THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL DIVISION

CIVIL SUIT NO. 19 OF 2018

SYNERGY LIFE WELLNESS :: PLAINTIFF

VERSUS

GUARANTY TRUST BANK LTD :: DEFENDANT

BEFORE HON. JUSTICE SSEKAANA MUSA

JUDGMENT

The plaintiff brought this suit against the defendant under Order 36 Rule 2 of the Civil Procedure Rules for breach of contract and recovery off US$ 25,955.28 (United Stated Dollars Twenty Five Thousand Nine Hundred Fifty Five and Twenty Cents), VAT inclusive and costs of the suit.

The plaintiff alleges that on the 31st August, 2009, it entered into a tenancy agreement with Fina Bank Uganda Limited wherein the defendant was to rent the plaintiff's condominium property units comprised in LFV 3981 Folio 23, LRV 3966, Folio 25, LRV 3967 Folio 1-4 and LRV 3967 Folio 5 all attached to Condominium Plan N0. 059.

The defendant took over Fina Bank Uganda Limited and in so doing became successors in title and continued renting the premises. The plaintiff alleges that it was an express term of the contract dated 31st August, 2009 that the defendant was to pay quarterly a total sum of US$ 11,700 VAT exclusive and US$ 13,806 VAT inclusive. However, it was not paid the amount due for the first quarter of the tenancy agreement and in that regard they defaulted on their contractual obligation to do so despite several requests and demands.

The defendant in its defence to the suit stated that it is the successor in title of Fina Bank (U) Ltd and noted that the plaintiff's claim is time barred, an abuse of

court process and waste of court's time as the plaintiff filed the same matter in Civil Suit No. 19 of 2017. The defendant further denied all allegations made by the plaintiff and stated that during the pendency of the tenancy agreement, the defendant paid all the rent as against the invoices issued to them by the plaintiff including the payment of the first quarter claimed.

The parties raised two issues for determination by this court as follows;

1. ***Whether the plaintiff's claim for rent for the first quarter of the tenancy is time barred.***
2. ***What remedies are available to the parties.***

The plaintiff was represented by ***Mr. Aisu Norman*** whereas the defendant was represented by ***Mr. Amos Matsiko***.

In the interest of time, the respective counsel filed written submissions and I have considered the respective submissions.

Whether the plaintiff's claim for rent for the first quarter of the tenancy is time barred.

Plaintiff's counsel submitted that the plaintiff's claim is not time barred since he started making the claims as far back as 1st September, 2009 at the beginning of the tenancy as evidenced by a letter dated 1st September, 2009, Ref: SLW/FINA/02/09.

Counsel relied on section 2 of the Limitation Act that provides that the limitation period shall be subject to extension of periods of limitation in case of acknowledgement. He submitted that from the evidence on record, the defendant acknowledges that they did not pay the plaintiff the rent for the first quarter

Counsel for the defendant submitted that section 3 (1) of the Limitation Act provides that an action founded on contract or tort shall not be brought after the expiry of 6 years.

Counsel stated that the plaintiff's claim is for recovery of money arising out of rent for the first quarter which accrued at the date of signing of the tenancy agreement on 31st August, 2009 which is 9 years prior to the filing of this suit.

He submitted that the money for the quarter was due upon execution of the tenancy agreement on the 1st September, 2009. He stated that even if the limitation period was to run from the 3rd September, 2009 when the plaintiff wrote its letter to the 11th January, 2018 when the suit was filed, the plaintiff would be barred by limitation.

Counsel submitted that mere correspondences do not stop time from running and it is not one of the exceptions envisaged by the Limitation Act and as such, the plaintiff's argument should be disregarded.

Counsel relied on the case of ***Makula International vs His Eminence Cardinal Nsubuga & Anor [1982] HCB 13*** that once an action is barred by the law, court has no residential or inherent jurisdiction to entertain such matter. He also relied on the case of ***Iga vs Makerere University [1972} EA 65*** that a plaint which is barred by limitation is barred in law and that unless the part has put himself within the limitation period by showing the grounds upon which he should claim exception, the court shall reject his claim.

