

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

HCT-00-CC-CS-0030-2006

INTERNATIONAL CREDIT BANK IN
(LIQUIDATION)..... PLAINTIFF

VERSUS

HAPPY JAMES TUMWEBAZE KWERIJA RESPONDENT

BEFORE JUSTICE LAMECK N. MUKASA

RULING:

The Plaintiff, International Credit Bank (in liquidation) filed this suit on 17th January 2006 seeking to recover a sum of shs13,193,044/= being the loan plus interest granted by the plaintiff to the Defendant on or about the 24th April 1997. The defendant in letters written to the plaintiff dated 23rd October, 3rd and 25th November 1997 acknowledged his indebtedness to the plaintiff.

In paragraph 6 of his written statement of defence the defendant stated that he was to raise a preliminary objection that the suit is time barred and bad in law. When this suit was called before me for a scheduling conference Mr. Peter Katutsi, Counsel for the defendant raised the objection. Counsel submitted that paragraph 4 of the plaint read together with annexure A1 to the plaint show that the overdraft facility was repayable within six months. Annexure A1, a letter from the plaintiff to the defendant, is dated 24th April 1997 and informed the defendant that an overdraft facility of Shs7, 500,000/= had been approved for a period of six months. Counsel pointed out that the six months period expired on 24th October 1997. By

letter 23rd October 1997, annexure A11, the defendant applied for an extension of the repayment period for another six months. There was no response from the plaintiff. However in his yet another letter dated 25th November 1997, also annexed among Annexure A11, the defendant states:

“I have now formally learnt that the facility has been restructured and is now a loan to be repaid in four (4) months. –“

Counsel for the defendant relied on section 3 of the Limitation Act which provides that actions founded on contract shall not be brought after the expiration of six years from the date or which the cause of action arose. He argued that the four months within which the restructured loan was to be repaid if computed from the date of that letter – i.e. 25th November 1997 - , expired on 27th February 1998. This suit was filed on 17th January 2006, a period coming to eight years. Counsel prayed that the plaint should be rejected under Order 7 rule 11 (d) of the Civil Procedure Rules and dismissed. Mr. Hamid Lugolobi, Counsel for the Plaintiff, did not make any reply. He instead called on Court to make a ruling.

Order 7 rule 11 (d) of the Civil Procedure Rules provides that a plaint shall be rejected where the suit appears from the statement in the plaint to be barred by any law. Actions founded on contract which are more than six year old from the date on which the cause of action arose are barred by section 3(I) (a) of the Limitation Act. Order 7 rule 11 CPR is couched in mandatory terms and where a period of limitation is imposed it begins to run from the date on which cause of action accrues. See Eridadi Otabong Waimo Vs Attorney General S.C.C. A No 6 of 1990 (1992) V KALRI If 25th February 1998 is considered as the last date when the restructured loan would have been paid, that is after the expiry of the four months and the plaintiff's cause of action regarded to have accrued then. The limitation period of six years had long expired by 17th January 2006 when this suit was filed. If there was any exemption or disability, so to say, the same should have been pleaded. Where a plaintiff wishes to rely on any exemption when caught up by the provisions of Order 7 rule 6 of the Civil Procedure Rules this must be specifically stated in the pleadings. If it is not the plaint should be rejected. See Iga Vs Makerere University (1972) EA 65 In Uganda Revenue Authority Vs Uganda Consolidated Properties Ltd (1997 – 2001) UCL 149 Justice Twinomujuni JA stated:-

“Time limits set by statutes are matters of substitutive law and not mere technicalities and must be strictly complied with.”

The instant suit was caught up by the statutory limitation period and no exemption was stated in the plaintiff's pleadings. In the premises the plaint is rejected and the suit dismissed with costs.

Hon. Mr. Justice Lameck N. Mukasa

Judge

20th April 2007