

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA

(COMMERCIAL COURT DIVISION)

HCT-00-CC-CS-0307-2005

PETER MULIRA  
T/A MULIRA & CO ADVOCATES

PLAINTIFF

VERSUS

MUMTAZ KASSAM

DEFENDANT

**BEFORE: THE HONOURABLE MR. JUSTICE FMS EGONDA-NTENDE**

**RULING**

1. The defendant raises a preliminary objection to this suit. It is contended that this suit is barred by limitation of time, and as such, it should be dismissed. Mrs Namudu Janet Katende, learned counsel appearing for the defendant, submitted that the cause of action in this case became known to the plaintiff in March 1998. A period of six years has since elapsed before this action was brought.
2. Mr. John Matovu, learned counsel appearing for the plaintiff, replied that in the first place this objection was misconceived as the point could only be decided after a trial of the case, and evidence in the case examined. Secondly he submitted that passing off was a continuing cause of action, that continued to subsist long after March 1998. He therefore prayed that this preliminary point of law should be dismissed.
3. I shall start by setting out the plaint in part,  
'5. Upon a date which the plaintiff cannot specify the Defendant commenced using the name of Mulira & Co. Advocates for business not connected with the plaintiff.

**6. PARTICULARS OF THE DEFENDANT'S USE**

The best particulars of use the Plaintiff can give are:-

- (a) An advertisement I the New Vision of the 12<sup>th</sup> day of August, 1994.
- (b)

Letterhead, which clearly indicated the plaintiff's firm as the Kampala Office of the Defendant.

- (c) Letter dated the 26<sup>th</sup> day of February, 1996, from the Commissioner for Land Registration.
- (d) Letter from the Commissioner for Lands dated the 12<sup>th</sup> day of October, 1998.
- (e) Caveat forbidding any dealing with land dated the 28<sup>th</sup> day of November 1995.
- (f) Affidavit dated the 28<sup>th</sup> day of November 1995.
- (g) Letter dated the 15<sup>th</sup> day of December 1995.
- (h) Caveat dated January 1995.
- (i) Statutory Declaration dated the 21<sup>st</sup> day of November 1994.
- (j) Letter dated the 13<sup>th</sup> day of January 1995.
- (k) Affidavit dated the 7<sup>th</sup> day of August, 1995.
- (l) Letter dated the 22<sup>nd</sup> day of June, 1993.
- (m) Letter dated the 25<sup>th</sup> day of January, 1996.

6. As a result of this the Plaintiff suffered damage through being billed for taxes and in his professional work. 7. The Plaintiff will contend at the trial that the defendant made misrepresentation calculated to benefit at the expense of the Plaintiff.'

4. The plaintiff does not disclose when the plaintiff became aware of the actions complained of but it is clear on an annexure to the plaint dated 18<sup>th</sup> November 1998, that by that date the plaintiff was aware of the actions complained of. The actions complained of are between 1994 and 1998. This action was filed in this court in April 2005. Definitely this was after more than six years since the cause of action arose or the plaintiff became aware of the same.
5. Section 3 of the Limitation Act, states,
  - '(1) The following actions shall not be brought after the expiration of six years from the date on which the cause of action arose----
  - (a) actions founded on contract and on tort
  - (2) An action for an account shall not be brought in respect of any matter which arose more than six years before the commencement of the action.'
6. Passing off is a tort. And if this is the basis of the current action, then it is barred from being brought, and thus entertained by this court, if it is more than six years old. This means that this court has no jurisdiction to proceed to trial over such a matter, once it is evident on the pleadings, as it ought to be, and as it is in this case, that it is barred by the Limitation Act. For that reason, I am unable to agree with Mr. John Matovu that this matter must go to trial first before a decision is made on the matter.

7. Turning to Mr. John Matovu's second argument that the tort of passing off is a continuing tort, and impliedly the cause of action continues to arise for as long as it is alleged the defendant continues to commit the tort. I would agree with Mr. Matovu in this regard but only to that extent. When applied to this particular case, there are no facts pleaded to show that the plaintiff alleges that passing off continued to be committed up to the date of filing of the action or any particular date for that matter. In the result, it is not available to the plaintiff to argue that some part of the acts complained of fall outside the limitation period. This has not been shown to be the case on the plaint.
8. I accept the point of law raised by the defendant and find that this suit is time barred. It is dismissed accordingly with costs.

Dated at Kampala this 12<sup>th</sup> day of October 2005

FMS Egonda-Ntende  
Judge