

**UNITED REPUBLIC OF TANZANIA
JUDICIARY
HIGH COURT OF TANZANIA
BUKOBA SUB REGISTRY
AT BUKOBA
CIVIL APPEAL NO. 21 OF 2023**

*(Arising from decision in Civil Case No. 20 of 2023 of the Resident
Magistrate Courts of Kagera by Hon J.E. Massesa-PRM)*

WINFRIDA SYPRIANAPPELLANT

VERSUS

**JANE NOVART LWOMIRE.....1ST RESPONDENT
ABELA KAMALA 2ND RESPONDENT
KASIBANTE RADIO STATION3RD RESPONDENT
FARDA HAMIS 4TH RESPONDENT
DAFROZA BARNABAS5TH RESPONDENT
ADELIUS MAIKO6TH RESPONDENT**

JUDGEMENT OF THE COURT

Date of last Order: 27/02/2024

Date of Judgement: 13/03/2024

BEFORE: G.P. MALATA, J

This appeal arose from the decision of the Resident Magistrate's Courts for Bukoba **(Hon J.E. Massesa-PRM)** in civil case No. 2/2023. The trial court dismissed the suit for being instituted arising on tort of defamation for being filed outside the time limine prescribed by law.

The facts giving rise to the dispute depict that, on three different occasions that is say, on 16th March 2018, 17th March 2018 and 19th March 2018, the 1st, 3rd, 4th, 5th and 6th respondents herein committed an offence of naming the appellant a wizard and the same was publicized on 19th March, 2018 in Kasibante Radio Station by the 1st respondent, the employee.

The alleged false utterances triggered the appellant to initiate criminal proceeding against the respondents criminal case No 259 of 2019 in the Resident Magistrate court of Bukoba in which its judgment was delivered on 18/12/2020. The trial court held and ordered in favour of the PW1 (the appellant) herein that,

The first accused to pay a fine Tshs. 100,000/= or serve a term of 5 years imprisonment for the first count.

The first accused to pay a fine Tshs. 100,000/= or serve a term of 5 years imprisonment for the second count.

The first accused to pay Tshs. 50,000/= to PW1 for the misfortune caused, the compensation to be paid within 3 months from today.

The second accused to pay a fine Tshs. 100,000/= or serve a term of 5 years imprisonment for the second count.

The second accused to pay Tshs. 50,000/= to PW1 for the misfortune caused.

The third accused to pay a fine Tshs. 100,000/= or serve a term of 5 years imprisonment for the second count.

The third accused to pay Tshs. 50,000/= to PW1 for the misfortune caused, the compensation to be paid within 3 months from today.

The fourth accused to pay a fine Tshs. 100,000/= or serve a term of 5 years imprisonment for the third count.

The fourth accused to pay Tshs. 50,000/= to PW1 for the misfortune caused, the compensation to be paid within 3 months from today.

This court noted that, by virtue of the above sentence of the trial court the appellant was paid compensation following conviction of the respondents herein. However, she decided to ask for more through civil litigation, thence Civil case no.02 of 2023. I will not deal with it on whether she had chosen the right way or not.

Subsequent, to the decision in the criminal case on 18/12/2020, on 06/02/2023 the appellant filed civil case no. 02 of 2023 in Resident Magistrates' Court claiming for damages for the defamation statement against the respondents. Civil case No.02 of 2023 was attacked by preliminary objection to the effect that, the suit was time barred. Upon hearing the said objection, the trial court upheld the it and dismissed the case for being filed outside the time limine prescribed by law.

Aggrieved thereof, the appellant approached this court armed with five grounds of appeal which reads;

- 1. That the Hon Principal Resident Magistrate of the trial court erred in law and in fact to hold that civil case No 2 of 2023 was filed out of the time by dismissing the same basing on erroneous ground.*
- 2. In dismissing the said suit on the ground of being filed out of time of three years the Hon Magistrate failed to take into account that the accrual of right of action for instituting civil case no 2 of 2023 and computation of time limitation, started to run from 18th December 2020 when the judgment of criminal case no 259 of 2019 has been delivered by the trial court.*
- 3. That in holding that the said suit was filed out of time by five years the Hon. Magistrate misdirected herself for failure to make a distinction between the commencement of cause of actions and accrual of rights action.*

4. *That the Hon. Magistrate erred in law and in fact in invoking a course of action which is not provided by the law by dismissing the suit instead of rejecting it.*
5. *In holding that provision of section 6(c) of the Law of Limitation Act [Cap 89 R.E. 2019] is irrelevant because the suit before the court was defamation and not malicious prosecution, the learned Magistrate misinterpreted the position of the law governing cases of this nature.*

The appeal was disposed by way of written submissions. The appellant appeared unrepresented whereas the respondents enjoyed the services of Mr. Ally Chamani and Ms. Gisela Rugemalira and learned counsels.

