

TANZANIA / JUDGMENT

grace semvua vs mdoe bakari nondo another 2012 tzhc 77 22 june 2012

COURT
TZHCDECIDED
22 June 2012

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IN THE HIGH COURT OF TANZANIA AT TANGA CIVIL CASE NO.1 OF 2012 GRACE SEMVUA [THE
ADMINISTRATRIX OF PLAINTIFF THE DECEASED NAPONDAEL MSAMGI] VERSUS
1.MDOE BAKARI NONDO

2. EXECUTIVE DIRECTOR DEFENDANTS TASHRIF BUS SERVICES Date of last order: 17.5.2012
Date of Ruling: 22.6.2012

RULING

Temba, 3; The plaintiff, Grace Semvua Msangi, an administratrix of the estate of the late
Napendael Msangi, instituted this suit against the defendants claiming for the following reliefs:-

- i) That the 2nd Defendant be ordered to pay the Plaintiff the sum amounting to Tshs.1,300,000/
= being reimbursement of money being payment for funeral expenses [for deceased's body
transportation fees, coffin, meal and other funeral expenses]. H) That the 2nd Defendant be
ordered to pay the plaintiff a sum of Tshs. 104,400,000/= being loss of future earnings. 1 iii)
That the 2nd Defendant be ordered to-pay the Plaintiff a sum of Tshs. 100,000,000/= being
loss of expectation of life. * iv) That the 2nd Defendant be ordered to pay the Plaintiff a sum
of Tshs.50,000,000/= being damages for pain and suffering..
- v) That the defendants be ordered to pay interest at Court's rate from the date of judgment to
the date of payment in full. vi) That the defendants be ordered to pay costs of this suit. These
claims are centred on the facts which are well depicted under paragraphs 5,6 and 7 of the
plaintiff's plaint. For purposes of clarity, these paragraphs are reproduced hereunder: "5:
That, on the 10th day of January 2009, the deceased one Napendael Msangi while traveling
in the Defendant's bus with registration number T.768 ALW enroute from Dar es Salaam to
Tanga, passed away following an accident that took place at Mwakinyumbi Hale Muheza Dis-
trict as the 2nd Defendant's bus went out of control of the 1st Defendant and knocked
another vehicle which happened to be in front of it Annexed hereto marked collectively
"GM - 2 " is a copy of the particulars of the road accident, Nipashe newspapers reporting an
accident and the plaintiff craves leave of this honourable court to refer to it as part of this
plaint.

6. That such an accident was caused by the 1st defendant while in the cause of employment of the 2nd defendant. 2
7. That the 1st Defendant was charged and convicted of dangerous and negligent driving causing 49 deaths, out of which the deceased was among. Annexed hereto marked "GM-3" is copy of form 115 showing that the 1st Defendant was convicted as charged and the Plaintiff caves leave of this honourable Court to refer to it as part of this plaint." The 2nd Defendant filed the written statement of defence and denied the claims. He also enjoined the preliminary objection on the points of law and the same are couched as follows: f
 1. That the suit is not properly before the honourable court on ground that the same has been instituted against a wrong party.
 2. That the suit is time barred.
 3. That the plaint does not disclose cause of action against the 2nd defendant. The parties were allowed to argue the raised preliminary objections by way of written submissions. In his submissions, the 2nd defendant contended that Tashrif Bus services is a trading name of the 2nd Defendant which is used by the Motor Vehicle in question. He added that this name is not a registered company and therefore the 2nd Defendant ought to have not been sued. He opine that the Registration card of the said motor vehicle together with insurance letter - annexure GM-4, clearly indicates that the owner of the motor vehicle in question is one SALIM 3 AMRI and in that regard, the plaintiff and not the-Executive Director of Tashrif : Bus Services. % On the issue of limitation, the 2nd defendant submitted that the suit is based on tort. The limitation period of instituting such suits is three years. The 2nd defendant cited the provisions of item 6 of Part 1 of the Law of Limitation Act [Cap.89 R.E. 2002] to that effect. He added that the alleged accident occurred on 10th January, 2009 and the plaintiff instituted this suit on 25th January 2012. It is noted that three years had already lapsed at the time of filing this suit. The 2nd defendant contended therefore that, under the provisions of section 3 of the Law of Limitation Act [supra] this suit has to be dismissed. On the issue of cause of action, the 2nd defendant submitted that the motor vehicle in question is owned by' one. Salim Amri who employed the 1st defendant. The second defendant submitted that under those circumstances, the Plaintiff has no cause of action against the 2nd defendant because he is not vicariously liable to the acts of the 1st defendant. In conclusion, the 2nd defendant urged the court to dismiss the suit with costs. In rebuttal, the learned counsel for the plaintiff who is from Decorum Attorneys, conceded to the 1st and 3rd preliminary points of objection and urged the court to grant them leave to amend the plaint for substituting the 2nd defendant with Salim Amri who is the employer of the 1st defendant. 4 On the issue of point of limitation, the learned counsel contended that the law regulating suits of this nature is The Law Reform [Fatal Accidents and Miscellaneous Provisions] Act [Cap.310 R.E. 2002]. In that regard, the learned counsel cited the provisions of section 9(3)(b) of the above law to the effect that no proceedings shall be maintainable in respect of cause of action unless such proceedings have been taken within a period of six (6) months after the executor or administrator took out representation. For that reason, the learned counsel contended that

