THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(COMMERCIAL DIVISION)
AT DAR-ES-SALAAM
COMMERCIAL CASE. NO. 6 OF 2023

SIGNON TANZANIA LIMITED .....PLAINTIFF

VERSUS

CFAO MOTORS TANZANIA LIMITED.....DEFENDANT

Last order: 14th AUGUST 2023
Ruling: 05th OCTOBER 2023

RULING

NANGELA, J:.,

The Plaintiff herein sued the Defendant seeking for Judgement and Decree as follows:

1. That, this Honourble Court be pleased to issue a declaration that the Defendant's act against the Plaintiff are in breach of contract and affected financial and reputation of the Plaintiff.
2. An order for specific damages to compensate the Plaintiff for the loss suffered to the tune of US$ 4,000,000.00.
3. Legal Fees US$105,000.00, Truck restoration costs totalling US$ 350,000.00.
4. Depreciation of trucks to wear and tear accelerated by non-use, equal to US$ 784,195.00.
5. Compensation of Payment to drivers for four years at TZS 288,000,000.00.

6. Compensation of TZS 14,888,947.00 being insurance and TZS 64,703,478.00 being inspection fee.
7. Compensation for bank loan interest amounting to TZS 838,427,024.00.
8. General damages as may be assessed by this honourable court.
9. Costs of this suit.
10. Interest on the above amounts at the Commercial and Court's rates respectively until payment in full.
11. Any other order or relief that this honourable court may consider just and fit to grant.

The Defendant filed a written statement of Defence and denied the allegations raised by the Plaintiff. The parties were not successful in mediating the suit before a mediator and thus court convened a final pretrial conference and drew up issues for subsequent determination in a full hearing of the parties.

However, before the court proceeded to a full hearing, the Defendant filed a Notice of Preliminary Objection. Specifically, the Defendant's objection was couched as follows, that:

> " To the extent that the Plaintiff's suit is based on an alleged breach of contract for the supply of ten (10) units of Mercedes Benz Actros Trucks Model 2641 ("Trucks") the supply of which occurred sometimes in

> September 2014; or to the extent that the Plaintiff's suit is based on the alleged breach of contract for the supply of the Tricks in which the Plaintiff became aware of the said breach on the 9th of January 2017; or to the extent that the suit is based on breach of contract for the supply of Trucks which the Plaintiff alleges to have occurred in the year 2017, then the suit is hopelessly time barred based on the provisions of Section 3 (1), 4 and 5 read together with Part I item 7 of the Schedule to the Law of Limitation Act, Cap.89 R.E 2019.

Submitting in support of the Preliminary Objection, Mr. Gasper Nyika, learned advocate who filed the written submission on behalf of the Respondent submitted that, as a settled law, an objection on account of time limit is based on a pure point of law and touches on the jurisdiction of the court and its determination does not require ascertainment of facts or evidence but only a review of the plaint and its annexures.

In support of that view, reliance was placed on the case of **Moto Matiko Mabanga vs. Ophir Energy Plc & Others**, Civil Appeal No.199 pf 2021 (unreported). Relying further on the case of **Momella Sawmill Company Ltd vs. Hon. Minister for Natural Resources and Tourism and Others**, Civil Appeal No.31 of 2017, Mr. Nyika contended that, it is from the nature of the suit that the period of limitation may be determined.

Referring to paragraphs 5, 28 and 31 (i) of the Plaint, Mr. Nyika contended that, the alleged cause of action by the Plaintiff is undoubtedly breach of contract for the supply of the Trucks in question.

He submitted, and indeed, correctly so, that, under Item 7 of Part I of the Schedule to the Law of Limitation Act, Cap.89 R.E 2019, claims regarding breach of contract must be brought within six years of the breach. Under section 4 of the Law of Limitation, he argued, the period of limitation commences on the date on which the right of action accrues. He contended that, under section 5 of the same Act, the accrual date is the date on which the cause of action arises, meaning that, the right of action accrues when the breach occurs.

Mr. Nyika maintained that, in the present case the breach accrued when the supply of the trucks was made. Reliance was further placed on the case of **Radi Services Limited vs. Stanbic Bank (T) Ltd**, Civil Appeal No.260 of 2020. In that case the Court of Appeal of Tanzania held a view that:

> "the right to sue accrue when the breach occurs and it is, generally, from that moment of breach when the time for filing a suit starts to run…. We have stated earlier that the law prescribes the accrual of right to sue and that accrual is the date of breach."

