

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(ARUSHA DISTRICT REGISTRY)  
AT ARUSHA  
CIVIL CASE NO. 32 OF 2022**

**ISSACK M. PETER.....PLAINTIFF**  
**VERSUS**  
**BONDENI SEED LIMITED..... DEFENDANT**

**RULING**

**04/04/2023 & 24/04/2023**

**GWAE, J**

This ruling emanates from a preliminary objection raised by the defendant to wit; *this suit is hopelessly time barred.*

Through his plaint, the plaintiff, Issack M. Peter is claiming inter alia a total of Tshs. 11,524,237,200/= against the defendant, Bondeni Seed Limited. Alternatively, for an order transferring to the plaintiff a land measured 101.6 acres out of the defendant's Farm No. 6 Oljoro–Arusha City. According to the plaintiff's averment at paragraph 4 of the plaint, the plaintiff and defendant orally entered into an agreement to establish a satellite City at Farm No. 6 at Oljoro (Farm) comprised of a total of 1130 acres, the property of the defendant sometimes in 2014. However, according to the plaintiff's averment at paragraph 10, on 6<sup>th</sup> June 2016 the defendant ever effected transfer of 500 acres from the Farm for the implementation of the parties' agreement

On 4<sup>th</sup> day of April 2023 when this suit was called on for hearing of the said preliminary objection, Mr. Abdallah Issa Alli, the learned advocate appeared representing the plaintiff whilst defendant was enjoying the legal services of Mr. Philip Mushi and Rogers Mlacha, both the learned advocates.

Arguing for the preliminary objection, Mr. Mlacha stated that, the plaintiff suit is time barred due to the fact that, it is founded on contract of which item 7 of the Part 1 of the Schedule of the Law of Limitation Act, Cap 89, Revised Edition, 2019 comes into play. He added that, the suit was to be filed within a period of six years.

Mr. Mlacha went on arguing that, the parties' negotiations cannot salvage the plaintiff's suit. He invited this court to make da reference to Order VII Rule 6 of CPC and a decision of the Court of Appeal of Tanzania in Case of **Fortunatus Masha and another vs. Claver Motors Limited**, Civil Appeal No. 144 of 2019 (unreported). He finally sought an invocation of section 3 (1) of the Law of Limitation Act (supra). Mr. Mushi on his part added that, the plaintiff did not plead exclusion of limitation of time save jurisdiction of the court and mere communication between the plaintiff and the defendant through Mr. Lakesh.

Resisting to the defendant' PO, Mr. Abdallah primarily questioned the competency of the defendant's PO in that, it requires ascertainments of some facts. He buttressed his argument by the most famous case of **Mukisa Biscuit Manufacturing Co. Ltd v. West End Distribution Ltd** (1969) EA 696. The counsel further argued that, in order for one to ascertain limitation of time he or she has to look at the plaint ad annexures thereto.

The plaintiff's advocate also argued that his client is covered or rescued by section 27 (3) of the Law of Limitation Act, Cap 89 Revised Edition, 2019. He cemented that there is an acknowledgement of debt by the defendant as reflected in MP7 dated 26<sup>th</sup> June 2022. Eventually, the counsel for the plaintiff prayed the defendant's preliminary objection be dismissed with costs.

The defendant's counsel through his rejoinder briefly stated their PO is based on purely point of law. He urged this court to make reference to the **case of Karata Ernest and others vs. AG**, Civil Revision No. 10 on 6<sup>TH</sup> June 2016 restating that the plaintiff ought to have complied with Order VII Rule 6 of the CPC instead of making inference. Mr. Mlacha further stated that, in the defendant's written statement of defence nowhere the defendant has admitted the alleged acknowledgment of

either the debt or existence of contract. More so, MP7 does not suggest that, there was a contract between the parties as pleaded at Paragraph 4 of the plaint. He also attacked the submission that, the plaintiff is salvaged by section 27 of the Law of Limitation Act (supra) as the word used therein is "deemed". Mr. Mushi also rejoined that the alleged acknowledgment by the defendant as per MP7 was to be expressly pleaded in the plaint, which according to him, it not the case.

Examining the parties' submissions and the pleadings, it is clear that, there are three issues for determination by the court, these are; **firstly**, whether the PO raised is valid in the eye of the law. **Secondly**, whether the plaintiff's plaint is rescued under section 27 (3) of the Act read together with plaintiff's annexure marked as MP7. **Thirdly**. If the 2<sup>nd</sup> issue is answered in affirmative, whether the plaintiff has complied with Order VII Rule 6 of the Civil, Procedure Code, Cap 33, Revised Edition, 2019.

In the 1<sup>st</sup> issue, the issue of jurisdiction, limitation of time are always points of law which may be raised at any stage of proceedings. However, in order a PO be legally meaningful at the stage of preliminary hearing the parties' pleadings and annexures must be capable of enabling the court to determine such PO. Other words there would be no other pieces

of evidence that will be required. This position has been consistently emphasized by courts for example in the Apex Court in our country when defining the preliminary objection in the case of **Raytheon Aircraft Credit Corporation and another vs. Air Al-Faraj Limited** (2005) 2 EA 259 had this to say;

*“A preliminary objection consists of a point law has been pleaded or which arises by clear implication out of a pleading or an application before the court and which, if argued as a preliminary objection may dispose of the main”.*

See also **Mukisa Biscuit Manufacturing Co. Ltd v. West End Distribution Ltd** (supra).

