THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

MISCELLENOUS APPLICATION NO 305 OF 2003

(Arising from H.C.C.S No. 116 of 2003)

NATIONAL COUNCIL OF SPORTS …… APPLICANT/DEFENDANT

VERSUS

PETER GRACE SSERUWAGI …….. RESPONDENT/PLAINTIFF

8th June, 2004

BEFORE HIS LORDSHIP JUSTICE J.B.A. KATUTSI:

RULING:

This is an application by chamber summons brought under the provisions of O7. rr 11 and 19 of the Civil Procedure Rules seeking orders that:-

a) The Respondent/Plaintiff's suit be dismissed for failure to disclose a cause of action.

b) The Respondent/Plaintiff's suit is time barred.

c) Costs of this application be provided for.

The application is supported by an affidavit sworn by A.K.P.M. LUTAYA said to be the General Secretary of the National Council of Sports the applicant.

In the said affidavit Lutaya depones inter alia that:-

"3. That on the 21st day of December 1967 the Respondent/Plaintiff was appointed as a full time coach with the National Council of Sports.

4. That Peter Grace Sseruwagi reported to the National Council of Sports an injury on his back while in USA on the 5th day of July 1984 during the Olympic games.

5. That the Respondent/Plaintiff is claiming for compensation for the injuries sustained as a result of that accident.

6. That since the accident arose on the 5th day of July 1984, it is now 19 years since then.

7. That by reason of the number of years that have passed, I am advised by the Corporation Lawyer Mr. Justin Semuyaba that the Respondent/Plaintiff's suit is time barred."

There is an affidavit in reply sworn by the respondent of which the relevant paragraphs run as follows:-

"2. That I have read the affidavit supporting the chamber summons dated 20th May 2003 sworn by one Lutaya and I hereby reply as hereunder:-

3. That in response to paragraph 6 and 7 Lutaya's affidavit, I state that injury is a continuous one and therefore not time barred.
4. That I was constantly treated from 1984 up to December 2002 as per Annexture "A" a report of my Doctor.
5. That I still suffer from the effects of the injury to date further indicated by the same Docotor in Annexture "B" dated 5th May 2004.
6. By virtue of the above facts my claim is not time barred."

In court Mr. Semuyaba learned counsel for the Applicants and Dr. Barya learned counsel for the Respondent enlarged on the contents of the affidavits sworn on behalf of their clients.

There is no definition in the limitation Act 1969 of the concept of the accrual of a cause of action. Going by what was said in the case of ***Cartledge And Other Vs E. Jobling & Sons Ltd (1963) AC,*** a cause of action must be considered to have accrued as soon as the plaintiff has suffered any damage which is more than minimal. The burden of proof in general is on the defendant who has to plead limitation, and then it is for plaintiff to show that his action is in time.

As correctly observed my Dr. Barya for the Respondent, there is no express authority on the point under discussion. I agree with Dr. Barya for the Respondent that the point under discussion will be decided by looking at cases analogous with present case.

One of the cases relied on by the Respondent is the case of ***Difasi V. Attorney General (1972) E.A 335***. That was a case of false imprisonment. It is both good sense and good law that such a tort is a continuing tort. Each day the plaintiff spends in false imprisonment gives rise to a fresh cause of action. But perhaps the most common example of this is a continuing nuisance. In these cases the right of action accrues a fresh everyday, but damages can be recovered only for that apart of the loss which arose within the relevant period before the filing of the plaint. In cases of false imprisonment the plea of Limitation Act prevents the recovery of so much of the false imprisonment as took place outside the time permitted by the Limitation Act. This is what the case of DIFASI (supra) says.

It is remarkable that there is no express authority on the point under discussion, and the fact that the respondent is now raising it for the first time is clear proof of the ingenuity of his lawyer.

I propose therefore to examine a few cases touching on subsidence of premises where the question of continuity has been urged and cases involving personal injuries that were unknown at the time they occurred and of which plaintiffs were not conscious when they did occur. By drawing an alogy from these cases I hope to arrive at the justice of this case.

But first we may ask why the law of Limitation of actions?

The learned authors of **Salmond & Heuston** on the Law of Tort 21st edition at page 558 state:

> "The Public Policy behind the statute of Limitation has been clear since 1603. A time must come when the defendants can relax and known that actions against them are time barred."

About one hundred and seventy years ago Best C.J. Said:

> "It is, as I have often heard it called by great Judges, an Act of peace. Long dormant claims have often more cruelty than Justice in them."

Here at home our Legislature recognizing this cruelty enacted the Limitation Act 1969. Section 3 there of provides as follows:-

"3. (1) the following actions shall not be brought after the expiration of six years from the date on which the cause of action arose-

(a) actions founded on contract of tort;
(b) ……..
(c) ……..
(d) ……..

except that in the case of actions for damages for negligence, nuisance or breach of duty (whether duty exists by virtue of a contract of or provision made by or under an enactment or independently of any such contract or any such provisions) where the damage 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 subsection should have effect as if for the reference of six years there were substituted a reference to three year."

Respondent appears to me to be saying that he has independent and distinct causes of action, in each a fresh distinct cause of damage, all arising from the same act that is the accident in which he was injured in 1984.

To that I would with respect echo the words of ***Fry L.J., In Lamb V. Walker 3 CP. B.D.394.*** He said:

> "I think we are bound to determine this "question on Principle. Now with the reference to the principle, it appears to me to be plain that all damages which result from one and the same cause of action must be recovered at once and the same time, and therefore we are driven to the inquiry what is the cause of action in a case of this description."

I will return to this inquiry later in this ruling. For his part MINISTY J. said:

> "It is a well settled rule of law that damages resulting from one and the same cause of action must be assessed and recovered once and for all."

