

UGANDA / JUDGMENT

Peter Mulira v Mumtaz Kassam

(HCT-00-CC-CS 307 of 2005) [2005]

UGCommC 59 (12 October 2005)

[2005] UGCommC 59

COURT

Commercial Court of Uganda

CASE / FILE NUMBER

HCT-00-CC-CS 307 of 2005

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UGANDA}{\insrsid15861250

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\par IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA

\par

\par (COMMERCIAL COURT DIVISION)

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\par HCT-00-CC-CS-0307-2005

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\par PETER MULIRA PLAINTIFF

\par T/A MULIRA & CO ADVOCATES

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\par VERSUS

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\par MUMTAZ KASSAM DEFENDANT

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\par {{b\ul\insrsid11016298\charrsid15293982 BEFORE: THE HONOURABLE MR. JUSTICE FMS
EGONDA-NTENDE

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\par RULING

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\insrsid11016298 The defendant raises a preliminary objection to this suit. It is contended that
this suit

is barred by limitation of time, and as such, it should be dismissed. Mrs Namudu Janet Katende,
learned counsel appearing for the defendant, submitted that the cause of action in this case
became known to the plaintiff in March 1998. A period of six year

s has since elapsed before this action was brought.

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Matovu, learned counsel appearing for the plaintiff, replied that in the first place this objection
was misconceived as the point could only be {{\insrsid15293982 decided}}{\insrsid11016298 after a
trial of the case, and evidence in t

he case examined. Secondly he submitted that passing off was a continuing cause of action, that
continued to subsist long after March 1998. He therefore prayed that this preliminary point of law
should be dismissed.

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I shall start by setting out the plaint in part, {{\insrsid5393642

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{\insrsid1209803 \quote

5. Upon a date which the plaintiff cannot specify the Defendant commenced using the name of
Mulira & Co. Advocates for business not connected with the plaintiff. {{\insrsid5393642

6. PARTICULARS OF THE
DEFENDANT'S USE

The best particulars of use the Plaintiff can give are:-

(a) An advertisement in the New Vision of the 12th day of August, 1994.

(b) Letterhead, which clearly indicated the plaintiff's firm as the Kampala Office of the Defendant.

(c) Letter dated the 26th day of February, 1996, from the Commissioner for Land Registration.

(d) Letter from the Commissioner for Lands dated the 12th

th day of October, 1998.

(e) Caveat forbidding any dealing with the land dated the 28th day of November 1995.

(f) Affidavit dated the 28th day of November 1995.

(g) Letter 11016298 dated the 15

th day of December 1995.

(h) Caveat dated January 1995.

(i) Statutory Declaration dated the 21st day of

November 1994.

(j) Letter dated the 13th day of

January 1995.

(k) Affidavit dated the 7th day of August, 1995.

(l) Letter dated the 22nd day of June, 1993.

(m) Letter dated the 25th day of January, 1996.

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\li1440\ri720\widctlpar\aspalpha\aspnum\faauto\adjustright\rin720\lin1440\itap0\pararsid5393642 {\insrsid15018872 6. As a result of this the Plaintiff suffered damage through being billed for taxes and in his professional work. }

\insrsid5393642 }\insrsid15018872 7. The Plaintiff will contend at the trial that the defendant made misrepresentation calculated to benefit at the expense of the Plaintiff.\rquote } {\insrsid11016298

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\insrsid10492552 The plaint does not disclose when the plaintiff became aware of the actions complained of but it is clear on {\insrsid15293982 an a}{\insrsid5393642 nnexture} {\insrsid10492552 to the plaint date}{\insrsid15293982 d}{\insrsid10492552 18

{\super\insrsid10492552\charrsid10492552 th}{\insrsid10492552 November 1998, that by that date the plaintiff was aware of the actions complained of. The actions complained of are between 1994 and 199}{\insrsid15293982 8}{\insrsid10492552

. This action was filed in this court in April 2005. Definitely this was after more than six years since the cause of action arose or the plaintiff became aware of the same.

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Section 3 of the Limitation Act, states, }\insrsid5393642

\par }\pard \ql \li2160\ri1440\widctlpar\aspalpha\aspnum\faauto\adjustright\rin1440\lin2160\itap0\pararsid5393642 {\insrsid10492552 \lquote (1) The following actions shall not be brought after the expiration of six years from the date on which

the cause of action arose---- }\insrsid5393642 }\insrsid10492552 (a) actions founded on contract and on tort }\insrsid5393642

\par {\insrsid10492552 (2) An action for an account shall not be brought in respect} {\insrsid2056908 }\insrsid10492552 of any matter which arose more than six years before the commencement of the action.\rquote }\insrsid15018872

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\insrsid2056908 Passing off is a tort. And if this is the basis of the current action, then it is barred from being brought, and thus entertained by this court, if it is more than six years old. This means that this court has }}\insrsid9655562 no }}

\insrsid2056908 jurisdiction to proceed to trial over such a matter, once it is evident on the pleadings, as it ought to be, and as i}}\insrsid9655562

t is in this case, that it is barred by the Limitation Act. For that reason, I am unable to agree with Mr. John Matovu that this matter must go to trial first before a decision is made on the matter.} {\insrsid10492552

\par {\listtext\pard\plain\lang2057\langfe1033\langnp2057\insrsid9655562

\hich\af0\dbch\af0\loch\f0 7.\tab}}}\insrsid9655562 Turning to Mr. John Matovu\rqquote

s second argument that the tort of passing off is a continuing tort, and impliedly the cause of action continues to arise for as long as it is alleged the defendant

continues to commit the tort. I would agree with Mr. Matovu in this regard but only to that extent. When applied to this particular case, there are no facts pleaded to show that the plaintiff alleges that passing off continued to be committed up to the d

ate of filing of the action or any particular date for that matter. In the result, it is not available to the plaintiff to argue that some part of the acts complained of fall outside the limitation period. This has not been shown }}\insrsid15293982

to be the case }}\insrsid9655562 on the plaint.

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\hich\af0\dbch\af0\loch\f0 8.\tab}}I accept the point of law raised by the defendant and find that this suit is time barred. It is dismissed accordingly with costs.

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\pararsid5393642 {\insrsid9655562 Dated at Kampala this 12}

{\super\insrsid9655562\charrsid9655562 th}}\insrsid9655562 day of October 2005

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\par FMS Egonda-Ntende

\par Judge

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Prepared on 14 October 2026 · Esheria