

**IN THE HIGH COURT OF ZANZIBAR
AT TUNGUU
CIVIL CASE NO. 74 OF 2023**

MWANAHAMISI OMAR HUSSEIN	.....	PLAINTIFF
VS		
MANAGING DIRECTOR,		
HONORA TANZANIA PLC	.....	1ST DEFENDANT
MANAGING DIRECTOR,		
NATIONAL BANK OF COMMERCE	.....	2ND DEFENDANT
MANAGING DIRECTOR,		
AKIBA COMMERCIAL BANK PLC	.....	3RD DEFENDANT
MANAGING DIRECTOR,		
VODACOM TANZANIA PLC	.....	4TH DEFENDANT
MANAGING, DIRECTOR,		
TRONIC TANZANIA	.....	5TH DEFENDANT
MANAGING DIRECTOR,		
NMB BANK PLC	.....	6TH DEFENDANT
MANAGING DIRECTOR,		
CRDB BANK PLC	.....	7TH DEFENDANT
MANAGING DIRECTOR,		
MUKURU MONEY TRANSFER LIMITED	.....	8TH DEFENDANT

RULING OF THE COURT

19/06/2024 & 04/09/2024

KAZI, J.:

The Plaintiff, Mwanahamisi Omar Hussein, instituted this suit against the above-named defendants for compensation at the tune of 800,000,000/ (Tanzanian Shillings Eight Hundred Million) for the claimed conduct of the defendants of using, for commercial purpose, her image without her authorization. Thus, in her plaint, she seeks the following reliefs:

- a) An injunction mandating the immediate cessation of the unauthorized use of the Plaintiff's image by the Defendants.
- b) An order compelling the Defendants to remunerate the Plaintiff with compensation amounting to TZS. 100,000,000 (Tanzania Shillings One Hundred Million) each, for the damages suffered due to the unauthorized use of the Plaintiff's image.
- c) An adjudication in favor of the Plaintiff, inclusive of additional damages stemming directly from the Defendants' infringement of privacy. These damages should incorporate attorney's fees and expenses incurred in the course of pursuing this legal recourse.
- d) An order compelling the Defendants to assume liability for the costs incurred in relation to this lawsuit.
- e) Any further relief deemed just, equitable, and consistent with the principles of law and justice by this Honorable Court.

Defendants filed a written statement of defence opposing the claim, whereby each one of them raised preliminary points of objection in their respective defence.

By the order of this court, parties argued the points of objection through written submissions. I would have reproduced all points raised and respective submissions herein, but I am afraid that will make this ruling unnecessary long, since, after scrutinised the plaint and its annexures carefully, I am satisfied that the point of objection raised by the fourth defendant is sufficient to dispose of this matter.

In his defence, the fourth defendant pleaded a plea in limine that the suit is hopelessly time-barred contrary to the provision of item 30 to the schedule of **the Limitation Decree**, Cap 12 (the Limitation Decree).

The fourth defendant's written submission was drawn and filed by Mr. Gasper Nyika, a learned advocate, whereas Mr. Itael Kimaro, a learned advocate, prepared and filed the plaintiff's submission.

In his submission, Mr Nyika submitted that it is undoubtedly that, according to the plaint, the alleged cause of action is based on the unauthorized and infringement utilization of the plaintiff's image for commercial purposes. He submitted further that according to item 30 of Part IV of the Schedule to the Limitation Decree, claims relating to compensation for infringing any exclusive privilege are to be instituted within three years of the occurrence of the wrong complained of. He added that under the 3rd column of item 30 of Part IV of the Limitation Decree, the limitation period commences on the date on which the right

of action accrues, which is on the date of infringement. Thus, according to Mr. Nyika, the right to institute a suit begins to run when the wrong complained occurs. He contended further that according to paragraph 11 of the plaint, the plaintiff became aware of the alleged defendant's infringement on or about 2020 without specifying the date and month. He, therefore, argued that one would wonder what the plaintiff is hiding by not providing the date and month where the numerous advertisements and documents attached to the plaint which is the basis of her claim for infringement. It was Mr. Nyika's views that, as paragraph 11 of the plaint implies that the infringement was discovered in the year 2020, and since no date is specified by the plaintiff, in terms of section 4 of the **Interpretation of Laws Act and General Provision Act**, [R.E 2006], which stated that a calendar year commences on 1st day of January in a year, therefore the discovery was on 1st January 2020.

In conclusion, Mr. Nyika submitted that when a limitation defence is accepted, the court has no option but to dismiss the suit in terms of Section 3 (1) of the Limitation Decree. To support his point, he cited Civil Appeal No. 27 of 2017 between **Mbezi Mgaza Mkomwa v. Attorney General and Another** (unreported) where the Court of Appeal of Tanzania held that:

"Under s. 3 of the Law of Limitation Act, when a suit is filed out of the prescribed time of limitation, the court does not have an option but to dismiss such suit."

Therefore, he invited this court to uphold the preliminary objection and dismiss the suit with costs.

