

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
COMMERCIAL DIVISION**

CIVIL SUIT NO. 584 OF 2003

HUSSEIN HAMDANI..... PLAINTIFF

VERSUS

UGANDA ELECTRICITY BOARD..... DEFENDANT

Before: The Hon Mr. Justice E. S. Lugayizi

RULING

This ruling is in respect of a preliminary objection the defendant's counsel raised. The purpose of the preliminary objection was to show that the head suit was time-barred and that Court should strike out the plaint with costs under **Order 7 rule 11(d) of the Civil Procedure Rules**.

However, before Court goes into the merits of the preliminary objection it is wise to understand the background that gave rise to it. Briefly, the background is as follows:

In response to an invitation to the general public that the defendant made on 20th March 1976, the plaintiff purchased a number of bonds from the defendant. The total value of the bonds was to be British Pounds Sterling seventy four thousand two hundred and forty eight (E 74,248) at the date of redemption. The date of redemption was to fall on the fifth anniversary of the date of issue of the bonds. Indeed, the bond matured in 1981 and from 1982 onwards the plaintiff endeavoured to redeem them, but was not successful. Finally, on 29th September 2003 the plaintiff decided to sue the defendant in respect of the bonds under **HCCS No. 584 of 2003** and sought to recover the sum of money referred to above. In response to the plaintiff's suit the defendant filed a Written Statement of Defence denying the above claim and, among other things, gave the plaintiff notice of the preliminary objection that is the subject of this ruling. In short, that is the background to the preliminary objection.

In presenting the preliminary objection and replying to it Court permitted learned counsel (i.e. Messrs. Kanyemibwa for the defendant and Mbabazi for the plaintiff) to do so in writing. It was agreed that both counsel would file the submissions within a given time frame at the close of which Court would give a ruling. Both counsel duly complied and Court is indebted to them for the useful submissions they filed.

Without wasting time the gist of Mr. Kanyemibwa's submissions was that the plaintiff's suit was time-barred; and for that reason it was unsustainable both in law and equity. Mr. Kanyemibwa insisted that the bonds were a contract the parties entered into on 20th March 1976. Therefore, when the defendant failed to pay the plaintiff the agreed sum of money on the maturity of the bonds five years later, it breached the contract. As a result of the breach the plaintiff was immediately entitled to sue the defendant; and he should have done so within 6 years from the date of the breach of contract i.e. at least by 1988. However, the plaintiff did not do so. Instead, he sat on his rights for more than 20 years. He eventually woke up in September 2003 and filed the head suit. According to Mr. Kanyemibwa, the plaintiff's suit was obviously time-barred in view of **section 3(1)(a) of the Limitation Act (Cap. 80)** that requires actions based on contract to be filed within 6 years of the date when they arose.

In addition to the foregoing, Mr. Kanyemibwa argued that where a suit is time-barred under a Statute, as it is in the instant case, the law is that the plaintiff cannot lawfully seek to defeat the provisions of such Statute by invoking an equitable remedy such as specific performance. Among others, he relied on the following authorities to justify that position:

(a) **section 14 of the Judicature Act (Cap. 13)**, which shows that equity applies in Uganda only where there are gaps in the written law; and

(b) the rule that equity follows the law and not vice versa. (See **Erukana Kuwe v Vasrambai Damji Nader Civil Appeal** No. 2 of 2002)

Finally, Mr. Kanyemibwa urged Court to reject the plaint and strike it out with costs under **Order 7 rule 11(d) of the Civil Procedure Rules**.

In his submissions Mr. Mbabazi pointed out that the preliminary objection had no merit. First of all, he argued that the bonds in question were not ordinary bonds. They were bonds that the defendant issued under **the Local Loans Act (Cap. 240)**. For that reason Mr. Mbabazi insisted that it was **the Local Loans Act (Cap. 240)** that governed their redemption, but not the general law of contract. Consequently, **section 3(1) (a) of the Limitation Act (Cap. 80)** would not affect the said bonds. Secondly, Mr. Mbabazi submitted that the equitable remedies that the applicant sought i.e. specific performance and the relief against unjust enrichment were very relevant in this case considering that the defendant does not deny that he received the plaintiff's money. Mr. Mbabazi finally called upon Court to over-rule Mr. Kanyemibwa on the preliminary objection.

After carefully considering the above submissions Court agrees with Mr. Kanyemibwa that the plaintiff's suit (i.e. **HCCS No. 584 of 2003**) is time- barred and these are Court's reasons for holding that view. Firstly, according to various authorities e.g. **Black's Law Dictionary Seventh Edition at pages 168 and 169, Byrne's Law Dictionary at page 127 and Words And Phrases Legally defined Volume 1 at page 176, a bond** is some form of contract under seal to pay a **sum** of money. From the pleadings and the agreed facts the arrangement between the parties herein consisted of an offer to sell the bonds on the terms the defendant put forward, an acceptance to buy the bonds on such terms and the consideration. The consideration was the money the plaintiff paid for the bonds in return for the defendant's promise to pay him the value of the bonds and some added interest on redemption. It is settled law that such arrangement amounts to a contract.

(See Carlill v Carbolic Smoke Ball Company (1892) 2 QB 484; Otis Elavator Company Ltd v Bhajan Singh and Others; and Jetha Petrol Station Ltd v Jamal Premji Lalal Ltd (1958) E.A. 555. Consequently, the ordinary general law of contract would apply to the said arrangement. Equally so, **section 3(1) (a) of the Limitation Act (Cap. 80)** that limits the time within which actions founded on contract may be filed would apply to the arrangement. From the foregoing, it follows that Mr. Mbabazi's argument to the effect that the bonds in question are not contracts and therefore section **3(1)(a) of the Limitation Act (Cap. 80)** does not affect them has absolutely no merit. Even **the Local Loans Act (Cap. 240)**, that Mr. Mbabazi referred to as the relevant law in this case, is in Court's opinion irrelevant. Indeed, Court has found no nexus between that law and the bonds in question.

Clearly, the above finding should have at this point wholly disposed of the preliminary objection that is the subject of this ruling if the plaintiff had not also sought to rely on equity for the success of his case against the defendant.

Paragraph 3 of the plaint, among other things, shows that in case Court did not grant the plaintiff the remedy he sought against the defendant for breach of contract Court should grant the plaintiff a **“relief in equity against unjust enrichment”**. Therefore, the question to answer at this point is whether a relief in equity against unjust enrichment would be available to the plaintiff? In Court’s opinion such relief would not be available to the plaintiff in the circumstances of this case. This is mainly because equity follows the law. **(See Erukana Kuwe v Vasrambai Damji Nader (supra))**. As Court earlier on pointed out **section 3(1) (a) of the Limitation Act (Cap. 80)** sealed the fate of the head suit. The said suit is time barred and the plaintiff cannot lawfully obtain a remedy under it. For that reason the plaintiff cannot lawfully manoeuvre the doctrines of equity in order to achieve what the written law has clearly said he ought not to achieve. All, in all, Court has no choice but to conclude that the head suit is time- barred under **section 3(1) (a) of the Limitation Act (Cap. 80)**. In the circumstances, Court must reject the plaint and strike it out with costs under **Order 7 rule 11(b) of the civil Procedure Rules**; and it is so ordered.

E.S. Lugayizi

(Judge)

22/4/2005

Read before: At 9.53 a.m.

Mr. P. Ahimbisibwe for the def.

Mr. N. Muhangi def’s Board Sec.

Mr. Abasi Bukenya for the p1.

Mr. Sewanyana c/clerk

E.S. Lugayizi

(Judge)

22/4/2005