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

CIVIL CASE NO. 209 OF 2003

TIMOTHY KAHOHO ..... PLAINTIFF

VERSUS

1. **THE PREVENTION AND COMBATING OF CORRUPTION BUREAU ..... 1ST DEFENDANT**
2. **THE PREVENTION OF CORRUPTION BUREAU ..... 2ND DEFENDANT**
3. **THE ATTORNEY GENERAL ..... 3RD DEFENDANT**
4. **DR. EDWARD HOSEAH ..... 4TH DEFENDANT**

Date of last order: 23/11/2010
Date of ruling: 13/12/2010

RULING

Dr. F. Twaib, J:

When filing this suit on 8th October 2003, the Plaintiff had sued only two defendants: The Prevention of Corruption Bureau ("the PCB"), and the Attorney General. Later on, on 1st April 2010, he obtained the Court's leave to join the 3rd and 4th Defendants.

Upon being served with the amended Plaint, all Defendants raised preliminary points of objection. The Plaintiff, on his part, also raised a preliminary point of law against the 4th Defendant's Written Statement of Defence (WSD).

On 22nd September 2010, I ordered that the preliminary objections be argued by way of written submissions. I made a schedule for filing the same. When the matter next came up for mention on 23rd November 2010, Ms Themi, learned Senior State Attorney, informed the Court that the Attorney General no longer wished to pursue his Preliminary Objection, which was based on the claim that the Plaint disclosed no cause of action against the Defendants. For that reason, I would consider the Preliminary Objection as having been withdrawn.

As for the 4th Defendants' preliminary objections and the Plaintiff's preliminary objection against the 4th Defendant's WSD, written submissions had been duly and timely filed. Hence, this Ruling relates to those points of objection.

In his WSD, filed on his behalf by legal Counsel Crax Law Chambers, the 4th Defendant raised four points of objection. In his submissions in support of the said objections, the 4th Defendant's learned advocates added one more point. It was to the effect that the suit is, as against the 4th Defendant, barred by limitation. Citing section 39 of the Law of Limitation Act, Cap 89 of the Laws (RE 2002), Counsel contended that seven years had passed since the alleged defamation took place through the Notice to the Public issued on 26th April 2003.

This being a suit based on the tort of defamation, the time limit within which a claim can be brought is 3 years (see item 6 of the Schedule to the

Law of Limitation Act, supra). This point is enough to dispose of the suit as against the 4th Defendant. However, in answer to the submissions, the plaintiff has asked the Court to hold that the 4th defendant cannot be allowed to argue the point, which should be dismissed. He said: "This additional objection is bad in law as it has been raised by taking me by surprise. I therefore pray before this Court of law for its dismissal with costs."

As counsel for the 4th Defendant has argued, the issue of limitation goes to the jurisdiction of the Court and may be raised at any time. Indeed, even where the parties do not raise it, it is the Court's duty to do so. The Court must always be satisfied that it has jurisdiction before entertaining any matter brought to it. Jurisdiction includes being satisfied that the matter is filed within the time prescribed by law. I am of the settled view that where the matter is raised and calls for the Court's determination, the only condition for its being entertained and determined is for the Court to grant to the Plaintiff sufficient opportunity to defend himself/herself against the plea before a decision adverse to him/her is reached and the matter is declared time-barred.

In the present case, while it is true that the 4th Defendant did not give notice on the point, it is also true that the Plaintiff did have sufficient opportunity to defend himself against the objection. He had a total of 22 days within which to do so. And, indeed, he took up the opportunity and apparently did his best to explain why, in his view, his claim is not time-barred. I consider that the Plaintiff did get sufficient opportunity. I would now proceed to determine the preliminary point of objection on merit.

The Plaintiff's main argument in response to the preliminary objection is that he had been granted leave by this Court to amend the plaint and add

the 3rd and 4th defendants as parties to the case. That leave was granted on 1st April 2010. For that reason, Plaintiff wants the Court to take it that the case is not time-barred. It actually amounts to arguing that computation of time for purposes of limitation began to run anew after the order granting leave to amend the Plaint and add the two other defendants. Plaintiff further stated that apart from leave to amend the Plaint, he had given the two new defendants notice of intention to sue them, and also relied on the order of Hon. Oriyo, J (as she then was) in Civil Case No. 131 of 2003.

