

TANZANIA / JUDGMENT

20180620 TZCA Dar es Salaam

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IN THE COURT OF APPEAL OF TANZANIA AT DAR ES SALAAM (CORAM: MUSSA, J.A., MZIRAY, J.A., And NDIKA, J.A.) CIVIL REVISION NO. 2 OF 2017 NORASCUS CHRISTOPHER NTAHEREZOAPPLICANT VERSUS CLARA .JOHN NG ILA 11

..... RES PONDENT .(Application for revision from the proceedings and ruling of the High Court of Tanzania at Moshi) {Mwingwa, J.) · th. dated the 11 day of August, 2016 in Civil Case No. 10 of 2015 RULING OF THE COURT 5th & 20th June, 2018 MZIRAY, J.A.: Before us are revision proceedings. - For proper appreciation of the circumstances in which the Court was prompted to take this course of action it is convenient to set out the background of the matter briefly. On 28.11.2014, the applicant Mr. Norascus C. Ntaherezo was involved in a motor vehicle accident. ... The accident was allegedly caused by a Mitsubishi Canter Truck with registration No. T.124 AKG which belonged to Ms. Clara John Ngila, the respondent herein. He was seriously injured in his two legs. He was taken and admitted at KCMC hospital for a long period of time. When he recovered, he thought time had run against him to claim for compensation. In the circumstances, on 12.5.2015 he wrote a letter seeking enlargement of time from the Minister of Constitutional and Legal Affairs. The Minister in turn, vide letter with reference No. J/C.130/1/276/5 dated 12/5/2015 informed him that the limitation period had not yet started running. Acting on the Minister's opinion, he filed a suit in the High Court of Tanzania at Moshi - Civil Case No. 10 of 2015 claiming compensation against the owner of the motor vehicle. In response to the claim, the respondent filed written statement of defence resisting the claim and in addition filed a notice of preliminary objection stating among other things that the matter was filed out of time and that the court had no pecuniary jurisdiction to entertain the matter. The preliminary objection was heard and on 11.8.2016 the ruling was delivered. In his considered ruling the learned Judge, ... Court ... 2 judge found merit in two of the six points of objection raised. He sustained the respondent's preliminary objection on the ground that the matter was indeed filed out of time and that the court lacked the pecuniary jurisdiction to entertain the matter. It appears that the applicant was not happy with the findings of the High Court. By a letter dated 17.9.2016 the applicant complained to the Chief Justice expressing his dissatisfaction on the findings of the trial judge which led to Civil Case No. 10 of 2015 to be struck out on ground that the suit was time barred. In that letter he maintained that the suit was filed within time. On the basis of that complaint, the Chief Justice was prompted to order that a revision suo motu be opened for the Court to satisfy itself as to the correctness, legality or propriety of the decision of the trial court. In this revision proceedings, Mr. John Seka,

learned counsel, appeared for the applicant. On the other hand, Ms. Clara John Ngila did not appear; she could not be traced for service of notice of hearing of the revision. In this regard and taking into account that the matter 3 has been initiated by the court suo motu/ we allowed the applicant to proceed to avoid any delay of the matter Mr .. Seka, strongly submitted that the trial court erred in its ruling sustaining the preliminary objection. He pointed out that although the suit was filed out of time, the same was filed after the applicant had acted on the words of the Minister of Constitutional and Legal Affairs to the effect that he was within time. As to the issue of jurisdiction, the learned counsel referred us to _ Order VII Rule 10 of the Civil Procedure Code and the unreported case of Godwin Biswalo & Three others V. The Board of Trustees of St. Augustine University, Civil Appeal No. 18 of 2014 and submitted that the consequence of filing an action in court without jurisdiction is that the plaint has to be rejected. We have had the opportunity to examine the record of the proceedings in the High Court, it being with us already, and the question is whether the record reveals any incorrectness, illegality or impropriety of any finding, order or any other decision made thereon. Order VII rule 6 of the Civil Procedure Code provides that where a 4 . suit is instituted after the expiration of the period prescribed by the law of limitation~ the plaint shall show grounds upon which exemption from such law is claimed. A. careful perusal of pleadings, the plaint in particular, there is nothing in it to show that the plaintiff either was under a disability which prevented him from seeking timely legal redress or sought exemption from (the Minister of Constitutional and Legal Affairs. Since this legal requirement was not complied with, the plaint ought to have been rejected. Apart from that, the Law of Limitation Act, 1971, prescribes by its . Section 4 that the period of limitation begins to run from the date on which the right of action accrues; that is the date the cause of action arises. Also, according to Section 6 (e) of the same Act, the right of action to a suit for compensation for an act or wrong which results into specific injury accrues on the date when an injury arises from such wrong and that under Part 1 of the 1st Schedule to the Act, item 6, suits founded on tort must be instituted within three years of the occurrence of the wrong complained of. As the record reflects, in the instant case, the cause of action arose on 28.8.2011 the date when the accident occurred and that the suit was filed on 18.8. 2015 which was three 5 -1 years and ten months after the prescribed period of limitation had expired. . . Apparently, if the period of limitation begins to run from the date on which the right of action accrues then, the Minister's opinion that the time started to run on 13.6.2014 was erroneous. On that basis therefore, it is our view that the High Court Judge was right in holding that the suit was time barred and we so uphold. We make no order as to costs as the revision was initiated by the Court suo motu. DATED at DAR ES SALAAM this 18th day of June; 2018. K. M. MUSSA JUSTICE OF APPEAL . R. E. S. MZIRAY

- JUSTICE OF APPEAL G. A. M. NDIKA JUSTICE OF APPEAL I certify that this is a true copy, of the original. A.H. M MI DEPUTY REGISTRAR COURT OF APPEAL. 6 \

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