

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT KAMPALA  
(COMMERCIAL COURT DIVISION)**

**HCT-00-CC-CS-0790-2003**

**GREENLAND BANK (IN LIQUIDATION) ::::::::::::::: PLAINTIFF**

**VERSUS**

**DR. APUULI KIHUMURO**

**MRS. MARGARET KIHUMURO ::::::::::::::: DEFENDANTS**

**Legislation referred to:**

1. *Limitation Act.*

**BEFORE: THE HONOURABLE MR. JUSTICE YOROKAMU BAMWINE**

**RULING:**

When this suit came up for a scheduling conference, Mr. Mugenyi for the defendants raised a preliminary point of law. He argued that the plaintiffs have no cause of action against the defendants. In his view, the suit is time barred. He cited to me S. 4 (1) of the Limitation Act.

Following the revision of our laws, it is now S. 3 (2) of the Limitation Act.

That law states:

***“(2) An action for an account shall not be brought in respect of any matter which arose more than 6 years before the commencement of the action.”***

It is Mr. Mugenyi’s view that according to the plaintiff’s pleadings, the defendants operated an account; they over drew it; and a sum of Shs.68, 104,587- is outstanding.

It is his view further that according to the pleadings, the last amount is indicated on the statement of Account as having been withdrawn on 6/10/95. That a demand was made in 1999 but a suit was not filed until 2003. In his view, by the time the suit was filed, the cause of action was already time barred. Mr. Sembatya for the plaintiffs does not agree. He invited me to find that the cause of action accrued to the plaintiffs in 1999 when a demand for payment was made and the defendants ignored it. Accordingly, it is the view of counsel that when the plaintiffs filed the suit in 2003, the same was not time barred.

I have very carefully addressed my mind to the point of law raised by Mr. Mugenyi. The law as stated in S.3 (2) of the Limitation Act is simply that an action cannot be brought after the expiration of six years from the date when it accrued. Of course if it is a simple contract, the determination of the accrual date may not be difficult to ascertain. Court would look at the terms of the contract. But if it is an action for the recovery of a debt, the determination of the accrual date may not be easy to ascertain and therefore become an issue as herein.

Generally speaking, a debt is repayable when it is due. And that date becomes the date when the cause of action arises. Coming specifically to Bank Law, this Court is of the view that a banker cannot recover a dormant overdraft more than six years after the last advance. For purposes of this case, this appears to have been 6/10/95. This must be taken as the date when the last overdraft was extended to the defendants. A suit filed after more than 6 years would fail unless a demand for payment is on record to have been made in between. In the instant suit, the last overdraft was extended to the defendants in 1995. A demand was made for its payment in 1999. The suit would only have been time barred if, in 1999 no such demand had been made and the suit was filed after 2001. For this reason alone, I would accept Mr. Sembatya’s argument that the suit is maintainable against the defendants.

In the interests of justice, I will discuss one more aspect which in my view defeats the defendants' prayer for the Court to dismiss the suit on account of being time barred.

From the records, when the issue of indebtedness was put to the defendants in 1999, they appear to have made a partial admission of the claim. They did so through their lawyers vide their letter of 22/11/99. The plaintiffs have pleaded the defendants' purported acknowledgement of a debt in para 4 (e) of their plaint. Assuming this to be the case, then S. 24 of the Limitation Act appears to be applicable. Under that law, where any right of action has accrued to recover a debt or other liquidated pecuniary claim and the person liable or accountable thereafter acknowledges the claim or makes any payment in respect thereof, the right shall be deemed to have accrued on and not before the date of acknowledgement or the last payment. Since the plaintiffs have pleaded the fact or the alleged act of acknowledgment of a debt by the defendants, this now makes it a triable issue.

When all is said and done, I hold that where a loan is granted without agreement as to the date of repayment, as it appears to be the case herein, the loan is repayable on demand. If demand is made 6 years after the advancement of the loan to the defendant, such a claim is time barred by virtue of S. 3 (2) of the Limitation. Since the last over draft is deemed to have been extended on 6/10/95 when the defendants are on record to have made the last withdrawal from their account, by the time a demand was made against them in 1999, the account had not been dormant for six years to warrant dismissal of the suit filed in 2003. The cause of action accrued to the plaintiffs in 1999 when a demand for payment was made and the defendants ignored it. In any case, the pleadings raise the issue of acknowledgment of a debt by the defendants which issue ought to be investigated and remedied. The objection is overruled. The case shall proceed to scheduling and hearing. Plaintiffs shall have the costs of the ruling.

Yorokamu Bamwine

**J U D G E**

21/03/2006

**Court:** Scheduling conference on 10/04/2006 at 11 a.m.

Yorokamu Bamwine

**J U D G E**

21/03/2006