

THE REPUBLIC OF UGANDA
IN THE SUPREME COURT OF UGANDA
AT MENGO

(CORAK: TSEKOOKO, J.S.C., KANYEIHAMBA, J.S.C., MUKASA-KIKONYOGO,
J.s.c.)

CIVIL APPEAL NO: 13 OF 1995

B E T W E E N

PETER MANGENI t/a MAKERERE INSTITUTE OF COMMERCE-----APPELLANT

A N D

DEPARTED ASIANS PROPERTY CUSTODIAN BOARD.....RESPONDENT

(Appeal from the ruling and orders of the High Court
of Uganda at Kampala (Mukanza, J.) dated 23rd
November 1994 in Civil Suit No.422/~~1994~~)

JUDGMENT OF TSEKOOKO, J.S.C:

I have had the benefit of reading in draft the judgment of Kanyeiamba, J.S.C.

This is an appeal against the ruling and orders of Kukanza, J, On 23/11/94 the learned judge dismissed the appellant's suit because the suit is time l|jarred by virtue of the provisions of the Civil Procedure And Limitation (Miscellaneous Provisions) Act, 1969 (Act 20 of 1969).

The facts of the case as gathered from the record of the Proceedings in the Court below are these. The appellant , Peter Mangeni, operated an Unicorporated educational business under the style or name Makerere Institute of Commerce. He operated the business in a building belonging to the respondent situate at Plot 399 Sekanyolya Road, Kampala. The facts appear to suggest that he was not a direct tenant of the Respondent. About 1988 the respondent appears to have discovered this anomaly and so the respondent required the appellant to vacate the building (hereinafter referred to as Suit premises). The appellant never vacated the suit premises voluntarily.

On 29/3/1989, the respondent used its enforcement officer to evict the appellant from the suit

premises, seized his property and equipment or property and equipment belonging to Makerere Institute of Commerce and had the appellant arrested by the police. The police took the appellant to court and charged him with some offences. On 2nd October, 1992 the Director of Public Prosecutions (D.P.P.) withdrew the Criminal charges from the appellant (see D.P.P.'s letter of 2/10/1992). This was followed by negotiations between the appellant and the respondent. As a result of the negotiations and through the intervention of the Inspector General of Government, some of the appellant's properties and equipment were restored to him on or about 6th January 1993. Thereafter the appellant served the respondent with Notice of Intention to sue the respondent seeking to recover the balance of his properties and equipment and for damages. He did not file the suit until 21/6/-1994

When the case came up for hearing the respondent who was the defendant in the court below raised objections to the suit on a number of grounds. The objection which was sustained by the learned judge and which is material to this appeal was that the suit was filed out of time because of the provisions of Section 2(a) and 2(c) of Act 20 of 1969. This is because the learned judge held that the cause of action was founded on tort and that the cause of action accrued on 6/1/1993 when the respondent restored some properties and equipment to the appellant.

The appellant has appealed against the ruling and order of the judge.

The Memorandum of Appeal contains two objections, namely;

1. The learned trial judge erred in law and in fact when he dismissed the appellant's case on an interlocutory application that the suit was time barred.
2. The learned trial judge misdirected himself and/or failed to properly evaluate evidence when he held that the case was not filed within the limitation period having noted that as late as October 1993 the respondent was inviting some relevant authorities for a meeting to Makerere Institute of Commerce, and that the appellant had every reason to hold and wait for the outcome of the discussion therefore, as an attempt to settle out of court.

In my opinion these two grounds refer to the same thing which is whether or not the suit was time barred.

Mr. Nagemi, counsel who represented the appellant before us and in the Court below agrees that some of the properties and equipment of the appellant were restored to him on 6/1/1993 after which the appellant served the Notice of Intention to sue the respondent.

Learned Counsel, however, contended that because of a letter reference BAC/5/50/SEKA dated 27/10/1993 written by the respondent to the previous advocates of the appellant inviting the appellant to a meeting, the period between 6/1/1993 to 27/10/1993 was postponed or suspended till after 27/10/1993. He cited African Overseas Trading: Co. vs acarya (1963) E.A. 468 and Shariff & Co. vs Chotai Fancy Store (1960) E.A. 374 to support his argument. With respect I do not find these decisions helpful. Mr. Nagemi half-heartedly urged us to hold that the doctrine

of mistake applies in this case because of Section 5(c) of Act 20 of 1969.

Mr. Ssekandi, for the respondent, contended, quite rightly in my view, that the letter of 27/10/1993 is valueless* He submitted in effect that the doctrine of mistake was never pleaded in the plaint and so cannot be raised now. He further contended that the letter of 27/10/93 did not suspend the time from running. Learned Counsel supported the ruling and orders of the trial judge.

