undisputed by parties that this petition was filed in Court on 12th July, 2021. Counting from the date when the cause of action arose to the date of filing of this petition, as correctly computed by Mr. Mangula, it is 5 years and 7 months. Indeed Cap. 212 did not provide for time limit within which an application of this nature may be filed. However, the situation can be salvaged by the provisions of the item 21 of the III schedule to the Limitation Act, which provides the time limit for an application to be filed within 60 days. The petition having been filed more than 6 years after the time the cause of action arose is time barred. Hence

by virtue of the item 21, the petition before me is time barred and it is hereby dismissed with costs.

Dated at Dar-es-salaam this 21st of June, 2023



A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke, positioned above a dotted line.

S.M MAGHIMBI.

JUGDE