

TANZANIA / JUDGMENT

MAITIRA WASINGE RULING ON S

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THE UNITED REPUBLIC OF TANZANIA (JUDICIARY) THE HIGH COURT (MUSOMA SUB REGISTRY AT MUSOMA) CIVIL CASE NO. 16 OF 2023 MAITIRA WASINGE..... PLAINTIFF ■>. Versus

1. JOSEPH SAMWEL \
2. GABRIEL T. ADAM I
3. NATIONAL INSURANCE DEFENDANTS CORPORATION (T) LTD f
4. REGISTRAR OF TREASURY J
5. THE ATTORNEY GENERAL ^/

RULING

24.06.2024 & 25.06.2024 Mtulya, J.: Mr. Maitira Wasinge (the plaintiff) was injured in a road accident on 10th November 2006 at Masusura area of Serengeti District in Mara Region by a motor vehicle registered number T.610 AJB. The vehicle was driven by Mr. Joseph Samwel (the first defendant), owned by Gabriel T. Adam (the second defendant) and insured by National Insurance Corporation (the third defendant). It is the injuries which had prompted the plaintiff to approach this court on 9th July 2023 to lodge a suit in tort praying for payment of general damages amounting to Tanzanian Shillings 237,655,000/= as against the first, second and third defendants. The plaintiff had also joined in the case the Treasurer Registrar (the fourth defendant) as overseer of the third defendant and the Attorney General (the fifth i defendant) as a necessary party under section 6 of the Government Proceedings Act [Cap. 5 R.E. 2019]. On the 4th August 2023, the third defendant had replied the complaint in a written statement of defence. However, the third defendant had attached five (5) points of law to be resolved by this court before proceeding further in the case. As the practice so requires, when a point of law is raised, nor further proceedings until the point is resolved to the finality (see: R.S.A. Limited v. HansPaul Automechs Limited & Govinderajan Senthil Kumai, Civil Appeal No. 179 of 2016; National Insurance Corporation Limited v. Johannes Jeremiah & Two Others, Civil Appeal No. 61 of 2021; and Bwire Nyamwero & Another v. National Microfinance Bank PLC & Five Others, Civil Case No. 21 of 2022). In order to abide with the established practice, this court had ordered the third defendant to appear in this court on 25th June 2024 in morning hours to explain her five (5)

complaints attached in the written statement of defence. The third defendant then hired the legal services of Mr. Marko Nsimba whereas the plaintiff invited Mr. Emmanuel Gervas, learned counsels to contest the points of law. However, before the points hearing could take its course, Mr. Nsimba had decided to abandon four (4) points of the protest. The remaining point of law reads: the suit is hopelessly time barred as it has been 2 filed out of time contrary to section 44 (2) of the Law of Limitation Act [Cap. 89 R.E. 2019]. In registering necessary materials in statutes and precedents, Mr. Nsimba stated that suits in tort must be filed within three (3) years from when the cause of action arose as per Item 6 of Part I of the Schedule of the Law of Limitation Act [Cap. 89 R.E. 2019] (the Law of Limitation). In his opinion, if a plaintiff has delayed in filing a suit, he has an option of seeking enlargement of time before the Minister of Legal Affairs (the minister) as provided in section 44 (1) of the Law of Limitation. However, according to Mr. Nsimba, the provision of section 44 (1) of the Law of Limitation empowers the minister to enlarge time period not exceeding one-half of the period of limitation provided by the Law of Limitation on such suits. In the views of Mr. Nsimba, such enlarged period commences to run immediately upon expiry of the period of limitation prescribed by the law. Finally, Mr. Nsimba submitted that the attached order of the minister in the plaint was issued after expiry of one year and six months, which is breach of the enactment of section 44 (2) of the Law of Limitation. In order to substantiate his views, Mr. Nsimba cited section 44 (2) of the Law of Limitation and precedents in Seleman Mohamed Mtoni