Arguing in support of grounds of appeal, the appellant submitted in principle that, the dismissed Civil case no.02 of 2023 was within time. She argued that, the time spend in prosecuting criminal case No. 259 of 2019 in the Resident Magistrates Court for Kagera which ended on 18/12.2020 had to be excluded. It was meant that, the time from Mach, 2018 to 18/12/2020 be expunged. However, the appellant acknowledged that, the cause of action and right of action for the claimed defamation occurred on 16th March 2018, 17th March 2018 and 19th March 2018. That by excluding such period, Civil case No.2 of 2023 which was filed of 06/02/2023 will be within time, that is filed just within two years and two months from the date of delivery of decision in criminal case No.259 of 2019.

That being the case, the dismissed civil case no.02/2023 falls under the provisions of section 6(c) of the Law of Limitation Act [Cap 89 R.E. 2019] which provides that

"For the purpose of this Act in the case of a suit upon a judgment the right of action shall be deemed to have accrued on the date on which the judgment was delivered"

The appellant, had the view that although the cause of action of being named a witch arose on three different occasions that is to say on 16th March 2018, 17th March 2018 and 19th March 2018 but the accrual of right of action for instituting civil case No 2 of 2023 commenced and need to be computed from 18/12/2020 when the judgment in criminal case No 259 of 2019 was delivered. She submitted that the case depended on delivery of criminal case No 259 of 2019, thus the trial court had to exclude such period of limitation as provided for in rule 6 Order VII of the Civil Procedure Code [Cap 33 R.E. 2019]. The rule reads that;

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

The appellant referred this court to unreported case of **Stanbic Bank Tanzania Limited Vs M/S Tradexim Company Limited**, Civil Appeal No 75 of 2019 [2022] TZ CA 757 where the court discussed among others, **item 6** of the first schedule to the Law of Limitation Act that, the limitation for the suit founded on

tort is three (3) years and that, section 4 of the Act provides for the commencement of the cause of action and the right to sue.

She also cited the case of the case of **Radi Services Limited Vs Stanbic Bank (T) Limited**, Civil appeal No 260 of 2020 [2023] TZCA 17492.

The appellant cemented that, it is not in dispute that, item 7 of part 1 of first schedule to the Law of Limitation Act prescribes for a six years period counted from accrual of the cause of action within which a party may institute a suit founded on contract. She was of the view that, the section applied to the present case, thus time limit is six (6) years. Finally prayed the appeal to be allowed with costs.

In reply thereof, the respondents arguing the appeal through Mr. Alli Chamani learned counsel stated that, the trial court correctly decided the case that, the Civil Case No.2 Of 2023 by the appellant was time barred.

They submitted that, the reliance on section 6 (c) of the Law of Limitation Act made by the appellant and that the cause of action commenced on delivered of decision in criminal case no.259 of 2019 on 18/12/2020 is a misconception and total misdirection of the law. That, the only category of cases in which the right of action is subjected to delivery of judgement is tort of malicious prosecution not other tortious liability like defamation in which slander and libel are founded.

In the present case, the suit did not arise from malicious prosecution but defamation/slander which is not subjected to determination and delivery of judgement in criminal case.

In that regard, the cause of action in the present case arose on 19th March 2018 and not on 18/12/2020 when decision in criminal case no.259 of 2019 was delivered. Finally, the respondents prayed for dismissal of appeal with costs.

Having carefully digested the submissions made by both parties and read trial court records, this court has gathered three issues for determination, these are;

1. whether the suit for defamation/slander by the appellant defended on delivery of decision in criminal case No.259 of 2019 before the Resident Magistrate Courts for Kagera,
2. whether Civil case no.2 of 2023 filed on 6/02/2023 was within time,
3. Whether the trial court had jurisdiction to try Civil case no.2 of 2023 by the appellant.