Mr. Nyika submitted that, according to the averments in paragraphs 6, 7, and 10 of the Plaint, the Plaintiff pleads that the agreement was reached on the 4th of August 2014 for the supply of the trucks and payment was made on the 5th of August 2014 reference being made **to Annex.A-4** and **A-7**. He further referred paragraph 11 on which the Plaintiff averred that the trucks were delivered in September 2014, reliance being

placed on **Annexture A-8** which shows that the trucks in question were first registered on the 25th of September 2014.

Mr. Nyika contended that, based on paragraphs 6, 7, 10 and 11 of the Plaint, the alleged breach of contract in relation to the supply, if any, arose towards the end of September 2014 when the trucks were delivered to the Plaintiff. He submitted that, since the suit was filed on the 16th of January 2023, it is by far time barred under item 7 of the 1st Schedule to the Law of Limitation Act, having been filed some 8 years from when the cause of action for the breach of contract arose.

Mr. Nyika contended that, accrual of course of action does not run from the date of discovery of the breach but from the date of breach. He noted that, under section 6 of the Law of Limitation Act, Cap.89 R.E 2019, discovery of breach is not among the list of circumstances used to ascertain the accrual of right of action. He submitted that, if at all that should count, then it should where one is seeking for extension of time from the Minister under section 44 of the Law of Limitation Act and not otherwise.

Mr. Nyika contended that, even if the cause of action was to accrue from the time when the Plaintiff discovered, still the suit will be time barred. Mr. Nyika referred to this court paragraph 16 of the Plaint which implies that the breach was discovered sometime in the year 2017. Relying on Annexure A-20, a letter dated 22nd of June 2022, (under the title TRA CLAIM) the discovery was in January 2017.

He contended that, although the exact date is not stated, page 4 of the proceedings and the judgement of the Tax Revenue Appeal Board in Customs & Excise Tax Application No.3 of 2018, appended as **Annex.A-14**, does show the date to be 06th of January 2017 when the Tanzania Revenues Authority (TRA) refused to renew road licences for the trucks because of non-payment of the relevant taxes during their importation.

Mr. Nyika submitted, therefore, that, what is pleaded in the Plaint is that the Plaintiff was made aware of the breach on the 06th of January 2017. In his view, even if the Plaintiff was to stretch further the date of discovery of the breach, that will be on the 09th of January 2017 and, if one goes by the 06th of

January 2017 date, the Plaintiff's last day to institute the suit was the 05th day of January 2023.

On the other hand, and in alternative, Mr. Nyika submitted that, if one was to go by the 09th day of January 2017, then, the last day to institute the suit was the 08th day of January 2023. He concluded, therefore, that, since the suit was instituted on the 16th day of January 2023, it was instituted well outside the prescribed time by law.

In his further submission, Mr. Nyika was of the view that, paragraph 16 of the Plaint does imply that the breach was discovered in the year 2017 but the Plaintiff is non-committal as to which date exactly. He reasoned, however, that, since the year begins on 01st of January it therefore means that the date is/was the 01st of January 2017.

He concluded that, if this court makes such a finding, and that the cause of action did not arise in September 2014 but when it was discovered, then it will mean that it arose on the 1st of January 2017 and the suit ought to have been on the 1st of January 2017 and was, thus, out of time.

It is on the basis of the above arguments that Mr. Nyika submitted that, under Order VII Rule 6 of the Civil Procedure

Code, Cap.33 R.E 2019, there is no ground for exemption from the law of limitation and there is no in this court an order extending time to institute the suit at hand from the Minister of Legal Affairs as per section 44 of the Law of Limitation Act. He urged this court, thus, to dismiss the suit in terms of section 3 (1) of the Law of Limitation Act and, with costs.

The Plaintiff has vehemently rebutted the submissions made by the Defendant. Mr. Kamala, the learned advocate appearing for the Plaintiff submitted that, indeed the Plaintiff purchased the vehicles in the year 2014 from the Defendant upon what the Defendant declared as completion of custom clearance and registration process. He submitted that, the Plaintiff was issued with registration cards and commenced transport services. He submitted that on 06th January 2017 when renewing the trucks registration cards, the TRA refused renewal of the trucks until physical verification was done which verification was done on the 9th of January 2017.

He submitted that the said verification is an ordinary process within the TRA Mandate. Mr. Kamala relied on what is stated in page 4 of the Tax Revenue Appeals Board's proceedings and that the results of the verification were

released on 17th and 18th of January 2017 and the trucks got impounded. According to Mr. Kamala, on the 15th of March 2017 the Commissioner demanded a pay of TZS 554,298,689.96 from the Plaintiff for processing uncustomed goods.

On that basis, Mr. Kamala submitted that, nothing was tangible as cause of action as between the 6th and 9th of January 2017 and in between the two dates up to the 17th and 18th of January 2017 the TRA was duly processing the Plaintiff's application for renewal of its trucks' registration including the requisite verification thereof and the trucks were in the Plaintiff's hands until their impoundment by the TRA. He submitted that the impoundment and compoundment of the offence by the TRA led to loss on the part of the Plaintiff and hence the cause of action for breach of contract because a 'complete breach'.

