

**IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)
AT DAR ES SALAAM**

CIVIL CASE NO. 50 OF 2004

**MSAE INVESTMENT CO. LTD.....PLAINTIFF
VERSUS
1. THE NATIONAL INSURANCE
CORPORATION (T) LTD.....1ST DEFENDANT
2. YUDIKA MREMI t/a DAR EXPRESS....2ND DEFENDANT
3. THE PRESIDENTIAL PARASTATAL
SECTOR REFORM COMMISSION.....3RD DEFENDANT**

RULING

SHANGWA, J:

In this case, the 2nd and 3rd defendants have raised preliminary objections against the plaintiff's suit. The 2nd defendant carries on passenger bus transport business. Both of them were represented by learned lawyers who requested the Court on their behalf to argue their points of objection by way of written submissions. Their request was granted. The point of objection which was raised by the 2nd defendant is that the claim against it is time barred. The 3rd defendant's point of objection is that

the plaintiff has no cause of action against it. Each of the said defendants prayed the Court to dismiss the suit as against each of them with costs. I will deal with the point of objection raised by the 2nd defendant first and thereafter I will deal with the 3rd defendant's point of objection.

It was submitted by learned Counsel for the 2nd defendant Mr. Herbert Nyange that the cause of action arose on 14.1.1998 when the plaintiff's bus with Reg. No. TZK 3682 was damaged in an accident and that the suit was instituted on 27.4.2004. He further submitted that according to S.6 (e) of the Law of Limitation Act, 1971, 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 Law of Limitation Act, 1971, item 6, suits founded on tort must be instituted within three years of the occurrence of the wrong complained of, but that the plaintiff's suit was instituted more than six years after the accident.

On the other side, learned Counsel for the plaintiff Mr. Magessa submitted, inter-alia, that the accrual of right of action against the 2nd defendant arose when the driver of the 1st defendant was found guilty of having caused the accident on 28.7.2000.

In order to avoid confusion, let me point out here that the driver who was found guilty of having caused the accident is not the 1st defendant's driver as submitted by Mr. Magessa for the plaintiff throughout his written submissions. It was the 2nd defendant's driver who was so found. Mark you, the 1st defendant is National Insurance Corporation (T) Limited (NIC). It was not the said corporation's driver who was found guilty of having caused the accident in which the plaintiff's bus was damaged. As I have already mentioned, It is the 2nd defendant's driver who was found guilty of the same. The 2nd defendant is Yudica Mremi t/a Dar Express.

Therefore, learned Counsel for the plaintiff is expected to have submitted that the accrual of right of action against the 2nd defendant arose when its driver was found guilty of having caused the accident on 28.7.2000.

Let me now resort to his argument on this point. In his argument, learned Counsel for the plaintiff said that the 2nd defendant could only be sued after it was established that the driver of the vehicle which the 2nd defendant had insured was responsible for the accident that occurred. He said, it could not have been so established before the hearing of the Traffic Criminal Case which had been filed against the said driver.

A similar confusion appears in this argument. In order to avoid it, let me point out also that the 2nd defendant is not an insurance Company. It is the 1st defendant which is an insurance Company.

Again, learned Counsel for the plaintiff is expected to have mentioned the 1st defendant as insurer of the vehicle instead of mentioning the 2nd defendant as its insurer.

I will now start to examine the 2nd defendant's point of objection. As already mentioned, this point is that the plaintiff's claim against it is time barred. It is not in dispute that the accident in which the plaintiff's Scania bus with Reg. No TZK 3682 was badly damaged occurred on 14.1.1998. The accident itself is alleged to have been occasioned by the negligent acts of the 2nd defendant's driver who was driving the 2nd defendant's Scania bus with Reg. No. TZJ 8836 when that accident occurred. It is as well not in dispute that the plaintiff's suit was instituted against the 2nd defendant and two others on 27.4.2004 which is more than six years from the date of the accident. I have examined the facts of this case and I wonder why the plaintiff spent all those years from the date of the accident without taking legal action against the 2nd defendant whose driver's negligent acts caused the accident. Is it

because he was waiting for the determination of Traffic Criminal Case No. 2 of 1998 against the 2nd defendant's driver which was filed in the Court of the Resident Magistrate of Coast Region at Kibaha? The answer to this question appears to be in the negative because the judgment in that case was delivered on 28.7.2000 and immediately thereafter he did not take any action against the 2nd defendant.

