

**IN THE HIGH COURT OF ZANZIBAR
AT TUNGUU
CIVIL CASE NO. 02 OF 2023**

MSUMAR TRAVEL & CARGO LIMITED PLAINTIFF

VS

BANK OF TANZANIA 1st DEFENDANT

STANDARD CHARTERED

BANK OF TANZANIA LTD 2ND DEFENDANT

FEDERAL BANK MICROFINANCE 3RD RESPONDENT

RULING OF THE COURT

11/07/2023 & 30/08/2023

KAZI, J.:

The plaintiff instituted this suit against the defendants seeking the following orders; -

- i. The Court pronounces that, the defendants No. 1, 2 and 3, breach the agreement.
- ii. The Defendants parties be kindly directed to pay a compensation a sum of Two Hundred Million (200,000,000/=) to the plaintiff by way of default to transferred (*sic*) the payment money Account sum of USD 24,861.42 by efflux of time.

- iii. That the defendants be ordered to pay the damages a sum of One Hundred Million (100,000,000/=) resulted (*sic*) for failure to settled (*sic*) overdue remittance dated resulted to termination of the contract between the IATA and the plaintiff.
- iv. Any other relief deemed fit and proper in the circumstances of the petitioners case be also granted.

The 1st and 2nd defendants filed separate written statements of defence, and they both challenged the tenability of this suit by raising, in their defence, a preliminary objection.

The 1st defendant raised three grounds of objection, as follows: -

1. The suit is hopelessly time barred.
2. The suit is unmaintainable for want of mandatory statutory ninety (90) days' notice.

3. The suit is unmaintainable for non-joinder of the Attorney General.

The grounds of objection with respect to the 2nd defendant are: -

1. To the extent that in terms of paragraphs 5, 6 and 22 of the plaint the alleged cause of action on breach of contract and negligence arose on 28th October 2016 and this suit was filed on 13th December 2022, this suit is out of the statutorily prescribed time (3 years and 6 years respectively) pursuant to Item 102 and 107, Part IV to the Schedule of the Limitation Decree, Cap 12 of Laws of Zanzibar.
2. To the extent that the cause of action arose in Dares Salaam, Tanzania Mainland and the 2nd and 3 Defendants reside in Dares Salaam, Tanzania Mainland this Honourable Court lacks territorial jurisdiction to try this suit pursuant to Section 15

(1) (a), (b) and (c) of the Civil Procedure Decree, Cap 8 of the Laws of Zanzibar.

The preliminary objection was disposed of by way of written submission.

Submitting on the first ground of objection, Mr. Charles Mtae, learned State Attorney for the 1st defendant, contended that item 53 of the Schedule of the **Limitation Decree**, Cap 12 of the Laws of Zanzibar provides that any claim for compensation for breach of a promise to do anything at a specified time or upon the happening of a specified contingency shall be brought within three years from when the time arrives or the contingency happens. He added that section 3(1) of the same law provides dismissal as a remedy for the suit instituted beyond the three years. The learned State Attorney contended further that, under the **Law of Limitation Act**, Cap 89 R.E 2019, the time for instituting a suit on compensation is only one year, and the dismissal remains a remedy for a suit instituted

beyond the stipulated time. Mr. Mtae submitted that the plaintiff averred in paragraph 7 of the plaint that the cause of action in respect to the suit emanates from claims for compensation of about TZS 300,000,000= from the Defendants, the claim which originates from a transaction alleged to take place on 11th March 2016. It was his submission that three years from 11th March 2016 lapsed on 11th March 2019, and the instant suit was instituted on 13th December 2022, therefore out of time for three years and nine months. He maintained that before filing this suit, the plaintiff neither sought an extension of time nor obtained leave of the Court to file the same out of time. It is his submission, therefore, the suit is hopelessly time-barred and deserves to be dismissed with costs. Mr. Mtae then cited **Yusuf Vuai Zyuma v Mkuu wa Jeshi la Ulinzi TPDF and 2 Others**, Civil Appeal No. 15 of 2009 (CAT Zanzibar) to support his submission that dismissal is the only remedy for suits instituted out of prescribed time.

