

IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)

AT DAR ES SALAAM

LAND CASE NO. 299 OF 2022

JOSHUA ATHAR MHAGAMA 1ST PLAINTIFF

ANNA JOSHUA MHAGAMA 2ND PLAINTIFF

HAKIKA JUMA ABDALLAH 3RD PLAINTIFF

SAIDI SAIDI MKALONGEI 4TH PLAINTIFF

SALUM MBWANA KORWA 5TH PLAINTIFF

JOYCE SEBASTIAN CHENGULA 6TH PLAINTIFF

MBARAKA SULEIMAN MOHAMEDI 7TH PLAINTIFF

VERSUS

TANZANIA ELECTRIC SUPPLY COMPANY 1ST DEFENDANT

KISARAWA DISTRICT COUNCIL 2ND DEFENDANT

THE ATTORNEY GENERAL 3RD DEFENDANT

RULING

Date of last Order: 06.03.2023

Date of Ruling: 07.03.2023

A.Z.MGEYEKWA, J

On 11th November, 2022 the Plaintiffs herein, instituted this suit against Tanzania Electric Supply Company (TANESCO), Kisarawe District Council, and Attorney General, seeking five reliefs as follows:-

- a) *Judgment and Decree against the 1st Defendant.*
- b) *The Court to order the 1st Defendant to pay the plaintiffs Tshs. 154, 277,508,6364.43 as total interest accrued due to late payment of compensation since January 2016 up to the year 2022 and any other interest accruing thereafter.*
- c) *General damages to the tune of 70,000,000 subjects to an assessment of this Honourable Court.*
- d) *Costs of this suit to be paid by the 1st Defendant.*
- e) *Such other or further relief as this Honourable Court may deem fit to grant.*

The Defendant's Advocate filed a joint Written Statement of Defence disputing the claims and the learned counsel. The suit stumbled upon preliminary objections from Mr. Erigh Rumisha, learned State Attorney, he the following point of objection: -

1. *That the suit is hopelessly time barred.*

When the matter was placed before me for hearing on 6th March, 2023, the Plaintiffs enjoyed the legal service of Mr. Stephen Mboje, learned counsel whereas the Defendants enjoyed the legal service of Mr. Erigh Rumisha, learned State Attorney.

Submitting on the preliminary objection, the learned State Attorney for the Defendants contended that the suit is time-barred. Mr. Rumisha contended that the cause of action arose in 2015 and the Plaintiffs were compensated on 1st January, 2016. To fortify his submission he referred this Court to paragraphs 5, 6, and 10 of the Plaint. The learned State Attorney stated that any claim in relation to compensation is governed under Part I Column 1 of the Schedule to the Law of Limitation Act, Cap. 89 [R.E 2019] that the limitation period for raising a claim of compensation is one year.

The learned State Attorney went on to submit that in case the Plaintiffs were dissatisfied with the amount of compensation or any query, they were required to file a suit within one year. He added that a suit that is instituting out of prescribed time deserves to be dismissed. To buttress his contention Mr. Rumisha cited Section 3 of the Law of Limitation Act, Cap. 89 [R.E 2019]. Mr. Rumisha contended that the Plaintiffs were required to adhere to the procedure stipulated under Section 44 the Law of Limitation Act, Cap. 89 [R.E 2019] to apply for an extension before the Minister.

The learned State Attorney did not end there, he contended that the Plaintiff filed the instant suit on 7th November, 2022, a lapse of six years. He stated that Order VII Rule 6 of Civil Procedure Code Cap.33 [R.E 2019] provides for the grounds of exemptions, however, the Plaint is silent as to why they

have filed the suit after a lapse of six years. He insisted that the provision of the law is couched in the mandatory term. To support his submission he referred this Court to Section 53 (2) of Interpretation of Laws Act, Cap.1 [R.E 2019], the word shall is used means it is mandatory. He also cited the case of **M/S P & O International Ltd v The Trustees of Tanzania National Parks**, Civil Appeal No. 265 of 2020, the Court of Appeal of Tanzania proceeded to dismiss the suit.

