

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA

COMMERCIAL COURT DIVISION

HCT-00-CC-CS-0029-2005

TROPICAL AFRICA BANK LTD PLAINTIFF

VERSUS

C C JUUKO SSALONGO DEFENDANT

BEFORE: THE HONOURABLE MR. JUSTICE FMS EGONDA-NTENDE

RULING

1. The plaintiff is a commercial bank which on 10/06/1997 advanced an overdraft of Shs.55,000,000.00 with interest at 27% per annum to Waswa & Co Ltd. The overdraft was for only 6 months. The defendant guaranteed this overdraft and mortgaged real property as security for the same. Waswa & Co. Ltd defaulted on payment. On 30th September 1999 the plaintiff sold the mortgaged property and realised Shs.100,000,000.00. This sum was not enough to retire the loan. There was a balance of Shs.30,597,870.00 and as at the 31st January 2003, the balance outstanding was Shs.81,805,916.00 which the plaintiff now seeks to recover from the defendant with interest at the rate of 27% per annum till payment in full, vide its amended plaint, filed on 30th May 2007.
2. Initially the plaintiff had filed, on 12th January 2003, an action seeking to recover Shs.115,148,409.00 with interest at the rate of 27% per annum from 1st April 1999 till payment in full. In response to this claim the defendant had filed a defence that this sum was not due, as the plaintiff had sold the mortgaged property worth Shs.400,000,000.00 to pay off the said loan and had failed to account for the proceeds of the sale to the defendant.
3. As the case progressed to trial, the plaintiff discovered that it had actually sold the defendant's property way back in 1999, and this resulted in the amended plaint being filed to reflect the current position. At scheduling conference I raised the issue to be determined as a preliminary point whether this suit was not time barred given the provisions of Section 18(5) of the Limitation Act, which barred actions recovering interest after the expiration of 6 years from when the interest became due. I fixed the case for hearing of this preliminary point of law.
4. At the hearing of this preliminary point of law the defendant did not up turn and the matter proceeded without him. Mr. Siraje Ali, learned counsel for the plaintiff, stated in part, 'We concede that a portion of the claim is time barred but a portion of the claim is made up of the principal which was not paid by the defendant. We submit that that part is not not time barred and the defendant is liable to pay that sum.'
5. Section 18(5) of the Limitation Act provides,

‘No action to recover arrears of interest payable in respect of any sum of money secured by a mortgageshall be brought after the expiration of six years from the date on which the interest became due:’

6. The action now before this court was brought on 30th May 2007, given the amended plaint, filed on that date that pleaded essentially new facts. It appears that a significant part of this claim is for interest that was due more than six years ago. As was conceded by the Mr. Siraje Ali, part of this claim is clearly time barred. Unfortunately the plaint does not disclose, of the sums claimed which portion is interest due for more than six years, and which portion is interest due for less than six years.

7. As the plaint has mingled together sums of money barred by statute with a portion which may not be statute barred it is not possible to carry this suit forward in that state. In addition the plaint does not show any ground which would exempt the claim from being barred by statute, as required under Order 7 rule 6 of the Civil Procedure Rules. It is not possible on the plaint to identify the portions of the claim that are not time barred.

8. Accordingly I reject the plaint in this suit with costs as it is barred by Section 18(5) of the Limitation Act, pursuant to Order 7 rule 11(d) of the Civil Procedure Rules.
Signed, dated and delivered this 20th day of September 2007

FMS Egonda-Ntende
Judge

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