

TANZANIA / JUDGMENT

deogratias peter ngowi vs regional air company limited 2022 tzhc 15099 12 december 2022

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TZHCDECIDED
12 December 2022

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (ARUSHA DISTRICT REGISTRY)
AT ARUSHA CIVIL CAUSE NO. 1 OF 2022 IN THE MATTER OF COMPANIES ACT, CAP 212
(R.E.2019) AND IN THE MATTER OF REGIONAL AIR COMPANY LIMITED AND IN THE MATTER
OF APPLICATION BY DEOGRATIAS PETER NGOWI..... PETITIONER
AND REGIONAL AIR COMPANY LIMITED..... RESPONDENT

RULING

9/08/2022 & 12/12/2022 GWAE, J I am obligated to compose this ruling following a notice of preliminary points of objection raised by the respondent in her reply to the petition. Originally, the petitioner filed a suit against the respondent claiming to be the director and a shareholder of the respondent since 1996 with one percent (1%) share in the company. According to his claims, in the year 1996, the respondent decided to give the petitioner a portion of his i share (1%) and since then the petitioner has not been involved in the business of the respondent including among other things, payment of his salaries and dividends. The petitioner is therefore seeking the following reliefs;

1. A court order that Extra Ordinary General meeting be conducted so as to discuss the Company's affairs.
2. A court order that, the respondent to update her information through BRELA ORS of any changes whatsoever.
3. A court order that respondent to provide the petitioner with copies of financial reports and audited accounts of the accounts of the company from the year 1996 up to date.
4. A court order that, the respondent to give the petitioner dividends as per his share of 1% from the year 1996 up to date.
5. A court order that respondent to give the petitioner salaries as director from the year 1996 up to date.

6. Costs of the petitioner be provided for and
7. Any other reliefs this honourable court may deem fit, just and equitable to grant. 2 The respondent, on the other hand, strongly refuted the claims levelled against her, and together with the reply to the petition the respondent raised the following points of objection;
 1. That, the petition is barred by limitation.
 2. That the petitioner has no locus standi to bring the present petition.
 3. That, the petition is brought under the wrong provision of the law. As the practice of law demands that, the preliminary objection be determined first and with the leave of the court, Mr. Ramadhan Sebeku and Mr. Emmanuel Kinabo who appeared for the applicant and respondent respectively, disposed of the respondent's PO by way of written submissions. Supporting his preliminary points of objection, Mr. Kinabo submitted on the two points of objection and abandoned the third point of objection herein. As to the first point of the preliminary objection, Mr. Kinabo submitted that this application is time barred pursuant to Item 21 of part III of the Schedule to the Law of Limitation Act [Cap 89 R.E 2019]. Reason being that according to the claims of the petitioner the cause of action arouse in the year 2001 when he was excluded from the respondent's affairs. Therefore, it is his opinion, that computing from the year 2001 to 2022 when this matter was instituted, this suit is hopelessly time barred as sixty days had lapsed. Responding to the 1st limb of the respondent's objection, the petitioner's counsel submitted that, his application is within time as it was in the year 2021 when the respondent updated her information through the online system registration without following proper procedures under the Companies Act, Cap 212, Revised Edition, 2002. It was the contention of the respondent's counsel that, the present petition was promptly filed and the same is within time. In order to safely determine the 1st point of the respondent objection, Item 21 of Part III of the Law of Limitation Act, Cap 89, Revised Edition, 2019 is reproduced herein under; "Application under the Civil Procedure Code, the Magistrates' Courts Act or other written law for which no period of limitation is provided in this Act or any other written law the time limitation is sixty days." From the parties' arguments, it is apparent that, the issue of time limitation being sixty (60) days is undisputed. However, the issue under contention is when the cause of action arouse. While the respondent 4 alleges that, the cause of action arouse in the year 2001 when the petitioner was excluded from the respondent's businesses, on the other hand, the petitioner maintains that, the cause of action arouse in the year 2021 on updating her information through the online system registration in 2021, without properly informing its members. Ordinarily, in determining when the cause of action arouse the court will inquire as to when the right of a part was infringed. In the matter at hand, the petitioner through paragraph 7 of the petition has pleaded that, and I wish to quote; "That, the petitioner since 2001 has been wilfully excluded and/or neglected from the company's affairs such as day to day operations of the company, preparation and submission of financial accounts/ statements, dividends and participation in company statutory meetings." Looking also at the prayers, the petitioner's prayers stand way back from the year 1996 when he was given the portion of his shares (1%)

