

<p>CIVIL APPEAL NO. 133 OF 2006- COURT OF APPEAL OF TANZANIA AT ARUSHA- RAMADHANI, C. J</p>	<p>TANGA CEMENT CO. LTD. Vs. CHRISTOPHERSON CO. LTD. (An Appeal from the Decision of the High Court of Tanzania, at Moshi)- Civil Case No. 11 of 1998 Mchome, J.</p>	<p>Breach of oral contract- cement was ordered on 21/04/1986 but the suit was filed on 10/03/1998, that is, after the expiry of almost twelve years.</p> <p>The court does not have the authority to waive limitation except as provided under section 14 (1) of the Limitation Act, 1971. The powers of extension are limited to institution of appeals and the filing of applications and they do not extend to the filing of suits.</p>
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IN THE COURT OF APPEAL OF TANZANIA
AT ARUSHA
(CORAM:RAMADHANI, C.J.; MROSO, J.A; And RUTAKANGWA, J.A.)
CIVIL APPEAL NO. 133 OF 2006
BETWEEN
TANGA CEMENT CO. LTD. ... APPELLANT
AND
CHRISTOPHERSON CO. LTD. ... RESPONDENT
(An Appeal from the Decision of the High Court of Tanzania,
at Moshi)
(Mchome, J.)

dated the 15th day of October, 2001
in
Civil Case No. 11 of 1998

.....
JUDGMENT

22 & 30 October, 2007

RAMADHANI, C. J.:

The respondent company sued the appellant company for breach of contract which would appear to have been oral. On 21st April, 1986, the respondent ordered 400 bags of cement from the appellant company and deposited shs. 62,000/= with the National Bank of Commerce, Bank Street, Tanga, being the purchase price.

In his evidence on behalf of the respondent company, Christopherson Mahoo, PW 1, stated that after paying the purchase price the respondent was issued with a receipt which he presented to the appellant company but the receipt was taken from them and they were refused to collect the consignment. No date was given of when that happened.

When the respondent company enquired as to the delivery of the goods, they were told that the shs. 62,000/= they had paid was taken to liquidate a debt of shs. 392,560/20 they had. The balance of the debt was then reduced to shs. 330,560/20. The learned trial judge entered a judgment for the respondent.

In this appeal the appellant was represented by Mr. Peter Shayo, learned advocate, while the respondent had the services of Mr. Makange, learned counsel. Mr. Shayo had a memorandum of appeal containing five grounds one of which was limitation. We are of the decided opinion that the appeal can be disposed of on that ground only.

Mr. Shayo argued that the cement was ordered on 21/04/1986 but the suit was filed on 10/03/1998, that is, after the expiry of almost twelve years. The learned advocate pointed out that the period of limitation set for claims based on contracts is six years.

In reply Mr. Makange pointed out that the appellant had consented to the filing of the suit out of time. Then in reply to the bench the learned advocate argued that the suit was not barred as time had to be counted from the time of the breach of the contract. In addition Mr. Makange referred us to section 18 (1) of the Law of Limitation Act and submitted that the respondent trusted the appellant.

Section 3 (1) of the Limitation Act provides:

(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 therefor opposite thereto in the second column, shall be dismissed whether or not limitation has been set up as a defence.

So, limitation has to be taken into account even if it has not been pleaded by a party.

Mr. Makange submitted that the then advocate for the respondent at the hearing of the suit pointed out that the court had consented to hear the suit despite limitation. With due respect the court does not have the authority to waive limitation except as provided under section 14 (1):

(1) Notwithstanding the provisions of this Act, the court may, for any reasonable or sufficient cause, extend the period of limitation **for the institution of an appeal or an application**, other than an application for the execution of a decree, and an application for such extension may be made either before or after the expiry of the period of limitation prescribed for such appeal or application. (Emphasis is supplied.)

The powers of extension are limited to institution of appeals and the filing of applications and they do not extend to the filing of suits as was the case here.

Mr, Makange then referred us to section 18 (1). Again with respect that section is not relevant at all. It provides as follows:

(1) Notwithstanding any provision of this Act or of any other written law, no suit against a person in whom property has become vested in trust for any specific purpose, to recover the trust property or the proceeds thereof, or for an account of such property or the proceeds thereof, or in respect of any fraud,

misconduct or fraudulent breach of trust to which the trustee was a party or privy, shall be barred by any period of limitation.

Mr. Makange was using the word "trust" in its ordinary English meaning. This section here refers to "trust" as a legal term.

As for when limitation starts to run, Mr. Makange, pointed out in paragraph 5 of the plaint that delivery was to be "within a reasonable period of one week from the date of paying the purchase price". Since the purchase price was deposited with the bank on 21/04/1986, so, delivery had to be within one week, that is, by 28/04/1986. The time prescribed of six years was up on 28/04/1992. But the suit was filed on 10/03/1998, that is, after almost twelve years from the time of the breach.

We are of the decided opinion that the suit was time barred and we, therefore, allow the appeal with costs.

DATED in ARUSHA, this 30th day of October, 2007.

A. S. L. RAMADHANI
CHIEF JUSTICE

J. A. MROSO

JUSTICE OF APPEAL

E. M. K. RUTAKANGWA
JUSTICE OF APPEAL

I certify that this is a true copy of the original.

(F. L. K. WAMBALI)
SENIOR DEPUTY REGISTRAR