The letter of 27/10/1993 was annexed to the plaint and marked as "E". It *reads as follows?*

"DEPARTED ASIANS' PROPERTY CUSTODIAN
BOARD (ESTABLISHED UNDER DECREE NO. 27
OF 1973)

Your Ref: AO/DO4/93

Our Ref: BAC/5/50/SEKA

P.O.BOX.579,
Tel: 231719/2/3
Kampala. Uganda.

27th October 1993.

M/S Ayena-Odongo & Co. Advocates,
Plot No.4 Parliament Avenue,
P.O. Box 10396,
Kampala.

Dear Sirs,

RE: PROPERTY BELONGING TO
MAKERERE INSTUTUTE OF
COMMERCE.

In response to your letter dated 20th October, 1993, this is to invite you to a meeting to be held at 10.00a.m. on Friday 29th October, 1993 in the DAPCB Board-Room.

By copy of this letter the under-mentioned are also requested to attend.

Yours faithfully,

Ruth Namirembe Olijio (Mrs)

FOR: AG EXECUTIVE SECRETARY.

cc: Property Management Division Manager

cc: Assistant Manager (Property Management)

cc: O/C CID/Custodian Board.

RNO/cln.

I agree with Mr. Ssekandi that this letter does not suspend the period of limitation from running against the appellant. The learned trial judge considered limitation period at pages 6 and 7 of his judgment in the following words:-

"According to the pleadings it is clear that when the goods were seized in 1989 the plaintiff was at the same time arrested and detained and the charge was only withdrawn in 1990. During that period of disability he could not sue and I do not subscribe to the submission of Mr. Maloba that the plaintiff never raised disability in his pleadings. From 1990 to January 1993 there was a move on the Part of the Inspector General of Government to see to it that the defendant delivers back all the goods seized from the plaintiff see Annexure C. The defendant complied by delivery of just part of the goods claimed by the plaintiff. That was on 6th January, 1993» Even as late as October, 1993 the defendant was inviting some relevant authorities for a meeting to discuss about the property belonging to Makerere Institute. The letter is dated 27th October 1993 Annexure "E". The plaintiff had every reason to hold and wait for the outcome of the discussion though the letter was apparently not copied to him. I am therefore agreeable with Mr. Nangeni that the cause of action arose on 6th January 1993 when the defendant did not deliver all the goods seized

from the plaintiff by the defendant's servants and or employees. The defendant admits in his written statement of defence that he was served with statutory notice of sixty days as prescribed by Section 1 of Act 20 of 1969. The plaintiff could not do that before 6th January 1993. The case should have been filed sixty days after the statutory period of 60 days in March 1993 but the same was filed on 21st January (sic) 1994 well after the 12 months.

I have looked at Section 4 of Act 20 of 1969 which deals with extension of the limitation period in case of disability. The plaintiff was not under disability from 6th January 1993 so as to extend his period within which he should have filed this action nor did Section 5 of Act 20 1969 assist him.

I was also referred to the limitation Act by Mr. Nagemi who argued that the action was not time barred because six years have not elapsed with effect from January, 1993 and that the action would be time barred by the year 1998. The learned Counsel had in mind Section of the Limitation Act Cap. 70 which says Actions shall not *be* brought after the expiration of six years from the date on which the cause of action arose [founded on tort or contract]. This is applicable to torts against the world in rem but in the instant case we are concerned with an action for tort brought against a scheduled corporation. *See* Section 2(a) and (c) of Act 20 of 1969”.

The date in the last sentence of the third last paragraph reading 21st January 1994. must be a typing mistake. It should be “21st June 1994” as the rest of the proceedings indicate.

The relevant provisions of Section 2(1) of Act 20 of 1969 state- 2(1) No action founded on tort shall be brought against,

- (a)
- (b)

(c) a scheduled corporation, after the expiration of twelve months from the date on which the cause of action arose". The respondent is a scheduled corporation. Therefore the above provisions apply to this case.

Section b of the same Act reads -

"4-If on the date when any right of action accrued for which a period of limitation is prescribed by this Act the person to whom it accrued was under disability, the action may be brought at any time before the expiration of twelve months from the date when the Person ceased to be under disability or died, whichever event first occurred, notwithstanding that the period of limitation had expired".

None of the provisions of the provisions & to this Section is relevant to this case.

The relevant provisions of Section 5 read -

"5-Where, in the case of any action for which a period of limitation is prescribed by this Act, either,

(a)

(b)

(c) the action is for relief from the consequence of a mistake, the period of limitation shall not begin to run until the plaintiff

has discovered the fraud or the mistake, as the case may be, or could with reasonable diligence have discovered it."

