

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA**

HCT-00-CV-CS-0073 -2001

SAM KIREMBWE ::: PLAINTIFF

=VERSUS=

ATTORNEY GENERAL :::DEFENDANT

BEFORE

**HON JUSTICE AUGUSTUS KANIA
:::ESQ**

JUDGE

RULING

During the hearing and when the plaintiff had called two witnesses, Mr. Wamambe, the learned State Attorney raised two preliminary points of law. The first preliminary objection was that the suit is barred by Statute in that the action was brought beyond 3 years from the time the cause of action arose contrary to S. 2(2) of the Civil Procedure (Limitation Act) because the cause of action arose in 1988 but the suit was on 30/01/2001 more than ten years later. He submitted that though the above act sets down exemptions in the event of a disability, which must be pleaded by the plaintiff a suit must be filed within 12 months after such disability ceases. Counsel submitted that in the instant case an exemption or disability was not pleaded. He pointed out that the contents of paragraph 3 (f) of the plaint, the plaintiff seeks to rely on does not amount to a disability. He contended to have been in time the suit ought to have been filed in 1990, the cause of action having arisen in 1988, counsel submitted that the plaint ought to be rejected, the suit having been filed in 2001 more than 10 years after it ought to have been filed. Counsel relied on Order 7 rule 11(d) of the C.P.R and **Iga Vs Makerere University [1972] EA 65.**

Mr. Wamambe raised another preliminary point to the effect that the suit is res judicata in that the same subject matter was considered and finally disposed of in **HCCS No 8 1/89 Sam Kirembwe vs. Attorney General.** He invited me to dismiss this suit with costs for being res judicata.

Mr. Kamugisha learned counsel for the plaintiff submitted that this action is not barred by the Statute of Limitation because under S 22(4) of the Limitation Act Cap 80 when there is an acknowledgement of the claim by a person liable or accountable for it, the right is deemed to have accrued from the date of such acknowledgement and not before. He cited the Inspector General of Police's letter dated 11.04.97, the letter of the Permanent Secretary Ministry of Internal Affairs dated 30.10.92 and that dated 22.03.2000 all of which according to him acknowledge the indebtedness of the defendant to the plaintiff. He contended that from the date of the letter dated 23.3.2000, which is an acknowledgement, to the time the suit was filed in February 2001 three years had not expired and therefore the instant suit is not barred by limitation. He submitted that the limitation act being a general statute as opposed to the Civil Procedure Limitation Act being a general statute as opposed to the Civil Procedure limitation (Miscellaneous Provisions) Act. He cited **National Pharmacy Ltd vs. KCC [1979] HCB** for this proposition.

With regard to the second point of objection Mr. Kamugisha submitted that the doctrine of res judicata is not applicable to the instant case because the subjects matter in the two suits in issue are different, they are based on different contracts and on different invoices and bearing different dates. Counsel urged me to reject both points of law with costs.

Under section 3(2) of the civil Procedure and limitation (Miscellaneous Provisions) Act no action founded on contract shall be brought against the Government or Local Authority after the expiration of three years from the date on which the cause of action arose. Order 7 rule (1) (d) of the C.P.R provides that in an action barred by law the plaint must be rejected. Plaints have invariably been rejected under the above provisions. **See Iga vs. Makerere University (Supra) and Arua Motor Dealers vs. Attorney general HCCS 1451/1986 Reported in [1997] VKLR 32** where it was held actions against Government brought in contract after 3 years from the accrual of the cause of action are barred by the provisions of the Civil Procedure and the provisions of the Civil Procedure and Limitation (Miscellaneous Provisions) Act.

Under Section 5 of the Civil Procedure and Limitation (Miscellaneous Provisions) Act when the period within which a person has expired when such person is under a disability, he may bring the action within 12 months from the time such disability ceases. I agree with the import Mr. Kamugisha gave to Section 22(4) of the Limitation Act which as a law of general application is applicable here that an acknowledgement of indebtedness by the debtor or by somebody accountable.

