follows that the order of forfeiture must fall on the side. I allow the appeal, quash the conviction of the appellant on both counts and set aside the sentence and order of forfeiture and compensation. The appellant should be released from custody with immediate effect, unless he is otherwise lawfully held.

CRDB (1996) LTD v. BONIFACE CHIMYA

COURT OF APPEAL OF TANZANIA AT DAR ES SALAAM

(Makame, Ramadhani and Lubuva, JJ.A.)

CIVIL APPEAL No. 57 OF 1999

(From the Ruling of the High Court of Tanzania at Dodoma, Msoffe, J. dated 26 November 1997, in Civil Case No. 11 of 1997)

Civil Practice and Procedure – Limitation of Actions – Action for declaratory orders – Limitation period for an action for declaratory orders – Law of Limitation Act 1971, first Schedule, Part I, item 24.

Limitation of Actions – Torts – Action for the tort of trespass to goods – Point in time when the tort becomes actionable.

Torts – Tort of Conversion – Factors constituting the tort of conversion.

Limitation of Actions – Torts – Tort of conversion – Running of time against an action for conversion – Point when time starts to run.

On 31 May 1993 the respondent obtained a loan from the appellant for a vineyard farm and animal husbandry project. He then failed to repay the loan as agreed and on 24 March 1994 the appellant seized the respondent's motor vehicle. The respondent tried to have it returned to him in vain. On 4 October 1996 the appellant wrote to the respondent telling him that he would not return the motor vehicle to the respondent. On 21 July 1997 the respondent filed a suit against the appellant for (a) a declaratory

order that the appellant had no legal justification under the loan agreement to seize the respondent's property, and (b) damages for trespass and conversion. The appellant raised a preliminary objection to the effect that the whole suit was barred by the Law of Limitation Act 1971. The High Court dismissed the preliminary objection and held that the torts of trespass and conversion arose from 1996, when the appellant communicated its refusal to return the motor vehicle, and so the suit was not time-barred when it was filed on 21 July 1997.

Held: (i) It is common knowledge that the period of limitation to any Court action runs from the date on which the right of such action accrues and the period is prescribed under the Law of Limitation Act 1971;

(ii) What was sought in this case was, among others, a declaratory order, the period of limitation prescribed for which is six years; therefore the suit was filed well within time in respect of the declaratory order sought, whether the relief sought was ancillary or incidental to the substantive relief, the period of limitation remains the same;

(iii) Trespass to goods is actionable *per se* and there was no reason for the respondent, whose motor vehicle was unlawfully seized on 24 March 1994, to wait until 21 July 1997 to institute the suit for trespass; therefore, as the period of limitation prescribed for trespass is three years, by 21 July 1997 when the suit was filed for the tort of trespass, that suit was time-barred;

(iv) The the tort of conversion is constituted by an act or a series of acts of wilful interference, without lawful justification, with any property in a manner inconsistent with the right of another person, whereby that other person is deprived of use and possession of the property, and to establish that the act of interference with the property was unlawful, it must be shown that demand was made for the release of the property and the demand was not complied with; otherwise, without such indication of refusal to hand over the property to the plaintiff upon demand to do so, adverse detention of the property may not be proved;

(v) Since refusal to release the property was indicated on 4 October 1996, the suit for conversion was, as held by the High Court, instituted in time.

Appeal only partly allowed; case remitted to the High Court for hearing

Statutory provisions referred to:

(1) Law Limitation Act 1971, section 3(1) items 20, 24

(2) Civil Procedure Code Order VII, rule 6

Mr Rweyongeza and *Mr Mwakipesile* for the Appellant

Mr Njulumi and *Mr Lugua* for the Respondent

JUDGMENT

(Dated 14 November 2001)

Lubuva, J.A.: This appeal arises from the decision of the High Court (Msoffe, J.) dismissing a preliminary objection that the suit was time-barred. The background giving rise to the matter is brief and straightforward. The respondent, Boniface Chimya instituted in the High Court a suit against the appellant, respondent, Co-operative and Rural Development Bank (1996) Limited. Among others, the respondent sought a declaratory order that the appellant had no legal justification under the Loan Agreement to seize the respondent's motor vehicle, and damages for trespass to property and conversion. On the basis of a loan agreement dated 31 May, the respondent obtained from the appellant bank a loan of TZS. 5 738 000 which was to be repaid by instalments. The loan money was for the development of a vineyard farm and animal husbandry project. It is apparent that the respondent also purchased a KIA type of motor vehicle registration number TZB 7706 for the project. As the respondent had failed to effect the instalments according to the loan agreement, on 24 March 1994, the appellant seized the respondent's motor vehicle registration number TZB 7706. Prior to institution of the suit, the respondent had unsuccessfully demanded the appellant to hand over the motor vehicle to him. In response to the respondent's demand, on 4 October 1996, the appellant wrote the respondent a letter refusing to hand over the motor vehicle. As just indicated, the respondent instituted the suit.

