

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

HCT-00-CC-CS-0532 OF 2007

VALUE MARKET SERVICES LTD. PLAINTIFF

VERSUS

CITY COUNCIL OF KAMPALADEFENDANT

BEFORE: HON. JUSTICE LAMECK N. MUKASA

RULING:

On 5th September 2003 the plaintiff, Value Market Services Ltd, filed H.S.C.S. Suit No. 0532 of 2003 against City Council of Kampala as defendant. By Order of this court dated 25th May 2007 in Miscellaneous applications No 164 of 2007, arising from this suit, an Amended Plaint was filed on 1st June 2007, whereby City Council of Kampala, Central Division was added as a second defendant. In the amended Written Statement of defence filed by both defendants it was stated:-

- “3. The suit is barred by Civil Procedure and Limitations (Misc. Provisions) Act and the Local Governments Act.
4. Liability is denied and it shall be averred that the plaintiff has no cause of action against the defendants.
5. The 1st defendant was not served with the requisite Statutory Notice.
6. The suit against the 2nd defendants is time barred.”

After the Scheduling Conference it was resolved that the preliminary points raised above be disposed off first as they might have the effect of disposing off the entire suit.

First Mr. Mutyaba Sempa, counsel for the defendants, submitted that no Statutory Notice was served on the 1ST defendant, City Council of Kampala. He therefore argued that the suit against the 1st defendant was incompetent. Counsel cited Gulu Municipal Council Vs Nyeko & Another (1996) HCB 66. He applied for the suit against the 1st defendant to be dismissed.

Section 2 of the Civil Procedure and Limitation (Miscellaneous Provisions) Act provides that no suit shall lie or be instituted against a local authority until the expiration of forty five days after written notice has been delivered to or left at the office of the person specified in the first schedule that such notice has been delivered or left in accordance with the above provisions. The scheduled Officer is the Town Clerk of the City council. In Gulu Municipal Council Vs Nyeko (above) Justice Okello held that the provisions of the above section are mandatory and a suit can only be properly brought after the service of statutory notice of intention to sue.

In the instant case the Statutory Notice was headed:

“Value Market Services Ltd – Intending Plaintiff

Versus

City Council of Kampala – Intended Defendant”

Central Division

In the body it is stated:

“Take Notice that M/S Value Market Services Ltd --- intends to institute a Civil Suit against City Council Kampala, Central Division in the High Court of Uganda
----“

At the end it is marked:

“To be served upon:-

1. The Principal Assistant
Town Clerk
Central Division
City Council of Kampala.
2. The Town Clerk
City Council of Kampala”

It was stamped received on 3rd March 2003 by a stamp marked.

“Kampala Central Division Council,
Administration Section.”

The above Statutory Notice was responded to by a letter from the City Council of Kampala, Legal Department, Office of the City Advocate and signed by the Ag. City Advocate.

Mr. Wabwire, Counsel for the Plaintiff submitted that the effect of Statutory Notice is to put the intended defendant on Notice of the impending suit. Counsel argued to the effect that since the Statutory Notice was responded to by the City Advocate, who is of the Legal Department of the 1st defendant, the 1st Defendant must have received the Statutory Notice and then responded to it.

Under Section 3 (3) and 6 of the Local Government Act, it is clear that the City Council of Kampala (1st defendant) and City Council of Kampala Central Division (2nd defendant) are separate Corporate bodies which may sue or be sued in each's respective name. The relevant officer to be served is the Town Clerk of each respective Council. In the instant case the Statutory Notice was to be served on the Town Clerk in respect of the 1st defendant and the Principal Assistant Town Clerk in respect of the 2nd defendant. The copy of the Statutory Notice on record shows that it was received by the Central Division, that is the 2nd defendant. There is none marked received by the City Council of Kampala, the 1st Defendant. However, the

Statutory Notice was responded to by a letter from the Legal Department of the 1st defendant, City Council of Kampala.

The Letter was Re:

“Value Market Services Limited
Versus
Kampala City Council Central Division.”

That was the advocate’s chosen way to reference the letter. This was contrary to the naming of the parties on the Statutory Notice, which was:

“Value Market Services Ltd - Intending plaintiff

Kampala City Council of Kampala - Intended defendant”
Central Division

Further in that letter the advocate, who is from the 1st defendant’s Legal Department, does not indicate on whose behalf of the two Councils he was writing the reply.

Mr. Mutyaba did concede that under the Local Government Act some of the services were not developed downwards. That is some divisional services are still controlled from Kampala City Council. Among such services are those of the City Advocate. It is also common knowledge that the Principal Assistant Town Clerks in charge of the respective City Divisions are still centrally controlled from Kampala City Council.

This court is entrusted with a Constitutional duty to administer justice in conformity with the law and with the values, norms and aspirations of the people. I agree that the requirement for the Statutory Notice is mandatory but considering all that I have pointed out above and for the proper adjudication of this matter, I find that the 1st defendant must have received the Statutory

Notice before reacting to it through its Acting City Advocate. In the premises the first objection is overruled.