- v. Minister of Justice/Attorney General, Misc. Civil Application No. 27 of 2002 and of Rajabu Hassan Mfaume v. Permanent Secretary 3 Ministry of Health Community Development, Gender, Elderly and Children & Three Others, Civil Appeal No. 287 of 2019. Regarding his prayers, Mr. Nsimba prayed this court to dismiss the plaint for want of time limitation and the plaintiff to pay costs as he has been initiating disputes against the third defendant and other several parties without justifiable cause. According to him, the law of limitation of actions knows no sympathy as it was explained in the case of Richard Benedict v. National Insurance Corporation, Civil case No. 87 of 2005 and it is so done to distinguish accessibility of courts of law and common market where every person may bring any commodities for exchange as he so wishes. The submission of Mr. Nsimba was bitterly protested by the plaintiff's learned counsel, Mr. Gervas. According to him, there are four
- (4) reasons to fault submission of Mr. Nsimba, namely: first, the raised point of law does not qualify to be a point of law as it needs evidence of the materials which the minister used to enlarge time period. According to Mr. Gervas the process of inviting materials from the minister will breach the principle established in Mukisa Biscuits Manufacturing Company Limited v. West End Distributors Limited

[1969] EA 696. On the second reason, Mr. Gervas stated that the procedure employed by Mr. Nsimba to raise a point of law in the main suit is not right. In the opinion of Mr. Gervas, the third defendant was 4 required to lodge specific application for mandamus or certiorari to dispute the order of the minister. In the third reason of protest produced by Mr. Gervas, he contended that the minister before he issued the order, he consulted the

Attorney General, who is party to the present suit hence the third defendant, as a public institution, it cannot protest the advice issued by the Attorney General to the minister. Finally, Mr. Gervas submitted that the plaintiff is rescued by provision of section 21 of the Law of Limitation on exclusion of days of prosecuting his action. According to him, even section 44 (1) of the of the Law of Limitation allows the minister to consider circumstances of each case. In his opinion, the plaint shows that the plaintiff was following up his action and had lodged a case on tort immediately after the accident and injuries. Regarding the indicated precedents in Seleman Mohamed Mtoni

- v. Minister of Justice/Attorney General (supra); Rajabu Hassan Mfaume v. Permanent Secretary Ministry of Health Community Development, Gender, Elderly and Children & Three Others (supra) and Richard Benedict v. National Insurance Corporation (supra), Mr. Gervas had distinguished them arguing that in the indicated cases, there was no any order of the minister which had favored the applicants and the disputes arose from special applications for mandamus. 5 Rejoining his submission, Mr. Nsimba submitted that he brought in the instant case enactment of section 44 (2) of the Law of Limitation Act as a point of law and supported by precedents in Seleman Mohamed Mtoni v. Minister of Justice/Attorney General (supra); Rajabu Hassan Mfaume v. Permanent Secretary Ministry of Health Community Development, Gender, Elderly and Children & Three Others (supra) and Richard Benedict v. National Insurance Corporation (supra). According to Mr. Nsimba, the precedents in Rajabu Hassan Mfaume v. Permanent Secretary Ministry of Health Community Development, Gender, Elderly and Children (supra), the Court of Appeal interpreted the application of section 44 (2) of the Law of Limitation Act and supported the decision of this court in Seleman Mohamed Mtoni v. Minister of Justice/Attorney General (supra) on the application of the same section. In the opinion of Mr. Nsimba, the mandate of the minister under section 44 (1) of the Law of Limitation is qualified by section 44 (2) of the law of Limitation Act hence the minister cannot enlarge time outside the ambit of the laws. In his views, Mr. Nsimba thinks that the indicated cases provide for a general principle in interpreting section 44
- (2) of the Law of Limitation, and not a narrow thinking stated by Mr. Gervas. On the application of section 21 of the Law of Limitation, Mr. Nsimba submitted that the exclusion of time does not apply in the present case as the plaintiff narrated the whole history in the plaint 6 which shows that on 3rd September 2008, he was directed by Hon. Judge Mackanja in Civil Case No. 4 of 2008 on the proper course to follow, but has been declined the directives. I have perused the record of this case and found that the plaintiff had filed Civil Case No. 6 of 2007 (the case) before the District Court of Musoma at Musoma (the district court) sometimes in 2007 against the first and second defendant, which was transferred to this court in Mwanza via Misc. Civil Application No. 23 of 2007 (the misc. application) resolved by the district court. At this court in Mwanza Registry, the case was registered as Civil Revision No. 4 of 2008, and the plaintiff was directed by Mackanja, J, as he then was to file fresh and proper suit under the bankruptcy law without any court filing fee. The order was issued on 3rd September 2008. However, since then, the plaintiff has not complied with the order, instead he was

