

TANZANIA / JUDGMENT

precision technocrafts ltd vs small industries development organization

2020 tzhclandd 76 30 april 2020

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30 April 2020

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (LAND DIVISION) AT PAR ES SALAAM LAND CASE NO. 168 OF 2018 PRECISION TECHNOCRAFTS LTD.....PLAINTIFF
VERSUS SMALL INDUSTRIES DEV. ORGANIZATION DEFENDANT

RULING

I. MAIGE, J

1. The plaintiff in the above suit has commenced an action against the defendant for a breach of a lease agreement entered into between them in 1995. She is claiming special damages at the tune of TZS 395,000,000/=. In the said agreement, the defendant leased a premises described as "Side Industrial Estate situated along Nyerere Road, Ilala, Dar Es Salaam Unit no. 13", hereinafter referred to "the demised premises" The facts constituting the alleged breach are pleaded in paragraphs 4,5 and 6 of the Plaintiff which for clarity I will reproduce here below. I immediately after taking possession of the premises the plaintiff noticed that its roof was dilapidated and was leaking when it rained. The plaintiff promptly informed the defendant about the problem. The plaintiff craves leave to refer to a copy of a letter bearing reference no. PTL/SIDO/72/99 dated 18 May 1999 annexed hereby and marked PT1 forming part of this plaint.
5. When the defendant failed to respond the plaintiff contacted its lawyers who also wrote to the defendant on 8th November 1999. The plaintiff craves leave to refer to a copy of a letter annexed hereto and marked PT2 forming part of this plaint.
6. Despite being notified of the problem the plaintiff took no action until 2017 when some repairs were carried out, but by that time the plaintiff had already suffered substantial loss due to extensive damage to its machines and tools caused by rain water flooding into the workshop by seeping into the workshop through the leaking roof.

2. In his written statement of defense, the defendant has attacked the competency of the suit on three points of law. First, for being time barred. Two, for not disclosing the time of the accrual of the cause of action. Three, for not indicating the name of the drawer of the plaint. She is urging the Court to dismiss the suit be dismissed with costs.
3. The disposal of the preliminary objection was, by the direction of the Court, made by way of written submissions. For the defendant, it was the learned advocate Julius Ndanzi who presented the written submissions whereas advocate F.E. Mkongwa presented the same for the plaintiff. I recommend them for timely filing their written submissions.
4. In his submissions in: support of the first point, Mr. Ndanzi contends that, the cause of action having accrued sometimes in 1999, the plaintiff was time barred to institute the instant suit in 2018. He therefore calls upon the Court to dismiss the suit with costs.
5. In rebuttal, Mr. Mkongwa submits that, since the breach was continuing, it cannot be said that the cause of action arose in 1999 when the plaintiff discovered the breach. In his view, the cause of action is deemed to have arisen in 2017. With respect, I cannot buy his opinion. The facts in the plaint as above reproduced are clear and speak for themselves. It is manifestly apparent that by 1999 the breach complained of had already been committed and the plaintiff through his counsel had expressed her desire to take legal action. She was thus not expected to sleep until 2018 thinking that time, for the purpose of limitation, would stop running to await until she j>effeeIs comfortable to pursue her claim.
6. Without wasting the very precious time of this Court, I find the suit at hand hopelessly time barred for being filed beyond the 6 years time limit prescribed for by paragraph 7 of the First Schedule to the Law of Limitation Act, Cap. 89 R.E., 2019. The first point of preliminary objection is thus sustained. In the circumstances, I find it unusable to determine the remaining two points of objection. The suit is therefore dismissed with costs. 3 It is so ordered. COURT: judgment delivered in absentia due to COVIC-19X.\\s 30th day of April 2020 at 8:30 am in Chambers. f.MAIGE JUDGE 30/ 04/2020 ORDER: Parties be notified and supplied with a copy of the ruling. I.MAIGE JUDGE 30/ 04/2020

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