Since in our instant suit, the plaintiff is found alleging the breach by the defendant to have arisen in 6<sup>th</sup> June 2016 as per paragraph 10 of the plaint and since this suit has been filed in the court on 27<sup>th</sup> September 2022. Hence, lapse of six years as rightly asserted by the defendant's counsel and therefore in contravention of item 7 item 7 of the Part 1 of the Schedule of the Law of Limitation (supra). I think the preliminary objection is point of law worth for the court's determination.

As to the **2<sup>nd</sup> issue**, whether the plaintiff's suit is rescued under section 27 (3) of the Law of Limitation (Supra). It is clear from section 27

of the Act, that once one a person acknowledges or makes part payment of debt, a cause accrues afresh. Section 27 (3) of the Act relied by the plaintiff's counsel reads;

“(3) Where a right of action has accrued to recover a debt or other pecuniary claim, or to recover any other movable property whatsoever, or to recover any sum of money or other property under a decree or order of a court and the person liable or accountable therefor acknowledges the claim or makes any payment in respect of it, the right of action in respect of such debt, pecuniary claim or movable property, or as the case may be, the right of action in respect of an application for the execution of the decree or the enforcement of the order, shall be deemed to have accrued on and not before the date of the acknowledgement or, as the case may be, the date of the last payment.”

According to the above quoted provision of the law, if a person is liable or accountable for a debt, satisfaction of a decree or any other pecuniary claim, if such person acknowledges the debt, claims or decree or makes part payment thereof. Therefore, it follows that, the right of action is considered to have accrued on the date of acknowledgement or date of last payment. The plaintiff's plaint at paragraph 13 categorically states;

*“That, on 26<sup>th</sup> June 2020, the defendant wrote a letter by her Directors replying to the plaintiff and admitting the claim communicated vide letter in Annexure MP-4 and thereby requested for extension of time for period of one month to prepare a proposal on settling the claims where the same was reiterated vide email dated 26<sup>th</sup> June 2020 and 23<sup>rd</sup> June 2021 but none of the claims has been settled to date and hence causing financial difficulties on the part of the plaintiff (Copy of a letter dated 26<sup>th</sup> June 2020, email dated 26<sup>th</sup> June 2020, 21<sup>st</sup>, 22<sup>nd</sup> 23<sup>rd</sup> and 30<sup>th</sup> June 2021 are hereby attached and collectively marked as annexure MP-7.....”*

Presently, according to the above-reproduced paragraph, the plaintiff has vividly exhibited an acknowledgment on the part of the defendant. I am also of the view that, parties' pleadings and annexures when determining interlocutory applications especially PO are subject to scrutiny by the court so that, the court can safely determine the PO. Unlike when a trial is concluded and no original documents or otherwise replacing the annexures. Perhaps, it is worthwhile to subscribe the decision of this court in the case of **Oilcom Tanzania LTD vs. Christopher Letson Mgaila**, Land Case No. 29 of 2015, (unreported) where it was stated;

*“The view is based on the fact that annexures form part of the pleading since they assist in elaborating the material facts pleaded in the pleadings. The broader*

*meaning of the pleadings for the purpose of promoting the right of fair trial to parties therefore, should be that annexures are part and parcel of pleadings”.*

Basing on the above quoted paragraph, it is an observation of this court that, the defendant acknowledged the plaintiff's claims through his letter dated 26<sup>th</sup> June 2020 (Annexure MP-7) replying the plaintiff's letter dated 20<sup>th</sup> June 2020 (Annexure MP-6). The plaintiff's suit is thus salvaged by section 37 (3) of the Act.

Now the **3<sup>rd</sup> issue**, whether the plaintiff has complied with Order VII Rule 6 of the Code which provides;

*"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”.*

The above provision of the law entails that, whenever a suit is time barred but it is salvaged by certain actions permissible by the law such as; prosecution of the same case in the wrong court forum, waiting a certified copies of judgment and decree, acknowledgement or a debt or part payment thereof and other. A party presenting such suit in the court of law must demonstrate such exemption in his plaint. The Court of Appeal



in **Fortunatus Masha and another vs. Claver Motors Limited** (**supra**) interpreted the above statutory provision of the law,

*"Likewise, there was no dispute on the requirement under Order VII Rule 6 of the CPC, for a suit instituted out of the prescribed time, its plaint should contain a paragraph indicating a ground upon which an exemption from such delay is claimed.....the requirement imposed by the above law is not optional, because the word used therein is shall which denote a mandatory compliance and not otherwise..."*

My reading of the plaintiff's plaint especially at paragraph 13 of the plaint quoted above which is indicative that, there was acknowledgment and prayer of extension of time in order to settle the debt as well as MP-7 ("We acknowledge and accept responsibility for points 1-5"). Though there is no paragraph in the plaint expressing that, the suit is time barred yet paragraph 10 of the plaint indicative of cause of action is followed by para. 13, which, in my considered view, it is, clear that, there was an acknowledgement of the plaintiff's claim. The said paragraph 13 of the plaint does not denote mere communications or promises or negotiations but acknowledgement and acceptance of liability.

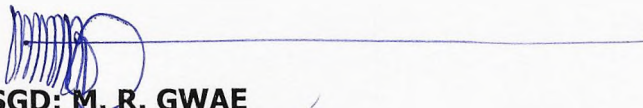
Having discussed as herein, the defendant's PO is overruled. Considering the nature of the PO and plaintiff's failure to expressly plead limitation of time in his plaint, I shall not make an order as to costs.

It is so ordered.

**DATED** and **DELIVERED** at **ARUSHA** this 24<sup>th</sup> April, 2023

  
**M. R. GWAE**  
**JUDGE**

**Court:** Ruling delivered in presence of the parties and their adats about 10:00hrs

  
**SGD: M. R. GWAE**  
**JUDGE**  
**24/04/2023**

