

**IN THE HIGH COURT OF TANZANIA
(DODOMA SUB REGISTRY)
AT DODOMA
CIVIL CASE NO. 18 OF 2022**

BLASTO GODWIN MAKUNDI.....PLAINTIFF

Versus

BENO ROMAN KARETI.....1ST DEFENDANT

PERMANENT SECRETARY MINISTRY OF HOME AFFAIRS2ND DEFENDANT

ATTORNEY GENERAL.....3RD DEFENDANT

RULING

Date of last order: 15th April, 2024.

Date of Judgment: 23th April, 2024.

E.E. KAKOLAKI, J.

Whether the suit preferred by the plaintiff is time barred, is the issue which this ruling seeks to address following the preliminary objection raised by the 2nd and 3rd defendants to the effect that, the suit is time barred. The plaintiff's claims against the 1st, 2nd and 3rd defendants respectively in this suit, is for compensation following serious damage of plaintiff's motor vehicle with Reg. No. T 496 DMA make YUTONG (bus) and injury of its passengers due to road car accident that occurred on 01/11/2019, allegedly caused by the 2nd defendant's motor vehicle make Toyota Cammy with Reg. No. UT 0262 driven by the 1st defendant, her employee. It is deposed in the plaint that, following that accident the 1st defendant was indicted before Kongwa

District Court in Traffic Case No. 69 of 2019, facing several traffic offences in which he pleaded guilty to, convicted and sentenced to pay fines while the plaintiff sending his motor vehicle for repair Dar es salaam at Mwigwa Best Motors, which repair allegedly was completed on 25/02/2022 the result of which suffered him loss of income. It is from that financial loss, psychological, mental sufferings and physical damages which the plaintiff claim to have undergone, he decided to file this suit against the defendants claiming for compensation totaling Tshs. 179,000,000/- being costs for maintenance of the motor vehicle, hiring a winch to transport the damaged vehicle from Kongwa to Dar es salaam, specific damages and instruction fees to the advocate among other reliefs, the claim which the 2nd and 3rd defendants are claiming was raised out time limitation prescribed by the law. Initially the 2nd and 3rd defendants had raised two grounds of objection but during the submission opted to drop one in which I find no reason to mention as this ruling seeks to determine the only remained and canvassed ground. Hearing of the raised preliminary objection took the form of written submission in which both parties adhered to the filing schedule orders. The Plaintiff hired the services of Mr. Fred P. Kalonga, learned advocate while

the 2nd and 3rd defendants enjoying representation of Ms. Kumbukeni Kondo, learned State Attorney as the 1st defendant could not be traced.

It was Ms. Kondo's submission in support of the raised preliminary point of objection that, time limitation for bringing an action based on claims of compensation is governed by Item 1 Column Two of Part I to the schedule of the Law of Limitation Act, [Cap. 89 R.E 2019] providing for one (1) year, the position of law which is also confirmed by the Court of Appeal decision in the **Tanzania National Road Agency and Another Vs. Jonas Kinyagula**, Civil Appeal No. 471 of 2020 (CAT-unreported). According to her parties are bound by their pleadings as it was held in the case of **Makori Wassaga Vs. Mwanakombo and Another** [1987] TLR 88 and cited in the case of **Masaka Mussa Vs. Roggers Andrew Lumenyela and 2 Others**, Civil Appeal No. 497 of 2021, Tanzlii. She argued in this matter since the cause of action arose in 2019 and this suit brought in 2022, the same was out of time for more than two (2) years in which the remedy is to have it dismissed under section 3(1) of the LLA as it was held in the case of **Shabani and 48 Others Vs. Tanzania National Road Agency and Another**, Civil Appeal No. 261 of 2020 which is cited in the case of **Jonas Kinyagula**

(supra). In view of the above submission she prayed the Court to find the suit is time barred and dismiss it with costs.

In rebuttal Mr. Kalonga attacked the 2nd and 3rd defendants' submission christened it as wrongly premised. He said, the 2nd defendant being uninsured party there is no way she can avoid to indemnify/compensate the plaintiff as if insured the liability of indemnity would have been carried by the insurer. According to him interpretation of the term compensation as taken by the 2nd and 3rd defendants is misconceived as in this matter the claimed payments is shouldered on the 2nd defendant who is duty bound to indemnify the plaintiff. He distinguished the case of **Jonas Kinyangula** (supra) relied on by the 2nd and 3rd defendants to the facts of this matter claiming that in that case claims of compensation were originating from land matter while in the present matter is based on traffic case involving the Government. As to the applicability of Item 1 column Two of Part I to the LLA, he said it is inapplicable in the circumstances of this case, as the same provides for general time limitation for lodging claims concerning compensation while in the matter at hand the sought compensation concerns a traffic case against the Government not bound by insurance policy as per section 4(3)(a) of the Motor vehicle Act, Cap. 169 which its time limitation

for claims on compensation is three (3) years as compared to other vehicles subjected to mandatory insurance cover which is one year. In view of that position of the law he urged the court to find the preliminary objection is without substance and proceed to dismiss it with costs so as to serve interest of justice on the plaintiff's part.

