

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

**HCT-05-CV-MA-01 26-2000**

(Arising from Mbarara Chief Magistrate's Court Civil Suit No. MMB 1 of 1991)

BUSHENYI DISTRICT ADMINISTRATION .....APPLICANT

VS

EPHRAIM KATOROBO..... RESPONDENT

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

**JUDGMENT**

This is an appeal against the judgment of the court of the Chief Magistrate, Mbarara, delivered on 21st January 2000. The appeal is hinged on eight grounds which were argued before this court by both counsels on 11<sup>th</sup> May 2005.

The suit genesis to this appeal was instituted against a District Administration, Bushenyi District Administration. The plaintiff in this suit, according to paragraph 10 of the plaint strove to adhere to the provisions of the Civil Procedure and Limitation (Miscellaneous Provisions) Act 1969 which was in force then. He gave the requisite notice under S.1 of the Act. I have considered this aspect and more since this being a court of first appeal it must reconsider and evaluate the evidence and come to its own conclusions. See *Selle vs Associated Motor Boat Co* [1968] EA 123; *James Nsibambi vs Lovinsa Nankya* [1980] HCB 81. It was the evidence of the plaintiff which was later reflected in the judgment that suspension of the plaintiff took effect on 2 November 1989 when he received the letter of suspension. In the circumstances, since no disability was pleaded, the latest occasion for him to institute his suit against the appellant herein in conformity with section 2 (1) (a) of the Civil Procedure and Limitation (Miscellaneous Provisions) Act, 1969 in force then should have been the 2<sup>nd</sup> November 1990. In the event the suit was instituted on 8th January 1991. The suit was barred by the law of limitation contained in the relevant provision of the Act of 1969. According to Order 7 rule 1 (d) of the Civil Procedure

Rules a plaint which is barred by any law should be rejected. This is what should have been done by the court of the Chief Magistrate. Since a court of law cannot sanction what is illegal and illegality once brought to the attention of the court overrides all questions of pleading, including any admissions made thereon (See *Makula International Ltd vs His Eminence Cardinal Nsubuga & Another* [1982] HCB 11) 1 hold the original suit was time barred and should be rejected. Consequently the decision of the Chief Magistrate's Court is set aside and it is ungainly to consider grounds set out in the memorandum of appeal.

This appeal succeeds with costs here and below.

P. K. Mugamba

Judge

7th June 2005

7th June 2005

Mr. Tumwesigye for the appellant

Ms Tushemereirwe court clerk

Court:

Judgment read in court.

P. K. Mugamba

Judge