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THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
CIVIL APPEAL NO. 153 OF 2012

DR. MENGE STEPHENAPPELLANT

VERSUS

10 **MBARARA DISTRICT LOCAL GOVERNMENTRESPONDEDNT**

CORAM: Hon. Mr. Justice Kenneth Kakuru, JA

Hon. Mr. Justice Geoffrey Kiryabwire, JA

Hon. Mr. Justice Christopher Madrama, JA

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JUDGMENT OF JUSTICE KENNETH KAKURU, JA

I have had the benefit of reading in draft the Judgment of my learned brother The Hon. Mr. Justice Christopher Madrama, JA. I agree with him that this appeal substantially succeeds for the reasons he has set out in his Judgment. I also agree with the orders he has proposed. I wish to add as follows:-

20 Courts, Administrative bodies and *quasi* Judicial authorities must at all time bear in mind the provisions of *Article 274* of the Constitution which requires that all laws in existence prior to the enactment of the Constitution in 1995 have to be construed with such modifications, adaptations, qualifications and exceptions as maybe necessary to bring it into conformity with the Constitution. See: *Attorney General vs*
25 *Osotraco, Court of Appeal Civil Appeal No. 32 Of 2002* and *Kabandize And 20 Others vs Kampala Capital City Authority Court of Appeal Civil Appeal No. 28 Of 2011*

With all due respect to the learned trial Judge, he ought to have looked at the provisions of *Article 50* of the Constitution to ascertain whether or not the appellant's action was sustainable as an action for redress under that Article.

30 Article 50 has been reproduced in the Judgment of Madrama JA, I do not need to reproduce it here.

5 In his amended plaint filed on 27th May 1998 the appellant sets out his claim in paragraph 3 which has also been reproduced by Madrama JA, in his Judgment.

He went to plead as follows in paragraphs 13, 14, 15 and 16 of the amended plaint.

10 *13. Between 28/2/95 and 11/3/95 at the instance and insinuations of the Chairman LC V Mbarara District Veterinary officer Mbarara, O/c MSF plaintiff was arrested by armed policemen, who trespassed upon plaintiff's official premises and wantonly violated plaintiff's Constitutional rights to privacy was confined in between two armed Policemen in Nissan sunny white car registration No. UE 973 and driven to the office of the District Police commander Mbarara where plaintiff was detained to Five (5) hours amid demands of when would plaintiff vacate the official premises.*

15 *14. The plaintiff avers that the trespass upon the premises and privacy and arrest and detention were unlawful as purported transfer and orders to vacate central Government official residence were ultra vires and contrary to law.*

20 *15. Subsequent upon the foregoing event, plaintiff was coerced into offering forced labour to defendant and was subjected to forced labour against his conscience, will and volition upon threats of disciplinary action (see: Annexure K1, K8, K9).*

25 *16. Plaintiff avers that forced labour was unconstitutional and violated plaintiff's basic rights for which plaintiff suffered physically, mentally and emotionally.*

30 It appears quite clearly to me from the above excerpt and the plaint as whole that the claim set out in the amended plaint was based both on wrongful dismissal and the violation of the plaintiff's fundamental human rights set out under chapter four of the Constitution. An action relating to the enforcement of or redress resulting from breach of fundamental human rights is not limited by the time set out in Government Proceedings Act or the Limitations Act.

A person bringing an action under *Article 50* of the Constitution is not subject to the statute of limitation. See: *Uganda Association of Women Lawyers and 5 Others Vs Attorney General, Constitutional Court Petition No 2 of 2003.*

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5 I am, therefore in agreement with Madrama, JA that this appeal substantially succeeds. The appellant is entitled to the orders set in the judgment of Madrama, JA. As Kiryabwire, JA also agrees, it is so ordered.

10 **Dated at Kampala** this.....^{6th}.....day of ^{May}.....2019.



.....
Kenneth Kakuru
JUSTICE OF APPEAL

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THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
CIVIL APPEAL NO. 153 OF 2012

DR. MENGE STEPHEN ===== APPELLANT

VERSUS

MBARARA DISTRICT LOCAL GOVERNMENT =====RESPONDENT

CORAM: Hon. Mr. Justice Kenneth Kakuru, JA

Hon. Mr. Justice Geoffrey Kiryabwire, JA

Hon. Mr. Justice Christopher Madrama, JA

JUDGMENT OF MR. JUSTICE GEOFFREY KIRYABWIRE, JA

JUDGMENT

I have had the opportunity of reading the Judgment of the Hon. Mr. Justice Christopher Madrama in draft. I agree with it and I have nothing more useful to add.

Dated at Kampala this.....^{6th} day of ^{May}....., 2019.


.....
HON. MR. JUSTICE GEOFFREY KIRYABWIRE
JUSTICE OF APPEAL

**THE REPUBLIC OF UGANDA,
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
CIVIL APPEAL NO 153 OF 2012
(CORAM: KAKURU, KIRYABWIRE, MADRAMA JJA)**

DR. MENGE STEPHEN}.....APPELLANT

10

VERSUS

MBARARA DISTRICT LOCAL GOVERNMENT}RESPONDENT

JUDGMENT OF CHRISTOPHER MADRAMA IZAMA, JA

The appellant being aggrieved by the decision of his Lordship Honourable Bashaija K. Andrew delivered on 28th August, 2012 lodged this appeal on three grounds namely:

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1. The learned trial Judge erred to have found that the appellant's claims for unlawful arrest, unlawful detention, a violation of rights to privacy, forced labour, forced retirement, unlawful dismissal were filed out of time.

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2. The learned trial Judge erred in not to have found that the plaintiff's claims excepting forcible retirement and unlawful dismissal/retrenchment, were breaches of the constitution and therefore not time barred.

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3. The learned trial Judge erred not to have found that the plaintiff's claim against forcible retirement and unlawful dismissal/retrenchment, were governed by the public service laws and therefore not time barred.

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The learned trial Judge had found that any purported unlawful retirement/retrenchment or dismissal of the plaintiff by the defendant was not based on any contract between them but was a purely tortuous action. He was therefore required to file an action against the defendant/respondent before the courts within the period stipulated by section 3 of the Civil Procedure and Limitation (Miscellaneous Provisions) Act (Cap 72) which provides that no action founded on tort shall be brought against the government, a local authority or a scheduled Corporation after the expiration of two years from the date on which the cause of action arose. The issue for consideration was when the cause of action arose and whether they were maintainable or not. The learned trial judge

5 determined the suit after taking the evidence of the parties and the result is a ruling on the issue in the final judgment.

