

20070530 TZHC Dar es Salaam

had pleaded that the Defendant had "assigned" the debt to TIOT in 2002 as per annexure A1 to the plaint. According to him, this amounted to an acknowledgment of that debt. So in terms of Si 27 (3) of the Law of Limitation Act, this had the effect of rewinding the clock so that the prescribed time began to run in 2002 and since the suit was filed in 2007 it was filed within time. However, he was quick enough to point out that whether or not Annexure A1 was an acknowledgment in, fact, was a matter of evidence that had to be determined in the course of a trial and not in a preliminary objection. He said this in response to the Defendant's plea that the letter was a mere instruction for debt collection. For this he cited TCC VS BURUNDI TOBACCO COMPANY LTD & MASTERMIND TOBACCO CO. LTD (Comm. Misc. Civil Cause :No. 7 of 2004) (unreported). So he prayed for the dismissal of the preliminary objection with costs. In a brief rebuttal, Mr. Mhango, learned Counsel, submitted that the Plaintiff's claim is based on debt collection, and not an assignment thereof. He said these were two different causes of action. In his view, Annexure A1 is only I.I. 3

- I binding between the Defendant and TIOT, if there was any assignment at all, and if the cause of action arose from the assignment. He went on to point out that in [his case, the Plaintiff's cause of action is that he lent money to the Defendant in 1999 and that the issue was not when was the debt assigned, but when the suit for debt recovery ought to have been instituted. He was certain that his objection was a meritorious and ought to be upheld. I think the learned Counsel are not disputing that the prescribed period of limitation for a suit to recover a debt, is 6 years under the Law of Limitation Act. There is also no dispute that in this case the Plaintiff alleges that he lent USD 41,919 to the Defendant in 1999. Therefore, prima facie, six years therefrom elapsed in 2005. These facts are pleaded in paragraphs 3, 4 and 5 of the plaint. However, cognizant of the legal position, and in obedience to the dictates of Order VII rule 6 of the Civil Procedure Code 1966, the Plaintiff pleaded in paragraph 6 of the plaint: - "6. The Defendant however did not heed the promise and pay the outstanding sum and follow ups by the Plaintiff were of no success, and eventually sometime in the year 2002, the Defendant assigned the debt to TANGANYIKA INVESTMENT OIL AND TRANSPORT COMPANY LTD (TIOT) to pay the Plaintiff on behalf of the Defendant. Annexed hereto marked A-1 is a letter whereupon the Defendant assigned the said debt to ... (TIOT) ... " r, I, I Annexure A - 1 referred to above reads as follows: - I I I I "RE: OUTSTANDING AMOUNT OF USD 41,919 I I I We wish to inform you that the above amount is outstanding for payment for more than three (3) years now. I I I I We advise (sic) you to pay this outstanding amount on our behalf to Mr. Thabit K. Abri.... " I) I, I This letter was written by i:011 COM (T) ILIMITED (the Defendant herein) addressed to Tanganyika Investment Oil & c Transport Co Ltd, dated 15 th August 2002 and copied to IJI THABIT K.T. ABRI (the Plaintiff). The parties are not in dispute as to the genuineness of this letter. I ", I 11 Order VII rule 6 of the Civil Procedure Code 1966 requires that if a suit is instituted after the expiration of the period prescribed by the law of limitation, this plaint shall show the ground upon which the exemption from such law is claimed. In the course of submission, it was clear that the Plaintiff was relying on

one of the exemptions shown in the Law of Limitation Act and in particular s. 27 (3). of the Act. The issues boil down to whether, the letter I have just quoted I above amounts to an acknowledgement of the debt, and whether such an issue could be determined at this stage. I do not agree with Mr. Muganyizi that the question is whether or not the letter amounted to an acknowledgment should be left to be determined at the trial. This is because I according to MUKISA BISCUITS MANUFACTURING CO. LTD I VS WEST END DISTRIBUTORS LTD [1966] EA. 696, which was applied by Kimaro J (as he then was) in TANZANIA CIGARRETE COMPANY LTD case, cited by Mr. Muganyizi, learned Counsel, an objection can be raised and argued if the facts are not in dispute. In that case (i.e. MUKISA'S) SIR I NEWBOLD P (as he then was) observed on p. 701: "A preliminary objection ... raises a pure point of law which is argued on the assumption that all the facts pleaded by the other are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion." In the present case, and as observed above, the letter in question and its contents are not disputed by the parties. So, a preliminary objection can be determined on its basis.

6 Having held so, the next question is whether the letter was an acknowledgement of the debt? Under s. 28 (1) of the Law of Limitation Act, every acknowledgment under section 27 must be in writing and signed by the person making it or by his agent duly authorized in that behalf. Annexure A1 is in writing and there is no dispute that it is signed by the Defendant's Director. It is dated 15 th August 2002 which is 3 years from 1999; therefore made before the expiry of the period of limitation. Section 28 (4) of the Law of Limitation Act was therefore complied with. The letter was addressed to TIOT and copied to the Plaintiff; but according to s. 28 (5) (d) of the Law of Limitation Act, that would not render the acknowledgment ineffective. And to seal it off the wording of the letter speaks the loudest: - "We advise (sic) you to pay this outstanding amount on our behalf to Mr. Thabit K. T. Abri." It is my view that this sentence is a sufficient acknowledgment of the debt by the Defendant as due to the Plaintiff. So this was more than an assignment of the debt. It was an instruction to TIOT to pay to the Plaintiff, the sum which is now the subject of the present suit. If it was not an acknowledgment why was the letter copied to the Plaintiff? In any case, I do not think the word "assigned" in paragraph 6 of the plaint was used in its technical sense. Legally it is not possible to assign obligations under a contract from the original contracting party to the shoulders of a third person except, possibly by means of a novation whereby a new contract is substituted for the original one. This is not the case in the present case.

I j j : For the above reasons, I am satisfied that annexure A-1 to the plaint has all the trappings of a written acknowledgment of the debt. Therefore the Plaintiff has succeeded in showing that the suit is exempted from the provisions of the Law of Limitation Act. I would in the event hold that the suit was filed within time. Accordingly I find that the preliminary objection is devoid of merit. I will accordingly dismiss it with costs. Order accordingly. S.A. MASSATI JUDGE 30/5/2007 1,471 words

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