

**WILLIAM G. KNUCKLES**, Appellant, v. **LIBERIA TRADING & DEVELOPMENT BANK (TRADEVCO BANK)**, by and thru its President, et al., Appellees.

APPEAL FROM THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Heard: October 29, 1998. Decided: December 4, 1998.

1. An action of damages for injuries to the person shall be commenced within three years of the time the right to relief accrued.
2. In an action based on mutual, open, and current account, where there have been reciprocal demands between the parties, the right to relief shall be deemed to have accrued as of the time of the last transaction in the account on either side.
3. It is the privilege of every person to avail himself of every advantage allowed by law, and this is a right of which the courts cannot deprive him. However, when a party fails to use the means placed at his disposal for his security as prescribed by statute, the court will not make up said deficiency or neglect in the face of positive legislative enactment.

Appellant instituted an action of damages against the appellee bank, claiming that he had deposited sums of money with the appellee bank in United States dollars, but that the appellee had informed him that the amount deposited by him had been in the United States dollar account had been turned into a Liberian dollar account. When his demand to be paid or permitted to withdraw from his account United States dollars, and upon being formally informed in writing in, response to written enquiry posed by him to the appellee bank, that he would only be paid in Liberian dollars, appellant brought the subject action of damages. The appellee bank, responding to the complaint plead the statute of limitations, asserting that the appellant should have brought his action within three years from the date the right to relief accrued. It contended that the right to relief accrued in 1987 when the appellant had tried to withdraw United States dollars from his account but was informed that he could withdraw only Liberian dollars.

The trial court judge agreed with the appellee and dismissed the appellant's action in its entirety, holding that he was statutorily time barred from bring the action in 1997. On appeal to the Supreme Court, the judgment was reversed. The Supreme Court

held that while it was true that the appellant was required under the statute to bring his action within three years of the time the right to relief accrued, the statute also provided that in the kind of transaction of which the appellant had complained, the right did not accrue until after the last transaction. The last transaction, the Court, occurred in 1995 when the appellee, in response to the enquiry of the appellant as to the statute of his account, informed the appellant that his account was in Liberian dollars. as the statute had not run out when the action was commenced in 1997, the Court opined, the action was not dismissible on the ground that same was time barred by the statute of limitations.

Accordingly, the Court, upon reversing the judgment of the lower court, ordered that the case be retried, commencing with the disposition of the law issues.

Frederick A. B. Jayweh of the Civil Rights Association of Liberian Lawyers, in association with Pei Edwin Gausi, of the Law Chambers of Gausi and Partners, appeared for the appellant. .1 Emmanuel Wureh and Stephen B. Dunbar of the Dunbar and Dunbar Law Office appeared for the appellee.

MR. JUSTICE JANGABA delivered the opinion of the Court.

The appellant herein, William G. Knuckles, instituted an action of damages for wrong against the TRADEVCO BANK on the 5th day of September, A. D. 1997, in the Sixth Judicial Circuit, Civil Law Court, Montserrado County, presided over by His Honour Timothy Z. Swope, then assigned circuit judge. The appellant alleged substantially in his nine-count complaint that he deposited Chase Manhattan Bank manager's check No. 062307, valued US\$180,037.22 on October 26, 1984 with the appellee's bank and thereafter effected several and additional deposits amounting to US\$19,000.00, totaling the sum of US\$199,037.22 as his deposit with the appellee's bank. The appellant alleged that he applied for a loan of US\$34,000.00 from the appellee bank on January 3, 1987, but he was advised to withdraw same from his account. He allegedly filled in a withdrawal slip for US\$34,000.00 but was allowed by the appellee bank to withdraw L\$34,000.00, instead of US\$34,000.00 as requested. Appellant also alleged that the bank, in response to his letters of November 23 and December 19, 1994, informed him by a letter dated January 5, 1995 that his account No. 605 was maintained in Liberian dollars. Appellant therefore prayed the trial court to rule the defendant bank liable in special damages of US\$199,037.22 and US\$2,000,000.00 as general damages for wrongfully withholding and converting his US\$199,037.22 to I, D199,037.22 without his consent and approval.

The appellee bank, on the 15th day of September, A. D. 1997 filed a twenty-two count answer contending among other things, that the appellant never deposited a Chase Manhattan Bank manager's check No.062307 with the alleged value of US\$180,037.22 on October 26, 1984 or at any time thereafter. Appellee alleged that the appellant only deposited coins with the appellee bank, and that it therefore had a Liberian dollars account for the appellant. Appellee further contended in the court below that appellant's action was statutorily barred in that it was not filed within three (3) years as of January 3, 1987 when the appellant allegedly knew that his US dollars account was denominated into a Liberian dollars account. Appellee prayed the trial court to dismiss appellant's complaint together with the entire action. Appellee also filed a one-count motion along with its responsive pleading to dismiss appellant's entire action on ground that the appellant was statutorily time barred when he instituted his action beyond the statutory period of three(3) years. The motion alleged that the appellant was aware on January 3, 1987 that his alleged US dollars account with appellee bank had been denominated into a Liberian dollar account. Hence, appellant, plaintiff in the court below, should have filed his action in 1990 because his right to relief accrued in 1987.

