

TANZANIA / JUDGMENT

CHACHA KERARYO RULING 0001 0001

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THE UNITED REPUBLIC OF TANZANIA (JUDICIARY) THE HIGH COURT (MUSOMA SUB
REGISTRY AT MUSOMA) CIVIL CASE No. 11 OF 2023 CHACHA KERARYO
MARWA..... PLAINTIFF Versus

1. MICHAEL NYAIGOTI @ CHACHA
2. KIRIBO LIMITED f..... DEFENDANTS

RULING

23.04.2024 & 29.04.2024 Mtulya, J.: Mr. Chacha Keraryo Marwa (the plaintiff) was injured in a road accident on 13th February 2020 by a vehicle driven Mr. Michael Nyaigoti @ Chacha (the first defendant) owned by Kiribo Limited (the second defendant). A traffic case was then filed before the District Court of Tarime at Tarime (the district court) in Traffic Case No. 28 of 2020 (the case) which was disputed and resolved by this court in Criminal Appeal No. 117 of 2012 (the appeal) on 13th September 2022. After the accident and subsequent proceedings in the case and appeal, the plaintiff was unconscious and was receiving clinic check-ups. The plaintiff then approached this court on 28th April 2023 and sued the defendants for negligence and prayed for damages for body and psychological pains. The case was then scheduled for necessary orders on 26th March 2023. On the indicated date, the first defendant had invited legal services of Mr. Michael Mahende, learned counsel, who had complained that the case breaches section 3 (1) (2) (a) (b) & (c) and section 4 of the Law of Limitation Act [Cap. 89 R.E. 2019] (the Law of Limitation). Following the complaint, the point of protest was set for hearing on 23rd April 2024. On this date, both parties invited legal services to argue the point. The plaintiff had engaged the legal services of Mr. Amos Wilson, learned counsel, whereas the defendants had hired Mr. Mahende. When Mr. Mahende was granted leave to explain his protest, he briefly stated that the current suit is a tort dispute and ought to have been brought in this court within three (3) years as per Item 6 of the First Schedule to the Law of Limitation, whereas the plaintiff approached the court after three (3) years. Mr. Mahende stated that section 4 of the Law of Limitation provides for commencement of proceedings in courts and it is when the right of action accrues. In the opinion of Mr. Mahende, the remedy for such suits, like the present one, which are time barred, are to receive dismissal order per section 3 (1) of the Law of Limitation. In order to persuade this court to take his course, Mr. Mahende cited the decision of this court in Flomi Hotel Limited v. Equity Bank Tanzania Limited, Civil Case No. 106 of 2021 and precedent of the Court of Appeal (the Court) in Mbezi

Mganza 2 Mkomwa v. Permanent Secretary, Prime Minister's Office & Another, Civil Appeal No. 27 of 2017. In replying the submission, Mr. Wilson submitted that the suit is exempted in time limitation as per law enacted in sections 16 & 21 (1) of the Law of Limitation read together with Order VII Rule 6 of the Civil Procedure Code [Cap. 33 R.E. 2019] (the Civil Code). In his opinion, the issue of automatic exclusion of time spent in prosecuting actions in court has already been resolved by the Court and the only issue which is required to be displayed is the reasons of delay in the plaint. In order to substantiate his move, Mr. Wilson cited precedents in Alex Senkoro & Three Other v. Eliambuya Lyimo, Civil Appeal No. 16 of 2017 and Geita Gold Mining Limited v. Anthony Karangwa, Civil Appeal No. 42 of 2020. According to Mr. Wilson, the plaintiff has complied with Order VII Rule 6 of the Civil Code and precedent in Alex Senkoro & Three Other v. Eliambuya Lyimo (supra) as he displayed in the twelfth paragraph of the plaint. In the opinion of Mr. Wilson, the plaintiff has provided two (2) reasons of delay, namely: first, sickness; and second, following up his action in the case and appeal. Regarding the cited precedent in Flomi Hotel Limited v. Equity Bank Tanzania Limited (supra), Mr. Wilson submitted that it does not regulate automatic exclusion of time whereas decision in Mbezi Mganza Mkomwa v. Permanent Secretary, Prime 3 Minister's Office & Another, (supra) the plaintiff did not spend time in court prosecuting his action, whereas the law states on time spent in prosecuting actions in courts of law. In a brief rejoinder, Mr. Mahende submitted that the cited section 16 & 21 (1) of the Law of Limitation does not favor the plaintiff as the provisions are applicable in the same cause of action in civil cases and not criminal matters resolved in the case and appeal, and in any case the plaintiff has declined proof of sickness in the plaint. On the indicated precedents in Alex Senkoro & Three Other v. Eliambuya Lyimo (supra) and Geita Gold Mining Limited v. Anthony Karangwa (supra), Mr. Mahende contended that the dual cases are inapplicable in the present dispute as the first precedent regulated time computation with regard to appeal whereas the second resolved application of section 21 (2) of the Law of Limitation. I have had an opportunity to peruse the record of present case, protest lodged by the defendants' learned counsel and submissions of the learned minds. Without shredding words, the learned minds are not in dispute on the application of sections 16 and 21 (1) & (2) of the Law of Limitation, Order VII Rule 6 of the Civil Code and all indicated precedents of this court and the Court of appeal regulating automatic exclusion of time spent in 4 prosecuting cases for preferring actions in courts. The parties are disputing on the application of three (3) words in the indicated enactments and precedents, namely: first, same parties, second, same reliefs, and finally, civil case. In the present dispute, the record shows that the plaintiff was not a party in the case and appeal, and the reliefs sought. The case concerned other parties seeking traffic liabilities and reliefs. Similarly, the plaintiff's learned counsel had remained mute on whether the completion of the traffic case was necessary in lodging the present dispute, and in any case, the plaintiff would have been pressed to cite the law regulating such circumstances. Having said so, I think, in my considered opinion, the plaintiff does not enjoy automatic exclusion of time spent in prosecuting civil case of the same parties praying for the same reliefs. In the end, I dismiss the instant case for want of the indicated enactments and precedents. I do so without costs, as the plaintiff was searching his rights in good faith, but had declined the law regulating lodging of plaints out of time in courts. 5 This Ruling was delivered in Chambers under the Seal of this court in the presence of the plaintiff's learned counsel Mr. Amos

Wilson and in the presence of the respondent's learned counsel, Mr. Michael Mahende, through teleconference attached in this court. Judge 29.04.2024 6

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