Furthermore, is it because he was waiting for the determination of High Court Misc. Criminal Cause No. 34 of 2000 relating to an application for revision of the conviction of the 2nd defendant's driver by the Court of the Resident Magistrate of Coast Region? The answer to this question appears to be in the negative as well because the ruling in that case was delivered on 11.11.2002 and thereafter the plaintiff did not take any action against the 2nd defendant until after one year and five months later which was on 27.4.2004.

I think therefore that the plaintiff slept on his rights. As a result, he run out of time. Actually, he was not supposed to wait for the determination of the Traffic Case against the 2nd defendant's driver before he could claim for compensation against the 2nd defendant for the damage caused to his bus at the time of the accident which took place on 14.1.1998 at Chalinze, Bagamoyo District, Coast Region. He was supposed to sue the 2nd defendant for the said damage immediately after the accident. As correctly submitted by Mr. H. Nyange for the 2nd defendant, the cause of action arose from the date of the accident and not from the date when the Traffic Criminal Case against the 2nd defendant's driver was determined. This is in accordance with S.6 (e) of the Law of Limitation Act, 1971 which was cited by Mr. H. Nyange.

There is no doubt that the accident in which the plaintiff's bus was badly damaged on 14.1.1998 resulted from the negligent acts of the 2nd defendant's driver committed in the course of his duty. Again, as correctly submitted by Mr. H.

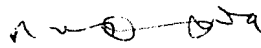
Nyange, suits founded on tort must be instituted within three years of the occurrence of the act complained of. This is in accordance with Part 1 of the 1st Schedule to the Law of Limitation Act, 1971, item 6 which was also cited by him in support of his submission. As this suit which is objected to was filed by the plaintiff more than six years after the accident which occasioned damage to his passenger bus Reg. No. TZK 3682 resulting from the negligent acts of the 2nd defendant's driver, I find that it is time barred as against the 2nd defendant and I dismiss it as against the 2nd defendant with costs.

I now go to the 3rd defendant's point of objection. As already pointed out earlier, the said defendant's point of objection is that the plaintiff has no cause of action against it. Here, I will be very brief. Learned Counsel for the 3rd defendant and learned Counsel for the plaintiff made lengthy submissions on this Point. I will not deeply go into them in order to save the Court's time.

First of all, I have found it novel for the 3rd defendant to say that the plaintiff has no cause of action against it. I would not have found it so, had the 3rd defendant been saying that the plaintiff does not disclose a cause of action. In cases where the plaintiff does not disclose a cause of action, the suit must be rejected. See O. VI r.11 (a) of the Civil Procedure Code 1966. In this case, the suit cannot be dismissed as against the 3rd defendant because the plaintiff is seeking for indemnity either from the 1st or 3rd defendant whom he has joined in the suit for damages suffered by him when his passenger bus overturned and got damaged in an accident.

Secondly, the 3rd defendant is the official receiver of the 1st defendant. That being the case, it would be unwise to dismiss the suit as against it. Although, currently the 1st defendant is a solvent going concern which is fully capable of discharging its financial obligations as argued by Mr. Bade and Co for the 3rd defendant, it is not known as to whether it will be in the same financial position in a few years to come.

Thirdly, the 3rd defendant knows very well that on 24.4.2004, the plaintiff obtained leave from the Commercial division of this Court to join it in the suit in respect of the matters contained in the plaint. Therefore, it is not easy for this Court to go back to its ruling in which leave to sue it in respect of those matters was granted by DR. Bwana, J. For these reasons, the 3rd defendant's point of objection fails. However, I make no order as to costs.



A. Shangwa

JUDGE

3.2.2005

Delivered in open Court at Dar es Salaam this 3rd day of February, 2005.



A. Shangwa

JUDGE

3.2.2005.