

IN THE HONOURABLE SUPREME COURT OF THE REPUBLIC
OF LIBERIA, SITTING IN ITS MARCH TERM, A.D. 2020

BEFORE HIS HONOR: FRANCIS S. KORKPOR, SR CHIEF JUSTICE
BEFORE HER HONOR: JAMESETTA H. WOLOKOLIE..... ASSOCIATE JUSTICE
BEFORE HER HONOR: SIE-A-NYENE G. YUOH... ASSOCIATE JUSTICE
BEFORE HIS HONOR: JOSEPH N. NAGBE... ASSOCIATE JUSTICE
BEFORE HIS HONOR: YUSSIF D. KABA..... ASSOCIATE JUSTICE

N. Z. Enterprises by and thru its authorized representative,)
 Mr. Allison G. Koine of the City of Monrovia.....Appellant)

VERSUS)

The Ministry of Lands, Mines & Energy by and thru its Minister,)
 Deputy Ministers and all employees under their control)
1st Appellee)

APPEAL

AND)

The Ministry of Finance by and thru its Minister, Deputy Ministers,)
 and all employees under their control.....2nd Appellee)

GROWING OUT OF THE CASE :)

The Ministry of Lands, Mines & Energy by and thru its Minister,)
 Deputy Ministers, and the Ministry of Finance represented by)
 the Minister, Deputy Ministers and all authorized employees)
 and all those under their control, also of the City of Monrovia)
Movants)

MOTION TO DISMISS

VERSUS)

N. Z. Enterprises by and thru its authorized representative,)
 Mr. Allison G. Koine of the City of Monrovia.....Respondent)

GROWING OUT OF THE CASE:)

N. Z. Enterprises by and thru its authorized representative,)
 Mr. Allison G. Koine of the City of Monrovia.....Plaintiff)

VERSUS)

The Ministry of Lands, Mines & Energy by and thru its Minister,)
 Deputy Ministers and all employees under their control)
1st Defendant)

ACTION OF DEBT

AND)

The Ministry of Finance by and thru its Minister, Deputy Ministers,)
 and all employees under their control.....2nd Defendant)

Heard: May 1, 2019

Decided: September 3, 2020

When this case was called for hearing, Counselor J. Laveli Supuwood of the Supuwood & Associates Law Firm appeared for the appellant. Counselor Wesseh Aphonsus Wesseh of the Ministry of Justice appeared for the appellees.

MR. JUSTICE NAGBE DELIVERED THE OPINION OF THE COURT

This case is before the Supreme Court of Liberia on appeal. The certified records as summarized reveal that on June 4, 2012, the appellant, N. Z. Enterprises, filed an action of debt before the Debt Court for Montserrado County, against the appellees, the Ministries of Lands, Mines and Energy, and Finance, for failure of the appellees to settle their indebtedness to the appellant in the amount of Sixty-Seven Thousand, Five hundred Twelve United States (US\$67,512.00) Dollars for the supply of office furniture and equipment to the Ministry of Lands, Mines and Energy in November, 1996. The appellees, through the Ministry of Justice, the agency of government responsible to represent the legal interest of all government functionaries, filed along with their answer, a motion to dismiss the debt action on two grounds, namely: that the appellant lacks the standing to sue and that the appellant is estopped by the statute of limitations. The appellant also filed along with its reply, a resistance to the motion to dismiss.

Pleadings rested and the trial judge, His Honor James E. Jones, assigned the case for hearing. Following arguments *pro et con* on the motion to dismiss, the trial judge ruled and dismissed the entire action of debt on September 3, 2012, on the premise that the appellant was barred by the statute of limitations because the law suit was filed twelve (12) years after the transaction. The appellant took exception and announced an appeal to this Court.

The facts reveal that the appellant filed a nine-count complaint against the appellees through its authorized representative, Allison G. Koine, on June 4, 2012, and alleged principally that in November, 1996, it supplied the co-appellee, the Ministry of Lands, Mines and Energy, office furniture and equipment in the amount of Sixty-Seven Thousand, Five hundred Twelve United States (US\$67,512.00) Dollars and demanded payment from the co-appellee, the Ministry of Finance, but to no avail. We quote counts 4, 5, 6, 7 and 8 of the complaint for their relevance to this Opinion.