Secondly Mr. Mutyaba submitted that the suit against the second defendant, the City Council of Kampala Central Division is time barred. This Court in its ruling dated 25th May 2007 in Miscellaneous Application No. 164 of 2007 allowed the plaintiff to add City Council of Kampala Central Division as a defendant to this suit. An amended plaint was accordingly filed on 1st June 2007. Mr. Mutyaba argued that the cause of action arose in 2003. In paragraph 5 of the plaint it is alleged that the defendants' servants and employees acts complained of and which gave rise to the cause of action happened on 25th December 2002. The suit against the 2nd Defendant was commenced by the Amended Plaint filed about four and half years later. Counsel relied on Section 3 of the Civil Procedure and Limitations (Misc Provs) Act which provides:

“(I) No action founded on tort shall be brought against:

- (a) the Government;
- (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.

- (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.”

Whether founded on tort or breach of contract, by 1st June 2007, when the amended plaint was filed and thus proceedings commenced against the 2nd defendant, the suit against the 2nd defendant was already time barred by the provisions of section 3 above. In Uganda Revenue Authority Vs Uganda (1997 – 2001) UCL 149 Justice Twinomujuni JA held:-

“—Time limits set by statutes are matters of substantive law and not mere technicalities and must be strictly complied with.”

See also Attorney General Vs Obote Foundation (1994) KALR 47 and Francis Nansio Michael Vs Nuwa Walakira (1991) VI KALR 14.

However, section 5 of the Act provides:

“If on the date when any right of action accrued for which a period of limitation is prescribed by this Act the person to whom it accrued was under a disability, the action may be brought at time before the expiration of 12 months from the date when the person ceased to be under a disability or died which ever event first accrued, notwithstanding that the period of limitation has expired;--“

In Miscellaneous Applications 164 of 2007, this court; basing itself on the above provision and the Blacks Law Dictionary’s (7th Edition para 474) definition of disability which is;-

- “1. The inability to perform some function; an objectively measurable condition of impairment physical or mental --.
2. Incapacity in the eyes of the law—“

and aware that errors of Counsel should not be visited on an innocent party, and having found that the statutory notice of intended suit prepared for the applicant by M/S Nile Chambers Advocates clearly showed that the applicant’s intention was to proceed against City Council of Kampala Central Division but that when the suit was filed by M/S Luba & Co Advocates, it was against City Council of Kampala solely; found that applicant had in the eyes of the law been incapacitated by its lawyers who had erroneously filed the suit leaving out the Division as a defendant yet originally so intended. Further this Court found that the applicant had ceased to be

under such disability when its current lawyers M/S Mwandha, Wabwire & Mwanje Advocates had on 10th January 2007 taken over the conduct of the plaintiff's case and pointed out the error to the plaintiff. This court therefore allowed the amendment to introduce the 2nd defendant as a defendant.

The plaintiff's current lawyers took over the conduct of its case on 10th January 2007. It was after they had taken over the conduct of the plaintiff's case that the plaintiff was brought out of the disability by pointing out to it its previous lawyer's errors. The so amended plaint was filed on 1st June 2007 thus within 12 months from the date when the plaintiff ceased to be under the disability.

However, the disability under section 5 is an exception to the general limitation provisions in section 3 of the Act. To determine whether a suit is time bar Court is required to consider the plaint as it stands to answer the question whether that is so. Looking at the amended plaint filed on 1st June 2007 the cause of action arose in 2002 and was by that date of commencement of the suit against the 2nd defendant time barred.

Order 7 rule 6 of the Indian Civil Procedure Rules provides:

“Where the suit is instituted after the expiration of the period prescribed by the Law of Limitation the plaint shall show the ground upon which exemption from such law is claimed.”

We lack a similar provision in any of our limitation statutes.

However, courts in this jurisdiction have strictly interpreted time limits set by statutes. When a suit is filed outside the limitation period, the plaint should show the nature of disability or exception.

See H. J. Stanley & Sons Ltd Vs Said Narrow Zakor (1963) E.A. 565.

If the disability is not pleaded or disclosed a look at the Amended Plaintiff as it stands answers the question whether the suit against the 2nd defendant was filed outside the limitation period in the affirmative. Despite this court having identified to the plaintiff the nature of disability in Misc. Application No. 164 of 2007, the plaintiff in its wisdom chose not to plead the same. It is trite that unless amended, a party is bound by its pleadings.

Order 7 rule I (d) of the Civil Procedure Rules provides that a plaint shall be rejected where the suit appears from the statement in the plaint to be barred by any law. From the statement in the plaintiff's Amended Plaintiff the suit against the 2nd defendant clearly appears time barred by the provisions of section 3 of the Civil Procedure and Limitations (MSc. Provs.) Act.

The second preliminary point is accordingly upheld and the suit against the 2nd defendant is dismissed with costs.

The suit against the first defendant shall proceed to be disposed off on merit. Costs shall be in the course of the main suit.

Hon. Mr. Justice Lameck N. Mukasa

JUDGE

19/10/2007