A When the case was called on for hearing the appellant took a preliminary objection that the suit was filed out of time. The thrust of the appellant's contention was that as the suit was found on the tort of trespass, it should have been instituted within the period of
B three years from the date the vehicle was taken as provided under section 3(1) of the Law of Limitation Act number 10 of 1971 (hereinafter referred to as the Act). The learned judge held that the torts of trespass and conversion arose from 10 April 1996 when the appellant
C communicated his refusal to hand over the motor vehicle. Consequently, he dismissed the preliminary objection on the ground that the period between 10 April 1966 and 21 July 1997, when the suit was filed was within the three years prescribed under the Law of Limitation
D Act 1971. The appellant has appealed against this decision.

Before us in this appeal the appellant was represented by Mr Rweyongeza assisted by Mr Mwakipesile, learned counsel. The respondent was advocated for by Mr Njulumi and Mr Lugua, learned advocates.
E In the Memorandum of Appeal three grounds of appeal were raised. First, that as the Declaratory Order sought was an ancillary relief the learned judge misdirected himself in law in holding that the period of limitation was six years. We need not be delayed by this submission
F which, in our view, has no merit. As correctly submitted by Mr Njulumi, it is common knowledge that in this country the period of limitation in relation to any proceeding in Court from the date on which the right of action accrues for such proceeding is prescribed under the
G Law of Limitation Act 1971.

In this case, there is no gainsaying that item 20(1) of the plaint among others, seeks a declaratory order that the appellant had no legal justification under the loan agreement to seize the motor vehicle.
H Under the Act we are clear in our minds that a Declaratory Decree falls under item 24 in Part I of the First Schedule to the Act. The prescribed period of limitation is six years. From 24 March 1994, when the motor vehicle was seized to 21 July 1996, the time when
I the suit was instituted, it is a period well within the six years prescribed by law. As the basis of the claim was a declaratory order, we think it

does not matter whether the relief sought was ancillary or incidental to the substantial relief as claimed by Mr Rweyongeza. We think the period of limitation prescribed under the law is the same, *viz* six years. We are satisfied that the learned judge was correct in holding that the limitation period was six years. Mr Rweyongeza's criticism of the judge on this point is, with respect, baseless, we dismiss it.

Grounds two and three concern the torts of trespass and conversion. The gravamen of Mr Rweyongeza's complaint was that the learned judge misdirected himself in law in holding that for the torts of trespass and conversion, the cause of action arose on 10 April 1996, when the appellant refused to hand over the motor vehicle. In support of this ground, the following reasons were advanced. First, contrary to what the learned judge held, the cause of action arose on 23 March 1994, when the motor vehicle was unlawfully seized. The respondent's right of action in the suit accrued on this date, in which case, he further contended, the period of limitation relating to the proceeding in this suit commenced to run from this date. In the instant case, he said, if the period of limitation is computed from this date, the three years period of limitation prescribed under the Act for suits founded on tort had long elapsed by 21 July 1997, when the suit was instituted. Second, in circumstances where, as in this case, the taking of the property was unlawful *ab initio*, the time of limitation starts to run from the date when the property was seized. He said there was no reason at all for the aggrieved party to wait for the refusal to release the property upon demand before filing the suit. Third, the suit having been instituted after the expiration of the period of limitation prescribed under the Act the learned judge should have dismissed it under the provisions of Order VII, rule 6 of the Civil Procedure Code. The reason he said was that in the pleadings no ground had been shown upon which the suit was to be exempted from the clear requirement of the law on limitation. Fourth, no distinction was made by the learned judge between lawful and unlawful seizure of the motor vehicle. In this case, Mr Rweyongeza went on in his submission, where, the seizure of the motor vehicle was unlawful *ab initio*, had the learned

judge addressed this fact, he would have come to the finding that the suit was time-barred.

Dealing with the torts of trespass and conversion the learned judge was of the view that the torts of trespass and conversion are closely interlinked. We agree with this view. Regarding the narrow distinction between the torts of trespass and conversion, the learned authors Heuston and Buckley in **Salmond and Heuston on the Law of Torts,** (21 ed) at page 94 have stated:

> The tort of trespass consists in committing without lawful justification an act of direct physical interference with goods in the possession of another person. It is trespass to take away goods. The tort of trespass is wider than conversion in that a mere act of interference is sufficient ...but it is narrower than conversion in that the act of interference must be direct

And at page 95, the learned authors further observe:

> A trespass to goods is actionable *per se* without any proof of actual damage. Any unauthorised touching or removing is actionable.