I have not been able to see where Mr. Nagemi pleaded, mistake in the plaint nor did he raise it in the court below. I cannot therefore consider it here. Even if I were to consider it, as I understand that doctrine ¹ think that the facts upon which Mr. Nagemi seeks to rely on the doctrine of Mistake under Section 5(c) of Act 20 of 1969 are too vague and insufficient to support his client's case. In any case Mistake was not a ground of appeal.

The learned judge considered relevant provision of Act 20 of 1969- I am unable to fault the conclusions of the trial judge on the issue of limitation period* I think, with respect, that the

learned judge was right in holding that the suit was filed out of time. I think, therefore, that the two grounds of appeal must fall.

I would dismiss this appeal. I would award the costs of the appeal to the respondent.

As Kanyeihamba, J.S.C., and Hukasa-Kikonyogo, J.S.C. also agree it is so ordered.

Delivered at Mengo this 22nd day of January 1998

JWN Tsekooko

JUSTICE OF THE SUPREME COURT

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT MENGO

CORAM: TSEKOOKO, J.S.C. KANYEIHAMBA J.S.C., KIKONYOGO J.S.C.

CIVIL APPEAL NO: 13 OF 1995

BETWEEN

PETER MANGENI T/A MAKERERE INSTITUTE OF COMMERCE.....APPELLANT

B E T W E E N

DEPARTED ASIANS PROPERTY CUSTODIAN BOARD.....RESPONDENT

(Appeal from a Ruling and Order of the High Court of
Uganda (Mr. Justice I. Mukanza J.) dated the 23rd
day of November, 1994 in Civil Suit No: 422 of 1994)

This is an appeal against the ruling of Justice Mukanza holding the submission on behalf of the respondents that the suit was statute barred in accordance with the provisions of the Civil

Procedure and Limitation (Miscellaneous Provisions Act, 1969)(Act 20 of 1969.

The facts and background of the case are well set out in the record of proceedings in the court below. The appellant was, for all intents and purposes, a proprietor of a commercial teaching institute by the name of Makerere Institute of Commerce, a nonregistered organisation. He entered into a Tenancy Agreement with the Departed Asians Property Custodian Board as Landlords, at Plot 399 Sekanyolya Road, Makerere Kivulu, Kampala. The appellant proceeded to stock the premises with equipment, books and stationery as well as furniture for the purpose of educating his actual or potential students. Sometime in 1989 and, for some reasons not fully explained in the pleadings, the respondents asked the appellant to vacate their premises. One of those reasons seems to have been the fact that, though not registered under the Companies Act, Makerere Institute of Commerce was holding itself out as an incorporated body. It would appear that the appellant was reluctant to vacate the premises. Later on, the police got involved in the dispute somehow and the appellant was arrested and detained. He was charged with criminal dispute somehow and the appellant was arrested and detained. He was charged with criminal offences by the Wandegeya Police as their CRB 178/90 shows. Subsequently, the charges were withdrawn by the police as per their letter of 2nd October, 1992. In the period between the Appellant's time of arrest and the time of dropping the criminal charges against him, the respondents forcefully entered the premises at Plot 399 Sekanyolya Road, and carried a way diverse items of furniture, equipment and property belonging to the appellant. These are listed in the various annexes to the pleadings and record of proceedings. The Inspector General of Government got involved in the recovery of these properties.

The memorandum of Appeal contains two grounds namely (a) and (b)-

Counsel for the appellant has submitted that the learned judge erred in law in holding that the suit was barred by the provisions of Statute of Limitation when in fact the same statute and the case law saves the suit as an exceptions to the rules which govern statute-barred suits. In support of this submission, Mr. Nageni argued that the learned judge misdirected himself or failed to evaluate the evidence properly when he held that the case was not filed within the limitation period. In support of this argument, learned Counsel for the appellant reasoned that from the date the appellant was charged and detained until the date of his release in 1992, he, the appellant, was under a disability. He cited and, quoted S.5 (c) of the Civil Procedure and Limitation (Miscellaneous Provisions) Act 1969.

Section 2 provides that no action founded on tort shall be brought against a scheduled corporation after the expiration of twelve months from the date on which the cause of action arose. It is to be noted that the Departed Asians Property Custodian Board is a scheduled Corporation. Mr. Nageni argued that the appellant's case falls within the exceptions prescribed in sections 4 and 5 of the Act.

Section 4 provides that "on the date when the right of action accrued for which a period of limitation is prescribed by the Act the person to whom it accrued was under a disability, the action may be brought at any time before the expiration of twelve months from the date when the person ceased to be under a disability or died, whichever event first occurred, notwithstanding that the period of limitation has expired". Section 5 provides in part that the commencement of the limitation period is postponed by a fact of mistake.

Mr. Nageni was right in arguing that the period which the appellant spent in prison and under the charges of a criminal nature should be discounted in the computation of the time for the purposes of the Act. Indeed, it is clear from the judgment, that that learned judge of the High Court took full cognisance of this disability. This is clear from the learned judges ruling at p 36 of the record of proceedings. He observe.

