THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CIVIL APPEAL NO. 090 OF 2012

(Arising from High Court Miscellaneous Cause No. 0064/2010)

JAMADA K LUZINDA:: APPELLANT

VERSUS

ATTORNEY GENERAL:: RESPONDENT

CORAM: HON. MR. JUSTICE M.S. EGONDA - NTENDE, JA

HON. MR. JUSTICE CHEBORION BARISHAKI, JA

HON. LADY JUSTICE PERCY NIGHT TUHAISE, JA

JUDGMENT OF HON. JUSTICE CHEBORION BARISHAKI, JA

The appellant, Jamada K. Luzinda was a Civil Servant and was first appointed in February 1965 as an Assistant Examination Secretary. He was confirmed for the said position in 1967. In 1970 he was promoted to the post of Inspector of Schools and in 1975 he was elevated to the post of Foreign Service Officer. The following year in 1976 he was appointed Permanent Secretary which position he served until April 1979 when he was suspended and later dismissed on 1st April 1980. Upon dismisal appellant was aggrieved and in 2002 appealed to the Ministry of Public Service and the Ministry of Justice and Constitutional Affairs. On 1st April 2010, the Solicitor General pronounced himself on the matter

stating that the dismissal and forfeiture of the appellant's terminal benefits was lawful. Being dissatisfied with the prononcement, the appellant filed an application at the High Court for Judicial Review and sought an order of certiorari to quash the decision.

The trial judge dismissed the application with costs on ground that it was time barred hence this appeal with the following grounds:

1. ***The learned trial Judge erred in law and fact when she held that the appellant couldnot appeal against the solicitor General's decision because he was not the appointing authority.***

2. ***The learned trial judge misconstrued the fact that the application wasn`t an appeal against the dismissal but sought to review the manner in which the decision to dismiss was made.***

3. ***The learned trial judge erred in law and fact when she held that the appellant didnot seek any remedy since 1984 when he learnt of his dismissal.***

4. ***The learned trial judge failed to properly evaluate the evidence hence arriving at a wrong conclusion.***

At the hearing of the appeal, Mr. Kamugisha Vincent appeared for the appellant while the respondent was represented by Ms Adong Imelda and Ms.Cheptoris Sylivia.

Counsel for the appellant opted to argue all the grounds of appeal jointly. Counsel for the respondent followed the same order.

Counsel for the appellant submitted that when the appellant learnt of his dismissal he immediately opted to use the internal disciplinary complaints procedure by lodging a compliant with the Public Service Commission. Counsel for the appellant contended that although the appellant was dismissed in 1980, he only got to know about his dismissal in 1984 and lodged a complaint in 2002. It was counsel's contention that although the stipulated time to file the appellant's complaint had elapsed, the Public Service Commission entertained his complaint and made a decision on it in 2010. He submitted that the delay was due to the internal disciplinary procedure at the Attorney General's office which concluded the proceedings on 1st April 2010. That after the appellant's recourse with the internal disciplinary procedure had been exhausted, he came to court.

Counsel further submitted that the role of the Public Service Commission was to review or determine the legality of the process of dismissal since he was not accorded a fair hearing. That the appeal to the Public Service Commission was not questioning the power of the appointing authority to dismiss but whether depriving the appellant of his terminal benefits was right. It was also counsel's contention that the fact that the Public Service Commission entertained and handled the complaint to its conclusion, that meant that the complaint was revived and no longer fell within the ambit of the Limitation Act in the spirit of

section 22(4) of the Limitation Act which provides that where any right of action has accrued to recover any debt or other liquidated pecuniary claim and the person liable or accountable therefore acknowledges the claim, the rights shall be deemed to have accrued on and not before the date of acknowledgement.

Counsel implored court to invoke Article 126(2) (e) of the Constitution and administer substantive justice without undue regard to technicalities.

In reply, counsel for the respondent submitted that the claim is time barred. He added that the appellant stated to have been dismissed in 1980 but only learnt of the dismissal in 1984 that however, he filed a judicial review application in 2002 which under the law must be brought within 6 months. She contended that the cause of action arose in 1984, and the application was filed long after the requisite time and as such the application was time barred. Counsel for the respondent asked this court to dismiss the appeal with costs.

Determination of issues

I have studied the record of appeal and the ruling of the lower Court. I have also considered the submissions of both counsel and the authorities that were availed to Court.

In my view, this appeal raises two main issues to be resolved by the court. The first is whether the learned trial judge erred in law and fact when she held that the appellant could not appeal against the solicitor General`s decision because he was not the appointing authority. The second is whether the trial judge erred in law when she held that the claim was time barred.

I will deal with the second issue first since its resolution has great bearing on the entire appeal.