He therefore submitted that the claim for rent for the 1st quarter arises from a period beyond the period of limitation as stipulated by the act and the plaint discloses no exception to the principle of limitation and thus the plaintiff's claim is time barred and untenable at law.

Analysis

We have to note that the events leading up to this claim arose in 2009 when the parties entered into a tenancy agreement and the plaintiff brought this suit for recovery of the alleged rent arrears in 2018 from this Honourable court.

Both counsel rightly cited section 3 of the Limitation Act, Cap 80 that provides for time within which a cause of action founded on a contract can be brought being six years.

Section 3 of the Limitation Act provides that actions founded on a contract shall not be brought after the expiration of six years from the date on which the cause of action arose except that in the case of actions for damages for negligence, nuisance or breach of duty (whether the duty exists by virtue of a contract or of provision made by or under an enactment or independently of any such contract or any such provision) where the damages claimed by the plaintiff for the negligence, nuisance or breach of duty consist of or include damages in respect of personal injuries to any person, this subsection shall have effect as if for the reference to six years there were substituted a reference to three years.

The plaintiff submitted that this action is well within time since it started making claims as early as 2009 against the defendant. The defendant on the other hand, contended that it fulfilled its obligation in upon execution when it deposited security with the plaintiff's predecessor in title at the time in 2009. The defendant further contended that this action was out of time in accordance with the time limitation under section 3 of the Limitation Act.

Firstly, it is important to recognize that the Statute of Limitations is a statutory defence. What this means is that a court has jurisdiction to issue proceedings in respect of and hear a claim, even if it is potentially **statute-barred**. The Defendant to the proceedings needs to plead on his or her defence that he or she is relying on the statute of limitations and prove this defence at trial.

As it was rightly stated in the case of ***Prime Finance Company Limited –vs- Obadia Ntebakaine Civil Suit No. 236 of 2019;*** *the court, in determining when an action accrues, is concerned with the existence of the facts giving rise to the entitlement to commence proceedings. Neither the knowledge nor the belief of the applicant as to an entitlement to bring proceedings is relevant to the question of when a cause of action accrues. The cause of action usually accrues on the date that the injury to the applicant is sustained. The statute of limitation clock is intended to tick solely from the time of the wrongful act, not from the time harm is realized.*

This court in the case of ***Kaggwa Erieza -vs- Christine Kagoya & Another Civil Suit No. 397 of 2014*** while citing the case of ***Picfare Industries Ltd -vs- Attorney General & Anor M.C No. 258/2013*** where Justice Musota while dismissing a suit for being time-barred held at pg. 4 that;

"*Statutes of Limitation are in their nature strict and inflexible enactments. Their overriding purpose is* 'interest reipublicalut sit finis litum', *meaning litigation shall be automatically stifled after a fixed length of time irrespective of merits of the case."*

Basing on all the above, it is clear from the evidence and pleadings on record that the plaintiff's cause of action arose in 2009 when the parties entered into a tenancy agreement for which the alleged sum was to be paid. However, the plaintiff only got to bring this suit for recovery of the same in 2018 which is clearly way past the limitation period of 6 years provided for under the law.

The six year limitation period for a claim for breach of contract begins to run when the breach of contract occurs regardless of whether any damage is suffered at that point and regardless of whether the innocent party knows there has been a breach of contract.

The plaintiff ought to have instituted this suit soon after its demands for compensation were made to the defendant and not heeded to immediately had it wanted to pursue this course of action. Instituting this suit nearly 12 years after the events that resulted into the claim arose, unfortunately, makes the suit time-barred.

I therefore, find that the plaintiff brought an action against the defendant out of time.

In sum and for the reasons stated hereinabove this suit fails and is dismissed with costs to the defendant.

I so order.

SSEKAANA MUSA
JUDGE
18th March 2022