Mr. Kamala contended that the cause of action was known to the Plaintiff when the TRA decided after their verification and which decision led to impounding of the trucks on the 17th and 18th of January 2017.

He submitted that, to contend that the breach took effect in September 2014 or the 9th of January 2017 is

misleading and a misconception. The reasons assigned are that in 2014 the Plaintiff was unaware of the breach as when she purchased the trucks, she was handed over with all documents which on their face created a presumption that the trucks were duly cleared and registered pursuant to law until when the trucks got impounded and confiscated on the 17th and 18th of January 2017.

He argued further that the 09th of January 2017 was a day the TRA Officers visited the Plaintiff's office for physical verification and their results were not given until the 17th and 18th of January 2017 whereby the Plaintiff's trucks were also impounded and on the 15th of March 2017 the Plaintiff was issued with a Tax Demand for payment of TZS 554,298,689.96.

Relying on section 6(e) of the Law of Limitation Act, Cap.89 R.E 2019, Mr. Kamala told this court that, the matter at hand took the nature of a kind of breach which did not give rise to cause of action until when the injury arose.

Further still, it was his contention that the Plaint does provide in paragraph 18 a clear view that the breach took place from the 17th of January 2017 and the present case was filed on the 16th of January 2023. He contended therefore, that, all

subsequent acts regarding the trucks begun on the 17th and 18th of January 2017 onwards occasioning loss to the Plaintiff, and the suit is within time.

Mr. Kamala contended that the Plaint must not be read in piecemeal but must be read as a whole. He submitted that even paragraphs 5, 28, and 31 of the Plaint and others do reveal that the cause of action started when the trucks got impounded and confiscated by the TRA and a tax demand issued on the Plaintiff.

He, consequently, distinguished the cases relied upon by Mr. Nyika, including the case of **Momella Sawmill Company vs. Hon. Minister for Natural Resources and Tourism and Others**, Civil Appeal No.31 of 2017 (CAT) (unreported).

He contended that the authorities relied upon by the Defendant's counsel were not concerned with the issue of knowledge of the breach and damages. He contended that, in the present suit the Plaintiff lacked knowledge of the full material facts regarding the breach of contract as she operated the trucks for a period of three years without any problem or inquiries from the TRA as she was duly issued with the registration certificates.

Mr. Kamala contended further that, in as much as the Defendant's counsel goes to the merit and evidence of this matter, it is contrary to the underlying principle governing a preliminary objection as held in the **Mukisa Biscuits Manufacturing Co. Ltd vs. West End Distributors Ltd,** [1969] EA 696.

He contended further that, the learned counsel for the Defendant has acted selectively and picked **Annexures -A-4, A-7,** and **A-8** to the Plaint deliberately leaving aside **Annexure A-11** of the Plaint which points to the issue of Notice and seizure of the trucks issued on the 17th of January 2017 which notified the Plaintiff of the breach. He also challenged the reference made to **Annexure A-20** by the counsel for the Defendant arguing that it was contrary to the principle governing preliminary objection.

In his submission Mr. Kamala has relied on discoverability rule which he argued that, looks at when the knowledge of the breach came to light and to him, it was on the 17th and 18th of January 2017 onwards. He contended that, that is the period the Plaintiff knew of the fact that the trucks were cleared

without adherence with the clearance requirements including non-payment of requisite taxes.

As such, and relying on the discoverability rule, he argued that, under the common law and the law of limitation, time is set to run from when the Plaintiff became aware of (discovers) the breach and is with sufficient evidence. He has therefore urged this court to invoke that rule while determining this preliminary objection. To support his views reliance was placed on the case of **R(Se) vs. Calgary City Police Services**, 2010 ABQB 406 (at para 59).

He also relied on the Kenyan case of **Alba Petroleum Ltd vs. Total Marketing Kenya Limited**, Civil Appeal No.43 of 2015, (CAK), **Novak vs. Bond** [1999]1S.C.R. 808 (SCC) as well as **Peixeiro vs Herberman** 1997 CanLII (SCC) [1997]3 S.C.R. 549 at para.18.

Mr. Kamala argued in the alternative that, the matter at hand is a continuing breach and that, every date when the Defendant continued not to cure the breach, the breach continued. Reliance was placed on the decision of the Court of Appeal in the case of **Stanbic Bank (T) Ltd vs. M/S Trademix Company Ltd,** Civil Appeal No.75 of 2019, (at page

14). Based on such submissions, Mr. Kamala urged this honourable court to dismiss the preliminary objection with costs.

