THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL DIVISION

CIVIL SUIT No. 193 OF 2013

JAMES BALINTUMA :::::::::::::::::::::::::::::::::::::: PLAINTIFF

- ***Versus*** **-**

DR. HANDEL LESLIE :::::::::::::::::::::::::::::::::::::: DEFENDANT

BEFORE: HON. MR. JUSTICE STEPHEN MUSOTA

RULING:-

At the commencement of the hearing of this suit, Mr. Walukagga learned counsel for the defendant raised a preliminary point of law as pleaded in paragraph 6 of the written statement of defence that the dealings between the plaintiff and defendant created a money lending relationship. That pursuant to the Money Lenders Act Cap. 273, Section 19 thereof, it is provided that any action to recover monies lent under the Act must be taken within 12 months of the rise of the cause of action. That paragraph "c" and "d" of the defence read together show that the cause of action arose on 2/5/2012. The suit was filed on 28/6/2013 which was several months outside the prescribed 12 months.

Learned counsel further submitted that it is not in doubt that the plaintiff claims recovery of money as a Money Lender as per the definition under S.I of the Act. That since there is no exemption pleaded as required under S. 19 (2) this suit is Statute barred to that extent.

Further that pursuant to Order 7 rule 6 of the Civil Procedure Rules, where a suit is instituted after the expiry date prescribed by Statute, the plaint shall show ground where exemption is claimed otherwise the suit must be struck out. He relied on the case of ***Nabisere Geraldine Vs***

Mutebi HCCS No. 565 of 2012. That the suit should be struck out for being out of time with costs.

In reply, Mr. Sempebwa submitted that the cause of action is not barred as under Section 19 of the Money Lender's Act since the plaintiff is not a Money Lender who is subject to the Act. That the plaintiff does not fall within the ambit of S.1 (h) of the Money Lenders Act. That the plaintiff merely advanced a friendly loan to be repaid with interest. That the question of whether the plaintiff is a Money Lender is a matter of evidence which the defendant cannot merely allege in his pleadings. That in this case the defendant has not led evidence to the effect that the plaintiff is a Money Lender.

Learned counsel further submitted that S. 19 (1) of the Money Lenders Act applies only to Money Lenders which does not affect the plaintiff. That the objection be overruled with costs to the plaintiff.

In rejoinder Mr. Walukagga insists that the plaintiff is a Money Lender and was the General Manager of a Money Lending Firm called M/S Huadar Guangdong Chinese Company Ltd and that the defendant used to obtain loans from the Company. That the plaintiff decided to lend the defendant money directly and executed a Loan Agreement with a Security Provision for Security of the defendant's home and interest. That in MA No. 395 of 2013 the plaintiff's affidavit paragraph 16 deposes that the defendant had obtained other loans in the sums of UGX.91,750,000/=, UGX.104,512,500/= and UGX.28,500,500/=. Therefore the plaintiff was holding out as a Money Lender. That the facts in ***Jamba Soita Ali Vs David Sallam HCCS No. 400 of 2005*** are similar to those in this case. That with a provision for Security and Interest the transaction ceases to be a friendly loan.

I have considered the objection by Mr. Walukagga and the response by Mr. Sempebwa. I have studied the law quoted and applicable as well as the case decisions referred to by learned counsel for the parties.

According to the plaintiff's pleadings in paragraph 4 (f) of the amended plaint, he states that:

> ***"(f) The defendant took short term friendly credit loans from the plaintiff"***

In answer to this, the defendant in paragraph 6 of the written statement of defence pleaded that:

> ***"The defendant shall raise a preliminary point of law that the plaintiff's claim is time barred having been brought after 12 months prescribed by law. The alleged Loan Agreement is indicated to have been executed on 2nd March 2012 and the defendant ought to have settled the indebtedness by 2nd May 2012. The cause of action arose on the 2nd May 2012 and the suit was filed on the 28th June 2013, out of the prescribed time."***

The issue for determination is whether the plaintiff in this case is a Money Lender or was holding out as a Money Lender and thus bound by the Money Lenders Act. Learned counsel for the plaintiff insists that his client is not a Money Lender but simply advanced to the defendant a friendly loan.

A Money Lender is defined under S.1 of the Money Lenders Act as follows

(1h) Money Lender includes every person whose business is that of money-lending, or who advertises or announces himself or holds himself out in any way as carrying on that business whether or not that person also possesses or earns property or money derived from sources other than the lending of money and whether or not that person carries on the business as a principal or agent; but shall not include –

1. ***Any person bonafide carrying on the business of banking or insurance or any business not having for its primary object the lending money, in the course of which and for the purposes whereof he or she lends money ……..."***

From the pleadings in paragraph 4 (f) of the amended plaint coupled with the wording in the Loan Agreement executed on 2nd March 2012, it created a money lending agreement between the

plaintiff and defendant. The plaintiff is claiming money from the defendant as a Money Lender. The defendant took several Credit Loans from the plaintiff as pleaded in MA No. 395 of 2013 where the plaintiff's affidavit in reply, paragraph 16 unequivocally states that the defendant took loans of UGX. 91,750,000/=, UGX. 104,512,500/= and UGX. 28,500,500/=. These loans are separate from the claim in this suit. The agreement includes a provision for security and interest.

An ordinary money lending transaction should not have a security clause as indicated in Clause 2 and interest in Clause 3 of the Loan Agreement.

On this basis, I will find that the plaintiff was clearly holding out as a Money Lender as defined in S1 (h) of the Act. The plaintiff was willing to lend money to all and sundry. He was therefore bound by provisions of S. 19 (1) of the Money Lenders Act which provides that:

> ***"No proceedings shall lie for the recovery by a money-lender of any money lent by him or her after the commencement of this Act or of any interest of that money, or for enforcement made or security taken after the commencement of this Act in respect of any loan made by the Money Lender, unless the proceedings are commenced before the expiration of twelve months from the date on which the cause of action accrued."***

In the instant case, the cause of action arose on 2nd May 2012. The suit was filed on 28/6/2013 which was clearly outside the limitation period. There is no exemption that has been pleaded by the plaintiff as provided under S. 19 (2) of the Money Lenders Act. Therefore, I uphold the submission by Mr. Walukagga that this suit is Statute barred.

Pursuant to Order 7 rule 6 of the Civil Procedure Rules, where a suit is instituted after the expiration of the period prescribed by the law of limitation, the plaint shall show the grounds upon which exemption from the law is claimed. This has not been pleaded in the instant case.

Learned Counsel pleaded that the plaintiff was not a Money Lender but even if this were to be true, the contract he is suing on is illegal under the Act, S2 (4) (b) which provides that:

> ***"If any person carries on business as a Money Lender without having in force a proper Money Lenders license authorizing him to do so or being licensed as a Money Lender, carries on business as such in any name other than his or her authorized address or addresses; he or she contravenes this Act."***

Since in the instant case the plaintiff had no Money Lending License and was carrying out business of Money Lending, any agreement or contract between him and defendant was illegal. Therefore, either way, this suit must fail for being time barred, and on the other hand being illegal and a base cause. It is accordingly dismissed with costs.

I so order.

Stephen Musota
J U D G E

15.02.2017