With regard to the preliminary point that this suit is barred by the provisions of the Civil Procedure and Limitation (Miscellaneous Provisions) Act Section 3(2) of that Act limits the period within which to bring an action against the Government in contract to 3 years from the time the cause of action accrued. In the instant case the cause of action is stated to have arisen in 1988 when the plaintiff supplied certain items of food stuff to various departments of the Uganda Police Force though the plaintiffs sued in respect of some of the supplies in 1989 and obtained judgment no suit was filed in respect of the present claim until 2001 which is about 13 years since the cause of action accrued. This action was therefore barred by Limitation under section 3(2) of the Civil Procedure and Limitation (Miscellaneous Provision) Act. Having been barred by statute an extension of time within which to file the suit could only be secured on the plaintiff pleading and showing that he was under a disability so as not to have been able to file the suit within the prescribed time as provided for under Section 5 of the above Act. From his pleadings in the plaint the plaintiff is not relying on any disability.

It was submitted for the plaintiff that the defendant or his authorized agents having acknowledged his indebtedness to the plaintiff his action would not be barred by limitation. Counsel for the plaintiff relied on Section 22(4) of the Limitation Act for this proposition. To my understanding the effect of Section 22(4) above is that a defendant acknowledges his indebtedness the cause of action is deemed to have arisen on the date of such Acknowledgement. In fact the correspondent relied on by the plaintiff as an acknowledgement of his indebtedness to the plaintiff in paragraph 3(i-ix) only the Permanent Secretary Ministry of Internal affairs letter dated 23.1.92 addressed to the General Manager co-operative Bank (U) Ltd Ref. C. 11583 Annexure "0" to the plaint and the letter of the Inspector General of Police Ref 3/1 dated 11/04/97 addressed to whom it may concern and Annexure "H" to that plaint come close to being called acknowledgement. Both are not useful to the plaintiff because if the cause of action

accrued from the date they were written then the 3 years within which the plaintiff should have filed his suit had long expired before the suit was filed. Annexure "0" is not useful for the additional reason that it was an acknowledgement of indebtedness to M/s Kirembwe Hatcherirs Ltd but not to Sam Kirembwe T/A M/s Paquebot Printers & stationery. All in all even section 22 (4) of the Limitation Act is not available to the plaintiff. The action of the plaintiff is barred by S.3 (2) of the Civil Procedure and Limitation (Miscellaneous Provisions) Act.

Mr. Wamambe also raised an objection that the action is barred by the doctrine of resjudicata Section (7) of the Civil Procedure Act dealing with this doctrine provides as follows;

"No Court shall try any suit or issue in which the matter directly or substantially in issue has been directly or substantially in issue in a former suit between the same parties or between parties under whom they or any of them claim litigating under the same title in a court competent to try the subsequent suit or the suit in which the issue has been subsequently raised and has been heard and finally decided by that court"

For the doctrine of res judicata to operate the following conditions must obtain;

- (a) The matter or issue must be similar and must have been directly or substantially in issue in a previous suit.
- (b) The parties must be the same or claiming from the parties in the previous suit.
- (c) The Courts in either case must be of competent jurisdiction.
- (d) The matters should have been heard on the merits and finally determined by the previous court.

See Maria Kevina Sentamu vs. Kikondo Kyaterekera Growers Cooperative Society Ltd HCCS 67/95 Reported in [1996] I KLR 160.

In the instant case, though there was a suit between the instant parties which had been finally determined it was not about the same subject matter. It is true it was a claim for goods supplied to the defendant but the goods in issue in the instant case are of a different delivery with different

invoiced and a different value because of these differences the instant suit is not resjudicata. This point of objection is rejected.

Mr. Kamugisha submitted that by their nature preliminary objections should be taken before the hearing commences. I totally agree that it is intended that they should be taken at the beginning to avoid going into a hearing when the suit could be disposed of with the preliminary objection. As the court will not condone an illegality once brought to its notice that a suit is barred by Limitation it will have no option but to reject the plaintiff under Order 7 rule 11(d) of the Civil Procedure Rules.

In the result have found that the instant suit is barred by S. 3(2) of the Civil Procedure and Limitation (Miscellaneous Provisions) Act. The plaint is rejected with costs to the defendant.

HON. AUGUSTUS KANIA

JUDGE

1/6/2006

Order: - This ruling shall be read by the Deputy Registrar (Civil) upon giving a notice to both parties.

HON. AUGUSTUS KANIA

JUDGE

1/6/2006