The records in this case revealed that the appellant filed a twenty-count reply along with a two-count resistance, contending inter alia that he deposited with the appellee bank a Chase Manhattan Bank manager's check valued at US \$180,037.22 and an additional US\$19,000.00. Appellant also contended in the court below that his action of damages was filed within the statutory period of three(3) years in that he only became aware on January 7, 1995 that his US\$199,037.22 account was converted to Liberian dollars. Appellant prayed the trial court to deny the motion and sustain his complaint entirely, as well as his demand for special and general damages as contained in his complaint.

On the 23rd day of December, A. D. 1997, the assigned circuit judge, Her Honour C. Aimesa Reeves, disposed of the motion to dismiss appellant's action and granted same dismissing appellant's entire action on the ground that the said action was statutorily time barred because appellant's right to relief accrued in 1987. The appellant excepted to this ruling and appealed to this Court upon a five-count bill of exceptions for appellate review and determination.

Appellant alleged in his bill of exceptions and argued before this Court that he was formally informed by a letter dated January 5, 1995 by the appellee bank that his US dollar account was denominated into a Liberian dollar account, and as such, his right to relief accrued in 1995, rather than in 1987, as ruled by the trial judge. Appellant

also contended that he had been dealing with the appellee bank but was never at any time advised or informed that his US dollar account had been denominated into a Liberian dollar account until January 5, 1995. Yet, he said, the trial judge had ignored and neglected to consider the last transaction or dealing between the appellant and the appellee bank when she dismissed appellant's entire action on the ground that the action was statutorily time barred. Appellant further contended that the decision of the trial judge, which relied solely on the transaction of 1987 to invoke the statute of limitation, was unjust, wrong, injurious, and constitutes a reversible error. Appellant therefore prayed this Honourable Court to reverse the ruling of the trial judge and order the parties to proceed to the court below and to commence the trial of this case on its merits.

Appellee, for its part, vehemently contended that appellant's right to relief accrued in 1987 and that he should have commenced his suit within three(3) years as of January 3, 1987. It argued that the appellant is statutorily time barred because of his failure to institute his damages suit within three (3) years of the time his right to relief accrued. Appellee therefore requested this Honourable Court to uphold and affirm the judgment of the trial court.

The cardinal issue for the determination of this case is whether or not appellant's action of damages for wrong is statutorily time barred?

"Statutory actions are such as can only be based upon the particular statutes creating them". BLACK'S LAW DICTIONARY 29 (6' ed.1990). Our statute provides the time within which particular actions should be commenced in this jurisdiction, the time within which the right to relief accrues to a plaintiff, and that failure to institute such actions constitutes a valid defense which can be expressly pleaded by a defendant.

Our Civil Procedure Law, Rev. Code 1: 2.11, provides that "an action for damages for injuries to the person shall be commenced within three years of the time the right to relief accrued". Section 2.38 of the aforesaid law also provides that "in an action based on a mutual, open, and current account, where there have been reciprocal demands between the parties, the right to relief shall be deemed to have accrued as of the time of the last transaction in the account on either side.

Appellant contended that his action is not statutorily time barred under section 2.11 of said law because his right to relief accrued as of the time of the last transaction between the appellant and the appellee bank in 1995, as provided for by section 2.38

herein above quoted. He maintained that the statute of limitations began to toll as of 1995, and not as of 1987, as ruled by the trial judge and contended by appellee herein. Appellee, on the other hand strongly argued that appellant is statutorily time barred because of his failure to commence his action within three years of the time his right to relief accrued in 1987.

A recourse to the records in this case reveals that the appellee bank wrote the appellant on January 5, 1995, informing him that his account No. 605 is maintained in Liberian dollars. Appellant pleaded this letter in his pleadings in the court below. A careful perusal of the judge's ruling to dismiss appellant's action shows that the trial judge, in paragraph four thereof, made reference to appellant's contention that he became aware on June 7, 1995 that his account was denominated in Liberian dollars; and as such, his suit is not statutorily barred as his right to relief accrued in 1995. We observed from the ruling that the trial judge however ignored and neglected to consider the last transaction of 1995 between the appellant and the appellee bank, and ruled instead that the right to relief accrued to appellant as of 1987, and that he should have commenced his damage suit in 1990.