“Count 4. That in November of 1996 or thereabout, plaintiff supplied 1st defendant with office furniture and equipment on voucher #12-8sc in the amount of Sixty-Seven Thousand, Five hundred Twelve United States (US\$67,512.00) Dollars as per official purchase and special service voucher hereto attached as exhibit “p/1” in substantiation of this debt obligation”;

“Count 5. That further as to count four (4) above, the Deputy Minister, Edward B. Dagoseh, on the 5th day of March, 1997, communicated with plaintiff and issued tax credit in the form of Draw Back in the amount of Sixty-Seven Thousand, Five hundred Twelve United States (US\$67,512.00) Dollars to be used to offset Government of Liberia’s obligation to plaintiff. Find herewith attached as exhibit “p/2” copy of said communication to form a cogent part of this complaint”;

“Count 6. That on the 26th day of July A.D. 2000, plaintiff further wrote 1st defendant demanding the outstanding obligation of Sixty-Seven Thousand, Five hundred Twelve United States (US\$67,512.00) Dollars due to the abolition of the Draw Back exercise that was institutionalized by said agency of government. Find herewith attached as exhibit “p/3” a communication from N. Z. Enterprises to Honorable Arthur W. B. Funbala, Deputy Minister for Expenditure and Debt Management, Ministry of Finance to substantiate same”;

“Count 7. That on the 29th day of September, A.D. 2000, the Honorable Deputy Minister for Administration, Ministry of Land, Mines and Energy wrote a letter along with Government of Liberia allotment form to Honorable Charles Allen, Deputy Minister for Expenditure and Debt Management, to liquidate the Ministry’s obligation to plaintiff. Find hereto attached as exhibit “p/4” in bulk for court’s attention, copies of the letter and allotment form, forming an integral part of this action”;

“Count 8. Plaintiff further says that in furtherance of the communication as stated in count seven herein above, an understanding was reached between plaintiff and 2nd defendant to have the amount paid in two (2) installments; in this regards a new official purchase and special service voucher was prepared for the 1st installment payment of United States Forty-Three Thousand, Two Hundred Forty (US\$43,240.00) Dollars. Find attached as exhibit “p/5” copy of said new voucher, which was never honored by second defendant”;

The appellees filed along with their answer a five-count motion to dismiss the appellant’s complaint and we quote herein verbatim the appellees’ answer and motion to dismiss:

DEFENDANTS’ ANSWER

“And now come defendants in the above entitled cause of action praying this Honorable court to deny plaintiff’s claims and showeth the following legal and factual reasons to wit:

1. Defendants are defendants in an action of debt before this Honorable court and have filed a verified motion to dismiss.

2. That count two (2) through count nine (9) of plaintiff's complaint should be denied and dismissed because the party asserting the claim has not the legal capacity to sue.
3. Further to count one (1) above, plaintiff says that it supplied 1st defendant with office furniture and equipment in 1996 and its last communication with 1st defendant as to settlement of said claim was in the year 2000; that is to say about twelve years ago. Defendants argue and say that our law extant says that the failure to commence an action within the time limited therefore shall constitute a defense to the action, which shall be pleaded affirmatively in the answer or reply as required by section 9.8(4).
4. Defendants argue and maintain that the failure of plaintiff to begin its action within the seven years' time allowed by law means that plaintiff is stopped from asserting the claim and at the same time should suffer waiver and lashes.
5. Defendants deny all claims that were not specifically traversed in this answer.

Wherefore, and in view of the foregoing, defendants most respectfully pray your Honor and this Honorable court to deny plaintiff's complaint in its entirety in both law and equity, rule costs of these proceedings against the plaintiff and further grant unto defendants any and such other relief that Your Honor may deem just, legal and equitable".

MOVANTS' MOTION TO DISMISS

"And now come movants in the above entitled cause of action praying this Honorable court to deny respondent/plaintiff's claims and showeth the following legal and factual reasons to wit:

1. Movants are defendants in an action of debt before this Honorable court and have filed a verified answer.
2. That counts two (2) through nine (9) of respondent/plaintiff's complaint should be denied and dismissed because the party asserting the claim has not the legal capacity to sue.
3. Further to count one (1) above, respondent/plaintiff says that it supplied 1st defendant with office furniture and equipment in 1996 and its last communication with 1st defendant as to settlement of said claim was in the year 2000; that is to say about twelve years ago. Movants/defendants argue and say that our law extant says that the failure to commence an action within the time limited therefore shall constitute a

defense to the action, which shall be pleaded affirmatively in the answer or reply as required by section 9.8(4).