preferring applications with faults involving a total of five (5) judges in this court in five (5) miscellaneous applications, viz. first, Misc. Civil Application No. 34 of 2008; second, Misc. Civil Application No. 117 of 2013; third, Misc. Civil Application No. 89 of 2015; fourth, Misc. Civil Application No. 77 of 2016; and Misc. Civil Application No. 186 of 2018 (the civil application). The final decision of this court was in the civil application which had struck out the application for want of time limitation of filing tort suits in this court. This court also directed the plaintiff to seek leave of the minister. The plaintiff then had rushed to the minister for enlargement of time to file a suit in tort and was granted on 2nd September 2021. On 15th November 2021, the plaintiff had already issued a ninety (90) days' notice to the fifth defendant on intention to sue the third and fourth defendants. However, it is unfortunate the record is silent on what transpired after the expiry of the notice on 14th February 2022 until filing of the instant suit on 9th July 2023. Similarly, the order issued by the minister to enlarge the time period of limitation by one-half of the period of limitation in tort suits of three (3) years, enlarged the later period for two (2) more years from 31st August 2021 to 30th August 2023. Letting aside the dual indicated confusions, this contest of the point of law asks this court to reply an issue whether: the minister may extend time as he so wishes depending on the circumstances of each case. Reading the submission of Mr. Gervas, the minister may do so and the materials which had influenced him are not in the record of the case, whereas Mr. Nsimba thinks that the enactment of section 44 (1) & (2) of the Law of Limitation restricts the minister to enlarge time from when the later time of limitation prescribed by the Law of Limitation has already elapsed. In his opinion, for tort cases, the minister cannot grant enlargement of time after expiry of four (4) years and six (6) months. It is fortunate that the enactment of section 44 (1) of the Law of Limitation on enlargement of time by one-half was not disputed by the learned minds of the parties, but the words: where the minister is of the opinion that in view of the circumstances in any case, it is just and equitable so to do. The question then, is whether: are the indicated words give mandate the minister to issue an order in tort cases after expiry of four and half years. In other words, can the minister issue an order after cumulation of both the initial period of limitation prescribed by the law and one-half of the prescribed time of limitation. I think, in my considered opinion, a reply is found in section 44 (2) of the Law of Limitation Act, that: such later period commences to run immediately upon the expiry of the period prescribed by this Act. The reply in section 44 (2) of the Law of Limitation Act has received interpretation of this court in *Seleman Mohamed Mroni v. Minister of Justice/Attorney General* (supra) and support of the Court of Appeal in *Rajabu Hassan Mfaume v. Permanent Secretary Ministry of Health Community Development, Gender, Elderly and Children & Three Others* (supra). This court in *Seleman Mohamed Mroni v. Minister of Justice/Attorney General* (supra) at the very first page thought that: It should be pointed out that time the law stipulates, that the time starts to run on the day when the cause of action arose and not otherwise as the applicant mistakenly thinks. The interpretation of this court was supported by the Court of Appeal in the decision of *Rajabu Hassan Mfaume v. Permanent Secretary Ministry of Health Community Development, Gender, Elderly and Children & Three Others* (supra). In the precedent, a point of law regarding the application of section 41 (1) & (2) of

