

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MBARARA

HCT-05-CV-CS-0097-2004

KARUHANGA WILFREDPLAINTIFF

VS

ATTORNEY GENERAL..... DEFENDANT

BEFORE: THE HON. MR. JUSTICE P. K. MUGAMBA

RULING

This ruling follows a preliminary objection by counsel for the defendant whose contention it is that the plaint was filed out of time. This suit is against the Attorney General, the legal representative of Government. Section 3 of the Civil Procedure and Limitation (Miscellaneous Provisions) Act, Cap 72 states *inter alia*:

(1) No action founded on tort should be brought against —

a) The Government

.....

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

It was argued by counsel for the defendant that the plaint should be rejected. Indeed Order 7 rule 11 of the Civil Procedure Rules does so ordain where the suit appears from the statement in the plaint to be barred by any law. I should state that the suit seeks relief for unlawful arrest and imprisonment and for malicious prosecution. According to counsel for the plaintiff the objection is unsustainable given that he had carefully mentioned in the plaint that there was delay in filing the suit owing to a disability. In that case he stated the plaintiff had complied with the requirements of 0. 7 r. 6 CPR which provides:

‘Where a suit is instituted after the expiration of the period prescribed by the law of limitation that plaint shall show the grounds upon which exception from such law is claimed.’

From the plaint the following facts relevant to this matter emerge. The plaintiff was arrested by Police attached to Ntungamo Police Station on 27th August 2001 on allegations of forgery and embezzlement. He was then taken into custody at the said Police Station where he was detained until the 30th August 2001 when he was granted bail after he was formally charged in court. Thereafter the plaintiff attended court on 11 occasions but was absent on 4 other occasions when his surety attended court. The case was dismissed on 14th November 2002. This suit was instituted on 9th August 2004,

Paragraph 10 of the plaint states:

‘Since the case the plaintiff has been in ill health hence failure to institute the case earlier.’

It is not clear what the above quoted paragraph is meant to convey. If it means the time when the cause of action arose, I hasten to state that not one but two causes of action are apparent. The first is that of unlawful arrest and imprisonment while the other is that of malicious prosecution. The two are severable. Where the two causes of action are different in duration and nature the effect of limitation on them ought to be considered separately. See *Eridad Otabong Waims vs Attorney General* Supreme Court Civil Appeal No. 6 of 1980 (unreported); *Iga vs Makerere University* [1974]1 ULR 121.

I have stated that the plaintiff was granted bail on 30th August 2001. Thereafter he would go to court on appointed days and according to the plaint he went to court on 11 occasions. There is no evidence he was under any disability. I do not find casual reference to ill health of any import. Time started to run on 31st August 2001 when he was released from detention and pursuant to section 3 of Cap 72 the latest he could have brought a suit against the defendant in connection with that cause of action would have been 31st August 2003. The action was therefore time barred when it was filed approximately yet another year later. It is accordingly rejected.

The other cause of action is that of malicious prosecution which, needless to say, arose upon completion of criminal proceedings in favour of the plaintiff. That was on November 2002 and time started running on November 2002. In the circumstances I find this cause of action is maintainable as it was filed within time.

The objection succeeds partially. Costs in the cause.

P. K. Mugamba
Judge

7th June 2005

Mr. Mwene-Kahima for plaintiff

Plaintiff in court

Ms Tushemereirwe court clerk

Court:

Ruling read in court.

P. K. Mugamba
Judge