

UGANDA / JUDGMENT

Jethwa v Bhanji (Civ. Case No. 3/1938,) [1938] EACA 208 (1 January 1938)

[1938] EACA 208**COURT**

East African Court of Appeal

BEFORE

Thacker J

CASE / FILE NUMBER

Civ. Case No. 3/1938,

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ORIGINAL CIVIL**BEFORE THACKER, J.****DURBAR TAKHATSINH HARISINH JETHWA, Plaintiff****v.****MULJI BHANJI, Defendant****Civ. Case No. 3/1938, Kisumu District Registry**

Limitation—Foreign judgment—Limitation Ordinance, 1934, secs. 3 and 41—Civil Procedure Ordinance, 1924, sec. 2—Indian Limitation Act, 1877, Art. 117.

On 9-4-38 plaintiff instituted the suit to recover the amount due on an unsatisfied foreign judgment dated \$31-12-31\$ obtained by the plaintiff against the defendant in the Court of Nyayadhish in the Native State of Porbandar in India.

*Held (25-8-38).—That the word "judgment" in section 3 of the Limitation Ordin-
ance does not mean or include a foreign judgment. The suit is governed by section 41 of the Ordinance and the period of limitation applicable is six years from the date of the foreign judgment as provided by Article 117 of the Schedule to the Indian Limitation Act, 1877.

Gautama for the plaintiff.

Russell for the defendant.

JUDGMENT.—The plaintiff in this case seeks to recover the sum of Sh. 1798/26 being the amount due on a foreign judgment dated \$31-12-31\$ obtained by the plaintiff against the defendant in the Court of Nyayadhish in the Native State of Porbandar in India. The said judgment remains unsatisfied in its entirety. The plaintiff and the defendant were at the time of the said judgment and are still subjects of the said Native State of Porbandar under the suzerainty of the British Government and they were, therefore, subject to the jurisdiction of the said Porbandar State Court during the pendency of the said suit. A duly certified copy of the judgment and decree in the said suit has been put in.

Now the defendant has pleaded inter alia that the suit is barred by Article 117 of the Indian Limitation Act, 1877. In this connexion, it is to be observed that the Limitation Ordinance, 1934, repealed by section 41 with certain exceptions the Indian Limitation Act, 1877, and by section 41 it was also provided that where in the said Indian Limitation Act, a period of limitation in respect of any act, matter or thing is not provided for in this Ordinance, then notwithstanding the provisions of this section, the period of limitation provided for in the said Indian Limitation Act in respect of the said act, matter or thing shall remain in full force and effect. It is $\mathbf{I}$ therefore necessary to see whether there is any provision in the Limitation Ordinance 1934 as to any period of limitation appertaining

* On appeal the Court of Appeal for Eastern Africa dismissing the appeal. held that the suit was governed as to limitation by section 5 of the Limitation Ordinance, 1934. The decision will be reported in 6 E. A. C. A.:

to suits or proceedings brought to recover any sum of money secured by a foreign judgment and in section 3 of the Limitation Ordinance, 1934, it is set out:-

"All suits or proceedings brought to recover any sum of money secured by any ... judgment ... shall and may be brought at any time within twelve years next after a present right to receive or have the same shall have accrued to some person capable of giving a discharge for or release of the same. and not after twelve years ... etc., etc."

If this section applies to a foreign judgment then obviously the plaintiff's action is not barred. The point, however, is taken by the defendant's advocate that the word "Judgment" does not embrace a foreign judgment and therefore that Art. 117 of the Indian Limitation Act, 1877, applies whereby a suit upon a foreign judgment must be brought within six years of the date of the judgment. It is necessary, therefore, to ascertain what is the legal interpretation of the word "judgment" in section 3 of the Limitation Ordinance, 1934. The word judgment is not defined in the Interpretation Ordinance but it is defined in section 2 (10) of the Civil Procedure Ordinance, 1924, as "the statement given by the judge of the grounds of a decree or order". It is again necessary to ascertain the meaning of the word "judge". The word is defined as meaning the Presiding Officer of a Civil Court and the word "court" means any Civil Court other than Native Subordinate Courts. It is also to be observed that the words "foreign judgment" are separately defined and it would appear to be reasonable to hold that the word "judgment" simpliciter was intended not to include a foreign judgment. The words "judgment", "judge" and "Civil" were

intended to have only local meanings and not to have any foreign application. I, therefore, hold that the word judgment in section 3 does not mean or include a foreign judgment. That being so, it follows that section 3 does not refer to any foreign judgment and the matter comes therefore within section 41 of the Limitation Ordinance, 1934, and it is necessary to refer to the Indian Limitation Act, 1877, which prescribes a limitation of six years on a foreign judgment. The judgment upon which the plaintiff sues was admittedly pronounced more than six years since.

It is unnecessary, therefore, to go into the other matters raised by the defendant.

I hold, therefore, that the action is barred and the plaintiff is not entitled to succeed in this action and accordingly give judgment for the defendant with costs.

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