In ***Nicklin V. Williaams 10 Ex.259*** the court said:

> "…….. no special or fresh action can under such circumstances, all brought for subsequently accruing damages, all damages consequent upon the unlawful act being in contemplation of the law satisfied by the one judgment or accord."

In ***Hodsoll Vs. Stalle Brass Ii A & E 30*** Littledale J. speaking on an action by a master for beating his servant per quod servitam amist (for losing his services) said:

> "It is argued that a fresh action might be brought from time to time but that is not so, the action being founded, not upon the damage only, but upon unlawful act and damage. Without the special damage this cause of action would not be maintainable at the plaintiff's suit. A fresh action could not be brought unless there was both a new unlawful act, and fresh damage."

In ***Darley Main Colliery Co. Ld. V. Thomas Wilfred Bowe Mitchell 11 App. Case 127***, the lessees of coal under the respondents land worked the coal so as to cause a subsidence of the land and injury to houses there on in 1868. For the injury to houses the lessees made compensation. They worked no more, but in 1882, a further subsidence took place causing further injury. There would have been no further subsidence if an adjoining owner had not worked his coal or if the lessees had left enough support under respondent's land.

In the course of his speech in the House of Lords, Lord Halsbury said:

> "But the words "cause of action" are somewhat ambiguously used in reasoning upon this subject; What the plaintiff has a right to complain of in a court of law in this case is the damages, I mean the damages which had in fact accrued, and if this is all that a plaintiff can complain of, I do not see why he may not recover torties quoties (as often as the damages happened) FOR FRESH DAMAGE INFLICTED"

Note that Lord Halsbury is talking of fresh damage as it happens. Fresh damages must give rise to a new cause of action.

In the present case I would venture to say that the cause of action is made of the injuries Respondent sustained as a result of the 1984 accident. If he still suffers pain as he alleges he does, that pain is a manifestation of the 1984 accident. Indeed that is what he appears to be saying in paragraph 5 of his affidavit in reply:

> "I still suffer the effects of the injury to date."

That is a manifestation and not fresh injuries.

In the case of ***Cartledge And Others V. E. Jobling & Sons Ltd (1963) Ac 756***, workmen, while employed as steel dressers in a factory, contracted pneumoconiosis, a disease in which slowly accruing and progressive damage may be done to a man's lungs with out his knowledge. According to the evidence a man susceptible to pneumoconiosis who inhaled noxious dust over a period of years would have suffered substantial injury before it would be discovered by any means known to medical science. By writs issued on October 1, 1956 the workmen claimed from their employers damages for negligence and or alternatively breaches of statutory duty causing disease.

The trial Judge found breaches of statutory duty owed proved, but regretfully felt bound, to hold that all claims were barred by the Limitation Act. The court of appeal with like regret affirmed his decision. The House of Lords with like regret dismissed the workmen's appeal. In the course of his speech in the House of Lords Lord Pearce said:

> "Plainly on the facts of this case, that is a harsh result and the appellants contend that such a result cannot have been intended by the Legislature"

Lord Reid said:

> It appears to me to be unreasonable and unjustifiable in Principle that a cause of action should be held to accrue before it is possible to discover any injury and, therefore before

> it is possible to raise any action. If this were a matter governed by the common law I would hold that a cause of action ought not to be held to accrue until either the injured person has discovered the injury or it would be possible for him to discover it if he took such steps as were reasonable in the circumstances. The common law ought never to produce a wholly unreasonable nor ought existing authorities to be read literally as to produce such a result in circumstances never contemplated when they were decided.
>
> But the present question depends on a statute, the Limitation Act 1939 and Section 26 of that Act appears to me to make it impossible to reach the result which I have indicated. …… So the mischief in the present case can only be prevented by further legislation."

The House of Lords rejected an argument that the time ran only from the date of the discoverability in cases if personal injury, held instead the commencement date for the period of Limitation was the earliest date at which the plaintiff had suffered more than minimal damage as a result of the defendant's breach of duty.

The injustice disclosed in the case of ***Cartledge (Supra***) namely that a plaintiff in a personal injuries action might find his cause of action barred by Limitation even before its existence became reasonably discoverable, led to the formation of the committee on Limitation of actions in cases of personal injury and subsequent report which was the back ground to the 1993 Act. Another Act was passed in 1980 and section 33 of the 1980 Act, gives court a discretion to allow plaintiff to bring an action for personal injuries, not withstanding that the time Limited by section 11 and 12 of the Act has expired, if it appears to the court that it would be equitable to do having regard to the degree to which section 11 and 12 of the Act prejudice the plaintiff, or any person whom he presents and the degree to which any decision under this section would prejudice the defendant, or any person whom he presents.

In our country there appears to be Legislative somnolence in this area of the law. Section 3 of the Limitation Act remains on the Statute book without any modification. I have to administer the law as I find and understand it. I would end by re-echoing the words of LORD REID in ***Cartledge V.E. Jobling (1963) AC 758.***

> "It is now too late for the courts of question or modify the rule that a cause of action accrues as soon as a wrongful act has caused personal injury beyond what can be regarded as negligible, even when the injury is unknown to and cannot be discovered by the sufferer, and the further injury arising from the same act at a later date does not give rise to a further cause of action."

With respect I think that is our law at present. I hasten to add that in this case there is no further injury arising from the 1984 accident claimed. Like the trial Judge in the CARTLEDGE case (Supra) I regretfully hold that this action is barred by Limitation. Accordingly under 0.7 r 11 the plaint is rejected with costs.

J.B.A. Katutsi

JUDGE

8/6/2004

Dr. Barya for respondent.

Nabatanzi clerk.

Ruling read.