At the hearing of the appeal, the appellant was represented by learned counsel Mr Ladislaus Rwakafuuzi and the respondent was represented by learned counsel Mr Twinomugisha Mugisha, Senior State Attorney.

10 **Submissions of the Appellant's Counsel**

Mr. Rwakafuzi submitted that the appellant was first appointed a District Veterinary Officer by the Uganda Central Government in 1987 and posted to work in Mbarara. Thereafter the District Executive Secretary (CAO) purported to transfer him to another farm. For whatever reasons the appellant resisted the transfer and force was applied on
15 him by which he was arrested, detained and forcefully evicted from his premises.

The appellant filed a suit in the High Court alleging unlawful detention, unlawful arrest, and criminal trespass, violation of the right to privacy, forced labour, forcible and unlawful retirement, unlawful retrenchment and dismissal. The parties adduced evidence and a point of law was addressed on whether the suit was time barred. Honourable
20 Justice Andrew K Bashaija held that the suit was time barred under section 3 of the Civil Procedure and Limitation (Miscellaneous Provisions) Act and dismissed it hence this appeal.

The Mr. Rwakafuzi raised one issue out of the grounds of appeal and merged the three grounds of appeal and is whether the learned trial Judge erred in finding that the
25 plaintiff's action was in tort when the plaintiff alleged violations of constitutional right to liberty and privacy. He contended that the court was resolving issues of unlawful arrest, unlawful detention, criminal trespass, violation to right to privacy, forced labour, forceful unlawful retirement and retrenchment. Mr. Rwakafuzi submitted that there has been a long standing error of law. Since Uganda got independence from Britain in 1962, it got a
30 bill of rights and the state guaranteed the right and therefore the causes of action whenever the state violated those rights was in the violation of fundamental rights and other freedoms and not the common law of tort.

Mr. Rwakafuzi submitted that the applicable Article was Article 22 of the 1967 Constitution which gave the procedure for enforcement of rights. Article 22 of the 1967
35 Constitution provides that any person who alleges that his fundamental rights and freedoms have been violated shall apply to the High Court for redress. The rule for enforcement of fundamental rights and freedoms was made in 1992 and therefore people continued enforcing their fundamental rights and freedoms using the Civil Procedure Rules and a litigant should not be faulted for this. The substance of the suit
40 was that the state was being sued for violations of the Constitution and therefore from

5 that perspective he contended that the causes of action subsisted and were not time barred.

Mr. Rwakafuzi further submitted that section 2 of the Government Proceedings Act gives instances where the Government can be sued by a private citizen and those instances are in tort and by private action. Therefore to enforce a private right to a remedy against
10 a wrong it envisaged a private law action and not public law. This meant that actions lay *inter alia* in tort and contract that is the only way to sue Government. In 1969 the Civil Procedure and Limitation (Miscellaneous Provisions) Act was enacted to cater for proceedings against government and scheduled corporations under the Government Proceedings Act which was only for causes of action in contract and tort and therefore
15 section 3 of the Civil Procedure and Limitation (Miscellaneous Provisions) Act was enacted purely for enforcement of tort and contract and not public law rights under which fall enforcement of fundamental rights and freedoms. Mr. Rwakafuzi submitted that Article 22 of the 1967 Constitution envisages enhancement of fundamental rights and other freedoms and not their curtailment by imposing a limitation period.

20 Mr. Rwakafuzi further submitted that this court in the case of **Kabandize and 20 others; Civil Appeal No 28 of 2011** held that statutory notice which is a requirement under the Civil Procedure and Limitation (Miscellaneous Provisions) Act was discriminatory and in violation of Article 21 of the 1995 Constitution. Similarly he submitted that the limitation period for suits against the Government should be the
25 same as that against ordinary persons and is 6 years.

With reference to which Constitution in terms of the 1967 Constitution or the 1995 Constitutional provisions are applicable or should applied, Mr. Rwakafuzi submitted that the guarantees in the Bill of Rights had always existed even in 1962, 1967 and now in 1995 they are spelt out even much better. Judgment was delivered by the High Court in
30 2012 and the appellant should benefit from the guarantees of the Constitution of the Republic of Uganda 1995. Further, he submitted that the two constitutions spelt out the same thing on the bill of rights and enforcement.

Rwakafuzi further submitted that the case of Kabandize (*supra*) was decided under the 1995 Constitution but its holding is applicable to the 1967 Constitution which had
35 already guaranteed certain rights. He prayed that the court finds that the Kabandize's case is a good guide on the guarantees of equality under the 1967 Constitution.

Mr. Rwakafuzi submitted that under the 1967 Constitution and Article 22 thereof, it is provided that subject to the provisions of clause 5 of Article 22 if any person alleges that any of the provisions of Article 8 to 20 including right to liberty from discrimination in
40 the bill of rights inclusive has been or is likely to be contravened in relation to him , then without prejudice to any other action with respect to the same matter that is lawfully available that person may apply to the High Court for redress. He submitted further that

5 where violations are committed by the state and as long as they were violations of the Constitution an action for infringement can be maintained.

Submissions in reply of the Respondent's Counsel

10 Mr. Twinomugisha in reply submitted that the trial Court correctly applied the law under the Civil Procedure and Limitation (Miscellaneous Provisions Act) Cap 72 which provided for the limitation of the claim that was presented. Section 3 thereof specifically provided that all actions in tort shall not be brought against the Government or a scheduled corporation after the expiration of 2 years from the date on which the cause of action arose. The plaintiff had been filed out of time and the respondent fell under section 1 (b) as a local authority against whom the claim was time barred.

15 The issue is whether the cause of action was in tort or it was a fundamental right which had been infringed. Mr. Twinomugisha submitted that the Constitution is the Grand Norm and guarantees rights and provides for the procedure on how those rights are going to be realized. For example Article 26 provides for a right property and a contract subsist between two parties and a contract is property protected by Article 26 of the
20 1995 Constitution, if the contract is breached the procedure will be to lodge an action by plaintiff in court to realize the fruits of that contract. Similarly the same applies to Article 50. Article 50 provides for enforcement of fundamental rights and freedoms. Under the 1967 Constitution Article 22 thereof provided for how those rights and freedoms would be enforced. The procedure is by the notice of motion in the High
25 Court. In the appellant's suit, there was a plaintiff which claimed remedies for *inter alia* unlawful arrest. There was a claim for breach of an employment relationship which would be tenable as a cause of action for breach of contract. The appellant claimed he was subjected to forced labour and unlawful dismissal. It is not denied that some rights could have been infringed but what was before the trial Court at that point was a private
30 claim for private remedies and the claim was in torts as provided for in the law which gives the remedies. Mr. Twinomugisha submitted that this Court should be precluded from inquiring into what was not canvassed at the trial Court, even when it was not termed as a constitutional breach at the trial Court, because it would now fundamentally be a new claim which is a claim for the breach of the fundamental rights and freedoms
35 which are provided for under Article 50.

