

IN THE HIGH COURT OF TANZANIA

(COMMERCIAL DIVISION)

AT DAR ES SALAAM

COMMERCIAL CASE NO. 90 OF 2013

EDNA JOHN MGENI.....PLAINTIFF

VERSUS

NATIONAL BANK OF COMMERCE
LIMITED.....1ST DEFENDANT

MBEYA CEMENT CO. LIMITED.....2ND DEFENDANT

RULING

Mansoor, J:

Date of Ruling- 06TH NOVEMBER 2015

The Complaint was filed by the National Bank of Commerce Limited "NBC" against Edna John Mgeni under a Summary Procedure. Leave to defend the suit was granted by the Court to Edna John Mgeni on 4th March 2014. Edna John Mgeni filed a written statement of defense and a counterclaim. In the

counter claim, the 1st defendant was NBC and the 2nd defendant was Mbeya Cement Co. Limited, "Mbeya Cement".

Against the Counter Claim, NBC raised the following preliminary objections:

1. Edna John Mgeni has no cause of action against NBC;
2. The suit is incompetent for being irregular and noncompliance with the prescribed procedure of the law as it offends the provisions of Order VIII (a) Rule 9 (a) of the Civil Procedure Code;
3. That the counter claim is bad in law for being premised on debts that are time barred;
4. That the counter claim is frivolous and vexatious and all abuse of the court process.

Mbeya Cement also raised the preliminary objections against the counter claim as follows:

1. The counter claim is time barred;

2. The counter claim is bad in law for contravening Order VIII Rule 1 of the Civil Procedure Code;

The preliminary objections raised by both defendants were argued by way of written submissions, I shall first deal with the most pertinent issue of whether or not the counterclaim is time barred or are being premised on debts which are time barred; it be noted that these objections on limitations were raised by both the defendants:

The claim in the counter claim against NBC contained in paragraphs 13 to paragraph 18 of the counterclaim together with Annexure E-2 and E-3 are that the cause of action arose from the deposits made by Edna John Mgeni between the years 2006 to 2010, according to NBC this is when the cause of Action accrued, and argued that the Law of Limitation under Part 1 to the schedule item 12 , provides for a period of six years for such claims to be instituted in court from the time the cause of action arose. NBC argues that the counterclaim was filed on 17th February 2015 is

time barred for the cause of action accrued in 2006. Also as pleaded in paragraph 17 of the counterclaim, the cheques were deposited in 2006 through to 2009, and thus claims regarding the cheque deposits in 2006 are barred by statutes of limitation. NBC prayed for the counter claim to be dismissed under Section 3 (1) of the law of Limitation Act.

On the part of Mbeya Cement, they argued that the prayer against Mbeya Cement in the counter claim is for payment of THz 1,101,980,885.50 being overpayments made by Edna John Mgeni to Mbeya Cement for supply of cements. That paragraphs 11, 12, 16 and 18 of the counterclaim, and the prayers contained therein are based on a cause of action arose in 2006. Edna claims to have made overpayments to Mbeya Cement in the 2006 to 2009. The Counsel for Mbeya Cement argues that Part 1 item 7 of the Schedule to the Law of Limitation Act, the limitation period for suits found on contract is six years, and the counterclaim filed on 17th February 2015 for a cause of