In a brief but equally solid rejoinder, it was Mr. Nyika's contention that, the Plaintiff has acknowledged in the submission filed, the fact that, on the 06th of January 2017 the Plaintiff's transport services were interrupted by the TRA as the latter refused to renew the trucks' registration.

He rejoined, however, that, the Plaintiff seems to believe that the claims are alive and raised within time only because: injury is a condition for the cause of action to rise, the Plaintiff became aware on the 17th January 2017, the court should consider the discoverability rule, the basic elements for breach must be complete before cause of action arises, and that, the breach is a continuing one.

Mr. Nyika maintained and reiterated his earlier submission that, discovery of the breach is not among the circumstances considered by the Law of Limitation Act when determining when a cause of action arose. He argued that, to state that the cause of action accrued on the 17th of January 2017 is a misconception since the Plaintiff admits that the TRA

refused to renew the registration of her trucks on the 06th of January 2017 which fact interrupted her business, meaning that the Plaintiff was aware of the breach since that very date, and, consequently, the injury ensued that very date. He contended that the Plaintiff ought not to have waited until the 17th of January to discover the breach.

Mr. Nyika relied on the record of the Tax Revenues Appeals Board which indicates on its page 4 that the upon visit by the TRA, the Plaintiff herein was informed that the renewal was not going to be done due to failure to pay different duties. Reference was also made to page 1 of the decision of the Tax Revenues Appeals Board annexed as **Annexure A-14**, at page 2, first paragraph. It was his contention therefore that the Plaintiff needed not to wait until 17th of January 2017 as alleged.

Concerning section 6(e) of the Law of Limitation Act, Cap.89 R.E 2019, it was Mr. Nyika's submission that, the Plaintiff has not shown how that provision applies to a case as this one. He contended that, the case at hand is for breach of contract which does not require any specific injury to arise so that such may trigger the cause of action. He argued that, in

any case, as of 06th January 2017, the TRA had refused to register the trucks a fact which, in Plaintiff's counsel's own words, interfered with the Plaintiff's transport business.

As to the discoverability rule, Mr. Nyika contended that, the Plaintiff's counsel is mixing up the aspect of breach and the occurrence of injury and the case of **S.E.R vs. Calgary City Police** (supra) does not support the Plaintiff's case. Moreover, he rejoined further that, based on the case of **Radi Services Ltd vs. Stanbic Bank (T) Ltd** (supra), the legal position in our jurisdiction is that a cause of action in contract arises at the time of breach and not when it was discovered. He distinguished the Canadian case to that extent and argued in the alternative that, even if it was to apply, the Plaintiff needed not to wait for a perfect knowledge as by the 06th of January 2017 she was aware.

Mr. Nyika did as well distinguish the rest of the cases relied upon by the Plaintiff since their being irrelevant. He contended that, under our law of limitation of action, delays in filing a claim regarding breach of contract is not excused because the Plaintiff needed to confirm first whether there was

a valid contract, whether there was performance or whether there were damages suffered.

Mr. Nyika rejoined as well that, in determining whether the suit is time barred or not the court has to look at the plaint, plus its annexures. He relied on the case of **Babito Limited vs. Freight Africa NV-Belgium & Others**, Civil Appeal No.355 of 2020 (CAT) (unreported).

He contended that, although the Plaintiff insists that the Plaint was clear that the cause of action accrued on the 17th of January 2017, the true facts, as one reads the Plaint, are such that, the breach was known to the Plaintiff on the 06th of January 2017 when registration was denied and/or the 9th of January 2017 upon confiscation and impoundment of the trucks.

Mr. Nyika rejoined as well that, the objection raised by the Defendant was not contrary to the Mukisa Biscuits' case (supra) and that argument stands misconceived on the part of the Plaintiff's counsel as the Defendant only considered the Plaint and its annexures. He also denounced the alternative argument based on the doctrine of continuing breach and argued that it was inapplicable to this case.

I have carefully considered the rival submissions as set out herein above. The main issue to respond to is whether there is merit in the objection filed by the Defendant. As it may be noted, the parties are at loggerheads regarding whether the Plaintiff was aware of the breach and hence giving rise to the cause of action on the 06th or the 09th of January 2017 or was it on the 17th or 18th of January 2017.

Essentially, determining when a particular cause of action arises, and hence, whether a suit based on that cause of action is time barred or not, requires, as correctly submitted by the learned counsels herein, the court to look at not only the Plaint, as a whole, but also all its accompanying annexures. See the cases of **John M Byombalirwa vs. Agency Maritime** [1983] TLR, 1; **Musanga Ng'anda Andwa vs. Chief Japhet Wanzagi and 8 Others** [2006] TLR 351 and **Babito Limited vs. Freight Africa NV-Beligium & Others,** Civil Appeal No. 355 of 2020 (CAT), at Moshi (unreported).