The contract was terminated on 13th March 1995 and the interdiction was on 11th March 1995 and ended on 31st August 1995 when the appellant was dismissed

40 Furthermore, Mr. Twinomugisha submitted that the way the issue was raised and resolved concerns a point of law. At page 51 of the record the trial Court actually attempted to look into the rights in the constitution as averred in the amended plaintiff.

5 Specifically in paragraph 5 it is mentioned that the alleged violation of rights to privacy and forced labour are causes of action based on tort.

In the circumstances Mr. Twinomugisha prayed that the appeal is dismissed and in the alternative, if this Honourable Court finds that the fundamental rights and freedoms were breached, it should remit the suit to the trial Court for trial of those issues.

10 **Resolution of appeal**

I have carefully considered the appellant's grounds of appeal, the questions for consideration in the appeal, the submissions of counsel and the law. The appellant's counsel argued that the main issue for consideration in the grounds of appeal was whether the plaintiff's action was in tort and not infringement of fundamental rights and freedoms. The basis of the appeal is that the appellant's suit in the High Court was held to be time barred. The ruling was that the plaintiff's action was purely founded on the law of tort and could not be maintained under the Civil Procedure and Limitation (Miscellaneous Provisions) Act and section 3 (2) thereof which prescribed a limitation period of two years within which the action can be commenced from the time the cause of action arose. In this appeal, we are not required to evaluate the facts other than the pleading to establish what the cause of action of the appellant was. Secondly, we are required to consider whether an action alleging infringement of fundamental rights and freedoms under the 1967 Constitution of the Republic of Uganda can be time barred under the Civil Procedure and Limitation (Miscellaneous Provisions) Act.

25 As a point of law based on pleadings which formed the basis of the claim that can be proved against the respondent, it can be discerned from the amended pleadings and paragraph 3 thereof that the plaintiffs claim against the defendant was for:

- (1) Unlawful arrest.
- (2) Unlawful detention.
- 30 (3) Criminal trespass.
- (4) Violation of rights to privacy.
- (5) Forced Labour.
- (6) forcible and unlawful retirement, and
- (7) Ultimate and unlawful retrenchment/dismissal.

35 In paragraph 13 of the pleadings, the plaintiff averred that:

"Between 28/2/95 and 11/3/95 at the instance and insinuations of the Chairman LC V Mbarara District Veterinary Officer Mbarara, the plaintiff was arrested by armed policemen, who trespassed upon the plaintiff's official premises and wantonly violated the plaintiff's constitutional rights to privacy, was confined in
40 between two armed policemen in a Nissan Sunny white car registration number

5 UE 973 and driven to the office of the District Police Commander Mbarara where plaintiff was detained for five hours amid demands for the plaintiff to vacate the official premises."

In paragraph 16 it is averred in the amended plaint that:

10 "Plaintiff avers that forced Labour was unconstitutional and violated Plaintiff's basic rights for which Plaintiff suffered physically, mentally and emotionally."

In this appeal, we are not so much concerned with whether the plaintiff's action as averred in the plaint alleging violation of constitutional rights could succeed on the merits. We are more concerned with whether a cause of action could be founded on violation of fundamental rights and freedoms under Article 22 of the constitution of the
15 Republic of Uganda 1967 and whether such an action would be time barred.

The right to apply for redress upon the infringement or threatened infringement of any fundamental and other human rights and freedoms under chapter 4 of the Constitution is a guaranteed. First of all Article 50 of the Constitution the Republic of Uganda in 1995 provides that:

20 "50. Enforcement of rights and freedoms by courts.

(1) Any person who claims that a fundamental or other right or freedom guaranteed under this Constitution has been infringed or threatened, is entitled to apply to a competent court for redress which may include compensation.

25 (2) Any person or organisation may bring an action against the violation of one other persons or groups human rights.

(3) Any person aggrieved by any decision of the court may appeal to the appropriate court.

(4) Parliament shall make laws for the enforcement of the rights and freedoms under this Chapter."

30 It is a guaranteed right for anybody who claims that a fundamental or other right or freedom declared under the Constitution has been infringed or threatened to apply to a competent court for redress whereupon the court may order redress which may include compensation. The right to apply for redress arises upon any infringement or threatened infringement of a fundamental right or freedom guaranteed or declared under the
35 Constitution. The cause of action of the plaintiff, who is the appellant in this appeal, predates the 1995 Constitution of the Republic of Uganda. The cause of action arose between September and December 1993. The current Constitution of the Republic of

5 Uganda was promulgated on 8th October, 1995 and will be referred to in this appeal as
the 1995 Constitution of the Republic of Uganda. The appellant's action was
commenced in the High Court of Uganda at Mbarara by plaint filed in court on 21st
October, 1997 presumably under the current constitutional dispensation as to the rules
10 of procedure because by that time the Constitution of the Republic of Uganda 1995 had
been promulgated and its provisions regarding suits for redress were applicable.

It could be argued that the rights of the appellant which were allegedly infringed, were
not in violation of the 1995 Constitution of the Republic of Uganda. Such argument
cannot stand in light of the fact that fundamental and other human rights and freedoms
are inherent and not granted by the state. Article 20 (1) of the Constitution of the
15 Republic of Uganda 1995 provides that:

"20. Fundamental and other human rights and freedoms.

(1) Fundamental rights and freedoms of the individual are inherent and not
granted by the state.

(2) The rights and freedoms of the individual and groups enshrined in this
20 chapter shall be respected, upheld and promoted by all organs and agencies
of government and by all persons."

The above notwithstanding, the appellant alleges that his rights which had been
guaranteed by the 1967 Constitution of the Republic of Uganda had been violated. The
Constitution of the Republic of Uganda 1967 in Article 22 (1) thereof provided as
25 follows:

"22. (1) Subject to the provisions of Clause (5) of this Article, if any person alleges
that any of the provisions of Articles 8 to 20 inclusive has been, is being or is
likely to be contravened in relation to him, then, without prejudice to any other
action with respect to the same matter that is lawfully available, that person may
30 apply to the High Court for redress.

