

IN THE HIGH COURT OF TANZANIA
AT DODOMA

CIVIL CASE NO. 15 OF 1998



CAPITAL DEVELOPMENT
AUTHORITY, DODOMA..... PLAINTIFF

Versus

BP TANZANIA LIMITED 1st defendant

AHMED SHEIKH 2ND DEFENDANT

RULING

KAIJAGE, J.

The plaintiff, **CAPITAL DEVELOPMENT AUTHORITY**, instituted a suit against **B.P. TANZANIA LIMITED** (1st Defendant) and **AHMED SHEIKH AYUBU** (2nd Defendant) claiming, among other things, for a return of the attached Dynapac roller caterpillar with Reg. No. SU 3984 and payment of TShs.96,000,000/= being loss of its use. Following the decision in Civil Case No. 411/1991 of the High Court of Tanzania, at Dar es Salaam, the first defendant who was a successful party, obtained an order for the attachment of a Dynapac roller in satisfaction of a decree dated 1st April.1993 issued against Capital Construction Equipment Company Ltd. The 2nd defendant who was then a Court Broker, executed the warrant of

attachment on the said property, the subject matter of the present suit. This Ruling has been prompted by the following preliminary points raised in the 2nd Defendant's Written Statement of Defence;

1. That, in so far as the wrong complained of his alleged to have been committed on 19th day of May, 1995, this suit is time barred and should be struck out with costs.
2. That, the plaintiff having transferred the Dynapac roller to M/S Capital Construction Equipment Co. Ltd. before the cause of action arose, the plaintiff has no locus standi in this case.

As regards the 1st preliminary point of objection, it has been submitted, on behalf of the defendants, that since the pleadings and the prayers in the plaint show that the suit is based on tortuous acts, same is time barred by virtue of Item 6 of Part 1 of the First Schedule to the Law of Limitation Act, No. 1 of 1971. Under the said Act, a suit founded on tort has a limitation period of three (3) years.

In this case, the plaint was presented for filing on 2nd October, 1998, and it is pleaded in paragraph 4 that the Dynapac roller was attached wrongfully by the 2nd defendant on 19th May, 1995. On the basis of the foregoing, it has been further submitted, on behalf of the defendants, that the cause of action having accrued on 19th May,

1995 and the limitation period having started to run from the same date, then the plaintiff's suit which was filed on 2nd October, 1998 is time barred.

On the other hand, it has been submitted, on behalf of the plaintiff, that the present suit is not founded on tort, but it is founded on the judgement in Dar es Salaam High Court Registry Civil Case No. 411/1991 whose limitation period of 12 years is governed by Item 16 of Part I of the First Schedule to the Law of limitation Act. In the alternative, it has been submitted that the plaintiff's Organisation came to know about the attachment of the Dynapac roller on the 12th day of September, 1995 and that the suit is not time barred by virtue of Item 6 of Part 1 of the First Schedule to the Law of Limitation Act.

In response, the defendants argued that the present suit is time barred even if it is accepted that the cause of action arose on 12th September, 1995 when the plaintiff is said to have learnt about the attachment of the Dynapac roller. The Defendants further contend that a suit founded on judgement must be intended either to enforce the judgment or to enforce an obligation created by that judgement.

From what I can gather in the pleadings and in the submissions filed on behalf of the parties, I am settled that the 1st preliminary

point of objection has merit and it is tenable. The same point, in my view, will suffice to dispose of this matter without necessarily going into the merits of the 2nd point of objection.

Undoubtedly, the present suit is based on tortuous acts namely; wrongful attachment of the Dynapac roller and the refusal to return it to the plaintiff thereby causing the anticipated loss of its use. The plaint which was presented for filing on 2nd October, 1998 clearly offended Item 6 of Part 1 of the First Schedule to the Law of Limitation Act which stipulates a period of three (3) years within which to institute an action based on tort. As rightly submitted by the defendants, the requisite three (3) years had already elapsed even if it is accepted that the plaintiff became aware of the attachment of the Dynapac roller on 11th September, 1995. Counting from that date until 2nd October, 1998 when the suit was filed, three (3) years had already elapsed. Three years elapsed on 11th September, 1998.

The submission that the present suit is founded on judgement is untenable. That submission is not borne out by the record. There is nothing on record showing or suggesting that the plaintiff's suit is intended either to enforce any judgement or to enforce an obligation created by any judgement. In this regard, I am in total agreement with the submission made on behalf of the defendants that a suit

found on judgement must be intended either to enforce the judgement or to enforce an obligation created by same.

In the upshot, I find that the suit filed by the plaintiff is time barred. There being no application for leave to have it filed out of time, I am prepared to order that the suit be struck out with costs, as I hereby do.




S.S. KAIJAGE

JUDGE

19.10.2005.

Ruling read over in open court this 2nd day of December, 2005 in the presence of Mr. Kitare for the plaintiff and Mr. Nyabiri for the defendants.

S.S. KAIJAGE

JUDGE

2.12.2005.