To start with, the parties are not in dispute that, **one**, the alleged defamation/slander took place 19/03/2018, **two**, the Republic initiated criminal case no.259 of 2019 against the respondents herein, **three**, criminal case no.259 of 2019 was delivered on 18/12/2020, **four**, the defendants did not commence

any criminal case against the appellant, **five**, the appellant filed Civil Case No.2 of 2023 on 06/02/2023, **six**, the suit by the appellant was tort one of which the time limit within which to institute such case is three (3) years, **seven**, the Civil Case No.2 of 2023 On 06/02/2023 was dismissed by the Resident Magistrate Courts for Kagera for being time barred and **eight**, the aggrieved thereof, the appellant preferred the present Civil appeal no.21 of 2023 before this court,

In fact, the parties are in disagreement as to when the cause of action and right of action should be reckoned, is it from time date of uttering the slander statement i.e 19/03/2018 or on the date of delivery of criminal judgement in criminal case no.259 of 2019 on 18/12/2020.

In response to issue number 1 herein above, this court will be guided by facts and law. Having gathered facts, what follows next is to test the facts with the applicable law. Without hesitation, parties will have their answers, shortly.

To begin with the right of action on tort of malicious prosecution is governed by section 6(d) of the Law of Limitation Act which reads that;

"For the purposes of this Act-

*"In the case of a **suit for malicious prosecution**, the right of action shall be deemed to have accrued on the **date on which the plaintiff was acquitted** or the prosecution was otherwise terminated;"*

In that regard, suit on tort for malicious prosecution the accrual of right of action is the date of acquittal. The rationale behind it is so obvious, as there could no malicious prosecution claims, if the criminal case has not been conclusively determined by the court of competent jurisdiction in favour of the plaintiff. To succeed in this category of suit, the plaintiff is required to prove and satisfy the court on existence of five clear ingredients for malicious prosecution.

This is echoed by plethora of authorities of the court, to cite a few; case of **Jeremiah Kamama vs. Bugomola Mayandi** [1983] TLR 123, the court emphasized on the ingredients for tort of malicious prosecution by stating that;

- I. *For a suit for malicious prosecution to succeed, the plaintiff must prove that;*
 - a) *He was prosecuted;*
 - b) *That the proceedings complained of ended in his favour;*
 - c) *That the defendant instituted the prosecution maliciously;*
 - d) *That there was no reasonable and probable cause for such prosecution; and*
 - e) *That damage was occasioned to the plaintiff.*

Additionally, in the case of **William Chamapwa v. Francis Bitegeko** [1975] LRT n.36 the court held that, to succeed in an action for damages for malicious prosecution, a plaintiff must prove that;

- a) *The prosecution was instituted or carried on such proceedings maliciously and without reasonable and probable cause,*
- (b) *The proceedings complained of terminated in the plaintiff's favour, and*
- (c) *The plaintiff had suffered damages.*

The above stated characteristics differentiates tort of malicious prosecution and other forms of tort including the defamation.

The tort of defamation carries two forms slander and libel which is categorized into two forms, namely *slander* and *libel*. While libel is in the permanent or written form, slander is merely spoken words. In this case, the words were alleged to have been uttered against the appellant by the respondents, and therefore it is a slander.

In defamation the plaintiff has to prove four elements, these are;

- (i) **First**, the plaintiff must prove that the defendant made a false and defamatory statement concerning the plaintiff,
- (ii) **Second**, the plaintiff must prove that the defendant made an unprivileged publication to a third party,
- (iii) **Third**, the plaintiff must prove that the publisher acted at least negligently in publishing the communication,

(iv) **Four**, that in some cases the plaintiff must prove special damages.

Looking at the two kinds of tort that is malicious prosecution and defamation, it is ascertainable that, the two are completely a different creatures. While plaintiff in malicious prosecution depends on existence of criterion stated in the case of **Jeremiah Kamama vs. Bugomola Mayandi** which are for tort of malicious prosecution, the defamation does not depend thereon. Thus, they are completely detachable.