(2) ...

(5) Parliament may make provision, or may authorise the making of provision,
with respect to the practice and procedure of any court for the purposes of this
Article and make or confer upon the court such powers, or may authorise the
35 conferment thereof of such powers, in addition to those conferred by this Article

5 as may appear to be necessary or desirable for the purpose of enabling that court more effectively exercise the jurisdiction conferred upon it by this Article."

Articles 8 – 20 of the Constitution of the Republic of Uganda 1967 provided for the protection of fundamental rights and freedoms of the individual. It follows that the appellant had his fundamental rights and freedoms guaranteed by the Constitution of
10 the Republic of Uganda 1967 as well as his inherent rights recognised under the 1995 Constitution and these rights were merely declared in the 1995 Constitution of the Republic of Uganda. Because the rights are inherent, they are not granted by the Constitution but only declared to be the rights and freedoms enshrined in the Constitution. Particularly Article 45 of the Constitution of the Republic of Uganda 1995
15 makes it clear that any other right not mentioned expressly in the constitution is not by reason of that fact, excluded and it provides as follows:

"45. Human rights and freedoms additional to other rights.

The rights, duties, declarations and guarantees relating to the fundamental and other human rights and freedoms specifically mentioned in this chapter shall not
20 be regarded as excluding others not specifically mentioned."

Last but not least Article 283 of the Constitution of the Republic of Uganda saved the rights, privilege, obligation, liability vested or subsisting against the Government by or under existing law. It provides as follows:

"283. Devolution of rights and liabilities.

25 Subject to the provisions of Article 284 of this Constitution –

(a) any right, prerogative, privilege or function which under the existing law vested in the President shall vest in the President or other person or authority as is specified under this Constitution;

(b) any right, privilege, obligation, liability, or function vested in or subsisting
30 against the Government by or under an existing law shall continue to so vest or subsists.

The inherent fundamental rights and freedoms of the appellant as well as the obligations of the government to him continued to exist and were only declared or recognised under the 1995 Constitution of the Republic of Uganda. Had there accrued a
35 right in the appellant to sue for redress? Was that right extinguished? The inherent and

5 enshrined fundamental rights and freedoms of the appellant were not extinguished by
the coming into force of the Constitution the Republic of Uganda 1995 neither were any
obligations of the government to the appellant under the Constitution of the Republic
of Uganda 1967 extinguished by the time he filed the action. Those rights, if any,
continued to subsist and were existent by the time the appellant filed an action in the
10 High Court of Uganda because no limitation period was provided for redress and the
rights were continued under the 1995 Constitution of the Republic of Uganda.

The appellant filed an action in the High Court by way of a plaint and the question
remains whether this was the right procedure for enforcement of the fundamental rights
and freedoms enshrined in the 1967 Constitution. An application for enforcement of
15 fundamental rights and freedoms was supposed to be brought under **Statutory
Instrument No 26 of 1992** known as the **Fundamental Rights and Freedoms
(Enforcement Procedure) Rules, 1992** and rule 2 thereof which provides that an
application in the rules means an application to the High Court under clause 1 of Article
22 of the Constitution for redress in relation to the fundamental rights and freedoms
20 referred to in Articles 8 to 20 of the Constitution. Under rule 3 (1) of the Fundamental
Rights and Freedoms (Enforcement Procedure) Rules, 1992:

"(1) Every application shall be made by motion and shall be heard in open court
by a single judge of the High Court."

Before considering whether the learned trial judge erred in law to hold that the action of
25 the plaintiff was an action in tort and therefore barred by the law of limitation, we have
considered the procedure for commencement of an application for redress under Article
22 of the 1967 Constitution of the Republic of Uganda or even under Article 50 of the
Constitution the Republic of Uganda 1995. As noted above, the plaintiff filed the action
that culminated into this appeal on 21st October, 1997 after the promulgation of the
30 Constitution of the Republic of Uganda 1995. The rules made for enforcement of
fundamental rights and freedoms under the 1967 Constitution are clear that an
application for redress for infringement or threatened infringement of fundamental
rights or other freedoms declared under Articles 8 – 20 of the 1967 Constitution had to
be commenced by motion and would be heard in court by a single judge of the High
35 Court. Article 22 of the Constitution of the Republic of Uganda 1967 provided that the
application for redress shall be made in the High Court. The appellant's action was
commenced by ordinary plaint and filed in the High Court. The original plaint was
amended and the amended plaint filed on 27th May, 1998. The question therefore is

5 whether the suit in so far as it purports to be an application for redress under Article 22 of the Constitution the Republic of Uganda 1967 was incompetent because it was commenced by Plaint. As noted above such an application for redress had to be commenced by notice of motion under the 1967 Constitution.

10 I have carefully considered the matter. Parliament was supposed to enact a law providing for the procedure or any law providing for powers to make the rules of procedure. The **Fundamental Rights and Freedoms (Enforcement Procedure) Rules 1992** were made by the Chief Justice in exercise of powers conferred by section 20 of the Judicature Act, 1967 on 19th October, 1992. These rules were subsequently modified to bring them into conformity with the 1995 Constitution of the Republic of Uganda
15 after the appellant's suit was filed and the subsequent rules are not relevant for purposes of this judgment.

Historically, the High Court of Uganda strictly applied rules for commencement of proceedings as can be illustrated by several reported cases. In **Salume Namukasa v Yozefu Bukya [1966] EA 433** an application was made by Chamber Summons under
20 Order 9 rule 24 of the Civil Procedure Rules to set aside an ex parte judgment when the prescribed procedure under Order 48 rules 1 or the revised Order 52 rule 1 of the CPR was by notice of motion. On the issue as to whether the application was competent, and at page 435 paragraph I Sir Udo Udoma held that:

25 "...Counsel must understand that the Rules of this Court were not made in vain. They were intended to regulate the practice of the Court. Of late a practice seems to have developed of counsel instituting proceedings in this court without paying due regard to the Rules. Such a practice must be discouraged. In a matter of this kind, might the needs of justice not be better served by this defective, disorderly and incompetent application being struck out? My ruling therefore, on the
30 preliminary objection of point of law raised by counsel for the respondent is that this application is not properly before the Court and must be struck out."

