

In the High Court of Fiji at Suva

Civil Action No. 21 of 2013

Between: Mohammed Wahid Khan

Plaintiff

And: Mohammed Yasad Ali

Defendant

Appearances: Mr A. Sen for the appellant

Mr K.Ratulele for the respondent

Date of hearing: 21<sup>st</sup> October, 2015

### **JUDGMENT**

1. This is an appeal from a decision of the Master.
2. The appellant filed action on 20<sup>th</sup> June, 2013, for personal injuries, loss and damage caused to him by reason of the respondent wrongfully assaulting and beating him on 7<sup>th</sup> October, 2008.
3. The respondent, in his statement of defence stated that the claim is statute barred under section 4 of the Limitations Act, as the cause of action arose on 7<sup>th</sup> October, 2008, and the time for filing action expired on 6<sup>th</sup> October, 2011.
4. By notice of motion dated 24<sup>th</sup> January, 2014, the respondent sought that the defence be decided as a preliminary issue and the matter be struck out as statute barred.
5. The matter was argued before the Master. The Master held that the cause of action was time barred under the Limitations Act.

6. I turn to section 4(1) of the Limitations Act. This reads :

(1) *The following actions shall not be brought after the expiration of six years from the date on which the cause of action accrued, that is to say-*

(a) *actions founded on simple contract or on tort;..*

*Provided that-*

*In the case of actions for damages for negligence, nuisance or breach of duty (whether the duty exists by virtue of a contract or of provision made by or under any Act or independently of any contract or any such provision) where the damages claimed by the plaintiff for the negligence, nuisance or breach of duty consist of or include damages in respect of personal injuries to any person, this sub section shall have effect as if for the reference to six years there were substituted a reference of three years.*(emphasis added)

7. The sole issue for determination is whether the limitation period arising from an intentional act commences within three or six years, in terms of the above section. The issue is one of construction of the words “breach of duty” in the proviso and whether it applies to all actions for damages for personal injuries, as contended by the respondent.
8. In support of his contention that the present action could be filed before the expiration of a period of 6 years, Mr Sen, counsel for the plaintiff relied upon the decision of the FCA in *Maloney v Tam*, (1997) FJCA 34( Abu0002u.97S).
9. The FCA followed the decision of the House of Lords in *Stubbings v Webb*, [1993] AC 498. In that case, it was held that the three year limitation period prescribed by the identically worded section in the UK Limitation Act of 1980, in respect of actions for negligence, nuisance and breach of duty where the damages claimed consists of personal injury, did not apply to injuries caused by deliberate assaults and similar intentional acts.
10. In *Stubbings v Webb*, Lord Griffiths held that the juxtaposition of the phrase “breach of duty” with “negligence” and “nuisance” carried with it the implication of the breach of duty of care not to cause personal injury, rather than a breach of an obligation not to infringe any legal right of another person.



11. The House of Lords did not follow the Court of Appeal case in *Letang v Cooper*, [1965] 1 QB 232 which decided that even where personal injuries are caused deliberately and not negligently or by nuisance, the cause of action is for damages for breach of duty and is statute barred after three years.
12. Lord Griffiths said that he accepts that *Letang v Cooper*, was correctly decided in so far as it held that negligent driving is a cause of action falling within Section 2(1) of the Act of 1954. But he did not accept that the words “*breach of duty*” have the effect of including within the scope of the section all actions in which damages for personal injuries are claimed . He said that :
- If that had been the intention of the draftsman it would have been easy enough to say so in the section. On the contrary the draftsman has used words of limitation; he has limited the Section to actions for negligence, nuisance and breach of duty.”*
13. *Letang v Cooper*, concerned an intentional trespass to the person. The defendant had negligently driven his car over the plaintiff’s legs, while she was sunbathing on the grass in the car park of a hotel. The accident happened on 10 July, 1957, but the plaintiff did not issue writ claiming damages for personal injuries until 2<sup>nd</sup> February 1961, which was outside the three-year limitation period provided by the Act. The plaintiff claimed in both negligence and trespass to the person. The Court of Appeal held that the plaintiff’s claim was statute-barred. Lord Denning MR said that the cause of action was negligence and not trespass to the person and “*is therefore barred by the word “negligence” in the statute*”. His Lordship went on to say that “*even if it was trespass to the person, it was an action for “breach of duty” and is barred on that ground also*”.
14. The FCA in *Maloney v Tam*, (*supra*) held that it is not possible to interpret the phrase “*breach of duty*” in the proviso to section 4(1) in a way which results in the proviso applying to all actions for damages for personal injuries, as was done in *Letang v Cooper*. The judgment of the Court stated further:

*We readily accept the phrase should be construed as bearing its natural meaning, if that is possible and does not result in absurdity or conflict with another provision of the Act. However, the natural meaning of any expression used in a statute is to be ascertained by reference to the context in which it is used. In proviso (i) it is used in a context in which clearly it cannot bear its broadest meaning of breach of any possibly duty, as that would lead to all actions for damages in respect of personal injuries coming within its terms. That is a meaning which it cannot bear in the context.*

*..it is, we believe, possible to see in the choice of those three causes of action (negligence, nuisance and breach of duty) stated in as the ones excluded from the general provisions of section 4 (1) (a) an intention not to exclude from that general provision actions for damages for personal injuries founded on specific common law causes of action as distinct from causes of action which in the past would have been described as actions on the case. In our view "breach of duty" has to be construed accordingly.*

15. Fifteen years after the decision in *Stubbings v Webb*, the House of Lords in *A v Hoare*, [2008] UKHL 6 overruled that case and reverted to the position in *Letang v Cooper*, (*supra*). It was held that actions for intentional assault have to be filed within three years.
16. In the present case, the Master accepted the reasoning of the House of Lords in *A v Hoare*, being the current position in the English Courts The Master said that it would be right to depart from *Stubbings v Webb* and reaffirm the law in *Letang vs Cooper*.
17. Mr Ratulele, counsel for the respondent argued that in light of the decision of the House of Lords in *A v Hoare*, the decision in *Letang vs Cooper*, was reaffirmed, as correctly held by the Master. *Stubbings vs Webb*, does not apply in Fiji. Alternatively, he moved that the question of law be referred to the FCA for its determination.



18. The Master, in his judgment referred to the anomalies created by the cases cited in *A v Hoare*.
19. In one such case, *S v W*, (*Child Abuse: Damages*), (1995) 1 FLR 862 the plaintiff sued her mother and father for sexual abuse by the father ten years after the event. The cause of action against the father was intentional assault and the claim was therefore struck out. The cause of action against the mother was negligent failure to protect the plaintiff against the father. That cause of action fell within the discretionary extension of the Court and was allowed.
20. Lord Hoffman in *A v Hoare*, stated that the Law Commission had considered the anomalous effect the judgment in *Stubbings v Webb*, had on the case of *S v W*, and recommended a uniform regime for personal injuries, irrespective of whether the claim was made in negligence or trespass to the person. Lord Brown of Eaton-under-Heywood stated that the elimination of these anomalies provided an ample reason for invoking the *Practice Statement (Judicial Precedent)*, [1966] 1 WLR 1234.
21. I note that Lord Hoffman took into consideration extrinsic material. The Court in *Maloney v Tam*, said that there is no statutory authority in Fiji for the use of extrinsic aids.
22. In my view, this Court is bound by the decision of the FCA in *Maloney v Tam*. It follows that the period of limitation in respect of injuries caused by an intentional assault is six years.
23. In my judgment, this appeal succeeds.

24. **Orders**

- a. The appeal of the appellant is allowed.
- b. The respondent shall pay the appellant a sum of \$ 1000 as costs summarily assessed.

3<sup>rd</sup> February, 2016



*A.L.B. Brito-Mutunayagam*

**A.L.B. Brito-Mutunayagam**

**Judge**