What amounts to a "cause of action" was defined in the case of **Coburn College** [1897] 1 QB 702 to mean:

> 'every fact which it would have been necessary to prove, if traversed, in

> order to support [a] right to judgment of the Court. It does not comprise every piece of evidence which is necessary to prove each fact, but every fact which is necessary to be proved.'

In **Simple Fresh (T) Ltd and 3 Others vs. Yasmine Haji**, Commercial Case No. 76 of 2020, this court defined a cause of action to mean:

> "a set of facts sufficient to justify suing to either obtain money, property, or the enforcement of a legal right against another party."

Ordinarily, in determining when an action accrues, and hence whether a suit is time barred or not, the court is concerned with the existence of the facts giving rise to the entitlement to commence proceedings and the time when such facts accrued. The concept, therefore, does not incorporate knowledge of the legal implications of known facts and neither is it concerned with the knowledge nor the belief of the Plaintiff as to his or her entitlement to bring proceedings.

The court will not, for instance, consider the point in time when a person obtained legal advice to bring an action but

rather when exactly the action accrued for which such legal advice was sought. The need to determine the exact timing when the right to bring an action accrues is vital because the law has set a limit when a person should pursue his/her right of action.

This is a legal- policy question better captured by Lord Nicholls in the case of **Haward and Others vs. Fawcetts (a firm) and Others**, [2006] UKHL 9 where he stated as follows, and I quote:

> "Statutes of limitation seek to hold a balance between two competing interests: the interests of claimants in having maximum opportunity to pursue their legal claims, and the interests of defendants in not having to defend stale proceedings."

In the Australian case of **Brisbane South Regional Authority vs. Taylor** (1996) 186 CLR 541 at 552-553, his lordship McHugh J set out at least four reasons for imposing time limitations on commencement of suits or various types of actions in court, namely:

(i) the possibility of losing relevant evidence over time;

(ii) the possibility that the defendant will be oppressed if the plaintiff will be at large in bringing an action long after the circumstances that gave rise to it have occurred;

(iii) the fact that people, commercial enterprises, insurance companies and public entities have an interest in knowing that their liability will not run beyond a certain period and so that knowledge allows them to properly 'arrange their affairs' and

(iv) the fact that it is in the public interest that disputes be settled as quickly as possible.

Generally, however, limitation of time runs from the earliest time at which an action could be brought. Accordingly, time would, in general, run from when the occurrence of the act or omission complained of took place and not from the

when the consequential damages ensue. However, the situation would be different where specific consequential damage is itself the gist of the cause of action. In such an eventuality, the general rule would call for qualification and time will run from when the damage ensued, the reasons being that the right to sue arises only then.

The above noted scenario played out in two old cases of **Backhouse vs. Bonomi**, (1861) 9 HLC 503, and in **Darley Main Colliery Company vs. Thomas Bilfried Howe Mitchell**, 1866 LR 11 AC 187 (HL). Quite old cases indeed but still relevant in terms of the principles that they evoked. In **Backhouse vs. Bonomi**, (supra), "A" was the owner of certain houses standing on land which was surrounded by the lands of "B", "C" & "D".

Underneath these landed properties, however, "E" the owner of a mining company operated mining activities. It happened that "E" worked the mines in such a manner (without actual negligence) that the lands of "B", "C" and "D" sank in; and, after more than six years interval, their sinking occasioned an injury to the houses of "A".

At the hearing, the court held that, a right of action accrued to "A" when this injury actually occurred, and that his right was not barred by the statute of limitations. This view was affirmed in **Darley Main Colliery Company case** (supra). In that case the House of Lords was of the view that the cause of action in respect of further subsidence did not arise till the subsidence occurred and, therefore, the injured party could maintain an action for the injury thereby caused, although more than six years had passed since the last working of the coal mine.

In essence, therefore, the above cited old cases exemplify a situation which, in our context, will call into application section 6 (e) of the Law of Limitation Act, Cap.89 R.E 2019 which provides that:

> "in the case of a suit for compensation for a wrong which does not give rise to a cause of action unless some specific injury actually results therefrom, the right of action shall accrue on the date when an injury results from such wrong."

In his arguments regarding the accrual of cause of action in the present suit, Mr. Kamala has contended that, it is based on or is pursuant to section 6 (e) of the Law of Limitation Act, Cap.89 R.E 2019. He contended that, the Plaintiff was unaware of the breach of the contract she had with the Defendant until when the tides turned against her following the impoundment and confiscation of her trucks by the TRA on the 17th and 18th of January 2017. He also argued that, by the 06th and 09th of January 2017 when the TRA refused to renew registration of the Plaintiff's trucks, the Plaintiff had no full knowledge of the facts constituting the breach as the TRA only undertook to conduct physical verifications and which they conducted on the 09th of January 2017.