The appellee's counsel has not denied the letter of appellee bank, dated January 5, 1995, informing the appellant that his account is maintained in Liberian dollars. Appellee, however, argued before this Court that appellant's action is statutorily barred for his failure to commence said action within three years as of the time his right to relief accrued in 1987. Appellee stressed that the time for the commencement of damages for injuries was mandatory, and that the failure to institute such action within the time specified by the statute constitutes a valid defense which can be expressly pleaded. Appellee relied on section 2.11 of our Civil Procedure Law, Rev. Code 1; *Doe v. Tarplah and Wonkar*, 15 LLR 410 (1963), text at page 412 413; *Sherman and Sherman v. Clarke*, 17 LLR 419 (1966); *The Management of the Liberia Telecommunications Corporation v. Tyler et al.*, 38 LLR 328 (1995), Supreme Court Opinion, October Term A. D. 1994, decided February 16, 1995.

In the *Doe* case, this Court rightly invoked the principle of the statute of limitations and sustained the judgment of the trial court dismissing Appellant *Doe's* action of damages for injuries to his person on the ground that he awaited the outcome of a criminal prosecution of Clan Chief *Tarplah* and one *Sackor Wonkar* of *Sinoe County* before commencing his civil action beyond the statutory period of three (3) years. In the *Sherman* case, the defendants occupied a real property for the period of twelve years, but claimed title thereto under a plea of adverse possession in an action of ejectment filed by *Clarke*. This Court sustained the judgment of the Sixth Judicial

Circuit Court for Montserrado County in favor of Appellee Clarke on ground that the appellants therein could not succeed in adverse possession in an action of ejectment under a twenty years statute of limitations when they occupied the subject property for the period of only twelve (12) years.

In the Liberia Telecommunications Corporation case, the employee, Amos Tyler, worked for the corporation for a period of 31 years without the payment of his accrued annual leave. He instituted an action of unfair labor practices on July 14, 1992, at the Ministry of Labour, against the corporation after the termination of his employment in April, 1992, claiming his accrued annual leave pay from 1958 to 1992. The hearing officer awarded him the sum of \$17,902.50 as accrued annual leave pay for the 31 year period in which he did not take his annual leave. On appeal, the National Labour Court for Montserrado County confirmed the ruling of the hearing officer. This Court, on a further appeal, reversed the ruling of the trial court on grounds that Appellee Tyler's right to relief accrued at the time of his employment but not from the time his services were terminated. Hence, he was statutorily time barred for his failure to institute his labor action within seven (7) years.

In the instant case, the appellant opened and maintained a deposit account with the appellee bank on October 26, 1984. He requested a loan of US\$34,000.00, but was advised to make a withdrawal from his deposit account. He allegedly filled in a withdrawal slip for US34, 000.00, but was paid the \$34,000.00 in Liberian dollars rather than United States dollars. The record shows that the appellant wrote the bank two letters dated November 23 and December 19, 1994, requesting for the status of his US dollars deposit account. The appellee bank herein wrote the appellant on January 5, 1995 informing him that his deposit account with the bank was maintained in Liberian dollars. The facts and circumstances in those cases cited by the appellee and the instant case are not analogous. As far back as in 1878, this Court held in the case Jackson v. Horace, as reported in 1 LLR 99 (1878), that: "it is the privilege of every one to avail himself of every advantage allowed by law, and this is a right of which the courts cannot deprive him. However, when a party fails to use the means placed at his disposal for his security as prescribed by statute, the court will not make up said deficiency or neglect in the face of positive legislative enactment".

We observed from the records of this case that the appellant availed himself of the legal advantage allowed by statute and he zealously pursued his rights upon the receipt of appellee's letter of January 5, 1995 that his deposit account was being maintained in Liberian dollars. In the mind of this Court, the appellant's right to relief accrued as of 1995 and not in 1987. This Court holds that the statute of limitations in

the instant case began to toll as of the last transaction between the parties in 1995, in conformity with section 2.38 of the Civil Procedure Law, quoted supra. Hence, the appellant was not statutorily time- barred when he commenced his action of damages for wrong in 1997, within the period of three (3) years, as prescribed by section 2.11 herein quoted. The trial judge indeed committed a reversible error when she dismissed appellant's complaint in its entirety for failure to file his action within three (3) years.

Wherefore and in view of the foregoing, it is the considered opinion of this Court that the ruling of the trial court appealed from should be, and the same is hereby reversed. The case is remanded for trial on its merits, commencing with the hearing and disposition of the law issues. The Clerk of this Court is hereby ordered to send a mandate to the court below informing the judge therein to resume jurisdiction over this case and to conduct a hearing consistent with this opinion. Costs are assessed against the appellee. And it is hereby so ordered.

*Judgment reversed.*