

TANZANIA / JUDGMENT

LEOPARD TOURS JUDGMENT edited

COURT
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DECIDED
20 November 2024

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IN THE HIGH COURT OF TANZANIA (DAR ES SALAAM SUB-REGISTRY) AT DAR ES SALAAM
CIVIL APPEAL NO 15818 OF 2024 (Arising from the Ruling of the Resident Magistrate Court of
Dar es Salaam at Kisutu in Civil Case No.5888 of 2024.) RAMADHANI SAID
MPASABE..... APPELLANT VERSUS LEOPARD TOURS
LIMITED.....1ST RESPONDENT NGAIMA SEIF
SALUM.....2ND RESPONDENT

JUDGMENT

24th October & 20th November, 2024 MWANGA, J. The instant appeal arises from the decision of the Resident Magistrate Court of Dar es Salaam at Kisutu, in which the appellant filed Civil Case No. 5888 of 2024 against the respondent. In his complaint in paragraph 20, it appeared that the appellant stated some grounds for an exemption to file his case out of time; however, in the prayers, he prayed for an extension of time. In his WSD, in paragraph 20, the defendant stated that the suit is time-barred and wrongly in court; thus, the remedy sought through 1 condonation is untenable, and the court has no jurisdiction to entertain it. Therefore, parties were ordered to address the court on the said objection. After considering the submission from both sides, the trial magistrate ruled out that the suit is time-barred as it was filed contrary to the provision of Order 7 rule 6 of the Civil Procedure Code [Cap33 R.E. 2022] and, therefore, incompetent for want of jurisdiction. Thus, the suit was struck out with cost. This decision irritated the appellant, so he decided to take up the ladder to this court and filed the present appeal armed with four grounds of appeal going thus;

- i. That having regard to the contents of paragraph 20 of the Complaint and paragraph 19 of the reply to the Written Statement of Defence, the trial court erred in law and fact when it held that there was non-compliance with the provisions of Order 7 rule 6 of the Civil Procedure Code.
- ii. That having regard to the contents of paragraph 20 of the Complaint and paragraph 19 of the reply to the Written Statement of Defence, the trial court erred in law and fact when it prematurely determined that the applicant is not entitled to condonation of the delay.
- 2 iii. That having regard to the contents of paragraph 20 of the Complaint and paragraph 19 of the reply to the Written Statement of Defence, the trial court erred in law and fact when it determined factual assertions regarding the timeliness or otherwise of the Complaint as a preliminary point of objection.
- iv. That the trial court erred in condemning the Plaintiff, a

certified legal aid beneficiary, to pay the costs of the suit. Based on the above grounds, the appellant prays before this court that the appeal be allowed with costs and interest, the judgment of the trial court be quashed with fees and interest, that the case be remitted to the trial court to allow the continuation of the suit in terms of the law and any other relief[s] that this Honourable Court deems and equitable to grant. Parties preferred written submission in the disposal of the appeal, as the appellant had a representation of Mr. John Seka while the respondent had the services of Mr. Elvaison E. Maro, both learned advocates. From the outset, Mr. Seka intimated that he wishes the following issues to be addressed: whether the court was justified in terms of Order 7 rule 6 of the Civil Procedure Code to treat as a preliminary matter the issue of extension of time pleaded in the Plaint and, whether the trial court was justified in condemning the appellant, a certified legal aid beneficiary, to pay costs of the suit, and, to what relief are the parties entitled to. The counsel also consolidated grounds 1 to 3 concerning the proper interpretation of Order 7 Rule 6 of CPC. He submitted that, in reaching this decision, the trial court, on page 6 of the typed ruling, noted thus: In the above recent decision of the Court, which discussed the import of Order 7 rule 6 of the Civil Procedure Code, there is no inclusion of prayer for extension of time among what the Plaintiff is required to plead or pray for the extension of time, as what was earlier observed in the case of Tanga Cement Co. Ltd [supra] does not extend to the filing of suits, not to mention extending time to a suit filed while the Plaintiff is aware that it is time-barred. He said that, it is a wrong interpretation of the law. He cited the case of M/s P & O International Ltd versus The Trustees of Tanzania National Parks [TANAPA], Civil Appeal No. 265 of 2020

[2020] TZCA 248 [9 June 2021 -Tanzlii] to support his argument. He contended that the import of the provision above is that each plaint filed beyond the prescribed limitation period must first state that it has been filed out of time. Secondly, it must indicate and plead the grounds from which exemption is sought. He submitted further that Plaintiff, through paragraph 20 of the Plaint and paragraph 19 of the reply to the Written 4 Statement of Defence, complied with the requirements of Order 7 Rule 6 of the Civil Procedure Code. It was, therefore, his contention that the trial court was wrong to find fault in the manner and style of pleading by the present appellant. In the second ground of appeal, Mr. Seka argued that the trial court had prematurely determined the issue of being time-barred without affording parties the right to present their arguments and facts. He added that the true import of Order 7 Rule 6 of the Civil Procedure Code is that once the exemption from limitation is raised, the court must ascertain the facts relating to the exemption. To him, the same cannot be done at the Preliminary stage but must be heard during the merit hearing stage. To proceed to determine the factual assertion at a preliminary stage was an error of law. The counsel, therefore, said that the determination of facts constituting exemption from limitation law in the manner done by the trial court [by entertaining the Preliminary objection] offended the well-settled principle of law that a preliminary objection cannot be raised if facts need to be ascertained. He concluded that the trial court was in error when it held that the appellant had not complied with the appellant in