4. Movants/defendants argue and maintain that the failure of respondent/plaintiff to begin its action within the seven years' time allowed by law means that respondent/plaintiff is stopped from asserting the claim and at the same time should suffer waiver and laches.
5. Movants/defendants deny all claims that were not specifically traversed in this answer.

Wherefore, and in view of the foregoing, movants/defendants most respectfully pray your Honor and this Honorable court to deny respondent/plaintiff's complaint in its entirety in both law and equity, rule costs of these proceedings against the plaintiff and further grant unto defendants any and such other relief that Your Honor may deem just, legal and equitable".

Subsequently, the appellant filed a seven-count resistance to the appellees' motion to dismiss and maintained therein essentially that mere allegation of respondent's lack of capacity is not supported by evidence in that it must be stated with specificity as to the aspect of the capacity to be legally founded. Appellant/respondent further maintained that it had made frantic effort aimed at securing payment from the appellees since it supplied the co-appellee, the Ministry of Lands, Mines and Energy, the office furniture and equipment. Respondent denied the assertions made by the appellees that it sat supinely for twelve consecutive years before instituting the action for payment of the obligation to it.

The respondent further argued that from the time it delivered the goods in 1996 up to and including 2011, there have been exchanges of communications between the parties to secure the settlement of the appellees' obligation. Respondent strenuously contended that as a result of its continuous request for settlement of its debt, a negotiation was reached between the parties in 2005 and agreed that the bill be paid in two installments. Specifically, the last communication from respondent's counsel, Counsellor Nyanati Tuan, in 2011, supports the fact that it had not sat supinely for twelve years before requesting for payment. Hence, it should not be estopped from making claims on the basis of the statute of limitations. Therefore, the movant's motion to dismiss its complaint should and must be denied.

On August 20, 2012, the case was called for hearing on the motion to dismiss after pleading rested and argument had *pro et con*. Thereafter, the court reserved ruling for Thursday, August 23, 2012. The Judge, His Honor James E. Jones, ruled and granted the motion and dismissed the appellant/plaintiff's entire complaint. We quote verbatim the portion of the court's ruling essential to the determination of this case:

“The question to be answered by this court: is the complaint dismissible on reason of Statute of Limitation”? The court says yes. The complaint itself says that the materials were supplied in November 1996, about 16 years ago; and that a letter was written in A.D. 2000 by the Lands & Mines Ministry on its behalf to the Ministry of Finance. The Statute of Limitation for debt on a written instrument is seven (7) years from the date the right to relief accrued. Plaintiff has filed this action of debt twelve to sixteen years after the time the right to relief accrued without any explanation for the delay.

This court says given the circumstances; the court will be out of order to find the GOL or the Ministry of Finance liable to plaintiff. The court must say that plaintiff has lost its standing to sue due to the Statute of Limitations.

Wherefore, and in view of the foregoing, the motion to dismiss must be and is hereby granted. The complaint and the entire action are therefore hereby dismissed. Given under my hands and seal of the court this 3rd day of September A.D. 2012”.

To this ruling of the Debt Court, the counsel for the appellant noted exception and announced an appeal to this Court for final appellate review. The counsel assigned as errors in his bill of exceptions the following as quoted herein below:

APPELLANT’S BILL OF EXCEPTIONS

“Appellant/plaintiff in the above entitled cause of action, being dissatisfied with Your Honor’s ruling of the 3rd day of September A.D. 2012 on the motion to dismiss files this bill of exceptions:

1. That appellant says that Your Honor’s ruling on the motion to dismiss appellant’s cause of action filed by the appellee is a reversible error in that for statute of limitation to apply, for a contract on written instrument, the appellant must have sat supinely for seven (7) years but in the instant situation the appellant never sat for seven (7) years to elapse as per the communications and interactions between the parties as contained in the exhibits annexed to the pleading, therefore statute of limitation would not lie in the instant situation.
2. That prior to the case Puk Yang Fisheries, a Garworlohu’ Township Bushrod Island v. Buchanan Building material store, appellee decided by the Honorable Supreme Court during its March Term A.D. 2008, all government institutions have all along claimed that all actions against the Executive Branch of government shall commence from the permanent claims commission under such circumstance statute of limitation would only start to turn as of the date of the Opinion stated herein.

