

TANZANIA / JUDGMENT

athumani hassani vs hussein juma mayai 2013 tzhc 2031 21 may 2013

COURT
TZHCDECIDED
21 May 2013

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IN THE HIGH COURT OF TANZANIA AT DODOMA PRAA. DC. CIVIL CASE APPEAL NO. 03 OF 2012 (A R ISIN G FROM C IVIL APPEAL N O . 3 OF 2 0 1 0 OF K O N D O A DISTRICT COURT AT D O D O M A) ATHUMANI HASSANI..... APPELLANT VERSUS HUSSEIN JUMA MAYAI..... RESPONDENT 28/3/2013 & 2 1 /5/2 013

JUDGMENT

R.I. RUTATINISIBWA - PRM. EXT. J. This is a 1st ap pe al from Civil Case No. 3/2010 of Kondo District Court. The r appellant one ATHUMAN HASSANI was not happy with the decision of the District court, which aw arded the Respondent one HUSSEIN JUMA MAYAI with Tshs 1,500,000/= as a general dam ages and 300,000/= as special damages and the costs of the suit. The brief story worth to narrate was that on 2003 the appellant stubbed the respondent with a knife. The appellant was caught and charged with grievous harm. The appellant was found guilty and convicted. He was l punished to suffer in jail for two years or pay a fine and compensation at the tune of Tshs 30,000/= The fine was paid . All that was done on 24/11 /2004. The respondent under went treatm ent at the District level and at the Regional level. On 26/10/2010 the respondent lodged the suit claim ing for .the said damages. The appellant in the instant appeal filed a petition which contain a total of four grounds. On the 4th ground the appellant said that the suit was filed out of time. This ground was raised again as preliminary objection but the trial court accorded no attention. Once the preliminary point, especially on a point of law is raised the trial magistrate has to stop everything and resolve the raised point. He who dares to venture and leave it unattended could find himself proceeding without proper direction. Since the raised point on the question of time is a point of law this court has to resolve it before embarking on other grounds. It was said and not disputed that the matter which was the source of everything occurred in 2003 when the respondent was stubbed. The appellant was charged and the criminal case cam e to an end on 24/11/2004. 2 The civil suit was filed on 26/10/2010. That is to say the suit was filed after the lapse of six years. ' The limitation period for a suit on tortious liability is three years. The instant matter which was filed after the expiry of three years and without leave of the court was time barred. That being the case all the proceedings of the trial court deserves to be nullified. The instant ap pe al allowed with costs. (R.I. RUTATINISIBWA) ft ' ■ PRM. EXT. JURISDICTION 21/ 5/2013 Delivered in the presence of the parties (R.I.RUTATINISIBWA) PRM. EXT. JURISDICTION

21/ 5/2013

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