the Law of Limitation was raised at this court, as reflected at page 3 to 4 of the judgment. This court then thought that: ...the minister had powers under section 44 (1) of the Act to extend a limitation period by a period not exceeding one-half of the prescribed period of such suit. However, in terms of section 44 (2) of the Act, the period extended by the minister, whether so extended before or after the prescribed period had elapsed, must commence to run immediately upon expiry of the period prescribed by the Act. The Court of Appeal took up the views and held at 19 of the judgment that: By way of emphasis, we wish to restate, with approval, what the High Court held in Seiemani Mohamed Mtoni (supra) that the minister has no power to extend the 10 period of limitation prescribed by the Act for a suit where the allowable period of one-half of the said period of limitation set by the Act has already elapsed. In my opinion, this is a right position despite several materials registered by Mr. Gervas in protest of the submission of Mr. Nsimba and indicated precedents. Even if we take the interpretation employed by Mr. Gervas on the application of section 21 of the Law of Limitation regulating exclusion of time spent in court, the record shows that the plaintiff was in court prosecuting his action until 15th September 2019, when the civil application was resolved. The plaintiff then took more than three (3) years to access this court on 9th July 2023. If we assume the plaintiff was vigilant in following his action in political bodies, the order of the minister was issued on 2nd September 2021 and the plaintiff had issued notice to the fifth defendant on 15th November 2021, but had filed the case on 7th July 2023. A close scrutiny of the record shows that there are two (2) big gaps of days of delay without explanations. First, the time between 2nd September 2021, when the minister issued an order to 15th November 2021, when the plaintiff issued the ninety (90) days' notice to the third and fourth defendants; and second, the period between 14th February 2021, when the notice expired to 9th July 2023 when the case was filed in this court. I am aware the order of the minister had granted the plaintiff two

- (2) years period to enjoy time limitation from 31st August 2021 to 30th ii August 2023, whereas the extra period provided by the law is one-half of three (3) years. The normal mathematical calculations of one-half years of three (3) years is one and half years or eighteen (18) months. The minister granted the plaintiff twenty-four (24) months and the plaintiff had approached this court for tort suit in the 23rd month, that is 9th July 2023. The indicated instances invite the initial question raised by this court on whether the minister can grant enlargement of time as he so wishes. I have already replied this question by use of precedents, both of this court and Court of Appeal. In such circumstances, this court is bound to respect its own previous decisions and abide with the directives of the Court of Appeal, even if it has good reasons to depart. This is what we call the principle of stare decisis. This court always cherishes the principle without any reservations whatsoever. I understand the complaint raised by Mr. Gervas on the need to invite wisdom in cases like the present one where the plaintiff has been busy following his rights, whereas Mr. Nsimba thinks that the law on limitation of action knows no sympathy. I appreciate Mr. Gervas version. However, I am wondering, in circumstances like the present case, how this court will put its record right. There are several faults in various applications registered by the

plaintiff in this court, the order of the minister is uncertain on numerous issues, and there are two (2) vivid gaps of delay which remain unaccounted by the plaintiff. 12 I am aware that every person is entitled to enjoy easy access of this court and have his cause heard and resolved. However, accessing this court should not be decided by plaintiffs as when they so wish. If that is allowed, this court would not be distinguished by open markets where sellers and buyers meet as they so wish. The present case is incompetent before this court for want of time limitation and must receive the remedy enacted in section 3 (1) of the Law of Limitation Act. Having said so, I hereby dismiss the instant case without costs. I do so because the plaintiff was enjoying his right to access this court and to have his cause heard and resolved. This Ruling was delivered in Chambers under the Seal of this court in the presence of the plaintiff, Mr. Maitira Wasinge and in the presence of Ms. Neema Mwaipyana, learned State Attorney for the fourth and fifth defendant, Mr. Cosmas Tuthuru, learned counsel for the first defendant and Mr. Marko Nsimba, learned counsel for the third defendant/?) » F. H. MtQlys Judge 25.06.2024 13

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