In the present case, it is clear that; **one**, there was no criminal case instituted by the defendants/respondents, **two**, no criminal case against the appellant prosecuted by the respondents, **three**, there is no fact that there was case prosecuted by the respondents which ended in favour of the appellant, **four**, there was no case filed by the respondents without reasonable and probable cause against the appellant and **five**, there was no case filed by appellant in court which she had legally to wait its final determination before instituting Civil Case no.02 of 2023.

In view thereof, there is nowhere the delay in filing the defamation Civil case no.02 of 2023 gets its legitimacy. Thus, the appellant's attempt to legalize her delay in filing Civil Case no.02 of 2023 gets no support, thus a negligence.

Having so said, it is evident therefore that, paragraph 6 of Part I to the Schedule of Law of Limitation Act provides for time limit within which to file suit arising from tort. The section reads that;

"Suit founded on tort t tort three (3) years"

In exclusion of tort of malicious prosecution, other forms of torts, the right of action commences on the date of incidence, defamation inclusive. This is assembled from sections 4 and 5 of the Law of Limitation Act, Cap. 89 R.E.2019

Section 4 reads;

The period of limitation prescribed by this Act in relation to any proceeding shall, subject to the provisions of this Act hereinafter contained, commence from the date on which the right of action for such proceeding accrues.

And section 5 reads;

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

To bolster my stand, reference is further made to famous Author C. K. Takwani on his book titled; The Civil Procedure with Limitations Act, 1963, Eastern Book Company, 7th Edition published on 2015 stated that:

"Limitation starts to run from the date right to sue accrues in favour of a party. "Right to sue means" right to seek relief, i.e right to approach a

court of law. Thus, there can be no "right to sue" until there is an accrual of right asserted in the suit..."

What has been stated by C. K. Takwani in the above quoted para, is in fact what is provided for under sections 4 and 5 of the Law of Limitation Act, Cap 89 R.E 2019.

On the strength of the above, it clears therefore that; **first**, tort of defamation which is the case at hand has nothing to do with or depend on finalization of criminal case as opposed to malicious prosecution, **two**, the accrual of right action for tort of malicious prosecution commences on delivery of judgement in criminal case as stated by section 6(d) of the Law of Limitation Act, whereas defamation is on the date of incidence.

In the appellant's case, the cause of action and accrual of right of action commenced on 19/03/2018 when the publication of imputation was effected. In event therefore, the appellant was required to institute Civil case no.02 of 2023 within three (3) years as required by paragraph 6 of the Part I to the Schedule of Law of Limitation Act.

The allegation that the appellant was waiting finalizing spend in handling criminal procedure be excluded has no merits for reasons that; **one**, in criminal case no.259 of 2019 the complainant was by the Republic and the appellant just testified as PW1 like any other witnesses, **two**, the appellant was neither a party nor

prosecuted the said criminal case, **three**, criminal case no.259 of 2019 had nothing to prevent the appellant from filing Civil case No.2 of 2023 in time, **four**, the exclusion of time argued by the appellant is out of context as it can only be done in respect of the same matter that she could have been pursuing before any court of law.

In similar vein, the appellant cannot even benefit from section 21(1) of the Law of Limitation Act. The section reads;

"In computing the period of limitation prescribed for any suit, the time during which the plaintiff has been prosecuting, with due diligence, another civil proceeding, whether in a court of first instance or in a court of appeal, against the defendant, shall be excluded, where the proceeding is founded upon the same cause of action and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is incompetent to entertain it,"

As stated herein, the appellant was neither prosecuted criminal nor civil case against anybody the respondents inclusive, thus she cannot benefit therefrom.

This marks the end of discussion in respect to issue number 1 herein above.

As to the second issue, the response is that, since the cause of action and right of action arose on 19/03/2018 and the Civil case no.2 of 2023 was filed on

06/02/2023 being five (5) years from the date of cause of action, then the said suit was filed contrary to paragraph 6 of the Part I to the Schedule of Law of Limitation Act, supra. The suit was filed beyond the time limine prescribed by law which is three (3) years. Thence time barred. Therefore, the trial court correctly decided that, Civil case No.2 of 2023 was unmaintainable for being time barred.

The next issue is whether the court had jurisdiction to entertain suit which is time barred.

