

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE SUB-REGISTRY OF MWANZA  
AT MWANZA  
CIVIL CASE NO. 14 OF 2023**

**CONTINENTAL PRINTING AND PACKAGING**

**CORPORATION LIMITED..... 1<sup>ST</sup> PLAINTIFF**

**SAHARA MEDIA GROUP LIMITED .....2<sup>ND</sup> PLAINTIFF**

**ANTHONY MWANDU DIALLO ..... 3<sup>RD</sup> PLAINTIFF**

**SAMWEL NYALLA NGHUNI .....4<sup>TH</sup> PLAINTIFF**

**VERSUS**

**DIAMOND TRUST BANK TANZANIA**

**PUBLIC LIMITED COMPANY.....DEFENDANT**

**RULING**

21/5/2024 & 28/6/2024

**ROBERT, J:-**

This is a ruling on a preliminary objection raised by the Defendant, Diamond Trust Bank Tanzania Public Limited Company, against the Plaintiffs' suit. The Plaintiffs, Continental Printing & Packaging Corporation Limited, Sahara Media Group Limited, Anthony Mwandu Diallo, and Samwel Nyalla Nghuni, have instituted this suit asserting breaches of credit facility agreements concluded in 2013 and claiming special damages amounting to USD 1,572,603.86. The Defendant has raised a preliminary objection on the

ground that the suit is time-barred in terms of Item 7 of Part I to the Schedule to the Law of Limitation Act, Cap. 89 R.E. 2019.

Briefly, the Plaintiffs entered into a credit facility agreement with the Defendant in 2013, amounting to USD 820,000, to be used by the 1st Plaintiff for purchasing a Newspaper Printing Machine Goss Community. The purchase was intended as an investment in a newspaper and book printing project. The loan was guaranteed by the 2nd, 3rd, and 4th Plaintiffs. Subsequently, an additional loan of USD 250,000 was requested for the purchase of raw materials and spare parts but not credited to the 1st Plaintiff's account as agreed. Instead, it was forfeited as an interest repayment on the initial credit facility. The Plaintiffs allege that this forfeiture constituted a breach of contract, resulting in financial and operational difficulties. The Defendant's refusal to restructure the said loans further exacerbated the Plaintiffs' predicament.

On 15th May 2023, the Plaintiffs were served with letters from the Defendant demanding USD 1,135,998.99, which the Plaintiffs dispute, arguing they are not indebted to the Defendant in that amount. Consequently, the Plaintiffs seek various declarations and orders from the Court, including a declaration that they are not indebted to the Defendant,

an order for mutual reconciliation of the actual outstanding amounts and a declaration that assets owned by the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> Plaintiffs are not subject to any recovery measures by the Defendant.

The Defendant raised a preliminary objection, arguing that the suit is time-barred as per Item 7 of Part 1 to the Schedule of the Law of Limitation Act, which prescribes a six-year limitation period for suits founded on contract.

At the hearing of the Preliminary objection parties were represented by Messrs. Boniphace Sariro and Faustin Anton Malongo, learned counsel for the Plaintiff and Defendant respectively. At the request of parties, hearing proceeded by way of written submissions.

The Defendant's counsel submitted that the suit is time barred. He argued that according to Item 7 of Part 1 of the Schedule to the Law of Limitation Act, suits founded on contract must be filed within six years from when the cause of action arises. He maintained that, in the present suit, the cause of action arose in 2015, as stated in paragraph 15 of the Plaint, where the Plaintiffs aver that the breaches commenced from 2015. Thus, the suit

should have been filed by December 31, 2021, at the latest. Filing the suit on May 29, 2023, is beyond the six-year limitation period.

He submitted that, the right to sue accrues when the breach occurs citing section 4 and 5 of the Law of Limitation Act (Cap. 89 R.E. 2019) and the case of **RADI Services Limited v. Stanbic Bank (T) Ltd**, Civil Appeal No. 260 of 2020, where it was held that the time for filing a suit starts to run from the moment of breach. Similarly, in **NBC Limited and IMMMA Advocate v. Bruno Vitus Swalo**, Civil Appeal No. 331 of 2019, the Court emphasized that parties are bound by their pleadings, and the cause of action accrues on the date of the stated breach.

On consequences of time-barred claims, he submitted that, under section 3(1) of the Law of Limitation Act, suits filed after the prescribed limitation period must be dismissed. To support his submission, he cited the cases of **M/S. P & O International Ltd v. The Trustees of Tanzania National Parks (TANAPA)**, Civil Appeal No. 265 of 2020, and **Anthony Talaka Nlegembo v. CRDB Bank PLC and another**, Land Case No. 01 of 2017, where it was held that courts have no jurisdiction to adjudicate time-barred suits.