It is trite law that the duty of this Court as a first appellate court is to re-evaluate evidence and come up with its own conclusion as enunciated in ***Rule 30(1) of the Court of Appeal Rules, Fr. Narcensio Begumisa & others vs. Eric Tibebaaga (Supreme Court Civil Appeal No. 17 of 2002) and Banco Arabe Espanol V Bank of Uganda, Supreme Court Civil Appeal No.8 of 1998.***

It's clear from the record that the appellant was dismissed as a Permanent Secretary by a letter dated 1st December 1980. He stated to have first learnt of the dismissal in 1984 after he made a complaint to the head of the civil service about his wrongful suspension. The appellant filed a complaint contesting his dismissal and the terms set therein on 2nd February 2002, about 22 years after his dismissal.

Counsel for the appellant submitted that the claim no longer fell within the ambit of the Limitation Act for reason that the Public Service Commission entertained the complaint and handled it to its conclusion. To counsel, that meant that the claim was acknowledged and thus revived. He referred court to section 22(4) of the Limitation Act. He contended that, should court be swayed to believe that actually the action is time barred, then court should invoke section 126 (2) (e) and administer substantive justice without undue regard to technicalities.

Counsel for the respondent in opposing the appeal submitted that the cause of action arose in 1984 however, the application was filed way out of time stipulated under the law.

In addressing this matter the trial judge in her ruling at page 68 of the record stated that;

"I agree with Counsel for the respondent that not only is the applicant time barred under the judicial review rules (supra) the applicant`s action is also outside the time prescribed and set under the civil procedure and limitation (Miscellaneous Provisions) Act Cap 72, S.3 (2) which provides that no action provided on contract shall be brought against the Government after the expiration of three years. The relationship between the two parties was contractual.

The applicant slumbered too much and delayed to bring his claim to the relevant authorities/court. Moreover no reason has been given for this undue delay. ***In Odinga & others vs Nairobi City Council {1990-1994} EA 482****. Court held that;*

"An application for judicial review, may it be for an order of mandamus, prohibition or certiorari, should be made promptly and in any event within a maximum period of six months within the date when the grounds of the application arose. The plaintiff's application was made after the lapse of 14 months and was therefore time barred.

This court is persuaded by ***Roland Browne vs Public Service Commission HCVAP 023 of 2010(Saint Lucia)*** *relied on by the respondent where court*

observed that "in exercising its discretion as to whether to grant any relief the court can take into account other factors including that there was unreasonable delay before making the application, whether the claimant acted promptly, or whether it would be detrimental to good administration or cause substantial hardship to rights of any person, or substantially prejudice the rights of any person."

The relevant law at the time of the appellant`s dismissal in 1980-1984 was the **Judicature Act 1967(repealed) section 34(5) & (6)** which provided that; *an application for inter alia certiorari shall in specified proceedings be made within six (6) months or such a shorter period as may be prescribed after the act or omission to which the Application for leave relates.*

The Civil Procedure and Limitation (Miscellaneous Provisions) Act cap 72, *Section 3(2) provides; that no action founded on contract shall be brought against the Government after the expiration of three years.*

Counsel for the appellant referred court to **section 22(4) of the Limitation Act** which provides that; that where any right of action has accrued to recover any debt or other liquidated pecuniary claim and the person liable or accountable therefore acknowledges the claim, the rights shall be deemed to have accrued on and not before the date of acknowledgement.

In the case of **Jones v Bellegrove Properties Ltd [1949] 2 All ER 198** Lord Goddard CJ in interpreting a statute in pari materia with section 22 (4) stated that;

"Statute does not extinguish a debt. It only bars the right of action. An acknowledgement leads to the accrual of a new cause of action. In this case there was no counterclaim based on an alleged fresh cause of action by the defendants. The defendants did not plead acknowledgement of a debt within the context of the Limitation Act."

According to section 23 (1) of The Limitation Act such acknowledgment is required to be in writing and signed by the person making the acknowledgment. In order to satisfy the stipulations of section 23 of the Limitation Act, the following essentials must be present:-

(i) there must be a promise to pay a debt;

(ii) there must be a debt of which the creditor might have enforced payment but for the law for the limitation of the suits;

(iii) the promise must be made in writing; and

(iv) the writing must be signed by the person to be charged therewith or by his or her agent generally or specifically authorised on his or her behalf.

I am unable to find such attachment to the appellant`s complaint nor is there a reference to a signed document in his list of documents/evidence.

A cause of action means the facts that entitle a person to sue. The period of limitation begins to run when the cause of action accrues. A cause of action accrues when there is in existence a person who can sue and another who can be sued, and when there are present all the facts which are material to be proved to entitle the plaintiff to succeed.

It is trite that the principle that underlies the law of limitation is basically one that "once statute barred, always statute barred" and the essence of the principle is that once a suit is statute barred, any subsequent developments cannot revive it **See: Arnold v. General Electricity Generating Board [1988] A.C 288 and Nicholson v. England [1926] 2KB 93**.