by the respondent. Para. 7 of the petition quoted above clearly indicates that, the infringement of the respondent's rights as a director and shareholder of the respondent arose in the year 2021 as rightly argued by the 5 respondent's counsel. Hence, the petitioner's petition, on the strength of his pleadings, is extremely out of time. Nevertheless, the petitioner's submission that, the cause of action arose on 12th October 2021 relying on the respondent's reply to the petition Para. 8 of the petition especially on an official search dated 6th December 2021 or and a BRELA's letter addressed to the petitioner dated 12th October 2021. This court had a look at the said para. 8 of the respondent's reply to the petition. The said letter appears to be dated 12th October 2021 and the same was addressed to the petitioner informing him of his failure to comply with the directives given to him by BRELA with regard to the caveat he filed in the year 2003. As a result, BRELA notified the petitioner of the act of the Registrar updating the company's particulars in disregard of the submitted caveat. From the face of the parties' pleadings especially, the letter from BRELA to which the petitioner herein alleges to mark the time within which the cause of action arose was a reply following a caveat already filed by the petitioner in 2003 requesting the registrar not to accept any changes made by the respondent without his authorization. Plainly, one may construe that, by the time the petitioner was filing a caveat with BRELA the respondent had already been infringed of his rights and that, is why he opted to protect his rights by filing the said caveat. By no means, the petitioner herein can allege that, the cause of action arose in the year 2021 when the BRELA wrote him a letter while his relationship had started to deteriorate since the year 1996 when his portion of shares was given to him. If, I were to consider that, the petitioner became aware as per his complaints through the letter dated 12th day of October 2021 yet, sixty days had already lapsed when he filed his petition on 26th day of January

2022. Applicability of item 21 of Part III of the schedule to the Law of Limitation Act (supra) relating to petition was rightly held in the case of Redegunda Mosha and 10 others vs. Orbit Securities Company Limited and another, Miscellaneous Commercial Cause No. 46 of 2020 (unreported). Having determined as herein, next question to be answered is, what is a consequential order for the matter filed out of the prescribed time. According to Law of Limitation Act, Cap 89, Revised Edition, 2019 under section 3 (1) it is provided; "3(1) Subject to the provisions of this Act, every proceedings described in the first column of the Schedule to this Act and which is instituted after the period of limitation prescribed therefore opposite there 7 to in the second column, shall be dismissed whether or not limitation has been set up as a defence." This position of the law has correctly been stressed in various judicial decisions, for instance in Soza Plastic Industries v. Scolastica Chawalla, Labour Revision No. 73 of 2012 (unreported) where it was held inter alia: "The remedy for a time barred application filed without leave is dismissal. " Law of Limitation was essentially enacted to prevent a party from coming to a court at any time of his or her own choice and therefore maintenance of speedy administration of justice in our country and the world at large (See Daphne Parry vs. Murray Alexander Carson,

(1963) EA 546) and Tanzania Fish Processors Limited vs. Christopher Luhangula, Civil Application No. 161 of 1994 (unreported), the Court of Appeal stressing a need of enhancing social justice at large stated among other things that: "Limitation is material point in the speedy of administration of Justice. Limitation is therefore to ensure that a party does not come to court and when he chooses..." 8 The petitioner's letter to BRELA and its response letter with ref- Number RFG No. 26293 (Para. 9 and respondent's Annexure-RAS2) was in my view to be acted promptly. The 2nd limb, does not need to curtail me as the petitioner is neither the director nor the shareholder of the respondent due the Registrar's updates of the respondent as plainly revealed by respondent's annexure- RAS1. Basing on the above deliberations, this court is in agreement with the respondent's arguments that, as per the facts pleaded by the petitioner in his petition, the cause of action arouse in the year 2001 when he was excluded from the business affairs of the respondent.. Consequently, the respondent preliminary objections on limitation of time and locus stand are hereby sustained. As a result, the petition is dismissed with costs. It is so ordered. DATED and DELIVERED at ARUSHA this 12th December, 2022 JUDGE 9

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