"According to the record of pleadings, it is clear that when goods were seized in 1989 the plaintiff was at the same time arrested and detained and the charge was only withdrawn in 1990. During that period of disability he could not sue and I do not subscribe to the submission of Mr. Maloba that the plaintiff never raised disability in his pleadings

With this observation of the learned judge, this court respectively agrees. I note judge's insertion of 1990 was in error because the letter of a Miss Maureen Owor, State Attorney, on behalf of the Director of Prosecutions withdrawing the criminal against the appellant was dated 2nd October, 1992 and it must have been received by him sometime during the period after 2nd October, 1992. It is therefore clear that for the purposes of the Act of Limitation, time would have started running in October, 1992 or thereabouts. However, the appellant is further given more time by the part acknowledgement of the claim when, on 6th January 1993, the respondents acknowledged their indebtedness by returning some of the properties taken away from the appellant and as shown in exhibit "D" on page 12 of the record of pleadings. In *African Overseas Trading Co.. v Transukh S. Acharva*

(1963) E.A. 481 Civil Appeal No: 7 of 1963 cited by Mr. Nageni Weston J., observed, at p. 471.

"The question is whether the plaintiffs should be allowed to plead the alleged acknowledgement of June 9, 1959, of their claim, which now amounts to shs 1,221/02 only.

I am in no doubt that the answer is yes".

Counsel for the appellant makes heavy weather of the letter written by Miss Ruth Namirembe - Olijjo and dated 27th October, 1993 in which she responded to a letter written by the then Counsel for the appellant, Messrs Ayena - Odong & Co., Advocates, inviting them for a

meeting to be held at 10.00 a.m. on Friday 29th October, 1993 in the Departed Asians Property Custodian Board room and copied, to the Property Management Division Manager and to the O/C C.I.D. -Custodian Board. I do not know the contents of the letter dated 20th October, 1993 and the fate, or indeed the outcome of the subsequent meeting, if it took place at all, are unknown. However, Counsel argued very strongly that the letter had the effect of postponing the time when the period of limitation in accordance with Act 20 could commence. Mr. Ssekandi for the respondent invited this court to regard the letter of 27th October, 1993 as irrelevant and as incapable of extending the period of limitation. He contended that in any event the doctrine of mistake was not argued or proved to be applicable to this case. Mr. Ssekandi supported the finding of the ruling and a day of the trial judge.

I agree with Mr. Ssekandi that an offer to negotiate terms of settlement between parties to an action, admirable as it may be, has no effect whatsoever on when to serve statutory notice or file a suit in time. It is my opinion that even where genuine and active negotiations are going on or contemplated between the parties, it is still incumbent upon those who need to file documents to do so within the time allowed. Thereafter, they are at liberty to seek adjournments for purposes of negotiation. Although the learned judge appears to have accepted that ground as valid, I find no authority or reasons for it. I therefore reject it. Consequently, the date of action remains as it was, January 1993. The Judge was correct to reject Counsel for defendant's submission that the date for filing the suit should have been March 29th, 1989. In actual fact the Statutory Notice was served in January 1993. consequently, the date of the action remains as it was January 1993.

I think that the suit in this case should have been filed in March, 1994 at the very latest. According to the pleadings and admission of Counsel for the appellant, Civil Suit No. 422 of 1994 between the parties was filed on 20th June, 1994 long after the period in which it should have been filed had expired. In my opinion this court has one option and that is to dismiss this appeal.

In my opinion the learned judge of the High Court was correct in his ruling and orders. His ruling is upheld and this appeal is dismissed with costs to the respondent.

DATED AT MENGO THIS 22ND DAY OF JANUARY 1998

G.W. KANYEIHAMBA

JUSTICE OF THE SUPREME COURT

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT MENGO

CORAM: TSEKOOKO, J.S.C. KANYEIHAMBA J.S.C., KIKONYOGO J.S.C.

CIVIL APPEAL NO: 13 OF 1995

BETWEEN

PETER MANGENI T/A MAKERERE INSTITUTE OF COMMERCE.....APPELLANT

B E T W E E N

DEPARTED ASIANS PROPERTY CUSTODIAN BOARD.....RESPONDENT

(Appeal from a Ruling and Order of the High Court of Uganda (Mr. Justice I. Mukanza J.) dated the 23rd day of November, 1994 in Civil Suit No: 422 of 1994)

JUDGMENT OF MUKASA-KIKONYOGO, J.S.C.

I have had the benefit of reading in draft the judgment of Tsekoko, J.S.C. and I concur with his reasoning and the conclusions reached. I have nothing more to add.

Dated at Mengo this 22nd day of January 1998

L.E.M. Mukasa-Kikonyogo.

Justice of Supreme Court.