In **Masaba v Republic [1967] EA 488**, the action was commenced by a document entitled "Notice of Motion" but its form was that of a chamber summons. Sir Udo Udoma CJ held that the prescribed procedure under rules 3 and 4 of the **Civil
35 Procedure (Fundamental Rights and Freedoms) Rules 1963** was by originating motion and the chamber summons was incompetent and a nullity. In **Kaur & Others v City Auction Mart Ltd [1967] EA 108**, an application to lift a caveat was commenced

5 by notice of motion but the notice of motion had not been endorsed or issued by a judge. It indicated that the summons were taken out by Messrs Shah Esq. It was held that this did not comply with Order 5 rule 1 of the Civil Procedure Rules and it was a fundamental statutory requirement. The application was dismissed with costs. In **Nakito & Brothers Ltd v Katumba [1983] HCB 70**, an application for an order of a temporary
10 injunction was commenced by notice of motion when there was no suit pending. The High Court declared the suit a nullity and struck it out for non-compliance with Order 5 of the CPR.

The East African Court of Appeal took the approach that wrong procedure would not invalid proceedings, if it does not go to jurisdiction or occasion a miscarriage of justice
15 to the opposite side. In **Boyes v Gathure [1969] EA 385**, an application for extension of a caveat was commenced in the High Court under section 57 of the **Registration of Titles Act of Kenya** by way of a chamber summons. An objection was made on appeal that the application entitled as "Chamber Summons" was incompetent because "chamber summonses" were used for interlocutory applications and cannot originate or
20 commence proceedings. It was held by the Court of Appeal for East Africa that section 57 of the RTA (supra) provided for applications by summons and this meant originating summons. The wrong procedure did not however invalid the proceedings, as the respondent had replied and had been heard in the trial by a court which was seized with jurisdiction in the matter and no prejudice had been occasioned to the respondent. The
25 question went to the substance as to whether a procedural defect is a substantive defect or a formal defect and a matter of form and not substance that vitiates the action. In **Iron and Steelwares Ltd v C.W. Matyr & Co. [1956] 23 EACA 175 at 177**, it was held by the East African Court of Appeal that the High Court has discretion to waive the strict application of Order 16 rules 2 (now Order 17 rule 2 of the revised CPR) on the question
30 of the right to begin address of the Court and the right of reply when they held:

"Procedural rules are intended to serve as handmaidens of justice, not to defeat it, and we think that the high court in its inherent jurisdiction to control its own procedure, has discretion to waive the strict application of order XVI, rule 2."

Finally the appellant's suit was commenced after the promulgation of the 1995
35 Constitution of the Republic of Uganda and Article 126 (2) (e) thereof provides that:

"In adjudicating cases both of a criminal and civil nature, the courts shall subject to law, apply the following principles: ...

5 (e) substantive justice shall be administered without undue regard to technicalities.”

In **Kasirye Byaruhanga & Co. Advocates v U.D.B. S.C.C.A. NO. 2 of 1997**, the Supreme Court of Uganda held that:

10 “...a litigant who relies on the provisions of Article 126 (2) (e) must satisfy the court that in the circumstances of the particular case before the court it was not desirable to have undue regard to a relevant technicality. Article 126 (2) (e) is not a magical wand in the hands of defaulting litigants.”

A judge has discretion to hear a suit even though commenced in a manner not prescribed where there is jurisdiction to do so and the opposite party has opportunity to
15 present their pleadings and be heard in defence or on their side of the matter. In **Boyes v Gathure [1969] 1 EA 385** Sir Charles Newbold P held at page 389:

20 “Did this erroneous procedure result in the whole proceedings being a nullity as is urged by Mr. da Gama Rose? In my view the concept of treating something which has been done and acted upon as a nullity is a concept which should be used with the greatest caution. May I repeat some words I used in *Nanjibhai Prabhudas & Co. Ltd. v. The Standard Bank Ltd.*, [1968] E.A. 670. I said in that case (at p. 683 B):

25 “The courts should not treat any incorrect act as a nullity, with the consequence that everything founded thereon is itself a nullity, unless the incorrect act is of a most fundamental nature. Matters of procedure are not normally of a fundamental nature.”

Using an incorrect form of procedure which has, in fact, brought the parties before the court and has, in fact, enabled the parties to present their respective cases to the court is not an incorrect act of such a fundamental nature that it
30 should be treated as if it, and everything consequent upon it, did not exist and never had existed.”

The principle of substantive justice prevailing over procedural law prescribing a particular form not adhered to was applied in **Saggu v Roadmaster Cycles (U) Ltd [2002] 1 EA 258**, where Mpagi-Bahigeine JA, of the Court of Appeal, held at page 262
35 that:

5 "Regarding the second point in objection that the notice of motion did not cite the law under which it was being brought. The general rule is that where an application omits to cite any law at all or cites the wrong law, but the jurisdiction to grant the order sought exists, then the irregularity or omission can be ignored and the correct law inserted."

10 The using of wrong procedure is not fatal if the parties appear in court and present their cases and the court has jurisdiction in the matter.

In this appeal, the appellant commenced the action by plaint and not by Notice of Motion as prescribed and the defendant filed a written statement of defence on all the matters. I note however that Article 22 of the 1967 Constitution is permissive in that an application for redress for the infringement or threatened infringement of a
15 fundamental right or other freedom did not preclude an applicant from seeking redress provided for under any other law. Secondly, because the action was commenced after the promulgation of the 1995 Constitution of the Republic of Uganda, it can be argued, and there are grounds to support that argument, that the action was commenced under
20 the 1995 Constitution and therefore Article 50 of the Constitution is applicable. Article 50 of the Constitution does not only provide for "redress" for infringement or threatened infringement of a fundamental right or other freedom but includes compensation under the main word for a remedy "redress" by providing that:

"Any person who claims that a fundamental or other right or freedom guaranteed
25 under this Constitution has been infringed or threatened, is entitled to apply to a competent court for redress which may include compensation."

The word "redress" under the 1967 Constitution was not defined. Before finally concluding the matter, the appellant's appeal raises three grounds of appeal which in summary can be dealt with by establishing whether an action can be commenced by
30 way of an ordinary plaint. Secondly, it has to be resolved whether an action can be commenced for redress which may include damages on the ground of infringement of fundamental rights and freedoms under the 1967 Constitution. I have carefully considered the grounds of appeal which are as follows:

1. The learned trial judge erred to have found that the appellant's claims for
35 unlawful arrest, unlawful detention, a violation of rights to privacy, forced labour, forced retirement, unlawful dismissal were filed out of time.

