

**THE JUDICIARY OF TANZANIA**  
**IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA**  
**(DAR ES SALAAM SUB REGISTRY)**  
**AT DAR ES SALAAM**  
**CIVIL CASE NO. 213 OF 2023**

**AGNESS MATHEW MARWA..... PLAINTIFF**  
**VERSUS**  
**MARGARET SIMWANZA SITTA.....1<sup>ST</sup> DEFENDANT**  
**MINERAL COMPANY LIMITED.....2<sup>ND</sup> DEFENDANT**  
**BENJAMIN KAWWE SITA.....3<sup>RD</sup> DEFENDANT**

**RULING**

*24<sup>th</sup> April & 31<sup>st</sup> May 2024*

**MKWIZU, J: -**

The plaintiff's claim against the defendants jointly and severally is for a payment of specific damages of 4000,000,000 unpaid deposit made to the defendants. Tsh 143,993.439.37 interest made to CRDB Bank and 200,000,000 general damages, interest and costs of the suit. According to the plaint, the plaintiff was in 2016 invited by the 1<sup>st</sup> Defendant to partner with the 1<sup>st</sup> Defendant's family mineral company business. The agreement was for her to contribute the capital of Tsh. 490,000,000.00 /= to generate a monthly income of Tshs. 30,000,000/= . Enticed, she borrowed Tshs. 400,00,000 from CRDB Bank PLC at an interest rate of

14.5% per annum and Tshs. 90,000,000 from other sources to raise that capital and went ahead to deposit the amount into the defendant's account. Instead of a partnership Deed, she asserts, the 1<sup>st</sup> and 3<sup>rd</sup> Defendant came up with a borrowing Agreement. Fearing losing her money, she resorted to signing the contract where the defendant agreed to repay the money within six months period.

It is the plaintiff's averment in the plaint that since the signing of the contract, the defendants have refused to pay the plaintiff despite several demand notices and follow-ups hence this suit.

The Defendants filed a written statement of Defence and denied the allegations raised by the Plaintiff coupled with a preliminary objection to the effect that:

*"The suit before this Honourable court is hopelessly time barred"*

Arguing in support of the preliminary objection, the defendants' counsel swiftly stated that, the course of action is found on contract, a six-month contract signed by the parties on 13/2/2016 which was to end on 13/7/2016 maintaining that the suit is time- barred because the plaintiff had not commenced its claim within six years after the breach of contract contrary to Item 7 of the 1<sup>st</sup> schedule to the law of Limitation

Act, Cap 89. He cited the case of **Signal Tanzania Limited V CFAL Motol Tanzania Limited**, Commercial case No. 6 of 2023, page 4 asserting that the accrual of the course of action in this case is the date of breach, just after the lapse of the six months period agreed in the contract which is 13<sup>th</sup> July 2016. He lastly invited the court to dismiss the suit for being time barred under section 3 of the law of limitation Act with costs.

Mr. Denga advocate for the plaintiff admits that the suit is founded on breach of contract but he categorized the breach in this case as a continuous breach as demonstrated under paragraph 11 of the plaint read together with annexure AM5 to the reply to the WSD . Referring to **Ally Shabani and 48 Others V Tanroad and the Attorney General**, Civil Appeal No 261 of 2020 ( unreported) he said, determination of a preliminary objection on time barred allows reference or cross reference to pleadings and annexure thereto which includes the Plaint, WSD and reply to WSD and that according to paragraph 11 of the plaintiff, the defendant who were indebted to the plaintiff made final deposit of Tanzania Sh 5000,000/= on 25<sup>th</sup> October 2021 as fortified by the Bank statement annexure AM 5 in the reply to the WSD which also reflects the said deposit appearing at page 461 of 714 of the Bank statement.

His contention was that the 2021 payment resulted into accrual of a fresh cause of action because the payment acted as acknowledgement of the outstanding debt, and it was a part payment of the said outstanding in terms of section 27 (1) of the law of limitation Act, read together with the proviso immediately after (i) to the law of limitation Act and sub section 3 thereto. Therefore the accrual of the cause of action in such a matter is calculated from the date of the acknowledgement or the date of the last payment, which is 25/11/2021 in our case when the last payment by the defendant was made as pleaded. He lastly implored the court to overrule the objection with costs

I have considered the rival submissions and the records. The crucial issue from the battling arguments by the parties is only whether this suit is time barred or not. The parties agree that the cause of action in this suit is typical contractual in nature emanating from the parties' contract entered on 13/2/2016 with a life span of six months.

According to the Law of Limitation, breach of contract claim is to be instituted within six years from the date of the accrual of the cause of action. And in terms of sections 4 and 5 of the Law of Limitation Act, the period of limitation of action in relation to any proceedings commences

from the date on which the right of action for such proceeding accrues.

