

IN THE HIGH COURT OF TANZANIA
(COMMERCIAL DIVISION)
AT DAR ES SALAAM

MISC. COMMERCIAL CASE NO. 44 OF 2005

UNIVERSAL AUTO ELECTRICAL
& HARDWARE (1986) LIMITED.....APPLICANT
VERSUS

1.N.I.C.

2.PSRC.....RESPONDENT

Counsel: Mr. Muganyizi for applicant
Mr. Msechu for Respondents

R U L I N G

Dr. BWANA, J:

1. The Respondents have raised the following preliminary objection –

*“ That this application is bad in law and ought
to be dismissed in its entirety as the intended
suit to be instituted is hopelessly out of time”*

2. In support of that objection, it is averred in essence that since the burglary to the Applicant's premises took place between the 1 and 2 October 1994, this application is time barred for a suit under contract has a six year limit. Therefore the Applicant ought to have instituted the intended suit by 2 October 2000. The provisions of section 4 and 5 of the Law of Limitation Act, 1971, are relied upon.


3. On its part the Applicant avers that the relevant provisions applicable is section 7 and not 4 and 5 of the said Act. It is further averred that the parties were involved in negotiations during which the first respondent gave indications of settling the payment. It is only after the said Respondent repudiated its promises on 22 September 2003 that the cause of action arose, that is, the Applicant's rights were denied.
4. I concur with the Applicant. Both sections 4 and 5 of the Law of Limitation Act refer to the date on which the cause of action arose. The immediate issue is – when did that cause of action commence. In my view, after examining the submissions, affidavits and their annexures, the relevant provision of the law to be applicable here is section 7 of the Act. That section states:

“Where there is a continuing breach of contract or a continuing wrong independent of the contract, a fresh period of limitation shall begin to run at every moment of the time during which the breach or the wrong, as the case may be continues”

The continuing wrong in this respect is the continued unfulfilled promises to pay after all the formalities have been complied with. So, up to 22 September 2003, when the promises were repudiated, it can be said that the period of commencement of the cause of action was

governed by the provisions of section 7 of the Act. Thereafter, the period, applicable under section 4 and 5 emerged.

5. The above considered, the contractual period of six years have not elapsed by the time this application was filed. Therefore the preliminary objection is dismissed with costs.



Dr. S. J. Bwana

JUDGE

13/2/2006