pleading exemptions from limitation law. The counsel stressed that the appellant had strictly adhered to the law. He thus moved this court as the first appellate court to review the evidence on record and reach its conclusion that the present appellant had complied with the law by pleading exemption. Hence, it was erroneous on the trial court's part to proceed to determine the issue of time limitation as a preliminary objection, the same being a pleaded factual matter that ought to be determined while arguing the merits of the case. On the third ground of appeal, the appellant asserted that discernible from page 54 of the Complaint filed at the trial court, the appellant was a legal aid client with a legal aid certificate from the Tanganyika Law Society [TLS]. However, on page 12 of the typed judgment, the trial court, in total ignorance of the statutory provisions of Section 31[1] of the Legal Aid Act, condemned the present appellant to costs. It was his strong contention that the trial court made an error in condemning the present appellant with an order for costs while fully appreciative that he is an indigent client with a legal aid certificate and being a legal aid client and an indigent; he is excused from paying statutory filing fees and is also exempted from being condemned to pay costs based on the provisions of Section 31 of the Legal Aid Act. He, therefore, invited the court to invalidate the trial court decision. Mr. Maro adamantly resisted Mr. Seka's stance as he had different 6 arguments. He told the court that the main point of departure between the appellant and respondent is the difference between exemption from the law of limitation Act and application of extension of time. He stated by addressing the issue as to whether it was right for the trial court to determine the issue of the suit being time-barred prematurely without affording parties the right to present their arguments and facts as a preliminary objection. In his view, since the complaint stated clearly that the suit was time-barred, the court could not entertain the same as it lacked jurisdiction; thus, the matter had to be addressed first. He then submitted the difference between the two, as provided under Order VII Rule 6 of the Civil Procedure Code, and the application for an extension of time. He cited a plethora of cases on that aspect. It was his submission, therefore, that when Order 7 rule 6 requires a party to plead ground exempting application of the law of limitation, a party has to plead ground "to free him or her from limitation" and not to apply for an extension of time. To support his stance, he cited the case of *Jalala Selemani Jalala vs. Fred Edson Mwajungwe & 2 Others*, High Court Civil Appeal number 14/2022 [2023 TZHC 17627], which explains how to plead grounds of exemption under Order 7 rule 6. It was held that, "In my understanding, the (sic) Order VII Rule 6 of 7 the Civil Procedure Code provides the automatic exclusion of time in computing the period of limitation where the plaintiff shows the ground upon which exemption from such law is claimed. In doing so, it does not mean that the plaintiff has to seek an extension of time to the Court; rather, the plaintiff is required to inform the Court of the ground upon which the law prescribes exemption from the limitation. Indeed, section 16 of the Law of Limitation Act provides an exemption to the plaintiff under disability' before the expiration of the period of limitation prescribed by the law". He believed that the appellant completely failed to meet any of these conditions. Thus, the trial court decision was well-founded, and this appeal should be dismissed. Concerning the cases cited by the appellant to support this appeal,

he said they advance the first respondent case because they require a party seeking to rely on order 7 rule 6 to plead grounds of exemption and not otherwise. On the last ground of appeal concerning costs, Mr. Maro's submission was that reading the complaint and the reply to the WSD, the trial magistrate could not discover that the appellant is the beneficiary of legal aid as the same is not stated anywhere. 8 In a short rejoinder, Mr. Seka reiterated his submission in chief and stressed that paragraph 20 of the Complaint did show the ground under which exemption from the law of limitation is sought. He took the view that when you claim exemption from the law of limitation, essentially, you are pleading with the court to consider on merits your grounds and reasons the court can exercise its discretion to allow the continuation of the suit, which was otherwise time-barred. I have keenly considered the submission advanced by the learned counsels for the parties concerning the grounds raised and the lower court records. The main issues to be addressed are whether it was correct for the trial court to rule that the complaint filed by the appellant in the trial court was in contravention of the provision of Order VII Rule 6 and whether the trial court was justified in condemning the appellant, a certified legal aid beneficiary, to pay costs of the suit. Starting with the first issue, I wish to quote the provisions of Order VII Rule 6 of the CPC. The same states that; "Where the suit is instituted after the expiration of the period prescribed by the law of limitation, the plaintiff shall show the ground upon which exemption from 9 such law is claimed." As the law suggests, the complaint should contain grounds showing why the plaintiff should be exempted from the law of limitation. There are a lot of cases explaining how the said grounds should be stated in the complaint. For instance, in the case of Voi Sisal Estates Ltd [suing by Its Attorney, Farida Kennedy vs. Permanent Secretary & 2 Others, Civil Case No. 62 of 2014 [2022], where the High Court at page 11 of the typed judgment stated thus; "I must also state that I am not oblivious to the fact that the law provides a leeway that can accommodate delayed actions by a litigant, i.e., the plaintiff. The leeway is provided under Order VII Rule 6 of the CPC, which grants an exemption from the application of the law of limitation. For ease of reference, it is appropriate that the said provision be quoted. It states: Where the suit is instituted after the expiration of the period prescribed by the law of limitation, the plaintiff shall show the ground upon which exemption from such law is claimed. It is worth of a note, however, that the condition precedent for invocation of this window is that the plaintiff must demonstrate that by pleading the ground for such exemption in the complaint". See also the case of Consolidated Holding Corporation v. Rajani Industries & Another, 12 CAT-Civil Appeal No. 2 of 2003 (unreported) 10 Having that knowledge in mind, I will now consider whether the appellant complied with the requirement of Order VII, Rule 6 of the CPC. Looking at paragraph 20 of the complaint alleged to have pleaded the grounds for exemption, I wish to quote the said paragraph for better appreciation.

