

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE SUB-REGISTRY OF MANYARA

AT BABATI

CIVIL CASE NO. 16 OF 2023

LAWRENCE SULUMBU TARA.....PLAINTIFF

VERSUS

RICHARD MWAISEMBA.....1ST DEFENDANT

THE ATTORNEY GENERAL.....2ND DEFENDANT

HALFAN A. MATIPULA.....3RD DEFENDANT

RULING

6th & 08th November, 2023

Kahyoza, J.

Lawrence Sulumbu Tara sued Richard Mwiseba, the Attorney General and Halfan A. Matipula claiming for a declaration that the arrest and detention of the plaintiff for nine days without police bail was unlawful, general damages for false imprisonment and costs of the suit. The defendants refuted the claims and raised a preliminary objection, that the suit was time barred.

The issue is whether the suit was time barred.

A brief background relevant to the issue is that a police officer commanding station informed the plaintiff to report at Bashnet police station. Later, the first defendant ordered him to report at Babati police station. He

obliged^{and} reported to police station with his advocate one Tadey Lister. He pleaded that the plaintiff detained him from 13.06.2020 to 22.06.2022. following his detention, the plaintiff instituted the instant suit against the defendants for prayer stated above.

Is the suit time barred?

The second defendant raised the preliminary objection that-

- (1) The suit is hopelessly time barred and that this Court lacks jurisdiction to hear and determine it.

To support the preliminary objection Mr. Mkama Musalama, learned State Attorney, submitted that the cause of action arose on the 13.06.2020 up to filing date of the suit on 21.06.2023, three years and 8 days had lapsed. He submitted that time limit within which to file suit based on tort was three years. He cited item 6 of part 1 ~~of~~ the schedule to **the Law of Limitation Act**, [Cap. 89 R. E. 2019] (the LLA). He also cited the case of **Mbezi Mgaza Mkama Vs. Permanent Secretary Prime Minister's office and AG**, Civil Appeal No. 27 of 2017, Court of Appeal of Tanzania where it was held that-

"As alluded to above, the cause of action arose from the appellant's imprisonment following the trial for the offence was preferred under the Act. He claimed that he was unlawful imprisonment hence the

ground for the reliefs sought in the plaint. In the circumstances it is clear that the cause of action was found on tort. As can be gleaned from their submissions, the appellant and the learned Senior State Attorney agreed that the suit was filed out of time. Under item 6 of the schedule to the Law of Limitation Act, the suit should have been filed within 3 years. On the basis of the foregoing, we find that the trial court erred in failing to find the suit was time barred”

The plaintiff opposed the preliminary objection vehemently, that, the suit is not time barred. He negated the contention that the cause of action arose on 13.06.2020. He submitted that the cause of action arose not on the date he was arrested but on the day he was released that is on 22.06.2020. Thus, the suit was not time barred. He argued that since he was arrested on 13.06.2020 and falsely imprisoned up to 22.06.2020 time started running on date he was released. He argued that there was continuing wrong from the date of his arrest to the date he was released. He cited section 7 of **the Law of Limitation Act**, [Cap. 89 R. E. 2019], which provides that-

"Where there is a continuous breach of contract or a continuing wrong independent of contract a fresh period of limitation shall begin to run at every moment of time during which the breach or the wrong as the case may be continues”.

He argued that Court of Appeal in **Zaidi Baraka and 2 others V. Exim Bank (Tanzania) Limited**, Civil Appeal No. 194 of 2016 and **Stanbic Tanzania Ltd V. M/S TADExIM Co. Ltd**, Civil Appeal No. 75 of 2019 defined continuing wrong or breach to mean-

"This section speaks of a continuing breach of contract and a continuing tort without defining what those expressions mean. Therefore, one has to resort to the general law, where the expression means nothing more than that the breach or the wrong is not the result of the single positive act but is the result of neglect or default which continues to exist over a number of days, so that fresh neglects and defaults are deemed to occur every day giving rise to fresh cause or action."

The plaintiff submitted that where there is continuing wrong, the accrual of the cause of action is on the last day of the wrong. To support his contentions, he cited the case of **Alicheraus Sepherine Mwesiga V. Tanzania Portland Cement Company Ltd**, Civil case No. 12 of 2019 High Court (T) Dar es Salaam. Where it was held that-

"Under this doctrine (continuing wrong doctrine) where there is a series of continuing wrongs, the Statute of Limitation will be tolled to the last date on which a wrongful act is committed"

The plaintiff refuted the contention that he filed the plaint on 21.06.2020. He contended that the day of filing the plaint was on 19.06.2023, when he submitted the plaint online. To support his contention, he cited **rule 21 of the Judicature and Application of Laws** (Electronic Filing) Rules, 2018 GN No. 148 of 2018 which provides that-

"A document shall be considered to have been filed if it is submitted through the electronic filing system before midnight, East African time, on the date it is submitted, unless a specific time is set by the court or it is rejected"

Having heard the rival submissions, I wish to state the obvious that the plaintiff's suit is founded on tort. The limitation for a cause of action founded on tort is three years. See item 6 of Part 1 of the schedule to **the law of limitation Act**. The plaintiff's claim is founded on tort, thus, it was required to be instituted within three years.

I wish to add that there is no dispute that the plaintiff was arrested on 13.06.2020 and released on bail on 22.06.2020. Another obvious fact is that, a document filed online is considered on the date of submission, unless the pleadings are rejected. See rule 21 of the e-filing Rules. It is also a common practice that the date of filing is the date of payment. In the present case, it is obvious that the plaintiff paid filing fees on 21.06.2023. I was

unable to find the date when the plaint was submitted online. My failure to find the submission date was due to the fact that the e-CMS was down. It could not be accessed and there was no record to show when the plaint was filed online. I take it that the filing date was on 21.06.2023 when fees were paid. However, if the plaintiff filed the plaint online before 21.06.2023, then the filing date is the date the plaint was submitted online.

The only question for determination is whether the cause of action arose on the date the plaintiff was arrested or on the date he was released. The second defendant's position is that it started running on the 13.06.2021, when the plaintiff was arrested.

The plaintiff's contention is that the cause of action commenced on the 22.06.2020 when he was released. He argued that there was a continuing wrong. Having considered the rival submissions and the authorities cited, I am of the view that the cause of action arose on 22.06.2020 when the plaintiff was released. No wonder that the unlawful arrest and detention, if any took place on 13.06.2020, but the fact that the plaintiff remained under confinement for nine days, every day constituted a wrong. I share the views similar to the plaintiff, that, there was a continuing wrong.

The law is settled that when there is continuing wrong, the period of limitation shall begin to run at every moment of time during which the wrong, as the case may be, continues. Since there was continuing of wrong up to 22.06.2020, when the plaintiff was released, the cause of action begun to run at that moment.

I am of the firm view that since the cause of action accrued on 22.06.2020, the suit is not time barred, even if we take it that the plaintiff filed his plaint on 21.06.2023.

In the end, I find that the objection meritless and I overrule it .

I make no orders for costs.

Dated at **Babati** this **08th** day of **November**, 2023.




J. R. Kahyoza

Judge

Court: Ruling delivered in the presence of the plaintiff and Mr. F. Bukambu State Attorney for the first, second and third defendants. B/C Ms. Fatina (RMA) present.



J. R. Kahyoza

Judge

08/11/2023