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THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
[COMMERCIAL COURT]
CIVIL SUIT No. 18 of 2016

SEBOWA JOLLY JOE **PLAINTIFF**

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VERSUS

EQUITY BANK UGANDA LIMITED **DEFENDANT**

BEFORE: HON. MR. JUSTICE B. KAINAMURA

JUDGEMENT

15 Sebowa Jolly Joe (herein after referred to as the “plaintiff”) brought this suit against Equity Bank Uganda Limited (herein referred to as the “defendant”) seeking for special damages of UGX 70,042,500/= being purchase price of his motor vehicle, loss of earnings of UGX 270,000,000/=, general damages and inconveniences, interest and costs.

The defendant deny liability and allege that the plaintiff grossly defaulted on his loan payment obligations and the guarantors fully settled the plaintiffs loan obligations and that the defendant, 20 its agents, workmen and or employees have never impounded the plaintiff’s motor vehicle. That the said Molly who is believed to have impounded the plaintiff’s motor vehicle does not work for the defendant company.

The plaintiff adduced its evidence through three witnesses while the defendant produced one 25 witness where upon Counsel for the parties addressed the court in written submissions.

BACKGROUND

The plaintiff's case is that the plaintiff was a customer of the Uganda Microfinance Limited, Corporate Branch which was liquidated and taken over by the defendant. The plaintiff on the 20th June 2008, obtained a loan to the tune of UGX 12,000,000/= (Twelve Million Shillings) and as security he deposited the log-book of his lorry Isuzu Forward MV No. UAF 086 Q. The plaintiff
5 by 22nd October 2009 had cleared the full loan and the loan account was closed by the defendant on the same day.

On the 28th December 2009, the defendant's employee a one Molly working with the defendant's Bank Kamwokya Branch and well known to the plaintiff went with another person claiming to be a court broker to a garage in Kawempe Division and fraudulently impounded his vehicle
10 claiming that the plaintiff owed a sum of UGX 3,200,000/= (Three Million Two Hundred Thousand Shillings). The plaintiff demanded for his truck from the defendant since he had fulfilled his obligations under the loan agreement but till to date the defendant has failed to hand over the plaintiff's truck. The plaintiff has lost his truck, source of income and has faced inconveniences as a result of the defendant's fraudulent actions of which he seeks recourse.

15 On the other hand the defendant contend that the plaintiff had defaulted on the loan repayment obligations and the defendant called upon the guarantors who paid all the outstanding amount. That the defendant no longer had interest in the plaintiff's motor vehicle and was willing to release the logbook to him and the defendant denies all allegations that its employees impounded the vehicle.

20 The following issues were framed and agreed upon for this court's determination during scheduling.

1. Whether the suit is barred by limitations

2. Whether the defendant impounded the plaintiff's lorry Isuzu Forward Motor Vehicle No. UAF 086Q and if so, whether the impounding was lawful.
3. What remedies are available to the parties.

Issues One: Whether the suit is time barred

- 5 It was Counsel for the defendant's submission that the plaintiff in his plaint avers that the motor vehicle was impounded on 28th day of December 2009, the plaintiff filed the instant case on 15th January 2016 well passed the 28th December 2015 when the period of six years stipulated under Section 34 of the Limitation Act for an action, as the present one, founded on tort of conversion, should have been filed.
- 10 Counsel submitted that the principle that underlines the law of limitation is one of "once statute barred always statute barred" and that once an action is barred by law, court has no residential or inherent jurisdiction to entertain such matter (see *Mukula International Vs His Eminence Cardinal Nsubuga & Another [1982] HCB 13*).

Counsel further submitted that in as far Counsel for the plaintiff concedes that the case was filed
15 out of time, Counsel's contention that the plaintiff was sick immediately after the incident and only recovered in 2011 and accordingly the time should start to run from that time as provided under Section 21 of the Limitation Act was not legally tenable. According to Counsel for the defendant Section 21 of the Limitation Act is not available to the plaintiff given the particular circumstances of the case. That under Section 1 of the Limitation Act a person is deemed to be
20 under a disability while he or she is an infant or of unsound mind and that there was no proof that the alleged sickness of the plaintiff had affected his mental state.

Counsel further submitted that under O 7 rr 6 of CPR where a suit is instituted after the expiration of the period prescribed by the law of limitation the plaintiff should show the grounds upon which exemption from the law is claimed. That courts have emphasised the need to rely on the plaintiff only to determine whether or not a suit is barred (see ***Okeng Washington Vs Attorney General HCCS No. 16 of 2004***) and ***Iga Vs Makerere University [1972] EA 65***) and further that if a suit is brought after the expiration of the period of limitation and no ground of exemption from the law of limitation is pleaded in the plaintiff, the plaintiff must be rejected (see ***Uganda Railways Corporation Vs Ekwere D.O [2008] HCB 64***).

Counsel for the defendant based on the above authorities submitted that in the instant case there is no pleading whatsoever in the plaintiff showing the grounds upon which the purported exemption from the law of limitation is based. That grounds for exemption are only stated in the submission of Counsel for the plaintiff who relies on the testimony of PW1 the plaintiff- who testified that he was sick and was admitted in hospital in January 2010 which according to Counsel does not merit reliance on Section 21 of the Limitation Act.

In reply, Counsel for the plaintiff submitted that the plaintiff testified that he was sick on the day the vehicle was impounded, was admitted to Mulago Hospital on 22nd January 2010 and was only able to peruse the matter of the vehicle with the defendant Kamwokya Branch on 19th September 2011 and that the six years limitation period should run from that date. Based on this Counsel for the plaintiff argued that the plaintiff's case is not barred by limitation because the delay by his sickness is a disability.

I have considered the plaintiff's plaintiff as well as the written submissions of Counsel which I have summarised above. It is not in dispute that the suit was brought after the period stipulated in

the Limitation Act. It is trite that the question whether a suit is barred by limitation can be considered by a perusal of the plaint only. O 7 r 11 (d) of CPR is to the effect that;-

“(d) where the suit appears from the statement in **the plaint to be barred by any law**”
(emphasis mine).

- 5 In ***Iga Vs Makerere University [1972] EA 65*** while considering O 7 r 11 (d) of CPR the East African Court of Appeal held that a plaint which is barred by limitation is a plaint that under the rule is “barred by law” and should be rejected under that order. It was further held in that case that a plaintiff who seeks exemption from the law of limitation has to plea it under O 7 r 6 of CPR.
- 10 I have perused the plaint at great length and i see no where in the plaint where the plaintiff sets out his inability to file the suit within the period stipulated by law due to a stated disability. I agree with the submission of Counsel for the defendant that if a suit is brought after the expiration of the period of limitation and no ground of exemption from the law of limitation is pleaded in plaint, the plaint must be rejected (see ***Uganda Railway Corporation Vs Ekwere D.O [2008] HCB 61***).
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In my view an attempt to explain the disability at the point of trial as the plaintiff attempted to and his Counsel’s submission to that effect is not legally tenable and accordingly shelter in Section 21 of the Limitation Act is not available to the plaintiff.

In the result the plaint filed in Civil Suit No. 18 of 2016 is rejected Under O 7 r 11 (d) of CPR.

- 20 Since this holding has the effect of disposing the entire suit, i will not delve with the other issues agreed for determination.

The defendant is awarded costs of the suit.

B. Kainamura

5 **Judge**

02.08.2018

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