3. That prior to the Opinion of March Term A.D. 2008, the Executive Branch of Government has always invoked Chapter 66 of the 1LCLR page 282, therefore it would be inappropriate to invoke statute of limitation since the Honorable Supreme Court gave party litigants to sue the Executive Branch came into effect during the March Term A.D. 2008 and that from the date of the Opinion up to and including the filing of this action seven years have not elapsed.

Wherefore, and in view of the foregoing, appellant/plaintiff excepts to Your Honor's ruling on the motion to dismiss and hereby tenders this Bill of Exceptions for Your Honor's approval so as to facilitate the review of this case by the Honorable Supreme Court of Liberia sitting in its October Term A.D. 2012".

From the pleadings and arguments of the parties before us, the singular issue that we have identified to settle is: whether or not the statute of limitations will apply to or lie in favor of the appellees herein that are solely government institutions?

The transaction between the parties in this case is not disputed neither is the cost for the materials supplied by the appellant to the co-appellee, Ministry of Land, Mines and Energy, is in doubt. The only contention by the appellees which the court below sustained is that the appellant sat on its right to bring the action of debt within seven years as mandated by the statute. To settle this contention, we take recourse to the certified records transcribed to this Court.

On June 4, 2012, the appellant filed an action of debt against the appellees herein at the Debt Court for Montserrado County for office furniture and equipment it supplied to the co-appellee, the Ministry of Lands, Mines and Energy, in November 1996. The appellant annexed to its complaint several documents to substantiate the claim of US\$67,512.00 as the total cost for the office supplies and equipment to the co-appellee, the Ministry of Lands, Mines and Energy.

One year following the supply of the office furniture and equipment to the co-appellee, the Ministry of Lands, Mines and Energy, the appellant, on May 5, 1997, communicated with the then Deputy Minister for Revenue, Honorable Edward B. Dagoseh, who acknowledged the appellees' indebtedness in the amount of 67,512.00 to the appellant. We reproduce said communication for the benefit of this Opinion.

"Republic of Liberia
Ministry of Finance
Office of the Deputy Minister for Revenues

MF/2-3/DMR-062/'97

May 5, 1997

The Manager
N. Z. Enterprises, Inc.
2nd Street, Monrovia, Liberia

Dear Mr. Manager:

We take this opportunity to express our sincere thanks and appreciation to you for your understanding of our financial situation.

In this effort to ease the financial burden on your company in the absence of our payment of the government obligation to you, we herewith issue you a Tax Credit in a form of a transferable **Draw-Back** in the amount of US\$67,512.00 (Sixty-Seven Thousand Five Hundred Twelve United States Dollars) for goods supplied to the Government of Liberia. This could be applied to income tax and import duties your company owes the Government of Liberia.

This letter constitutes the legal Drawback until the amount is fully liquidated.

Kind regards,

Sincerely yours,
Edward B. Dagoseh
Deputy Minister for Revenues”

Three years elapsed without settlement of the appellees’ debt to the appellant; hence, on July 26, 2000, the appellant communicated with the Ministry of Lands, Mines and Energy, in which it expressed its disappointment with the Ministry of Finance to settle the co-appellee’s indebtedness of US\$67,512.00 to the appellant. We also reproduce said communication for its relevance to this Opinion.

“N. Z. Enterprises, Inc.
P.O. Box 10-2761
2nd Street, Sinkor, Monrovia, Liberia

July 26, 2000

Hon. John G. Thomas
Deputy Minister/Administration
Ministry of Lands, Mines & Energy
Monrovia, Liberia

Hon. Minister:

We have the honor most respectfully to extend our profound greetings and compliments to you and the Ministry's family.