In that regard, he maintained, therefore, that, knowledge for purposes of commencement of action for breach of contract could only be reckoned from when the Plaintiff was issued with notices of seizures and impoundment of the trucks which was the 17th and 18th of January 2017.

For his part Mr. Nyika maintains that the right time to be reckoned as far as when the cause of action arose in this suit is the time when the Trucks were denied registration which is the

06th of January 2017 and/ or when they were impounded on the 09th of January 2017. He has referred to both the Plaint and its annexures to reveal the fact that, the Plaintiff was aware of the breach from those dates and not from the 17th or 18th of January 2017 as contended. He also contended that section 6 (e) of the Law of Limitation Act, Cap.89 R.E 2019 has been relied upon without explanations as to how it applies.

What then should be said of such rival submissions? In my considered view, looking at paragraph 5 of the Plaint, it is clear that, the cause of action stated therein, is "*breach of contract*" arising from the contract of sale of trucks, which breach has occasioned loss/damages (injury) on the part of Plaintiff. The gist of the suit is therefore a breach and not the injury as the latter is the consequence of the breach. As such, the suit cannot fall under section 6 (e) of the Law of Limitation Act, Cap. 89 R.E 2019 as Mr. Kamala wants this court to believe.

But what is more pertinent in this suit whose cause of action is stated to be breach of contract of supply is when did that breach ensued for purposes of limitation? Paragraphs 6, 7, 10, 11, 12 and 13 of the Plaint provide for the time when the contract of sale between the parties was made and completed

as a full *contract of sale* as per **Section 3 (1) and (3) of the Sale of Goods Act, Cap.214 R.E 2002**.

In particular, and by looking at paragraphs 6, 7, 10, 11, 12 and 13 of the Plaint as well as **Annexures A-3, A-4, A-7**, and **A-8** the parties' *contract of sale* was between the 13th day of June 2014 and the 25th of September 2014. In paragraph 11 of the Plaint, for instance, the Plaintiff does admit that the agreement was "concluded … and … the Defendant delivered the said 10 trucks to the Plaintiff…around September 2014." Annexure A-8 does show that the certificates of registration in the name of Plaintiff were issued on the 25th of September 2014.

That being said, when then did the alleged breach ensued? According to sections 4 and 5 of the Law of Limitation Act, Cap.89 R.E 2019, it is provided that:

> "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.

> Section 5: 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."

Considering the two provisions hereabove, did the alleged breach ensue in September 2014 when the trucks were delivered? In his submission, Mr. Nyika has argued that way as his first preferred alternative. He contended that, accrual of right of action for a breach of contract commences from the date of breach and not the date of discovery of breach. He has relied on the decision of the Court of Appeal in **Radi Services Limited vs. Stanbic Bank (T) Ltd** (supra) and item 7 of the Schedule to the Law of Limitation Act hence concluding that, since the suit was filed on the 16th of January 2017, the Plaintiff is time barred.

Essentially as per section 4 and 5 of the Law of Limitation Act, the period of limitation of action in relation to any proceedings, which means this includes proceedings in respect of claims for breach of contract, commences from the date on which the right of action for such proceeding accrues

and this will be the day when the cause of action took place. In this case the Plaint and its annexures discloses that, the contract of sale was finally concluded in September 2014 and the Defendant presented to the Plaintiff that the requisite duties were exempted and documents to that effect were handed over to the Plaintiff by the Defendant while the fact was to the contrary.

However, in his submissions, Mr. Kamala submitted that, having received the trucks, the Plaintiff operated the trucks for three years until the year 2017 without any knowledge of the breach since that fact was solely within the knowledge of the Defendant until when the tables were turned down by the TRA upon revelation that the Defendant did not pay the requisite duties though he had earlier signified to the Plaintiff that such duties had been exempted.

In my view, the cause of action cannot be said to have ensued in the year 2014 when the trucks were delivered but it will at the material time when the Plaintiff became aware of the breach. As a matter of principle, an innocent party will surely lose his right to bring a claim for breach of contract if he delays for a certain length of time. However, in a situation where one

party has acted dishonestly against the other, the limitation period will start to run at the time that innocent party discovered the dishonest act or at such time which he/she ought to have discovered it.

In the present suit, however, the problem is the exact date when the Plaintiff acquired the knowledge that the Defendant had breached the contract by representing that the requisite duties were exempted while it was not the case. In my view, that date will be the trigger for the cause of action. From the submissions, the Plaintiff's counsel has maintained that the Plaintiff was aware of the breach on the 17th of January 2017 while the learned counsel for the Defendant maintains that the Plaintiff was well aware from the 6th and/or the 9th of January 2017.

