



**THE JUDICIARY OF TANZANIA**  
**IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA AT KIGOMA**  
**(CORAM: HON. AUGUSTINE RWIZILE)**  
**CIVIL CASE NO. 6 OF 2023**

**YUSUPH HASANI NYAMKUNGA (ADMINISTRATOR OF THE ESTATE OF THE LATE ZAINABU  
KENGWA SABUNWE ) ..... COMPLAINANT / APPELLANT / APPLICANT /  
PLAINTIFF**  
**VERSUS**  
**NURU ISSA KASHAKALI & 3 OTHERS ..... RESPONDENT / DEFENDANT**

**RULING**

**Fly Notes**

-

**Facts**

-

**Ratio Decidendi**

-

13th of May 2024

**Hon. RWIZILE.:**

Zainabu Kengwa Sabunwe was involved in a fatal car accident on 13.7.2021 in Kigoma Ujiji Municipality at Senga on Kasulu-Kigoma road in a car with registration No. T 871 DLX property of the 1st defendant. Following his death, the plaintiff was appointed to administer his estate. The plaintiff, therefore, filed this suit for damages against the defendants. The plaintiff was under the service of Mr. Damas Sogomba while the 1st and 2nd defendants were under the services of Mr. Ignas Kagashe, learned advocates. Before the hearing, the case against other defendants was withdrawn.

At the hearing, Mr. Kagashe argued a preliminary objection on the point of law that the application is time-barred. It ought to be filed within six (6) months from the date when the plaintiff was appointed to administer the estate of the deceased. He further added that the deceased died on 13.7.2021, the plaintiff was appointed to administer the estate on 14th December 2021 and this suit was filed on 29.6.2023, which is out of time, in contravention of section 9(3)(b) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) Act, it should therefore be dismissed with costs.



Replying, Mr. Damas submitted that the suit was filed in time according to item six of the schedule to the Law of Limitation Act, which is three years. He said, it is true the Deceased died on 13.7.2021, the administrator was appointed on 15.12.2021 and the case was filed on 29.6.2023, therefore it is less than three. According to him, section 9(3)(b) of the Act, does not apply, because it deals with cases that are filed in court already. I was asked to overrule the objection.

In a rejoinder, Mr. Kagashe submitted that the Law of Limitation Act is general and should not be applied because the Law Reform (Fatal Accidents and Miscellaneous Provisions) Act, is specific on this matter.

Having heard the parties, I have to determine whether this case is time-barred. It is clear that the death occurred on 13.7.2021, the plaintiff was appointed an administrator on 15.12.2021, and he filed it on 29.6.2023. As rightly argued by Mr. Kagashe that the Law of Limitation Act, is a law of general application in matters of limitation. It does not apply when the specific law provides its time limit for an action. It cannot be inferred as insinuated by Mr. Sogomba that the instant case is a tort that is governed by items six to the Law of Limitation Act. Therefore, since the deceased left no suit pending, his argument cannot salvage his opinion of Mr. Sogombas' view. Section 9(3)(a) (b) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) Act, applies here and it provides that;

*No proceedings shall be maintainable in respect of a cause of action in tort which by virtue of this section has survived against the estate of a deceased person unless either-*

*(a) proceedings against him in respect of that cause of action were pending at the date of his death; or*

*(b) proceedings are taken in respect thereof not later than six months after his executor or administrator took out representation."*

I believe executorship or representation occurs when the administrator or executor is appointed legally to take over the deceased's matters. There is no doubt that it is what happened in this case as parties have rightly argued. Counting time from the appointment of an administrator of the deceased's estate, and the date this suit was filed is more than six months. This means time had elapsed. Therefore, when a suit is filed after the time of limitation, it must be dismissed in terms of section 3 of the Law of Limitation Act. Therefore, the objection has merit, it is sustained. The suit is dismissed. To avoid adding salt to an injury, I order each party to bear its costs.

**Dated at KIGOMA ZONE this 13th of May 2024.**

**AUGUSTINE RWIZILE  
JUDGE OF THE HIGH COURT**

