

22/1964

IN THE PRIVY COUNCIL

No. 44 of 1962

O N A P P E A L

FROM HER MAJESTY'S COURT OF APPEAL FOR
EASTERN AFRICA AT DAR ES SALAAM

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES
22 JUN 1965
25 RUSSELL SQUARE
LONDON, W.C.1.

B E T W E E N :

78595

CONSOLIDATED AGENCIES
LIMITED ... (Defendant) Appellant

- and -

BERTRAM LIMITED (Plaintiff) Respondent

10 CASE FOR THE RESPONDENT

Record

1. This is an Appeal by leave from the Judgment and Order, dated the 29th day of March, 1962, of Her Majesty's Court of Appeal for Eastern Africa at Dar-es-Salaam (Forbes Ag.P., Crawshaw, Ag.V.P., and Newbold J.A.) setting aside Decree dated the 19th day of September 1961 of the High Court of Tanganyika (Weston J.) dismissing the Respondent's claim on the ground that it is time barred.

pp.122-137

p. 100.

20 2. This action arose out of two accounts "Account No.1" and "Account No.2" for money lent and advanced by the Respondent to the Appellant. The total claim for money lent and advanced on two accounts is Shillings 349,962/52 and Shillings 6,040/45 for interest at 6% per annum from 1st January, 1961 to 15th April, 1961.

p.2

30 3. The Respondent pleads in its Plaint that its claim is not barred by the Law of Limitation on the grounds that the debt due to the Respondent has been acknowledged by the Appellant in its books and accounts from year to year.

p.8

4. The Appellant in its defence at the first

stage in its defence denied its indebtedness to the Respondent and also alleged that the Respondent's claim is barred by the Law of Limitation.

p.10. 1.11

5. In the High Court only one issue was agreed upon, whether the suit is time barred or not.

p.130. 1.40

In the Court of Appeal the Appeal was argued on the same issue.

6. To support the Respondent's contention that the suit is not barred by the Law of Limitation the Respondent relies on Sections 19 and 20 of the Indian Limitation Act which reads as follows :- 10

RELEVANT
Relevation Portions:-

Section 19.(1) Where, before the expiration of the period prescribed for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by some person through whom he derives title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed. 20

(2) Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but subject to the provisions of the Indian Evidence Act, 1872, oral evidence of its contents shall not be received. 30

Explanation I. - For the purposes of this section an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come, or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to a set-off, or is addressed to a person other than the person entitled to the property or right. 40

Explanation II. - For the purposes of this section, "signed" means signed either personally or by an agent duly authorised in this behalf.

10 Section 20. (1) Where interest on a debt or legacy is, before the expiration of the prescribed period, paid as such by the person liable to pay the debt or legacy or by his agent duly authorised in this behalf, or where part of the principal of a debt is, before the expiration of the prescribed period, paid by the debtor or by his agent duly authorised in this behalf, a fresh period of limitation shall be computed from the time when the payment was made:

20 Provided that, save in the case of a payment of interest made before the 1st day of January 1928, an acknowledgment of the payment appears in the handwriting of, or in a writing signed by, the person making the payment.

30 7. In support of Section 20 of the Indian Limitation Act, the Respondent relies on different payments made by the Appellant towards Account Nos. 1 and 2, by cheques signed by its agent. The payment in No.1 Account of Shs.300/- on the 15.5.58, and in No.2 Account of Shs.20,030/- on 26.8.58 and Shs.26,000/- on the 3.2.59 were paid by cheques by the Appellant to the Respondent.

p.130. 11.27-34

8. In support of Section 19 of the Indian Limitation Act, the Respondent relies on evidence on Record and Exhibits A, B, C, D, E and L and the following Balance-Sheets:-

pp.140-157

40 (a) The Balance-Sheet showing the Appellant's (Defendant) financial position as at 31st December, 1954 was sent to Walli Dharsee, the Managing Director of both Plaintiff and Defendant Companies, for signature on 19th October 1956 and must have been signed by the Appellant (Defendant) between that date and 27th October, 1956, when Mr. Houghton testified he signed.

50 (b) The Balance-Sheet showing the Appellant's (Defendant) financial position as at 31st December, 1955 was sent to Walli Dharsee, the Managing Director of both Plaintiff and Defendant Companies, for signature on 6th November 1957 and must have been signed

by the Appellant (Defendant) between that date and 19th November, 1957, when Mr. Houghton testified he signed.

(c) The Balance-Sheet showing the Appellant's (Defendant) financial position as at 31st December 1956 was sent to Walli Dharsee, the Managing Director of both Plaintiff and the Defendant Companies, for signature on 12th March 1958 and must have been signed by the Appellant (Defendant) between that date and 11th April 1958, when Mr. Houghton testified he signed. 10

(d) The Balance-Sheet showing the Appellant's (Defendant) financial position as at 31st December 1957 was sent to Walli Dharsee, the Managing Director of both Plaintiff and the Defendant Companies, for signature on 28th April 1959 and must have been signed by the Appellant (Defendant) either on that date or on 29th April 1959, when Mr. Houghton testified he signed. 20

9. The Respondent also relies on the following authorities :-

(a) Jones v. Bellgrove Properties Ltd.
(1949) 2 K.B. 700. and

(b) Rajah of Vizianagaram v. Official Liquidator (1952) A.I.R. (Mad.) 163

10. The Respondent respectfully submits that the Judgment of the Court of Appeal for Eastern Africa was right and ought to be affirmed and this appeal ought to be dismissed, for the following (amongst other) 30

R E A S O N S

(1) BECAUSE the Appellant did acknowledge its liability as required by Section 19 of the Indian Limitation Act and did make part payment towards its debts in writing signed by its agents as required by Section 20 of the same act :

(2) BECAUSE of the other reasons given in the Judgment of the Court of Appeal. 40

ROBIN HOURY.

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B E T W E E N :

CONSOLIDATED AGENCIES
LIMITED (Defendant) Appellant

- and -

BERTRAM LIMITED
(Plaintiff) Respondent

CASE FOR THE RESPONDENT

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