Sir, we want to take this time to acquaint you with our disappointment that led to a total collapse of our firm, N.Z. Enterprises. This came as the result of the Ministry of Finance failure to liquidate the amount of Sixty-Seven Thousand, Five Hundred Twelve United States (US\$67,512.00) Dollars due our firm.

Our firm supplied office furniture and equipment to the Ministry of Lands, Mines and Energy at the total price of Sixty-Seven Thousand, Five Hundred Twelve United States Dollars and cannot recover the amount spent for the goods supplied since 1997.

Having pressurized the government of Liberia through the Deputy Minister for Revenues, Hon. Edward B. Dagoseh, a tax credit in the form of a transferable Draw Back was issued in favor of N.Z. Enterprises. But said tax credit was aborted by Lasanah V. Kromah, erstwhile Minister of Finance reason(s) were not disclosed to the entity.

Mr. Minister, I am of the candid opinion that you might have come across some of these office materials since your incumbency as Deputy Minister for Administer, but if not, your procurement chief can be contacted for detailed accounts.

The N.Z. Enterprise is therefore requesting you to come to her aid so as to reactivate its firm by prevailing over the relevant authorities at the Ministry of Finance to liquidate the amount in question.

Attached herewith, please find copies of the voucher No. 12-8SC and the tax credit (Drawback) written, stamped and signed by former Deputy Minister Edward B. Dagoseh.

Sincerely yours,
N.Z. Enterprise"

Upon receipt of appellant's communication to the Ministry of Lands, Mines and Energy, the then Deputy Minister for Administration, Honorable John G. Thomas, on September 29, 2000, communicated with Honorable Charles Allen, former Deputy Minister for Expenditure and Debt Management, Ministry of Finance, requesting the kind indulgence of the Ministry of Finance for the payment of the US\$67,512.00 in favor of the appellant with voucher 12-8SC attached and further requested the Ministry of Finance to apply said voucher against the budget of the Ministry of Lands, Mines and Energy for fiscal year 2000/2001. We also reproduce this communication and make it a material part of this Opinion.

"Republic of Liberia
Ministry of Lands, Mines & Energy

September 29, 2000

Honourable Charles Allen
Deputy Minister for Expenditure
and Debt Management
Ministry of Finance
Republic of Liberia

Dear Hon. Allen:

We have the distinguished honor to present to you our compliments and request your kind indulgence with the payment of the hereto attached voucher No. 12-8SC in favor of N.Z. Enterprises, Inc. in the amount of US\$67,512.00 (Sixty-Seven Thousand, Five Hundred Twelve United States Dollars).

In connection thereto, we will appreciate were you to kindly apply said voucher against our Ministry's budget for fiscal year 2000/2001.

Please accept the assurances of our sincere best wishes and esteemed personal regards.

Very truly yours,

John G. Thomas
Deputy Minister for Administration"

The records further reveal that on March 31, 2005, a payment voucher captioned "Official Purchase and Special Service Voucher" from the Ministry of Finance was raised in favor of the appellant, N. Z. Enterprises, Inc., following a negotiated settlement between the parties for the amount to be paid in two installments. The voucher reads:

"Republic of Liberia
Official Purchase and Special Service Voucher
O4-200 LM March 31, 2005
Ministry of Finance, RL
Please pay to N.Z. Enterprise Inc.
Monrovia, Liberia

Description – payment of amount, account representing cost of office furniture & equipment for use by the Ministry of Lands, Mines & Energy ... US\$43,240.00 (Forty-Three Thousand Two Hundred Forty United States Dollars).

Prepared by: John S. Kollie
Director of Finance"

Again, the appellees failed to make payment of the negotiated amount of US\$43,240.00 as the first payment of the agreed two installments. Consequently, the appellant, by and through its legal counsel, Counsellor Nyenati Tuan, wrote the Honorable Minister of Finance a communication dated December 2, 2011, demanding payment of the full amount of US\$67,512.00 owed the appellant. We reproduce said communication in this Opinion.

“TWLF/NT/CLLR./435/2011

December 2, 2011

The Honorable Minister
Ministry of Finance
Republic of Liberia

Dear Sir:

We write in our capacity as lawyers representing and protecting the legal interest of N.Z. Enterprises, a corporate duly organized and existing under the Association Law of the Republic of Liberia. Our client has made representation to us to the effect that the Government of Liberia is indebted to her in the amount of Sixty-Seven Thousand, Five Hundred Twelve United States Dollars (US\$67,512.00), representing amount for goods supplied the Ministry of Lands, Mines & Energy, Monrovia, Liberia in November, 1996. We are further informed by our client that despite of several communications exchanged between the entity and the Ministry of Finance, payment has not been made. See attached.