as the plaintiff was appointed the administratrix * of the deceased estate on 3rd October, 2011 and filed this suit on 25th January, 2012 then, the suit was filed within the prescribed period of six months. In rejoinder, the 2nd defendant cited the case of John Byombalirwa V. Agency Maritime International (TZ) Ltd [1983] T.L.R.l and insisted that the suit be struck out with costs for non-disclosure of the cause of action against the 2nd defendant. I now turn to consider the merit of the objections and I will start with the 2nd preliminary point of objection, that is, the suit is time barred. There is no dispute that the plaintiff was appointed the administratrix of the deceased Napendael Msangi on 3rd October, 2011. In view of the provisions of section 9(3)(b) of The Law of [Fatal Accidents Miscellaneous Provisions] Act [supra] and on the basis of the case of Juma Shamte Mtambo V. John Roussous and two others , Civil case Mo.457 of 2002, High Court of Tanzania at Dar es Salaam Registry [unreported], it is settled position that the limitation period is computed from the time when the plaintiff was appointed as the administratrix of the deceased. In computing the time from 3rd October, 2011 when the plaintiff was granted letters of administration to 25th January, 2012 when this suit was filed one will note that only three months had expired. Since, the law provides for six months within which to file the instant suit, then I agree with the plaintiff that the suit was filed within the prescribed period. For that reason, the second preliminary point of objection is hereby overruled. Secondly, there is no dispute that the actual owner of the motor vehicle in question is Salim Amri. For that reason and as correctly submitted by the 2nd defendant, he was wrongly sued. The plaintiff had a cause of action against the owner of the motor vehicle and that was/is a right person to be sued. For that reason, the plaintiff has no cause of action against the 2nd defendant. Thus, the 1st and 3rd preliminary points of objection are hereby sustained. The learned counsel for the plaintiff conceded to the 1st and 3rd preliminary points of objection and prayed for leave to amend the plaint. This prayer, in my considered view, was made at the wrong time. It is, at the moment, designed to pre-empt the preliminary objections raised by the defendant. It will be improper for the court to grant the prayer at this stage of proceedings. This position is well stated in the case of the Minister for Labour and Youth Development and Another, Civil appeal No.105 of 1998 [CAT] [unreported]. In this case, the Court of Appeal noted that where a preliminary objection has been lodged, it was improper for the appellant to seek to defeat the objections by acts designed to remove its basis. The Court of Appeal emphasized that if such practice* is allowed it would- lose the purpose * and meaning, and the decency of proceedings would be in jeopardy. That being said, the prayer to amend the plaint is accordingly refused and the suit is struck out with costs. The plaintiff may file a fresh suit but subject to the law of limitation. R.A. TEEMBA, J. 22/ 6/2012 \$f Court: The Ruling is delivered in the presence of the plaintiff and Mr. Mohamed Rajab holding brief for Mr. Muganyizi. The defendants are absent. \- R.A. TEEMBA, 3. 1 1 \~lr 22 / 6/2012 \ \ F" :i r ; V ' t\hereby certify' that this is a true copy of the original. V \ V v x , / / X ----- DISTRICT

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