On the strength of the above submission, Mr. Rumisha urged this Court to dismiss the suit with costs.

In response thereto, when Mr. Stephen took the stage to address this Court, Mr. Stephen was emphatic that the objection is demerit. He stated that the learned State Attorney has failed to understand the basis of the instant suit. He submitted that the cause of action started in 2016, and the Plaintiffs were paid compensation as per the Valuation Report without any problem. The learned counsel for the Plaintiffs contended that the claim before this Court is related to claims of interests, not compensation. He further stated that the payment of interest is not provided anywhere in the Law of Limitation Act. He asserted that the Part I Item 24 of the Schedule to the Law of Limitation Act, Cap. 89 [R.E 2019] states that claims against any suit which is not provided for six years. Therefore, it was his view that as long as the claim of

interest is not provided in Cap. 89 then the limitation period is six years. He went on to submit that counting from the year 2021, the date when they were not paid interests; six years are not due.

The learned counsel for the Plaintiff continued to submit that counting from the year 2016 to the date when the Plaintiffs filed the instant suit is a lapse of less days than six years. Mr. Stephen added that assuming that the cause of action arose in 2021, the Plaintiffs under paragraphs 5 and 13 of the Plaint stated that, the cause of action arose after finding that the Plaintiffs were not paid their interests. For that reason, it was his view that the cause of action did not stop. He stated that Section 3 of the Law of Limitation Act, Cap. 89 is qualified by Section 7 of the same Act.

Mr. Stephen continued to argue that the Plaintiff after being paid their compensation in 2021, found that they were not paid interest hence they started to make follow up and served the Defendants with a demand notice. He submitted that a demand notice was received on 2nd June, 2022. To bolster his submission, he referred this Court to paragraph 13, Annexure 3. He submitted that at the time when they wrote the demand notice they were still within time. Therefore, in his view, the cause of action did not stop at the time when they were compensated they proceeded to pray for interests, thus,

the cause of action extended to 2022. To fortify his submission, he cited the case of **Thomas Ngawaya v AG & Others**, Civil Case No. 137 of 2023.

On the strength of the above submission, Mr. Stephen beckoned upon this Court to dismiss the suit with costs.

In his rejoinder, Mr. Rumisha reiterates his submission in chief. He insisted that in case the Plaintiffs were dissatisfied with the awarded compensation, then they were required to file a suit within one year. He stressed that even if the Plaintiffs claim that the cause of action arose in September, 2022, still the suit is time-barred because one year ended in September, 2022 and Plaintiff filed their suit in November, 2022. The learned State Attorney forcefully opposed Mr. Stephen submission that after issuing the 90 days notice, the time was extended. He argued that the 90 days notice is not for the purpose of extending the cause of action instead it is the procedure for suing the Government.

He contended that the Plaintiffs claims that they were bargaining cannot hold water, he referred this Court to the case of **M/S P & O International Ltd** (supra), the Court of Appeal of Tanzania stressed that a pre-court action or negotiations cannot stop the running of the time. He insisted that negotiations or bargaining is not a ground to stop running of the time. Mr. Rumisha

valiantly contended that in the matter at hand, there is no such continuation as stated under Section 7 of the Law of Limitation Act, Cap. 89. The learned State Attorney argued that as long as their claims are related to compensation then the Plaintiffs were required to file the suit within one year. Ending, he urged this Court to dismiss the suit with costs.

Mr. Stephen was given a chance to reply on the ground of negotiation. He submitted that negotiations were a must. He stressed that it was not easy for the Plaintiffs not to negotiate since negotiation assisted the Plaintiffs to build their case and convince this Court that there was a cause of action and negotiation was in regard to interests accrued and calculations.