20. That having regard to the fact that this claim has been filled out of the statutory limitation period, the Plaintiff seeks condonation of time under the inherent jurisdiction of the court on the basis of: -

- (a) The existence of diligence by the Plaintiff in search of a remedy, including attempts at seeking an extension of time from the Minister of Justice, whose letter of extension was belatedly received after the extended period of limitation had lapsed. Copies of the letter from the Ministry of Justice granting an extension of time are attached and shall be relied upon during the hearing.
- (b) The existence of a point of law of sufficient importance that is apparent on the face of the Complaint, to wit, Plaintiff's right to his constitutional, legal, and equitable right to a remedy and the fact that the requirement of referring the matter to the Minister for extension of time is now unconstitutional, leaving the remedy to the inherent jurisdiction of the court. 11
- (c) The high probability and chances of success by the Plaintiff having regard to the genuineness of his unresolved claims;
- (d) The clear fact that the Defendants will not be prejudiced by the Plaintiff's claims, and,
- (e) The existence of fraud occasioned by the Defendant through the refusal to disclose the name and whereabouts of the driver and details of their insurers and; In the prayer section, the plaintiff prayed, among other things, for a declaration that the Plaintiff is entitled to an extension of time to pursue his remedy in law and equity. And this was the cause of the preliminary objection/ conflicts between parties. In my profound view, and being guided by the provision of Order VII Rule 6 of the CPC and the case cited above, there was compliance with Order VII Rule 6 of the CPC as the appellant stated clearly that the suit is filed out of statutory limitation period and said the grounds for exemption to it. The fact that in his prayer, he mentioned the prayer for extension of time does not derogate the appellant's grounds for exemption stated in paragraph 20 as it is not every prayer sought by the party must be granted by the court. Under the circumstances and guided by the overriding principle encompassed in our laws, the trial magistrate had to consider the matter 12 and ultimately determine whether the grounds stated for exemption had merit or not. Therefore, it was wrong for the trial court to rule that the complaint contravened Order VII Rule 6. The last ground on cost is accurate, and I subscribe to Mr. Seka's contention that under section 31 (1) of the Legal Aid Act, the appellant, being a beneficiary of legal aid, is excused from paying statutory filing fees and is also exempt from being condemned to pay costs. Mr. Maro argued that the court could not detect that the appellant is the beneficiary of legal aid since neither the complaint nor the reply to WSD stated that fact. I had time to scrutinize the record and annexures annexed in the complaint, where I came across a letter dated 28th February 2024 from Tanganyika Law Society, assigning Mr. John Seka, learned to advocate, to provide legal assistance to Ramadhani Said Mpasabe, the appellant herein. If you are to read the complaint and its annexures as the law requires, one would realize that evidence is enough to prove that the appellant had legal aid; thus, it was not suitable for the trial court to order him to pay the cost after sustaining the preliminary objection. The trial court ignored this fundamental requirement; thus, I find this ground to have merit, and the same is allowed. 13 Consequently, I hold that the ruling and drawn order bred out this travesty is a nullity. Accordingly, I quash and set them aside and remit the matter back to the Resident

Magistrate of Dar es Salaam at Kisutu so that it can continue with the hearing of the matter on merit. Therefore, the appeal is allowed. Due to the circumstances leading to this appeal, I give no order regarding cost. It is so ordered accordingly. MWANGA J JUDGE. 20/11/2024
COURT: Judgment delivered at Dar es Salaam in chambers this 20th November 2024 in the presence of Mr. Elvaison E. Maro, counsel for the Respondent, also holding the brief of the Appellant. Right of appeal explained. MWANGA J JUDGE. 20/11/2024 14

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