In this case, it is not in dispute that the motor vehicle was unlawfully seized on 24 March 1994. According to Mr Rweyongeza for the appellant, the cause of action with regard to the torts of trespass and conversion arose on this date. In that situation, he further contended, if the time of limitation is computed from this date, the there years period of limitation prescribed under the Act had long expired by 21 July 1997, when the suit was filed. On the other hand, Mr Luguwa, for the respondent, vehemently countered this submission. He submitted that the cause of action with regard to the torts of trespass and conversion arose on 4 October 1996, when the appellant indicated in its letter refusal to hand over the motor vehicle to the respondent. As indicated earlier, the learned judge was in agreement with Mr *Luguwa's* submission. Consequently, he held that the cause of action with regard to the torts of trespass and conversion arose on 4 October 1996 when return of the motor vehicle was refused. With respect, we think in the circumstances of this case, the learned judge was in error as regards the tort of trespass. We agree with the learned authors in *Salmond*

and Houston (*supra*)that a trespass to goods is actionable *per se*. For that reason, we see no reason at all why the respondent in a situation where, as in this case, his property *viz* the motor vehicle was, as conceded by the appellant's counsel unlawfully seized on 24 March 1994, should wait until 4 October 1996, before instituting the suit for redress. It is our view that in circumstances such as here, where, the tort of trespass was committed unlawfully from the outside, the cause of action arose on the date of the commission of the tort of trespass.

In this case, we are satisfied that the respondent's right of action for the proceedings in this case accrued on 24 March 1994 as submitted by Mr Rweyongeza. In that situation, the period of limitation of there years prescribed under the Act for the tort of trespass commenced on this date i.e. 24 march 1994. It follows therefore that by 21 July 1996, when the suit was filed, the period of limitation in regard to the tort of trespass had elapsed. In the event, we agree with Mr Rweyongeza, for the appellant that the learned judge erred in holding that the suit was not time-barred in respect of the tort of trespass. The ground pertaining to the tort of trespass thus succeeds.

We will next deal with the tort of conversion. Broadly stated, conversion is an act or series of acts of wilful interference without lawful justification with any property in a manner which is inconsistent with the right of another person whereby that other person is deprived of the use and possession of the property – see **Salmond and Heston** at page 897. In order to establish that the act of interference with the property on the part of the defendant that general principle is that it should be shown that demand was made for the release of the property but the defendant refused to comply. Without such indication of refusal to hand over the property to the plaintiff upon demand to do so, adverse detention of the property may not be proved. In this case, it was on 4 October 1996, when the appellant indicated its refusal to hand over the motor vehicle to the respondent. Applying this general principle to the instant case, we are satisfied that the learned judge cannot be faulted in his finding that the cause of action

A in regard to the tort of conversion arose on 4 October 1996. In that case, we agree with the learned judge that the suit was timeously instituted. We find no merit in this ground, it is dismissed.

B In the upshot, and to the extent indicated, the appeal is otherwise dismissed. The case is remitted to the High Court for hearing on merits. Costs in the cause.

C

CARITAS KIGOMA *v.* KG DEWSI LTD

D

COURT OF APPEAL OF TANZANIA AT MWANZA

(Kisanga, Lubuva and Lugakingira, JJ.A.)

E

CIVIL APPEAL No. 69 OF 1999

(From the ruling and order of the High Court of Tanzania at Tabora, Masanche, J. dated 17 September 1998 in High Court Civil Case No. 24 of 1997)

F *Civil Practice and Procedure – Ex-parte judgement – Application for extension of time to apply to set aside ex-parte judgment and (b) setting aside – What the Court must consider in the application.*

G The appellant was the defendant in the High Court and did not appear when the suit was called for hearing; and an *ex-parte* judgment was consequently given against it. The appellant then filed an application for two orders: first, for extension of time in which to apply to set aside the *ex-parte* judgment; second, to set aside the *exparte* judgment. Purporting to deal with the application as it related to extension of time, the H judge proceeded to consider whether the applicant had given good reason for its failure to appear on the date of hearing the case. The judge dismissed the application for extension of time, having found that the applicant had no good excuse for his non-appearance. The judge did not deal with the application to set aside the *ex parte* I judgment. The applicant appealed to the Court of Appeal.