Having gone through the arguments of both parties, the question that presents itself for the Court's determination is *whether the preliminary objection is meritorious*. In the matter at hand, the learned State Attorney is complaining that the suit at hand is hopelessly time barred. I had to ascertain my by scrutinizing the Plaint. Reading paragraph 5 of the Plaint, it shows that the Plaintiffs jointly and severally claim against the Defendants for payment of Tshs. 154,277,508.63643 being interest due to late payment of compensation. Under paragraph 10 of the Plaint, the 1st Defendant made payment of the said compensation to the Plaintiffs without including the accrued interest from 1st January, 2016. To support their pleading they

annexed a copy of the Bank Statement showing payment to the Plaintiffs marked as Annexure P2.

Again, under paragraph 13 of the Plaint, the Plaintiff are claiming that the cause of action arose in September, 2021 at the time when they realized that the compensation did not include interests, thereafter the Plaintiff made effort to write a letter to the Defendants claiming interest accrued due to delay in compensation but their effort were infertile. To support their claims they referred this Court to Annexure P3 a copy of the Demand Notice issued to the Defendants.

Reading the above analysis, as per the Plaintiffs' Plaint it is clear that the cause of action arose in September, 2021 when they were compensated and not on 2nd June, 2022 as alleged by Mr. Stephen the day when they received a Demand Notice. As rightly pointed out by Mr. Rumisha that the governing provision of the law concerning compensation is Part I Column 1 of the Schedule to the Law of Limitation Act, Cap. 89 [R.E 2019] which reads:-

"For compensation for doing or for omitting to do an act alleged to be in pursuance of any written law the limitation period is one year."

Therefore, in my considered view, the time taken in serving the Defendants with a Demand Notice does not defeat the fact that the cause of action arose in September, 2021 as clearly stated by Mr. Rumisha.

Consequently, the allegation that their claims are related to interest accrued due to late payment of compensation cannot favour them for their lateness to file the suit within time. Similarly, the allegation that the time starts to run from the date when they served the Defendants with a Demand Notice, it is a requirement of the law in all cases which involve the Government to be issued with a 90 days' Notice, therefore, the delay to file the same is not a good reason for filing the suit out of time.

The Plaintiffs' counsel raised a point that after being compensated in September, 2021, they continued to make follow-ups and served the Defendant with a Demand Notice which suggests that the Plaintiffs are trying to show that the matter at hand is related to claims of interest which in my view the said are part and parcel of compensation claims. It is worth noting that a claim for interest cannot be termed as a separate claim from compensation. If they were dissatisfied with the amount paid then they were required to file a suit within a year.

Regarding, the issue of negotiation, I am in accord with Mr. Rumisha that negotiation does not check the time from running. See the case of **M/S P & O International Ltd** (supra).

Similarly, in the case of **Consolidated Holding Corporation v Rajani Industries Ltd & Another**, Civil Appeal No. 2 of 2003 (unreported), the Court held that:-

"...time taken in negotiations does not fall under the specific grounds warranting exemption from limitation."

Thus, Mr. Stephen's contentious that the cause of action did not stop is cannot favour the Plaintiffs for their lateness to file the suit within time.

Upon scrutinizing the dates and time, it is apparent that this matter has been delayed unreasonably for more than one year and two months. It was held in the case of **NBC Ltd & Another v Bruno Vitus Swalo**, Civil appeal No. 331/2019, CAT at Mbeya (unreported) on page 8 the Court of Appeal of Tanzania held that:-

"...courts are enjoined not to entertain matters which are time-barred. Limitation period has an impact on jurisdiction. Courts lack jurisdiction to entertain matters for which litigation has expired."

Having found that the matter was filed outside the prescribed time, I have no other option than to dismiss. The Plaintiffs will pay half the costs of the case taxable by the Taxing Master.

Order accordingly.

DATED at Dar es Salaam this 7th March, 2023.



A.Z.MGEYEKWA

JUDGE

07.03.2023

Ruling delivered on 7th March, 2023 in the presence of State Attorney and learned counsels.



A.Z.MGEYEKWA

JUDGE

07.03.2023