

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB-REGISTRY OF MWANZA
AT MWANZA**

CIVIL CASE NO. 35 OF 2022

NARCIS CONRAD MISSAMA PLAINTIFF

VERSUS

RURAL ENERGY AGENCY.....DEFENDANT

ATTORNEY GENERALNECESSARY PARTY

RULING

7th October & 28th November, 2022

Kahyoza, J.:

This Ruling is in respect of the preliminary objection raised by **Rural Energy Agency** and **Attorney General**, the defendants, that the suit is bad in law for being hopelessly time barred.

There is only one issue for determination, whether the suit is time barred.

Narcis Conrad Missama (Narcis) sued **Rural Energy Agency** and **Attorney General**, the for trespass and malicious damage of his trees. He claimed among other things, for payment of Tzs. 250,000,000/= for loss of business and payment of general damages, punitive damages, cost and expenses including legal fees.

The defendants filed a joint Written Statement of Defence, where they raised two points of preliminary objection. They decided to abandon one point of preliminary objection and retained one that is the suit is bad in law for being hopelessly time barred.

Is the suit time barred?

The defendants submitted that the suit was time barred as it was instituted after the expiry of one year, which was time limit for lodging a compensation claim in court. They submitted that basing on paragraphs 5 and 8 of the Plaint, **Narcis's** was claiming for compensation. The defendants submitted that compensation, according to Black's law diction was payment of damages. or any other act that a court orders to be done by a person who has caused injury to another. They submitted that the genesis of the suit, they submitted was the acquittal of **Narcis** in criminal case No. 216 of 2016.

They argued further that the time limit for claims for compensation was one year as provided by item 1 of Part 1 of the Schedule to the Law of Limitation Act, [Cap. 89 R.E. 2019], (the Act). They added that time started running from the from the date of accrue of the cause of action was on 10.10.2018.

The defendants prayed the suit to be dismissed and not struck out for being time barred. To support their prayer for dismissal of the time barred suit, they cited the case of **Stephen Masato Wasira v. Joseph Sinde**

Warioba and the Attorney General, [1999] TLR, 334-335, **Veris Karol & 375 Others v. Tanzania Packaging Manufacturers (TPML) (Under receivership) & 2 Others**, Misc. Civ. Application No. 66 of 2005 (unreported) and **Rajab Mfaume (the Administrator of the Estate of the Late Hija Pmary Kipara) v. Permanent secretary, Ministry of Health, Communication Development, Gender, Elderly and Children & 3 Others**, Civil Appeal 287 of 2019 (unreported).

Narcis, the plaintiff opposed the preliminary objection. It was submitted that **Narcis'** claim was not based on malicious prosecution but on tort and that the prescribed time limit for a claim emanating from tort is three years. He sought refuge to item 6 of the Schedule to the Act.

It was further submitted that the suit is based on tort of trespass to land as clearly defined by the Court of Appeal in the case of **Avit Thadeus Massawe vs Isdory Assenga**, Civil Appeal No. 6 of 2017 (unreported).

It was further submitted on behalf of **Narcis**, the plaintiff, that the claim was not time barred as was a continuous breach in terms of section 7 of the Act. Section 7 of the Act stipulates that-

"Where there is a continuing breach of contract or a continuing wrong independent of contract a fresh period of limitation shall begin to run at every moment of the time during which the breach or the wrong, as the case may be, continues."

It was submitted that since **Rural Energy Agency** trespassed to the

Narcis' land, cut trees and erected electricity poles, which are still in his farm, that act constitute a continuing wrong. To support his contention, he cited the case of *Holes vs Chard Union* [1894] 1CH.D. 293, where it was held that a continuing cause of action arises from repetition of act or omission similarly to those in respect of which action is brought. Narcis added that he explained grounds for exemption to the time limit.

Having heard the rival submissions, the task of this court is to answer whether the suit is time barred. However before doing so I find it pertinent to explain answer whether the claim was required to be filed within one year or within three years. The defendants submitted Narcis' claim was a claim for compensation so the time limit was one year as provided by item 1 of Part 1 of the Schedule to the Act. On the other hand, Narcis submitted through his advocate, that since his claim was based on tort of trespass time limit was three years. He relied on item 6 of Part 1 of the Schedule to the Act.

Indisputably, Narcis' claim is for compensation for trespass to his land. It is also true that time limit for action based on tort is three years and that for compensation is one year. See the items 1 and 6 of Part 1 of the Schedule to the Act. I decided to reproduce items 1 of Part 1 of the Schedule to the Act. Item 1 of Part 1 of the Schedule to the Act stipulates that-

- 1. For compensation for doing or for omitting to **do an act alleged to be in pursuance of any written law**..... one year.*

And item 6 of Part 1 of the Schedule to the Act, states that-

"6. Suit founded on tortthree years"

Reading the Complaint, I agree with Narcis, the plaintiff that his claim was based on tort of trespass to land. He alleged that **Rural Energy Agency** trespassed to his land, cut trees and erected electricity poles. He is not basing his claim for compensation on any written law. Hence item 1 of Part 1 of the Schedule to the Act does not apply. It is item 6 of Part 1 of the Schedule to the Act which applies. Thus, Narcis was required to institute his claim within three years from the date of the alleged trespass. The Complaint depicted that **Rural Energy Agency** trespassed on 10.10.2018. For that reason, time limit within Narcis was required to institute the claim expired on 9.10.2021.

Narcis, the plaintiff instituted the suit in 2022. The suit was instituted out of time prescribed of three years. Narcis submitted that he explained in the complaint grounds from which his claim was exempted from time limitation. He contended that rule 6 of Order VII of the CPC require the plaintiff filing a suit after expiry of time limit to *the ground upon which exemption from such law is claimed*. He cited the case of **National Bank of Commerce Ltd v. MM Worldwide Trading Company Ltd**, Commercial Case No. 166/2014 (unreported).

It is true that rule 6 of Order VII of the CPC require the plaintiff, where the suit is instituted after the expiration of the period prescribed by the law

Agency entered his farm and elected electricity poles is continuous wrong as far as the elected polls are still in Narcis' farm.

In the end, I find that part of Narcis' claim is time barred. I therefore, partly sustain the preliminary objection and strike part of the claim. The plaintiff shall not be allowed to litigate and be compensated for trees allegedly cut by **Rural Energy Agency**. The plaintiff's claim will be based on the allegations that **Rural Energy Agency** trespassed to his farm and elected electricity polls. Each party shall bear its own costs as the preliminary objection has been partly allowed.

It is so ordered.



Dated this 28th day of November, 2022.

A handwritten signature in black ink, appearing to read 'J.R. Kahyoza'.

J.R. Kahyoza
JUDGE

Court: Ruling delivered in the absence of the parties as either the parties or me, could not connect to the virtual court. Copies sent to the bench clerk for dispatch to parties.

A handwritten signature in black ink, appearing to read 'J.R. Kahyoza'.

J.R. Kahyoza
JUDGE
28/11/2022