

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL SUIT NO.1385/86

J. A OSMA.....PLAINTIFF

VERSUS

TRANSOCEAN (U) LTD.....DEFENDANT

BEFORE: The Hon. Mr. Justice G. M Okello

RULING

When this suit was called for hearing before me, Mr. Malinga for the Defendant raised a preliminary objection in point of law contending that the suit is time barred misconceived, bad in law and does not disclose a proper cause of action against the defendant and prayed that it should be rejected under O 7 r 11(d) of the CPR. The Defendant had raised this point under paragraph 4 of their W.S.D.

For the Plaintiff, Mr. Donge opposed the preliminary objection hence this ruling.

The principle applied in determining whether or not a plaint discloses a cause of action is that the court must look only at the Plaint. See **Onesforo Bamuwayira and 2 others .vs. A.G (1973) HCB p.87; Nagoko .vs. Sir Charles Turyahamba and Anor (1976) HCB 99.**

In the instant case the relevant parts of the pleadings are as follows:

“Plaint_

3, Plaintiff’s action against the defendant is in detinue for the wrongful detention of his vehicle Dutsun Station wagon.

4. In late 1978 the Plaintiff imported a reconditioned Datsun Station Wagon p.610 Engine number CLS.625367 Chassis number p.610—831976 from Yokohama Japan which vehicle arrived at the Port of Mombassa on or about 14th march 1979 as indicated in the defendant's Cargo Dispatch Certificate referred to above as an annexure 'A.'

5. The said vehicle was cleared from the port of Mombassa by the defendant company and the vehicle arrived in Kampala on 10th September 1979 as per the defendant's cargo Dispatch Certificate referred to above as annexure 'A'.

6. To date the said vehicle has not been handed over to the plaintiff and no explanation offered to him despite the numerous efforts the plaintiff made to get his vehicle released,

7. Notice of Intention of begin the suit was served on the defendant on 29th July 1986”.

Paragraph 4 of the defendant's W.S.D reads thus;-

“4. Without prejudice to the foregoing, the defendant shall aver that the suit is time barred, misconceived and bad in law, does not disclose a proper cause of action against the defendant”.

Mr. Malinga argued that under section 4 of the Limitation Act Cap 70 Laws of Uganda, actions in torts should be instituted before the expiration of six years from the date when the cause of action accrued. He submitted that in the instant case, the suit being in tort of detinue, the action must be instituted before the expiration of six years from the date when the cause of action accrued. Counsel pointed out that in the instant case, the plaintiff does not aver the date of effective demand by the plaintiff for the delivery of the vehicle to him after its arrival in Kampala on 10th September 1979. He submitted that in that case, the date of demand is taken to be 10.9.79 because in his view detinue is not a continuing tort for the purpose of limitation. That his date therefore constitutes the date when the cause of action accrued, That the action having been instituted on 14/11/86 as shown the “Received” stamps of the court on the Plaintiff, the suit is instituted well after the six years period from the date when the cause of action accrued, That the suit having been barred by Limitation Act must be rejected under O 7 r 11 (d) CPR. He relied on the following cases-

(1) Iga .v. Makerere University (1972) EA 05

(2) Suwali Kidimu .v. A.G (1975) HCB 87

(3) Musomba .v. West Mengo District Administration (1971) EA 379.

For the Plaintiff, Mr. Donge contented that the suit is not statute barred because the tort of detinue is based on wrongful detention of the Plaintiff's chattel by the defendant. That so long as the wrongful detention of the Chattel continues, the cause of action also continues. He submitted that detinue is a continuing tort.

As regards the of effective date of demand by the Plaintiff for the delivery of the vehicle, Mr. Donge submitted that the demand was made on 27.9.86, when the defendant, was given notice of intention to sue as indicated in paragraph 7 of the Plaint, He submitted further that even if the cause of action is taken to have arisen on 10.9.79, there was still a cause of action because detinue as a tort is continuing since the defendant still continues to wrongfully holds the chattel.

Mr. Malinga replied that the effect of Limitation Act was not to abolish the cause of action but to deny the Plaintiff remedy through court action because of his delay in instituting the suit.

From the above argument, I am of the view that the issue of the dispute between the parties is whether detinue is a continuing tort. What is detinue? Detinue may be stated to be a wrongful retention by the defendant after demand of possession of a chattel which the Plaintiff is entitled to immediate possession of. It is significant to note that there must be a demand by the Plaintiff of the release of the chattel and a refusal by the defendant to release the same in order to constitute a cause of action in the tort of Detinue.

As to whether this, type of tort is a continuing one for the purpose of Limitation Act, it is important to consider the nature of the tort because those torts like nuisance, false imprisonment and occasionally trespass to land which though may be done once but which consequences and damages arising from them are continuous are regarded as continuing torts. **(Winfield and Jolowicz on Tort 12th Ed. Page 648—9).** In those types of torts, a fresh cause of action arises de die dem (from day to day) so long as the wrongful state of affairs continues, In such event the

Plaintiff can recover for such portion of the tort as lie within the time allotted by the statute of Limitation although the first commission of the tort occurred outside the period prescribed by the statute of limitation (see **Winfield and Jolowicz on Tort 12th Ed. Page 649**).

The gist of the wrong in a tort of detinue therefore lies in the wrongful detention of Property by the defendant after demand by the Plaintiff for its release. So long as the wrongful detention of the chattel continues, the cause of action arises de die dem (from day to day) and in that event the plaintiff can recover for such portion of the tort as lie within the limitation period prescribed by the statute of Limitation even though the first commission of the tort occurred out side the time prescribed by law.

For the reasons stated above, I find myself in agreement with Mr. Donge that detinue is a continuing tort for the purpose of limitation.

In the instant case, the Plaintiff does not contain the date when the Plaintiff demanded from the defendant the release of the vehicle after its arrival in Kampala on 10.9.79, Mr. Malinga submitted that in the event of such a failure to make the averment, the date of demand should be taken to be the 10.9.79 when the vehicle arrived in Kampala and that this should constitute the date of the cause of action. I agree with that argument because for there to be a cause of action for tort of detinue, there must be a demand by the Plaintiff for the release of the chattel and a refusal by the defendant to release the same. In a continuing tort like in this one, this date constitutes the date of first commission of the tort but so long as the wrongful detention continues the cause of action arises from day to day,

In this case it is averred in paragraph 6 of the Plaintiff that the defendant still continues to wrongfully retain the vehicle to date. It means that the cause of action also continues. It follows that the action is not time barred for the portion of the tort which lie within the limitation period of six years. For the reasons given above, the preliminary objection is over-ruled.

G. M. Okello

JUDGE

30/10/90