- 5 2. The learned trial judge erred in not to have found that the plaintiff's claims
 excepting forcible retirement and unlawful dismissal/retrenchment, were
 breaches of the constitution and therefore not time barred.
3. The learned trial judge erred not to have found that the plaintiff's claim against
10 forcible retirement and unlawful dismissal/retrenchment, were governed by the
 public service laws and therefore not time barred.

The court is concerned primarily with ground 2 of the appeal which deals with whether
the action of the plaintiff in so far as it alleges infringement of fundamental rights
and freedoms in the 1967 Constitution was a tort and therefore barred under section 3
15 of the Civil Procedure and Limitation (Miscellaneous Provisions) Act cap 72 laws of
Uganda.

Jurisprudence from Commonwealth countries on enforcement of fundamental rights
and freedoms is clear that efforts should be made by the courts to ensure that those
rights are enforced and litigants not turned away on account of procedural matters of
20 form or irregularities. The jurisprudence concerns the right of access to a court of law for
redress in respect of breach of a fundamental right and other freedoms. In **Attorney
General v Ali & Others (1989) LRC 474** at page 525 where Harper J.A held that:

 "... a citizen whose Constitutional rights are allegedly being trampled upon must
 not be turned away by procedural hiccups. Once his complaint is arguable, a way
25 must be found to accommodate him so that other citizens become
 knowledgeable of their rights..."

The right of individuals alleging violation of any fundamental right to access court was
also considered in **Juandoo v Attorney General of Guyana (1971) AC 972** at page
982. In that case no rules of procedure had been prescribed by Parliament for
30 enforcement of fundamental rights and freedoms though the Constitution provided that
Parliament would make the rules for enforcement of fundamental rights and freedoms.
On application by the Appellant for enforcement of her right to compensation, a
preliminary objection was raised to her petition on the ground that no procedure was
available to approach the court. The objection was overruled and the court held that:

35 "...the clear intention of the Constitution that a person who alleges that his
 fundamental rights are threatened should have unhindered access to the High

5 Court is not to be defeated by failure of Parliament or the rule making authority to make specific provisions as to how that access should be gained”.

The underlying principle which comes when accessing court in respect of enforcement of fundamental rights and other freedoms is that Courts jealously guard fundamental rights and other freedoms and would hear a litigant even if the court is moved through
10 wrong procedure. Article 50 of the Constitution of the Republic of Uganda 1995 gives the competent courts the role of custodians of fundamental rights and other freedoms.

In **Minister of Home Affairs and another v Fisher and another [1979] 3 All ER 21** it was held by the Privy Council that the bill of rights in Constitutions of many countries was influenced by the United Nations Charter on Human rights and calls for a generous
15 and purposive interpretation. Lord Wilberforce said at pages 25 – 26 that:

“It is known that this chapter, as similar portions of other Constitutional instruments drafted in the post-colonial period, starting with the Constitution of Nigeria, and including the Constitutions of most Caribbean territories, was greatly
20 influenced by the European Convention for the Protection of Human Rights and Fundamental Freedoms. That convention was signed and ratified by the United Kingdom and applied to dependent territories including Bermuda. It was in turn influenced by the United Nations Universal Declaration of Human Rights 1948e. These antecedents, and the form of Chapter I itself, call for a generous interpretation avoiding what has been called ‘the austerity of tabulated legalism’,
25 suitable to give to individuals the full measure of the fundamental rights and freedoms referred to. (3) Section 11 of the Constitution forms part of Chapter I. It is thus to ‘have effect for the purpose of affording protection to the aforesaid rights and freedoms’ subject only to such limitations contained in it ‘being limitations designed to ensure that the enjoyment of the said rights and
30 freedoms by any individual does not prejudice ... the public interest’.”

In **The Queen v Big M Drug Mart [1986] LRC 332** the Supreme Court of Canada held that in interpreting the charter on rights the courts should adopt a generous rather than a legalistic approach aimed at fulfilling the purpose of the guarantee and securing for individuals the full benefit of the Charters protection.

5 In conclusion, a purposive interpretation of the right to apply for redress should in all cases call for accommodating a litigant who has approached court by any form and procedure available to court (See **Attorney General v Ali & Others** (supra)). The procedure of the appellant to move court by ordinary Plaint was not fatal to his suit for redress for alleged infringement of any fundamental rights.

10 The only question left in this appeal is whether the part of the suit as alleging infringement of the bill of rights under Articles 8 – 20 of the 1967 Constitution was time barred.

I have considered the submissions of the appellant's counsel that fundamental rights and freedoms cannot be limited by the provisions of the Civil Procedure and Limitation
15 (Miscellaneous Provisions) Act. The preamble to the Civil Procedure and Limitation (Miscellaneous Provisions) Act, Cap 72 laws of Uganda provides that it is:

"An Act to provide for the giving of notice before certain suits are instituted; for the limitation of certain actions; for the protection against actions of persons acting in the execution of public duties and for purposes incidental to or
20 connected with the matters aforesaid."

The preamble to the said Act clearly provides that it caters for limitation of certain actions. It is provided for under section 3 thereof which provides that:

"(1) No action founded on tort shall be brought against –

(a) the Government;

25 (b) a local authority; or

(c) a scheduled corporation,

after the expiration of two years from the date on which the cause of action arose.

5 (2) No action founded on contract shall be brought against the government or
against a local authority after the expiration of three years from the date on
which the cause of action arose."

The Civil Procedure and Limitation (Miscellaneous Provisions) Act is therefore a
limitation Act for certain actions against the government, local authority or scheduled
10 corporation.

Question of whether the fundamental right or freedom guaranteed by the Constitution
can be limited by a Limitation Act is a question of law primarily based on how the courts
will guarantee the enforcement of fundamental rights and freedoms enshrined in the
constitution. Article 2 of the Constitution of the Republic of Uganda provides for the
15 supremacy of the Constitution in the following words:

"2. Supremacy of the Constitution.

(1) This Constitution is the supreme law of Uganda and shall have binding force
on all authorities and persons throughout Uganda.

(2) If any other law or any custom is inconsistent with any of the provisions of this
20 Constitution, the Constitution shall prevail, and that other law or custom shall,
to the extent of the inconsistency, be void."