Plaintiff further submitted that the defendants merely allege that he (Plaintiff) was required to comply with sections 3 (3), 4 and 5 of the *Law of Limitation Act* (by obtaining leave to sue out of time from the Minister responsible for justice) before filing the suit against the 4th defendant. The Plaintiff seems to argue that those provisions of the Law of Limitation Act are irrelevant to his case, because he had obtained leave to amend the Plaint and include the two as additional Defendants, one of whom was the 4th Defendant. He also argued that the provisions do not apply to him because once leave was granted, there was no need for him to apply for extension of time from the Minister. It was the plaintiff's further contention that the provisions applied only to public institutions and not individual persons.

As pointed out by learned Counsel for the 4th Defendant, the only way that the Plaintiff could avoid limitation in the circumstances of this case was by applying for extension of time from the Minister for Justice, under section ,,, of the Law of Limitation Act. The provisions do not, he argued, correctly in my view, apply only to public institutions. They apply to all intended claimant, regardless of the nature of legal personality. It should also be pointed out that even the Minister's powers are limited to only one half of

the prescribed period. The Minister cannot grant an extension beyond one half. In the present case, therefore, even the Minister can no longer exercise those powers. The order granting leave did not, and could not, operate as extension of time as the Plaintiff would have us believe.

I am therefore of the decided view that, as against the 4th defendant, this suit is time-barred, and I hereby dismiss it. With this finding, I do not have to consider the Plaintiff's objection with regard to the signing of the 4th defendant's Written Statement of Defence, and the 4th Defendant's objection that the suit against him is *res judicata*.

I however, feel that there is need to consider the 4th defendant's first point of preliminary objection on the existence of the 1st and 2nd Defendants' herein as parties to the suit. Although the point has been taken by the 4th Defendant and not by the 1st and 2nd Defendants themselves or any of them, it is my opinion that since it is matter of law and gives rise to important issues on the proper parties to the case, it is pertinent that this Court considers the issue in light of the submissions made and of the relevant law.

Counsel for the 4th Defendant has consolidated the first two ground of his preliminary objections as point 1 and point 2 and argued them together. It has been submitted that the PCB was an organ of the Government which existed before the commencement of the Prevention and Combating of Corruption Burea ("the PCCB"). By Act No. 11 of 2007, the PCCB Act, the PCCB was established to replace the PCB.

Hence, the 2nd Defendant no longer exists in law. Act No. 11 of 2007 repealed and replaced the Prevention of Corruption Act, which established the PCB. In its stead, the PCCB was established by section 5 (1). The 1st

Defendant took over the assets and liabilities of the 2nd Defendant effective 1st July 2007. As rightly stated by the Plaintiff, one of the liabilities taken over was the present case. It follows, therefore, that the 2nd Defendant cannot be sued since she no longer exists in law. And, since the law has transferred all the assets and liabilities of the former PCB to the new entity (PCCB), the Plaintiff can still recover from the latter and enforce whatever decree he may ultimately be awarded in this case for acts done by the former entity, PCB.

In would thus be merely academic and rather confusing, to say the least, if we were to maintain both the 1st and 2nd Defendants as co-Defendants. In the first place, the Plaintiff cannot expect to enforce a decree against a non-existent party and secondly, it is legally impossible that anyone, including the Attorney General for that matter, would be able to appear in Court and act on the instructions of a non-existent party. I would therefore strike out the suit as against the 2nd Defendant PCB.

In the final analysis, we remain with two Defendants, the 1st and 3rd Defendants. I see no reason to discuss the 3rd and 4th grounds of preliminary objections. It would otherwise be superfluous.

The usual practice in our Courts is that the party who loses the case or matter is condemned to pay the other party's costs. In the rather unusual circumstances of this case, however, I am inclined not to do so. Each party shall bear its own costs.

In the upshot, I uphold the preliminary objection that the Plaintiff's claim against the 4th Defendant, Dr. Edward Hosea, is time barred and the said claim is hereby dismissed. Secondly, the 2nd Defendant is removed from