In a brief rejoinder Ms. Kondo reiterated her submission in chief while attacking the plaintiff's interpretation on the use of two terms of compensation and indemnity interchangeably to mean one and the same. Making reference to Black's Law Dictionary she submitted the term **indemnity** means a collateral contract or assurance in which one person engages to secure another against an anticipated loss or prevent him from being indemnified by the legal consequences of an act or forbearance on the part of one of the parties or some third parties while compensation is referring to payment of damages or any other act that a Court orders to be done by a person who has caused injury to another. She argued basing on the said definition that, since in this matter the plaintiff is claiming for compensation according to the pleadings which binds him and given the fact that, Item 1 Column Two of Part I to the schedule of LLA states that, issues relating to compensation for doing or omitting to do an act pursuant to any

written law is required to be brought within one year and given the fact that, the plaintiff preferred this suit more than two years passed since accrual of the cause of action, then the suit is time barred and deserves dismissal. She added that, the provision of section 4(3)(a) of Cap. 169 deals with exemption of Government owned vehicles from being covered under insurance policy hence the presupposition by the plaintiff that, it excludes application of Item 1 column two of Part I to the schedule of LLA, has no room to stay as LLA cater for all situations on the claims of compensation regardless of its nature. She thus prayed the court to sustain the objection and dismiss the suit as prayed.

I have accorded the fighting arguments from both parties the deserving weight and took time to study the plaint under consideration in a bid to answer the issue as to whether this suit is time barred or not. From parties submission it is gathered that, both are at one on the fact that, plaintiff's claims are for compensation of the loss suffered out of the motor vehicle accident involving his vehicle and 2nd defendant's vehicle driven by her employee (1st defendant) who is alleged to have cause it on 01/11/2019, on the high way from Dodoma to Dar es salaam within Kongwa Distrct area in Dodoma Region. It is also not in dispute that this suit was brought by the

plaintiff in the year 2022 more than two years passed from the date of accrual of cause of action which is 01/11/2019. What brings them into locked horns is the issue as to whether in determination of the time limitation for lodging a suit for compensation Item 1 column two of Part I to the LLA applies, as the plaintiff's argument is that it does not since the matter at hand specifically refers to a traffic case in which the Government is involved and exempted from having insurance policy/cover under section 4(3)(a) of Cap. 169 hence responsible to indemnify the plaintiff within 3 years while Ms. Kondo for the 2nd and 3rd defendants is of the contrary view arguing that, the LLA as cited caters for all claims of compensation regardless of their nature.

It is true and I agree with Ms. Kondo's proposition that, Item 1 column two of Part I to the LLA on time limitation for bringing an action on issues related to compensation for doing or omission to do an act, is one (1) year. The said, Item 1 in column 2 of Part 1 to the LLA reads thus:

*"For compensation for doing or for omitting to do an act alleged to be in pursuance of any written law, period of limitation is **one year.**" (Emphasis supplied)*

From the exposition of the law above cited, the use of the words **in pursuance of any written law** leaves this Court without any scintilla of doubt that coverage of the said provision of the law is too wide and extends to catch or cover any claim for compensation either for doing or omission to do any act under any written law including the matter at hand on claims arising from traffic offences (cases) regardless of whether the motor vehicle involved is covered by insurance policy or not, save where application of the LLA is specifically excluded. Thus the provisions of section 4(3)(a) of Cap. 169 excluding Government motor vehicles from being covered by insurance policy as relied on by the plaintiff in my humble firm view does not have any effect in so far as the time limitation for bringing action for compensation for either doing or omitting to do an act provided under any written law, as Mr. Kalonga would want this Court to believe that it does. The case of **Jonas Kinyagula** (supra) relied on by the 2nd and 3rd defendant, I am satisfied is relevant to the fact of this case and I so find. Further to that, I hold the claim by Mr. Kalonga that, time limitation for lodging claim for compensation on issues related to traffic cases like the present matter is three is a mere submission from the bar without any legal justification for failure to cite any authority be it the provision of law or case law backing his submission. I so

hold as position of the law is very clear as stated above and held in several decisions by the Court of Appeal one of them being **Jonas Kinyagula** (supra) where the Court had this to say concerning lodging of claims on issues related to compensation:

"Our starting point will be to restate that issues relating to compensation for doing or for omitting to do an act alleged to be in pursuance on any written law (land inclusive) are covered under item 1 of Part I to the Schedule to the LLA which requires such claims to be lodged within the period of one year." (Emphasis supplied).

In this matter since the plaintiff does not dispute to have instituted this suit on the claim of compensation in 2022, more than two years passed since accrual of the cause of action on 01/11/2019 and given the fact that, time limitation for lodging suit on claims of compensation for doing or omission to do an act alleged to be in pursuance of any written law (traffic case based matters inclusive) in terms of item 1 of Part I to LLA, it is the findings of this Court that, the plaintiff's suit is time barred.

Next for consideration is what befalls the suit filed outside the prescribed time limitation. I think this issue need not detain this Court much as it is tacitly stated under section 3(1) of the LLA that, the same shall be dismissed

as it was also stated in the case of **Ally Shabani and 48 Others** (supra) where the Court of Appeal observed thus:

"...He rightly held that the appellants suit was time barred for being instituted beyond 12 months from the date on which the time accrued. As the suit was time barred, the only order was to dismiss it under section 3(1) of the LLA."

In view of the above stated and for the foregoing reasons I find the raised preliminary objection to be meritorious and therefore sustain it. As the plaintiff's suit is time barred, the only awardable remedy is dismissal which order I do hereby enter.

The plaintiff is further ordered to bear costs of this suit.

It is so ordered.

Dated at Dodoma this 23rd April, 2024.



E. E. KAKOLAKI
JUGDE
23/04/2024.

The Ruling has been delivered at Dodoma today on 23rd day of April, 2024, in the presence of Mr. Fred Kalonga, advocate for the Plaintiff, Ms.

Kumbukeni Kondo, State Attorney for the 2nd and 3rd Defendants and Ms. Veradina Matikila, Court clerk and in the absence of the 1st Defendant.

Right of appeal explained.



E. E. KAKOLAKI
JUGDE
23/04/2024.