In response, the Plaintiffs' counsel submitted that the Defendant's breaches constitute a continuing breach of contract, as the breaches have persisted from 2015 to date as indicated in the Plaint. He argued that the Defendant's failure to restructure the loans and the promise to release the additional loan amount until May 15, 2023, indicates ongoing breaches.

He invoked section 7 of the Law of Limitation Act, which provides that in cases of continuous breach of contract, a fresh period of limitation begins to run at every moment during which the breach continues. He pointed out that the final breach occurred on 15th May 2023, when the Defendant served the Plaintiffs with demand letters. Thus, he contended that the suit is within the limitation period. To support his argument, he cited the case of **Stanbic Bank Tanzania Limited v. M/S Tradexim Company Limited**, Civil Appeal No. 75 of 2019, where the Court held that a continuing breach occurs when there is a neglect or default continuing over a number of days, giving rise to a fresh cause of action each day.

He contended that paragraph 15 of the plaint clearly indicates a continuous breach from 2015 to the date of the suit. Therefore, the limitation period should be computed from the date of the last breach, which is May 15, 2023. He argued that section 7 of the Law of Limitation Act should apply

to the Plaintiffs' case, allowing the suit to be filed within six years from the last date of the continuous breach.

In a brief rejoinder, counsel for the Defendant asserts that the Plaintiffs have misinterpreted the concept of continuous breach. He argued that the Plaintiffs' failure to pay salaries due to the Defendant's alleged breach, as alleged in paragraph 15 of the Plaint, is a consequence of the breach, not a continuing breach itself. He distinguished between continuing breach and continuing damage, arguing that the Plaintiffs' claims pertain to the latter, which does not extend the limitation period. He cited the case of **Brookside Dairy Tanzania Ltd v. Liberty International Ltd & another**, HCT (Commercial Division), commercial Case No. 42 of 2020 emphasizing that continuing damage does not create a fresh cause of action.

The learned counsel also argued that the Plaintiffs did not plead any grounds for exemption under Order VII Rule 6 of the Civil Procedure Code, Cap. 33 R.E. 2019, which requires a party relying on exemption from time limitation to state the grounds for such exemption.

The primary issue for determination is whether the Plaintiffs' suit is time-barred.

implies an ongoing series of wrongful acts, not merely the persistence of damage from an initial breach.

Paragraph 15 of the Plaint provides that:

*"15. That, as a result of the Defendant's above referred breach of contract, the Plaintiff has suffered damages both general and special and is continuing to suffer very serious financial and business losses due to the fact that the Plaintiff has, for a considerable period now since the said breaches commenced from the year 2015 to date has been unable pay its employees totally because the Defendant killed the project that was meant to pay them"*

As argued by the Defendant, the Plaintiffs must differentiate between a continuing breach and continuing damage. The assertion above is not sufficiently detailed to invoke the continuous breach doctrine effectively. The Plaintiff's failure to pay salaries due to the Defendant's alleged breach is a consequence of the breach, not a continuous breach in itself.

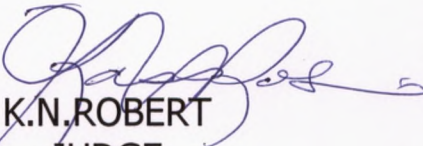
The breach alleged by the Plaintiffs occurred in 2015 when the Defendant forfeited the additional loan and refused to restructure the said loans. The Plaintiffs' continued suffering from that breach does not extend the limitation period. The case of **Brookside Dairy Tanzania Ltd v Liberty International Ltd & another** (supra) clarifies that a continuing breach gives rise to a fresh cause of action, whereas continuing damage does not.

Furthermore, the Plaintiffs' assertion that the breach continued until 15th May 2023 when the demand letters were served is insufficient to constitute a continuous breach. The nature of the credit facilities agreement does not support the argument of a continuing breach. The breach occurred at the point of default, and the right to sue accrued when the breach occurred, not when the demand for payment was made against the Plaintiffs. Therefore, the Court finds that the Plaintiffs have not adequately demonstrated that the breach by the Defendant is continuous in nature.

In light of the foregoing analysis, it is evident that the Plaintiffs' suit is time-barred. The cause of action arose in 2015, and the suit was filed in 2023, beyond the six-year limitation period prescribed for contract claims. The Plaintiffs failed to plead any grounds for exemption under Order VII Rule 6 of the Civil Procedure Code. Accordingly, the preliminary objection is sustained. The suit is hereby dismissed with costs.

It is so ordered.



  
K.N. ROBERT  
JUDGE  
28/6/2024



