

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(CORAM: MWARIJA, J.A., KOROSSO, J.A., And SEHEL, J.A.)

CIVIL APPEAL NO. 27 OF 2017

MBEZI MGAZA MKOMWA APPELLANT

VERSUS

1. PERMANENT SECRETARY, PRIME MINISTER'S OFFICE RESPONDENT

2. THE ATTORNEY GENERAL RESPONDENT

**(Appeal from the judgment and decree of the High Court of Tanzania
at Dar es Salaam)**

(Teemba, J.)

dated the 29th day of July, 2016

in

Civil Case No. 243 of 2013

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RULING OF THE COURT

13th July & 5th August, 2020

MWARIJA, J.A.:

The cause giving rise to this appeal dates back over thirty six years ago. In 1983 the appellant was charged in the Resident Magistrates Court of Bukoba with the offence of being found in unlawful possession of properties suspected to have been stolen, which was an economic sabotage offence under item 4 of the schedule to and section 5 (5) of the Economic Sabotage (Special Provisions) Act No. 9 as amended by Act No. 10 of 1983 (hereinafter "the Act").

According to the record of appeal, on 8/8/1983 at about 6:00 a.m. at Bukoba port area, the appellant was stopped by a police officer No. B. 7781 Cpl Enos (PW1) and upon being searched of his handbag, a total of 511 bottles of two different types of medicines were found. When he was asked whether he had a permit authorizing him to possess those medicines, he could not produce any. He was charged and tried before the then Economic Sabotage Tribunal which found him guilty of the offence. The Tribunal found that the appellant's explanation that the bag in which the bottles of medicines were found, belonged to one Clement Ndole, was a mere attempt to extricate himself. Following his conviction, he was sentenced to nine (9) years' imprisonment. He however served 3 years in prison as in 1986, he was released following the President's pardon.

After his release from prison, in 1990, the appellant took the initiative of writing letters to the Government authorities including the Principal Secretaries of the Prime Minister's Office and the Ministry of Health and Social Welfare asking for *inter alia*, compensation which according to him, was by order of the President, payable to the victims of the Economic Sabotage cases. He also asked to be sent for treatment abroad on account that he was infected with Tuberculosis Adenatis disease while in prison.

He complained that despite being treated, the disease used to recur and whenever that happened, it took him a long time to recover.

As from 1990, the appellant kept on corresponding with the Government and when his efforts finally ended up in futility, on 3/12/2013 he filed a suit in the High Court of Tanzania at Dar es Salaam. In that suit, Civil Case No. 243 of 2013, he complained that he was unlawfully arrested, charged and convicted and thus sought the following reliefs:-

- "(a) Declaration that the plaintiff was unlawfully imprisoned.*
- (b) Declaration that the plaintiff is entitled to compensation as declared by President Mwinyi in the year 1986.*
- (c) General damages to the tune of **Eight hundred and fifty Million Tanzania Shillings (Tshs. 850,000,000/=)** only for unlawful imprisonment.*
- (d) An order that the plaintiff be brought (sic) to India or St. Thomas, England for treatment of the [his] chronic tuberculosis.*
- (e) Interest with respect to (c) at the rate of 30%.*
- (f) Costs of this suit.*
- (g) Any other relief(s) may this Court deem fit and just to grant."*

The respondents disputed the claim made by the appellant. In their joint written statement of defence, they raised a preliminary objection to the effect that the suit was time barred. In response to the claims, they contended that the appellant was lawfully arrested, charged and following his conviction, he was lawfully imprisoned.

Having heard the parties on the preliminary objection, the learned trial Judge (Teemba, J.) found that the objection was devoid of merit. She reasoned that, according to the annexures which were attached to the plaint, the appellant spent time in pursuing his claim by writing to the Government and it was not until on 13/12/2012 when he was finally informed that he was not entitled to compensation. She found therefore, that by filing the suit on 3/12/2013, the appellant was not time barred. The learned Judge based her decision on the provisions of s. 95 of the Civil Procedure Code [Cap. 33 R.E. 2002] (now R.E. 2019).

With regard to the merits of the case, after having heard the evidence of the appellant who was the only witness for the plaintiff's case (PW1) and Saganda Ali Matondo (DW1) who was at the material time the Senior Legal officer in the 1st respondent's office, the trial Judge was of the view that the appellant was lawfully arrested, prosecuted in the court of

law and convicted. For that reason, she found that the contention by the appellant that he was unlawfully imprisoned because he was arrested before enactment of the Act, was devoid of merit. As a result, his claim for damages was found to be baseless. The trial court found further that, according to the evidence, only the victims of the Economic Sabotage cases who were acquitted by the Tribunal qualified to be compensated. With those findings, the trial court dismissed the suit and ordered each party to bear its own costs.