In **Mohammad B. Kasasa v Jaspher Buyonga Sirasi Bwogi, Civil Appeal No. 42 of 2008 (Court of Appeal) quoting Lord Green M.R. Hilton v Satton Steam Laundry [1946] IKB 61 at page 81** it was held that;

"*Statutes of limitations are by their nature strict and inflexible enactments. Their overriding purpose is interest* republicae ut fins litum, *which means that litigation shall automatically be stifled after a fixed length of time irrespective of the merits of the particular case. Statutes of limitation are not concerned with merits. Once the axe falls, it falls, and a defendant who is fortunate enough to have acquired the benefit of the statute of limitation is entitled, of course, to insist on his strict rights.*"

Public interest and the administration of Justice has always been concerned that litigation should be brought within a reasonable time. It is for these and other reasons that limitation statutes have been described as "acts of peace" or "statutes of repose". The Limitation Act also encourages claimants to bring their claims promptly and not, in the old phrase, "to sleep on their rights."

The applicant was suspended in 1979 and formally dismissed on 1st December 1980 even if, the dismissal was brought to his knowledge in 1984, From the year

1984 to 2002 there is no evidence what so ever proving that the appellant ever lodged any complaint using the available complaint procedures either to the appointing authority (Military Commission), Courts of law or the Public Service Commission as per the laws already mentioned above.

Counsel`s submission that since the minister of Public Service entertained the matter and the Solicitor General made a decision that meant that the cause of action was acknowledged and thus revived is misconceived. The mere handling of the said complaint never amounted to an acknowledgment and revival of the action as there is no proof from the Ministry of Public Service acknowledging the same. The Solicitor General was neither an appointing or relevant authority nor was he part of the tribunal. His letter was not a decision of the said authority/body. Therefore, the Solicitor General`s letter could not revive the cause of Action.

The appellant slept on his rights for over 20 years only to wake up in 2002.I find his conduct unreasonable and prejudicial. Section 5 of The Civil Procedure and Limitation (Miscellaneous Provisions) Act provides for a one year extension in the event of disability. In this case, no reason has been given for the appellant`s undue delay. I find no error on the part of the trial judge in finding as she did.

The appellant sought to rely on Article 126 (2) (e) of the constitution. In **Kasirye Byaruhanga & Co Advocates v UDB SCCA No. 2 of 1997,** the Supreme Court had this to say regarding the application of Article 126 (2) (e); *"...a litigant who relies on 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 technically. Article 126 (2) (e) is not a magic wand in the hands of defaulting litigants". The appellant did not demonstrate that it was not desirable to follow the law on limitation.

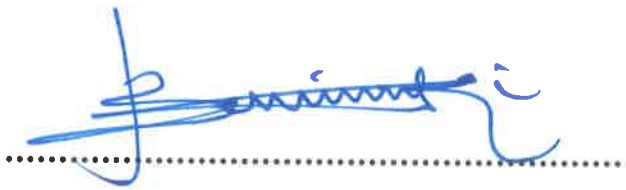
The appeal is thus incompetent and barred by law, it does not fall within the realm of redress under Article 126(2) (e) of the Constitution.

The other grounds of appeal and complaints raised by counsel are in respect to the merits of the appeal. Having found that the appeal is time barred and is incompetent I need not delve any further in the said grounds.

In that regard and for the reasons given above, this appeal is dismissed with costs in this Court and in the Court below. The ruling and orders of the trial court are hereby upheld.

I so order.

Dated at Kampala this ..... 18th ..... **day of** ..... Feb **2020**



HON. JUSTICE CHEBORION BARISHAKI

JUSTICE OF APPEAL

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

Coram: Egonda-Ntende, Barishaki Cheborion & Tuhaise, JJA.

CIVIL APPEAL NO. 90 OF 2012

Jamada K Luzinda ..... **Appellant**

versus

Attorney General ..... **Respondent**

(Appeal from the ruling and orders of the High Court (Civil Division) before Elizabeth Musoke J, dated 01/06/2012 in Miscellaneous Cause No. 64 of 2010)

Judgment of Percy Night Tuhaise, JA

I have had the benefit of reading in draft the judgment of my brother Cheborion Barishaki, JA. I agree with his analysis of evidence, decisions and conclusion that this appeal has no merit and should consequently be dismissed with costs.

Dated at Kampala this 18th **day of** May **2020.**

Percy Night Tuhaise
Justice of Appeal

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

[Coram: Egonda-Ntende, Cheborion Barishaki & Tuhaise JJA]

Civil Appeal No. 90 of 2012

(Arising from High Court Miscellaneous Application No. 64 of 2010)

BETWEEN

Jamada K Luzinda ==========Appellant

AND

Attorney General==== ==========Respondent

(*On appeal from the Judgment of the High Court of Uganda (Civil Division), Musoke, J., delivered on 1st June 2012 at Kampala.*)

JUDGMENT OF FREDRICK EGONDA-NTENDE, JA

[1] I have had the opportunity of reading in draft the judgment of my brother, Cheborion Barishaki, JA. I agree with it and have nothing useful to add.

[2] As my sister, Tuhaise, JA, agrees this appeal is dismissed with costs.

Dated, signed, and read at Kampala this 18th day of Feb January 2020

Fredrick Egonda-Ntende

Justice of Appeal