According to **paragraph 16** of the Plaint, the averments are to the effect that, when the Plaintiff was seeking to renew the M/Vehicles (Trucks) licences (**on a date which the Plaintiff does not disclose but in 2017**), the TRA blocked the application "*for what was said to be non-payment of Import Duty and Value Added Tax (VAT)".* That paragraph finds an amplification in paragraph 17 of the Plaint and paragraph 20

(regarding **Annexure A-20** which is referred to under this paragraph).

In paragraph 21 of the Plaint it is revealed that the Plaintiff had to pursue matters with the TRA and a tax related disputed ensued and proceedings to that effect were generated and a decision (ruling) was made. The proceedings and the decision thereto are part of **Annexure A-14**.

Further, paragraphs 18 and 19 of the Plaint are also instructive here as they make a specific mention of 17th January 2017, and this is the date which Mr. Kamala contends that the Plaintiff was made aware of the breach. I will reproduce them here below.

They provide as follows:

> "18. That, while Tanzania Revenue Authority was still holding the applications for the Plaintiff's trucks licence renewals for the year 2017, …TRA issued to the Plaintiff Tax Demand Notice for TZS 554,298,689.96…This Tax Demand was issued [in] respect of the 10 trucks for allegedly being

uncustomed goods, which is an offence. TRA further on 17th of January 2017 seized one truck …and impounded the remaining 9 trucks. Copy of the TRA Demand Note is annexed...and marked A-11…"

19. That the Plaintiff was further notified by the Tanzania Revenue Authority that at the time the trucks were sold by the Defendant the titles for the 10 trucks were no longer in the name of the Defendant …and were no longer eligible for the Import Duty and VAT exemption ..Copy of the letter from TRA …and copies of release order…are attached and marked A-12…"

Now, my reading of the paragraphs 16, 17, 21 (in relation to the Annexures Annexure A-14 referred thereto) and paragraph 27 (regarding Annexure A-20 which is referred to under this paragraph), it clearly dawns in me that, the undisclosed date in paragraph 16 was the 06th day of January 2017 and the 09th of January 2017. Although Mr. Kamala held a

view that on this material dates the Plaintiff was not aware of the breach, I tend to be in agreement with Mr. Nyika that the Plaintiff was knowledgeable of the breach committed by the Defendants right from those dates.

I hold it so because, according to the proceedings of the Tax Revenues Appeal Board which are attached to the Plaint as Annexure A-14, page 4, paragraph 2 thereto, a submission was made (on behalf of the Plaintiff herein who appeared before the Tribunal as the "Applicant") as follows:

> "…. We submit that there are serious questions of law to be determined by the Board. The **gist of the matter arose on 06th of January 2017**. On that date the Respondent refused to renew motor vehicles road license until physical verification is done. **On 09/01/2017** the Respondent visited the Applicant premises for verification of the vehicles. Upon that visit the Respondent **informed the Applicant that renewal could not be done because of failure to pay different duties**."

Looking at the above portion of what the Plaintiff herein disclosed before the Tax Revenue Appeals Board during its proceedings, I cannot hold my breath but agree with Mr. Nyika that the Plaintiff was aware of the alleged breach right from the 09th of January 2017 that certain duties in respect of the trucks which he had purchased from the Defendant were not paid and for that matter the TRA had withheld the renewal of the licenses because of that issue.

In view of that finding, it cannot be argued as Mr. Kamala would like this court to believe, that, it was until when the Plaintiff was served with a formal notice and tax demands on the 17th of January 2017 and the subsequent impounding of the trucks by the TRA. Those action were done while the Plaintiff was already made aware of the cause of her troubles, the knowledge which she acquired on the 09th of January 2017 as per the **Annexure A-14**.

From that premise and taking into account that this suit was brought to the attention of this court on the 16th of January 2023, it will be pretty clear that, the last day when it ought to have been instituted in this court was the 08th day of January

2023, a date when the six years prescribed under item 7 of the Schedule to the Law of Limitation Act, Cap.89 R.E 2019 lapsed.

As it might be noted in the submissions, Mr. Kamala implored this court to rely on the discoverability rule. As I have shown hereabove, there are indeed circumstances under which that rule will apply, and limitation of time will set to run from when the Plaintiff became aware of (discovers) the breach. However, I do not agree with his submission that, for the cause of action to accrue the Plaintiff "must have obtained sufficient evidence of the alleged breach."