In opposing the preliminary objection, Mr. Kimaro submitted that the provision of section 12 of the Limitation Decree provides that, "*In computing the period of limitation prescribed for any suit, the day from which such period is to be reckoned shall be excluded*". He, therefore, argued that the provision excludes the day on which the cause of action starts to run in the computation of the time limit. He argued further that in the plaint, the plaintiff showed that the cause of action arose on or about 2020, and she instituted the suit on 10th November, 2023. He relied on the **Black's Law Dictionary**, Abridged Tenth Edition at page 919, whereby the word "on or about" is defined as; "*Approximately; at or around the time specified. This language is used in pleading to prevent a variance between the pleading and the proof, usually, when there is any uncertainty about the exact date of pivotal event*". He, therefore, argued that, for the matter of calculating the time limitation, computation of time should start from the year 2021 to 10th November 2023, which makes the total of two (2) years and eleven (11) Months, respectively. Mr. Kimaro then submitted that the plaintiff instituted the suit within the time and that this court has the jurisdiction to hear and determine this suit. In his conclusion, Mr. Kimaro asked the court to dismiss the preliminary objection with costs.

In his rejoinder, Mr. Nyika submitted by way of introduction that the plaintiff has not contested their submission that since the infringement was discovered in the year 2020 and no exact date was specified therein in terms of section 4 of the **Interpretation of Laws Act and General Provisions Act** (R.E 2006) a calendar year commences on 1st day of January in a year. It was his submission that in the absence of any

response to that part of their submissions, their submission is taken to have been accepted.

Responding in regard to the plaintiff's submission that their suit is within time as the day in which the cause of action starts to run shall be excluded in computing the time limit, Mr. Nyika argued that the plaintiff's submission is baseless. He went on to submit that the plaintiff had excluded the entire period of 2020 and had begun to compute the time limit for the year 2021. He maintained that there is no basis for the exclusion of the entire year of 2020, which was pleaded by the plaintiff herself. Mr. Nyika argued that section 12 of the Laws of Limitation excludes only the day from which such period is to be calculated but not the entire year. He added that if we were to compute the time limit from 1st January 2020, the day to be excluded in the computation of time would be 1st January. As such, he claimed, the computation of time commences on 2nd January 2020.

The issue that needs to be determined from the party's submission is whether this suit is time-barred. As stated earlier, the plaintiff's cause of action is based on the unauthorized and infringement utilization of her image for commercial purposes by the defendants. In paragraph 11 of her plaint, the plaintiff stated that she became aware of the defendants' wrongdoing of utilizing her image on or about the year 2020. It is apparent that the plaintiff did not indicate the exact date and month on which the cause of action had arisen.

It is no doubt true that in view of item 30 of Part IV of the Schedule to the Limitation Decree, claims relating to compensation for infringing any

exclusive privilege are to be instituted within three years of the occurrence of the wrong complained of. In view of section 12 of the Limitation Decree, it is also the law that in computing the period of limitation prescribed for any suit, the day from which such period is to be reckoned shall be excluded.

Now, based on what was pleaded by the plaintiff on when the cause of action arose *vis-a-vis* the applicability of the law of limitation, the question that I will resolve at this moment is when the plaintiff's right of instituting the suit against the defendants starts to run. Mr. Nyika believed that the right of instituting a suit begins to run when the wrong complained occurs. He maintained that since the plaintiff claimed that she became aware of the defendants' infringement on or about 2020 without specifying the date and the month, then it should be considered that she became aware of the infringement on 1st January 2020, which is the beginning of the calendar year.

Mr. Kimaro, on his side, relied on Black's Law Dictionary, which defined the word "on or about" as approximately at or around the time specified. Therefore, in computing the time, he excluded the whole 2020 year.

As it was defined by the Black's Law Dictionary, the phrase "on or about" is used to describe the approximation of a date, time or even location. Therefore, when the word "on or about" is used in relation to a time or a date, it means that the action possibly occurred on the specified date with the variance of a few days, that is to say, it may have happened a few days before or after the stated date. In the instant matter, as the plaintiff claimed that the infringement occurred "on or about the year

2020,” it means, according to what I have narrated above, the infringement had occurred around the stated year; this could include late 2019, 2020, or early 2021. Nevertheless, it is essential to emphasize that, contextually, the provision of section 12 of the Limitation Decree requires the precise date or at least a month to be revealed to calculate the computation of time accurately. As already stated, Plaintiff did not mention the specific date on when the cause of action arose; she just stated it arose in 2020 or about 2020. Mr. Kimaro, in his submission, considered the year 2020 as a day, and he maintained that the whole 2020 year had been excluded in the computation of time. With respect to Mr. Kimaro, his position is incorrect. What has been excluded under section 12 is only a day, which means a plaintiff should specify clearly the exact day when her cause of action arose to help the court ascertain whether the suit is barred by limitation. Unfortunately, the plaintiff left it to the court to determine when the cause of action arose.

In his submission, Mr. Nyika sought aid from section 4 of **the Interpretation of Laws Act and General Provision Act**, No. 7 of 1984 [R.E 2006], which specifies that a calendar year commences on the 1st day of January in a year. I think, for the purpose of ascertaining when the cause of action arose in this matter, Mr. Nyika is correct. As there is nothing to the contrary, it should be considered that the course of action arose on 1st January 2020. Therefore, in terms of section 12 of the Limitation Decree, the computation of time of this suit commenced on 2nd January 2020, and the same ought to have been filed by 1st January 2023.

Since this matter was filed on 10th November 2023, it was outside the prescribed time. Consequently, under the circumstances, this court has only one option, which is to invoke Section 3 (1) of the Limitation Decree. In the end, this suit is dismissed with costs.

It is so ordered.

Dated at Tunguu, Zanzibar, this 04th day of September 2024.



G. J. KAZI
JUDGE
04/09/2024