We would therefore appreciate very highly were you to use your good offices to authorize the appropriate personnel under your control to make the payment of the above amount.

Very truly yours,
Nyenati Tuan
Counsellor-At-Law”

Having carefully laid down the facts in this case, coupled with the reproduction herein of the communications exchanged between the parties, we shall now address the lone issue, whether or not the statute of limitations will apply to or lie in favor of the appellees herein that are solely government institutions? We answer this question in the negative.

The question that grows out of this issue, the answer which will form the basis for further discussion is to determine in what year did the right to file this action accrue to the appellant herein? A recourse to the records shows that the last transaction between the parties occurred on March 31, 2005, growing out of the communication of the Deputy Minister for Administration, John G. Thomas, dated September 29, 2000, in response thereto that the Ministry of Finance, on March

31, 2005, raised a payment voucher captioned “Official Purchase Special Service Voucher” in favor of the appellant following a negotiated settlement between the parties for the amount so owed by appellees to be paid to the appellant in two installments.

The appellant, having considered that the appellees could not settle their indebtedness, decided to pursue a legal process to claim its debt of US\$67, 512.00 and subsequently filed an action of debt against the appellees by and through its authorized representative, Allison G. Koine, on June 4, 2012. From a computation of the time interval for such action to have been filed accrued to the appellant in March, 2005, which was the last transaction date between the appellant and the appellees. The trial judge believed and concluded that the appellant sat on its right for three months, March, 2012 to June 4, 2012, before instituting the debt action when the statute had tolled and therefore dismissed the entire action; relying on the controlling laws cited herein.

The Black’s Law Dictionary, Ninth Edition, defines Statute of Limitations as “a law which bars claims after a specified period; specifically, a statute establishing a time limit for suing in a civil case, based on the date when the claim accrued. The purpose of such a statute is to require diligent prosecution of known claims, thereby providing finality and predictability in legal affairs and ensuring that claims will be resolved while evidence is reasonably available and fresh”. Our Civil Procedure Law provides that “an action to obtain payment of a debt or for damages for breach of a contract based on a written instrument or acknowledgement shall be commenced within seven years of the time the right to relief accrued.” *Civil Procedure Law, Rev. Code 1:2.13(1)*.

However, the dismissal of the entire action of debt by the trial judge would have been legally justified if the parties were in the same category because said action of debt accrued to the appellant between March, 2005 and March, 2012 after the statute had tolled.

Notwithstanding, we note a departure from this settled statutory law since the parties involved in these proceedings are not in the same category as the law contemplates; that is, the appellant is a private corporation established under the Business Association Law of Liberia whereas the appellees, Ministries of Finance and Lands, Mines and Energy, are all government institutions against which the Statute of Limitations cannot toll. Equity therefore requires that similarly the Statute of Limitations should not toll against a private entity in an action of debt or financial transaction against a government institution as it is in this case. The Honorable Court, speaking through Mr. Justice Yangbe opined that: “where the statute of limitations does not run against the government, it is fair enough that the statute also not run against a private individual in a case in which the government is a party”. *Clark v. The Ministry of Finance and the Ministry of Justice*, 32 LLR 464 (1984).

That said, the appellant must recover and therefore is entitled to the full amount of US\$67,512.00 for the office furniture and equipment it supplied to the co-appellee, the Ministry of Lands, Mines and Energy in 1996.

Wherefore, and in view of the foregoing facts and circumstances, the ruling of His Honor James E. Jones, Debt Court Judge for Montserrado County, is reversed and the appeal granted. The appellees are hereby ordered to pay to the appellant the amount of US\$67, 512.00 as the total cost for the materials supplied. The Clerk of this Court is hereby ordered to send a Mandate to the Debt Court for Montserrado County, commanding the Judge presiding therein to resume jurisdiction over this case and give effect to this Judgment. AND IT IS HEREBY SO ORDERED.