On his side, Mr. Karume Mrisho, learned Counsel for the 2nd defendant, when submitted concerning the first objection as raised by the 2nd defendant, which is similar to the 1st defendant's first point of objection, argued that the plaintiff alleges in paragraphs 5, 6, 15 and 22 of the plaint, that on 11th March 2016 to 7th October 2016 was making payments from its bank account held at the 3rd defendant's bank to one of the 2nd defendant's customer, International Air Transport Association (IATA) at a bank account held with the 2nd defendant. He contended that it was also pleaded that the said payments were effected out of the agreed time on 9th November 2016. It was Mr. Mrisho's submission that according to the facts constituting the cause of action and the reliefs sought, this suit is founded on the tort of negligence and breach of contract. It was his view, therefore, that the cause of action arose on 7th October 2016 when the agreed time for effecting payments expired without the 2nd defendant performing its obligations. Mr. Mrisho contended that in terms of Item 102 and 107, Part IV to the Schedule of the Limitation

Decree, Cap 12 of Laws of Zanzibar, the suit founded on a breach of contract and tort shall be instituted within three and six years, respectively from the date on which the cause of action arises. He submitted that as the alleged breach of contract and negligence occurred on 7th October 2016, the plaintiff's last day to institute his case was by late October 2019 and 2022, respectively. But this suit was instituted about six years and two months after the cause of action for breach of contract and negligence arose against the 2nd defendant. He submitted further that the plaintiff did not advance in his plaint any grounds for exemption of limitation instead, she explained the efforts she made after 7th October 2022 to pursue his rights out of Court, which, according to him, were not grounds for exemption of limitation under the law. He refers to the case of **Meneja Mkuu, Shirika la Umeme, Zanzibar v. Juma Simai Mkumbini and others**, Civil Appeals Nos. 41, 42, 43, 44 and 45 of 2011, Court of Appeal of Tanzania at Zanzibar (unreported) on pages 8 to 9 to support his submission.

In his reply, Mr. Ali O. Juma, learned Counsel for the plaintiff, accepted that the suit was instituted beyond the prescribed time. It was his submission, however, that parties resolved to settle the matter amicably through arbitration. As the arbitration was unsuccessful, the plaintiff instituted this suit.

In his rejoinder, Mr. Mtei, learned Counsel submitted that the Court of Appeal of Tanzania guided that pre-court action negotiations are no ground for stopping the running of time as the statute of limitation is not defeated or its operation retarded by negotiations for a settlement pending between the parties, negotiations or communications between the parties. He cited **Shirika la Umeme Zanzibar** (Supra) and **M/S P&O International Ltd versus the Trustees of Tanzania National Parks (TANAPA)** Civil Application No. 265 of 2020 (CAT Unreported). He then argued that since the Court of Appeal already provided for such guidance and as the plaintiff neither sought an extension of time nor

obtained leave of the Court to file this suit out of time prior to filing this suit, the same is time-barred. Finally, he maintained that the only remedy is the dismissal of the suit with costs.

From paragraphs 5, 6, 7, 15, and 22 of the plaint, it is clear that this suit is based on compensation for breach of a promise to do something at a specified time. It is also with no doubt, and as admitted by the parties, that the instant suit was instituted beyond the prescribed time, which is three years as provided under item 53 of the schedule of Cap 12.

In his submission, the learned Counsel of the plaintiff insinuated, though not straightforwardly, that the plaintiff was justified to file the suit beyond the prescribed time because she tried to settle the matter amicably with the defendants out of Court. The 1st defendant opposed that, and while citing **Meneja Mkuu, Shirika la Umeme Zanzibar** (Supra) and **M/S P&O International Ltd** (supra), he maintained that

the out of court initiative to settle cannot stop statutes of limitation.

The Court of Appeal in **Meneja Mkuu, Shirika la Umeme Zanzibar** (Supra) had this to say regarding the matter in controversy: -

"We wish to emphasize here that it is settled law that the time spent by a party in pursuing his right(s) through other avenues is not counted in the computation of time. The only exception would seem to us to be under section 19(1) (supra) whereby if there is a firm acknowledgment of liability in writing before the expiration of the period prescribed for a suit a fresh period of limitation is computed from the time when the acknowledgment was so signed".

Guided by the above-quoted decision, I uphold both defendants' first point of objection that the suit is time-

barred since it was instituted beyond the prescribed time.

Since the defendants' first point of objection is sufficient to dispose of this suit, resolving the remaining point of objection will be nothing but an academic exercise. I will, therefore, not consider them.

In the premises, and for the obvious reasons, this suit is dismissed with costs.

It is so ordered.

Dated at Tunguu, Zanzibar this 30th August 2023.



G. J. KAZI
JUDGE
30/08/2023