It follows that the beginning point for analysis of whether fundamental rights and
freedoms can be limited in the manner stipulated above has to be determined first of all
by a perusal of the provisions of the Constitution as to what is a permissible derogation
25 from the rights enshrined in the Constitution. Before I do that, we were addressed on
whether the cause of action of the plaintiff was in tort or in the infringement of
fundamental rights and freedoms. From the Pleint that has been quoted above, the
appellant *inter alia* alleged the infringement of constitutional rights. At this stage of the
proceedings, it is not necessary to determine whether the allegation has substance. It

5 was sufficient to allege that there was an infringement of fundamental rights and freedoms guaranteed under the 1967 Constitution or the 1995 Constitution of the Republic of Uganda for there to be a cause of action. Any other determination would be on the merits. This is clear from Article 50 (1) of the Constitution of the Republic of Uganda which provides that any person who claims that a fundamental or other right or freedom guaranteed under this Constitution has been infringed or threatened, is entitled to apply to a competent court for redress which may include compensation. It is sufficient to claim that a fundamental right or freedom has been infringed or threatened to have a cause of action entitling the person alleging to apply to a competent court for redress. Similarly, Article 22 (1) the 1967 Constitution, is couched in the same way. It provides that "22. (1) Subject to the provisions of clause (5) of this Article, if any person alleges that any of the provisions of Articles 8 to 20 inclusive has been, is being or is likely to be contravened in relation to him, then, without prejudice to any other action with respect to the same matter that is lawfully available, that person may apply to the High Court for redress." It was therefore sufficient to allege that any of the rights in Articles 8 - 20 of the Constitution had been infringed to have the cause of action for enforcement of fundamental rights and other freedoms by the courts. The 1967 Constitution itself provided for the enjoyment of the rights subject to limitations granted in the constitution. Article 8 (5) of the 1967 Constitution provided that:

25 "(5) In the enjoyment of the rights and freedoms referred to in clause (2) of this Article, no person shall prejudice the rights and freedoms of others or the public interest.

(6) the provisions of this Article shall have effect subject to limitations contained in this chapter.

The 1967 Constitution further provided for limitation of the rights enshrined in the Bill of Rights in Article 21 by making provisions for times of war or public emergency. Finally,

5 Article 43 of the Constitution of the Republic of Uganda 1995 reproduces Article 8 (5) of the 1967 Constitution of the Republic of Uganda and provides that:

"(1) In the enjoyment of the rights and freedoms prescribed in this Chapter, no person shall prejudice the fundamental or other human rights and freedoms of others or the public interest."

10 Article 43 caters for the definition of public interest but excludes political persecution; detention without trial; and provides that:

"(2) Public interest under this Article shall not permit –

(a) political persecution;

(b) detention without trial;

15 (c) any limitation of the enjoyment of the rights and freedoms prescribed by this chapter beyond what is acceptable and demonstrably justifiable in a free and Democratic society, or what is provided in this Constitution.

Before the rights of the appellant to file an action can be limited, it has to be demonstrated that the limitation is in the public interest or to prevent prejudice of the
20 fundamental or other human rights and freedoms of others. This is not a preliminary issue but has to be tried on the merits. Where an authority such as the local government in this case or other person alleged to have infringed a right or freedom guaranteed argues that the limitation on a right or freedom is justified, it has the onus to prove that the limitation is acceptable and demonstrably justifiable in a free and democratic society
25 or is provided for by the Constitution itself. Provisions on limitation of fundamental rights or other freedoms as being the subject of several decisions. In **R v Oaks (1987) LRC (Const) 477** it was held by the Canadian Supreme Court that:

5 “The onus of proving that a limit on a right or freedom guaranteed by the Charter
is reasonable and demonstrably justified in a free and democratic society rests
upon the party seeking to uphold the limitation. It is clear from the text of
section 1 that limits on the rights and freedoms enumerated in the charter are
exceptions to the general guarantee. The presumption is that the rights and
10 freedoms are guaranteed unless the party invoking section 1 can bring itself
within the exceptional criteria, which justify their being limited. This is further
substantiated by the use of the word “demonstrably”, which clearly indicates that
the onus of justification is on the party seeking to limit.”

This principle was applied by the Supreme Court of Uganda In **Charles Onyango Obbo**
15 **and Andrew Mujuni Mwenda v the Attorney General Constitutional Appeal No. 2**
of 2002 and I refer to the judgment of C.K Byamugisha, Ag. J.SC who held that once an
infringement is proved, the onus shifts to the Respondent to demonstrate that
limitations on fundamental rights and other freedoms are justifiable:

20 “... there is no doubt in my mind that when the Appellants filed their petition they
were challenging a law that they thought rightly or wrongly was in existence
before the coming into force of the Constitution. The statement in the petition
and the accompanying Affidavit of Charles Onyango Obbo, the First Appellant,
bears testimony to that fact. The petition alleged that section 50 (supra) is
inconsistent with and/or is in contravention of the provisions of the constitution.
25 The petition ended with one of the prayers seeking a declaration that the section
is inconsistent with the provisions of Articles 29 (1) (a) and (b), 40 (2) and 43 (2)
(c) of the constitution.

30 Having said that, the burden was on the Appellants to prove that the state or
somebody else under the authority of any law has violated their rights and
freedoms to publish guaranteed under the constitution. Once that has been
established, the burden shifts to the state or the person whose acts are being
complained of to justify the restrictions being imposed or the continued
existence of the impugned legislation.

5 In the matter now before us the Appellants, I think established by their petition that the acts of the D.P.P to prosecute them was inconsistent or in contravention of their rights as enshrined in the constitution. The burden shifted to the state to justify the restriction as being demonstrably justifiable in a free and democratic society or within the confines of the constitution."

10 All that is required in a Complaint is an allegation of infringement of an Article on fundamental rights and freedoms for there to be a cause of action. The rest is a matter of evidence. In **NTN Pty Ltd and N.B.N Ltd v The State 1988 9 (Const) LRC 333**, it was held that in considering legislation that derogated from a right, the party impugning the legislation must show a prima facie case that his right has been affected:

15 "The Petitioner must demonstrate a prima facie case that his rights have been affected ... the nature of the evidence depends on the manner in which the fundamental rights is said to be affected by legislation..."

While the courts have been clear about the need to afford access to court on the question of infringement of fundamental rights and other freedoms and for redress, without any procedural "hiccups" or setbacks, the question of whether Parliament can restrict access to court under an equivalent of Article 50 of the Constitution of the Republic of Uganda 1995 has also been the subject of jurisprudence.