The appellant was aggrieved by the decision of the High Court hence this appeal which is predicated on the following four grounds of appeal:-

- "1. That the trial judge erred in law in holding that the appellant was lawfully arrested in 1983, prosecuted in the court of law and convicted.*
- 2. That the trial judge erred in law and fact in ignoring the appellant's evidence that the Economic Sabotage Act No. 9 of 1983 was enacted while the appellant had already been arrested and that the special court was established while the appellant was in remand.*
- 3. That the trial judge erred in law and fact in ignoring the contents of Exhibit P. 14 that the*

special court was under the Prime Minister's Office.

4. That the trial judge erred in law and fact in failing to analyze the evidence before her thus arriving to a wrong finding."

At the hearing of the appeal, the appellant appeared in person, unrepresented while the respondents were represented by Mr. Abubakar Mrisha, learned Senior State Attorney who was being assisted by Ms. Joyce Yonazi, learned State Attorney.

Before the appeal could proceed to hearing, the Court raised *suo motu* the issue whether the learned Judge was right in holding that the suit was filed within time. As alluded to above, the cause of action arose from the appellant's imprisonment following his trial for the offence which was preferred under the Act. He claimed that he was unlawfully imprisoned hence the ground for the reliefs sought in the plaint. In the circumstances, it is clear that the cause of action was founded on tort.

When the appellant was called upon to respond to the issues, he unhesitantly conceded that by filing his suit on 3/12/2013 while the imprisonment complained of was meted out on 22/5/1984, he did so out of time. He was indeed, alive that the limitation period for a suit founded on

tort is there (3) years. He also conceded that, even if the time taken by him to attempt to obtain redress from the Government out of court is to be considered, that initiative started in 1990 after the period of over there years from the date of his imprisonment.

On his part, Mr. Mrisha submitted that the High Court erred in holding that the suit was filed within time. According to the learned Senior State Attorney, with the clear provisions of item 6 of the Law of Limitation Act No. 10 of 1971 (now Cap. 89 R.E. 2019) (hereinafter "the Law of Limitation Act") the learned trial Judge erred in exercising the trial court's inherent jurisdiction under s. 95 of the CPC to overrule the preliminary objection. The learned Senior State Attorney urged the Court to exercise its revisional powers under s.4 (2) of the Appellate Jurisdiction Act [Cap. 141 R.E. 2019] (the AJA) to revise the ruling of the High Court and eventually, quash the subsequent proceedings of that Court and set aside the judgment giving rise to this appeal.

As can be gleaned from their submissions, the appellant and the learned Senior State Attorney agree that the suit was filed out of time. As stated above, the cause of action accrued on 22/5/1984 and the suit was filed on 3/12/2013 after a period of over 29 years. Under item 6 of the

Schedule to the Law of Limitation Act, the suit should have been filed within 3 years. With respect, to the learned Judge, we find that by overruling the preliminary objection on the ground that the appellant had spent time pursuing his claim with the Government through the correspondences, copies of which were annexed to the plaint, she impliedly extended the period of limitation purporting to act in the exercise of the court's inherent jurisdiction.

Under s. 3 of the Law of Limitation Act, when a suit is filed out of the prescribed time of limitation, the court does not have an option but to dismiss such suit. That section states as follows:-

*"3 – (1) Subject to the provisions of this Act, every proceeding described in the first column of the Schedule to this Act and which is instituted after the period of limitation prescribed thereof opposite thereto in the second column, **shall be dismissed** whether or not limitation has been set up as a defence."*

[Emphasis added].

On the basis of the foregoing, we find that the trial court erred in failing to find that the suit was time barred. In the circumstances, we

invoke the Court's revisional jurisdiction under s. 4 (2) of the AJA and hereby quash the ruling of the High Court dated 12/12/2014. Consequently, the proceedings which were conducted without jurisdiction are also hereby quashed and the resultant judgment is hereby set aside.

Since the point on which the appeal has been disposed of was raised by the Court, we order each party to bear its own costs.

DATED at DAR ES SALAAM this 30th day of July, 2020.

A. G. MWARIJA
JUSTICE OF APPEAL

W. B. KOROSSO
JUSTICE OF APPEAL

B. M. A. SEHEL
JUSTICE OF APPEAL

Ruling delivered this 5th day of August, 2020 in the presence of the appellant in person and Mr. Abubakar Mrisha, learned Senior State Attorney for the Respondents is hereby certified as a true copy of the original.




S. J. KAINDA
DEPUTY REGISTRAR
COURT OF APPEAL