Sections 4 the Law of Limitation Act, Cap.89 R.E 2019, reads:

*"Section 4: 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 says:

*"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."*

According to the above provisions, the right to action arises on the date of the accrual of the causes of action. Going by the pleadings, the cause of action alleged by the plaintiff is breach of contract. Meaning that the right to sue accrued when the breach occurred, which is the same date on which the time limit began to run. Clauses 2 and 3 of the agreement attached to the plaint (annexture AM2) are phrased as follows:

*2. It is hereby agreed that the lender shall recover the sum of four hundred and eighty million only (480,0000,000/=) as the loan plus interest accrued in the period of six months.*

*3. The said loan shall be reimbursed within six months (6) counted from the date of signing this agreement*

The parties had expressly agreed to have the loan amount paid within six months of the date of signing the contract. As rightly submitted by the defendant counsel, the Borrower in this case was mandatorily required to clear the entire loan amount plus interest by 13/7/2016 and any default in payment would have entitled the lender to dispose of the vehicle pledged as security under Clause 5 of the said agreement that reads:

*"5. That if the Borrower fails to pay the borrowed sum within the time stipulated, the Lender shall have power to sell the car prescribed above in paragraph 3 to recover the borrowed sum"*

It is the plaintiff's claim that the defendants evaded their obligations. They did not pay as agreed. By failing to pay, means the defendants breached the terms of the contract giving rise to the cause of action/ the right to sue. This position was well elaborated by this court in **Brookside Dairy Tanzania Ltd v Liberty International Ltd & Another**, Commercial Case No. 42 of 2020, High Court ( Unreported) where a passage from Halsbury's Law of England 4th Edn., Vol. 28 in paragraph 662 was cited to the effect that:

*"In an action for a **breach of contract, the cause of" action is the breach. Accordingly, such an action must be brought within six years of the breach; after the expiration of that period the action will be barred,"(bold is mine)***

So, this suit was, by that rule to be instituted at the latest on July 13<sup>th</sup>, 2022, reckoning the six years period of limitation from 13/7/2016 the date of the breach. I am not at all persuaded by the plaintiffs' counsel argument that the breach was a continuous one, revived by the payment by the defendant amounting to an acknowledgement of debt. I say so because the contract under consideration was to do one thing, that was to pay the amount due within six months from the contract date and on the non-payment of the money on the day appointed the breach of the contract was committed giving rise to a cause of action which is the beginning of the time limitation. I am on this supported by the case of **Zaidi Baraka & Two Others v. Exim Bank (Tanzania) Limited**, Civil Appeal No. 194 of 2016 [2020] TZCA October 2020; TANZLII)

*"...the immediate issue for our determination is whether the claim of TZS. 200,000,000.00 was time barred. Having duly considered the submissions of the learned counsel for the parties on the issue, we need not be detained much in*

*answering that issue. As stated above, from the second agreement (the TZS. 200,000,000.00 overdraft facility agreement), the amount was to be repaid within two months between 23/2/2001 and 24/4/2001. In that respect, the cause of action accrued on 24/4/2001. Thus, by filing the suit on 13/6/2007, after a period of about six years and one and a half months, the claim was filed in contravention of item 7 of Part I of Schedule to the Law of Limitation Act."*

I have also read section 27(1) and (3) of the Law of Limitation Act relied upon by the plaintiffs' Counsel. It provides:

*"27. -(1) Where-*

*(a) a right of action (including a foreclosure action) to recover land; or*

*(b) a right of a mortgage of immovable property to bring a foreclosure action in respect of the property, has accrued, and-*

*(i) a person in possession of the land or immovable property acknowledges the title of the person to whom the right of action has accrued; or*



*(ii) in the case of a foreclosure or other action by a mortgagee, the person in possession of the land or immovable property, or the person liable for the mortgage debt, makes any payment in respect thereof, whether of principal or interest, the right of action shall be deemed to have accrued on and not before the date of the acknowledgement or payment, as the case may be.*

With due respect to the learned advocate, the section cited section is self-explanatory. It is only limited to suits for possession of property, which is not the case here. And according to section 28 of the same Act the acknowledgement of the debt envisaged by section 27 has to so expresses in writing by the party so acknowledging.

Even if I was to take the commitment to pay the debt by the 3<sup>rd</sup> defendant, Benjamine Kawe Sita on 28th September 2016, 8th April 2017 and 7th June 2017 as a fresh contract made by the parties still the same could not have salvaged the suit because all the deadlines set were breached without any legal action taken within time. For instance, 3<sup>rd</sup> defendant promise to pay the amount due on 30<sup>th</sup> December 2016 could not be fulfilled, He again on 6<sup>th</sup> April 2017 promised to pay the amount due on 31/5/2017 and on 31/7/2017 but could not keep all his promises.

, From 31/7/2017 when the last commitment was broken to 19/10/2023 when this suit was filed, is almost two months beyond the six years period prescribed by the law. Any transactions accepted by the plaintiff after the breach had no effect of stopping the time limitation clock from running. This is the conclusion reached by this court Kalegeya J( As he then was) in **Makamba Kigome and Another Ubungo Farm Implements Limited & PRSC**, Civil case no.109 of 2005 (unreported) where he observed:

*"Negotiations or communications between parties since 1998 did not impact on limitation of time. An intending litigant, however honest and genuine, who allows himself to be lured into futile negotiations by a shrewd wrong doer, plunging him beyond 14 the period provided by law within which to mount an action for the actionable wrong, does so at his own risk and cannot front the situation as defence when it comes to limitation of time"*

Hence, in the absence of any valid contract extending the parties obligations to the original contract, it is just under the circumstances of this case to conclude that the suit by the plaintiff filed on 19/10/2023 for cause of action accrued on July 2016 is time barred. The only order

appropriate is to dismiss it under section 3(1) of the LLA, as I hereby do with costs. Order accordingly.

**Dated at Dar es Salaam, this 31<sup>st</sup> day of May 2024.**



A handwritten signature in blue ink, appearing to read "E.Y. Mkwizu", is written over the printed name and extends across the printed title.

**E.Y. MKWIZU**

**JUDGE**

**31/5/2024**