In my view, although the cases he has relied on to support his views such as the case of **S.E.R. vs. Calgary City Police Services**, 2010 ABQB 406, **Alba Petroleum Ltd vs. Total Marketing Kenya Limited**, Civil Appeal No.43 of 2015, (CAK), **Novak vs. Bond** [1999] 1 S.C.R. 808 (SCC) as well as **Peixeiro vs Herberman** 1997 CanLII (SCC) [1997]3 S.C.R. 549 are not to a large extent distinguishable from the matters at hand, still the discoverability principle enunciated or followed therein cannot act in favour of the Plaintiff in this case.

For instance, in the case of **S.E.R. vs. Calgary City Police Services** (supra) a case which deals with breach of

confidentiality, the court was of the view that limitation starts to run from when a claimant knew or ought to know that the injury was attributable to the defendant but what is required as knowledge on the part of the claimant is not perfect knowledge. If that is to be taken as a matter of principle, it will mean therefore that, the Plaintiff herein ought not to have waited up to the 17th or 18th of January 2017 to know that the Defendant was in breach of the terms of the contract of supply of the trucks.

In my view, I do agree with the submission by Mr. Nyika on the point that one must separate between the discovery of the breach and the occurrence of the injury resulting from the breach. Furthermore, the suit at hand cannot benefit from the concept of continuing breach envisaged under section 7 of the Law of Limitation Act. As correctly pointed out in **Lindi Express Ltd vs. Infinite Estate Limited**, Commercial Case No.17 of 2021, cases involving continuing or successive breaches include those which relate to promises to pay periodically as for instance, payment of rents, annuities, interest, maintenance cases, and that, in the case of a

continuing tort, a fresh period of limitation begins to run at every moment during which the breach or tort continues.

In the Indian case of **Maharani Rajroop Koer vs. Syed Abdul Hossein,** (1880) LR 7 IA 240 it was held, for instance that, every time the wrong doer was taking away the plaintiff's water from the channel as a diversion he was indulging in a fresh wrong.

As such, a fresh cause of action lay every time on account of continuing wrong. Consequently, if one is to comprehend as to whether a particular wrongful act is a continuing one or not, it behoves to distinguish between the continuance of an injury and the continuance of the effects of an injury.

In the Indian case of **Balakrishna Savalram Pujari Waghmare vs. Shree Dhavaneshwar Maharaj Sansthan** AIR 1950 SC 798 it was observed that, when an act of a wrongdoer results in an injury which is complete, the wrongful act is not a continuing one even if the damage caused by the injury continues. For that reason, a wrongful act will be termed as a "continuing act" when the resultant injury caused by it itself continues.

All said and done, the case at hand is essentially about breach of contract leading to loss or damages on the part of the Plaintiff and the cause of action given the nature of this case arose at the time when the Plaintiff discovered or was made aware of the breach on the 09th of January 2017. The breach was not a continuing event though its effects continued even after the Plaintiff had been made knowledgeable of the breach. In that regard, section 7 of the Law of Limitation Act, cannot as well be relied upon as an alternative to rescue the Plaintiff's late institution of the suit.

It follows, therefore, that, since the Plaintiff was late in instituting this suit, which lateness was by an excess of 8 days (as while the suit ought to have been filed on lately on 8th of January 2023 it was filed on the 16th of January 2023), such belated filing has a dire consequence. In the case of **Brookside Dairy Tanzania Ltd vs. Liberty International Ltd and Another**, Commercial Case No.42 of 2020, HC Comm. (unreported), this Court, citing an earlier judgment in **John Cornel vs. A. Grevo (T) Ltd,** Civil Case No.70 of 1998 (HC) (unreported), stated that:

> "the law of Limitation of actions knows no sympathy or equity. It is a merciless sword that cuts across and deep into all who get caught in its web."

It follows therefore, that, the consequences of bringing a suit outside the prescribed period within which it could be filed and, without their being a leave to bring it out of time, it to have the suit dealt with under section 3 (1) of the Law of Limitation Act, Cap. 89 R.E 2019 which provides that:

> "Subject to the provisions of this Act, every proceeding described in the first column of the Schedule to this Act and which is instituted after the period of limitation prescribed therefore opposite thereto in the second column, shall be dismissed whether or not limitation has been set up as a defence."

In the upshot of the above, having made a finding that this suit was brought outside the prescribed time, this Court upholds the preliminary objection and settles for the following orders, that:

(i) The suit is hereby dismissed in line with the provisions of section 3(1) of the Law of Limitation Act, Cap.89 R.E 2019 for having been preferred belatedly out of time,

(ii) That, the dismissal is with costs.

It is so ordered.

DATED AT DAR-ES-SALAAM ON THIS 05TH DAY OF OCTOBER 2023

.....

DEO JOHN NANGELA

JUDGE

RIGHT OF APPEAL EXPLAINED