In Re: Presidents Reference of the Constitution of Vanuatu and the Broadcasting and Television Bill 1992 [1993] 1 LRC or Law Reports of the Commonwealth, 141

25 the arbitrary use of power without a right of redress in a court of law under a proposed statute was successfully challenged in court. The President referred a bill whose clause gave the minister power to regulate private broadcasts to remove any member of the statutory corporation without giving any reasons and which prevented such removal from being called to question in any court to the Constitutional Court. The issue was

30 whether the provision was invalid for inconsistency with the fundamental rights and freedoms. The court considered the question of whether the term "protection of law" under Article 5 (1) (d) guaranteed the both procedural fairness and the fundamental rights. Inter alia the issue was whether the guarantee of fairness includes a guarantee of the right to be heard and the right to apply to a court of law for redress for enforcement

35 of fundamental rights and freedoms. The court held that Article 5 (1) (d) refers to a system of law, which incorporates the fundamental rules of natural justice that had formed part and parcel of the common law. It was held that the term "protection of law"

5 is not restricted to 'rules of natural justice' but is of wider import – it includes a right of
access to courts. To deny access to courts is beyond the Constitutional competence of
legislature. Laws enacted by Parliament are subordinate to the Constitution. In other
words legislature cannot enact a law that denies access to a court of law by aggrieved
persons seeking redress in respect of alleged infringement of their fundamental rights
10 and other freedoms.

In **Re Rivas and the Belize Advisory Council [1993] 3 L.R.C. 261**, the Solicitor General
on behalf of the Respondent, the Belize Advisory Council, applied to court seeking a
preliminary ruling on whether the court possessed jurisdiction to inquire into a decision
of the Respondent in view of s. 54 (15) of the Belize Constitution, a provision which
15 provided that the validity of actions of the Respondent shall not be inquired into by any
court of law. The point of law for determination was whether the court has no
jurisdiction to inquire into a decision of the Belize Advisory Council in view of section 54
(15) of the Belize Constitution. Section 54 (15) of the Belize Constitution provided:

20 "The question whether or not the Belize Advisory Council has validly performed
any function entrusted to it by this Constitution or any other law shall not be
inquired into by any court of law"

The provision limited powers of the court and is equivalent to a statute of limitation
which provides that no action shall be commenced after the expiration of a certain
period of time. The Constitutional Court held at page 269 that:

25 "Unique or not, any institution, be it an inferior court or a Superior tribunal, which
deals with the legal and human rights of any subject, in any capacity whatsoever
must conform to the time honoured and hallowed principles of fundamental
rights and natural justice. Allegation that there has been a breach of any of these
principles in relation to any person must in my view, be subject to inquiry by the
30 Supreme Court, irrespective of the calibre of the institution in respect of which
allegation has been made."

Any person who alleges breach of a fundamental right must have a right to seek redress
in a court of law through access to the court by way of a challenge to the decision or
action. The idea is that fundamental rights and freedoms are not conferred by the
35 Constitution and are inherent and Article 45 of the Constitution of the Republic of
Uganda recognises that because it provides:

5 “The rights, duties, declarations and guarantees relating to the fundamental and other human rights and freedoms not specifically mentioned in this Chapter shall not be regarded as excluding others not specifically mentioned”.

10 Furthermore, as I noted above, Article 20 (1) of the Constitution of the Republic of Uganda 1995 provides that fundamental rights and freedoms of the individual are inherent and not granted by the state.

15 In conclusion, the appellant could not be barred from being heard on his allegations in the plaint in paragraphs 13, 14 and 16 of the amended plaint which alleged infringement of fundamental rights. The learned trial judge considered the issue of whether the cause of action unmaintainable or not and applying the provisions of section 3 of the Civil Procedure and Limitation (Miscellaneous Provisions) Act Cap 72 on the footing that the plaintiff’s actions were actions founded in tort. He considered *inter alia* the causes of action of unlawful arrest, detention and trespass and applied the provisions of section 3 of the Civil Procedure and Limitation (Miscellaneous Provisions) Act to find that the action was time barred.

20 It may be argued that the alleged infringement of fundamental rights and freedoms were Torts. Such an argument would be valid but Article 22 of the 1967 Constitution made a separate provision for the enforcement of fundamental rights and freedoms from any other form of redress which an injured party is entitled to. The action for redress of fundamental rights and freedoms is a specific action in a competent court for declarations, injunctions or any other form of redress and which may include a remedy for redress in terms of compensation. The learned trial judge was not addressed on the question of the limitation with regard to fundamental rights and freedoms even though at page 51 of the record, the learned trial judge referred to alleged violations of right of privacy and violation by way of forced labour and concluded that they were Torts and therefore time barred. Infringement of a fundamental right gives rise to a statutory cause of action to which the provisions of section 3 of the Civil Procedure and Limitation (Miscellaneous Provisions) Act, does not apply.

35 Finally the issue of whether the provisions of the Civil Procedure and Limitation (Miscellaneous Provisions) Act should be modified or construed with the necessary adaptations, qualifications and modifications to bring it into conformity with the constitution of the Republic of Uganda 1995 under Article 274 thereof, is a matter that can be raised before the trial court and not in this court. In case of any question arising

5 as to whether the limitation provisions contained therein are inconsistent with any
Article of the Constitution of the Republic of Uganda, it can be considered by the trial
judge and where there is controversy about the matter, can be referred to the
Constitutional Court. Secondly, the question of what kind of redress the applicant would
be entitled to pursuant to allegations of violation of his fundamental rights and
10 freedoms, is a matter for consideration by the trial judge and not the subject of appeal.
In the premises, the learned trial judge erred in law to dismiss the action on the ground
that it is time barred and not determined it on the merits.

In the premises, grounds one and two of the appeal which will deal with the issue of
whether the plaintiffs action is time barred, is allowed to the extent that the action which
15 survives deals with the alleged infringement of fundamental rights and freedoms. The
appellant had a right to apply for redress which right could not be limited by section 3
of the Civil Procedure and Limitation (Miscellaneous Provisions) Act by defining the
alleged infringement as a tort. To that extent the judgment of the High Court is set aside
to enable the plaintiff prosecute his suit alleging infringement of fundamental rights and
20 freedoms and for redress. The matter is remitted to the trial court for trial of the suit or
determination accordingly.

Ground three of the appeal was abandoned and we do not have to deal with it.

On the question of costs, the appellant's did not address the learned trial judge on the
issue of breach of fundamental rights and freedoms as a statutory cause of action
25 guaranteed by the Constitution and limitation of actions and therefore, each party shall
bear its own costs of the appeal.

Dated at Kampala the 6th day of May 2019


Christopher Madrama,

30

Justice of Appeal