The answer to above posed question is that, courts and tribunals have no jurisdiction to entertain the matter filed out of time, unless extension of time was sought and granted before filing it. In the case of **Nbc Limited and Immma Advocates Vs Bruno Vitus Swalo**, Civil Appeal NO.331 of 2019, CAT AN Mbeya the court held that;

".....Courts are enjoined not to entertain matters which are time barred. Limitation period has an impact on jurisdiction. Courts lacking jurisdiction to entertain matters for which litigation period has expired."

Further, while revisiting its previous decision in **John Barnabas Vs Hadija Shomari**, Civil Appeal No.195 of 2013, CAT and **Baklays Bank (T) Limited Vs Jacob Muro** Civil Appeal No.357 of 2009, CAT, it held that,

"Consequently, in line with what we have endeavoured to traverse above, we hold that, the ward tribunal of Kinyangiri, lacked jurisdiction to entertain

the land dispute which was lodged by the respondent because it was time barred. As a result, the proceedings before the ward tribunal and those subsequent thereto, were a nullity and we nullify them."

In the case of **D.P.P vs. Benard Mpangala and Two Others**, Criminal Appeal No. 28 of 2001, the court of appeal had these to say,

*"Admittedly, limitation is a legal issue which has to be addressed at **any stage of proceedings as it pertains to jurisdiction.** However, parties have to be given a right of hearing, especially as in this case where there was a need to give some explanation and even to tender proofs"*

In the case of **Sospeter Kahindi vs Mbeshi Mbashani**, Civil Appeal No. 56 of 20217 (unreported) the court held that:-

*"The question of jurisdiction of a court of law is so fundamental. Any trial of any proceedings by a court **lacking requisite jurisdiction** to seize and try the matter will be adjudged on appeal or revision".*

The question which follows is what is the consequence of the appeal filed out of time. Reference shall be made to numerous court decisions to wit; the case of **John Cornel vs. A. Grevo (T) Ltd**, Civil case no. 70 of 1998 cited in

the case of **Nyanza Folklore Research Institute (NFRI 1985) vs. Mwanza City Council and others**, High Court of Mwanza, Land Case no. 04 of 2020 where it was held that;

*"However, unfortunate it may be for the plaintiff; **the law of limitation is on action knows no sympathy or equity. It is a merciless sword that cut across and deep into all those who get caught in its web**"*

The above position is cemented by section 3(1) and (2) (a) of the Law of Limitation Act.

(1) *Subject to the provisions of this Act, **every proceeding** described in the first column of the Schedule to this Act and which is instituted after the period of limitation prescribed therefore opposite thereto in the second column, **shall be dismissed whether or not limitation has been set up as a defence.***

(2) *For the purposes of this section a proceeding is instituted-*

(a) ***in the case of a suit**, when the plaint is presented to the court having jurisdiction to entertain the suit, or in the case of a suit before a primary court, when the complaint is made or such other action is taken as is prescribed by any written law for the commencement of a suit in a primary court;*

In the case of **Barclays Bank Tanzania Limited vs Phylisiah Hussein**

Mcheni, Civil Appeal no 19 of 2016 the court of appeal had these to say;

*"Finally, therefore there was no basis for the High Court Judge to strike out the complaint that had been presented in court after expiration of 60 days.....In view of that position of the law, it is our conclusion that, the learned High Court Judge should have **resorted to section 3(1) of the Act to dismiss** the complaint instead of striking it out as she did."*

Having ascertained that, Civil Case No.2 of 2023 was time barred and that the court lacked jurisdiction to entertain the matter, I hold that, the trial court correctly dismissed the suit under section 3(1) and 2 (a) of the Law of Limitation Act. In the event **PC. CIVIL APPEAL NO. 21 OF 2023** by the appellant lacks merits and is accordingly dismissed. Costs to follow the event.

IT IS SO ORDERED

DATED at **BUKOBA** this 13th March, 2024.

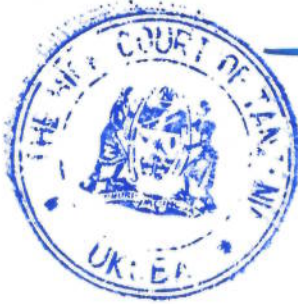


G. P. MALATA

JUDGE

13/03/2024

DELIVERED at **BUKOBA** in chamber this 13th March, 2024 in the presence of Appellant and 1st respondent but in the absence of the rest of respondents.



~~G. P. MALATA~~

~~JUDGE~~

~~13/03/2024~~