

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA**  
**HOLDEN AT JINJA**  
**HCT-03-CV-CA-109-2016**  
**(ARISING FROM MISC APPLICATION NO.073 OF 2015)**  
**(ARISING FROM CIVIL SUIT NO.0241 OF 2011)**

**TIGHT SECURITY**  
**LIMITED :::APPELLANT**

**VERSUS**

**ECHANU**  
**JOSEPH :::RESPONDENT**

***Whether claim instituted under the Law Reform (Miscellaneous Provisions) Act Cap 79 was time-barred.***

***Held:*** *This Appeal has merit and is ALLOWED. The Ruling and Orders of the lower Court be and are hereby set aside and substituted with an Orders of this Honorable Court dismissing the whole suit. The costs both in the High Court and lower Court are awarded to the Appellants.*

**BEFORE: HON. JUSTICE DR. WINIFRED N NABISINDE**  
**JUDGMENT ON APPEAL**

The Appellant being dissatisfied and aggrieved by the Ruling of His Worship Gakyaro Mpirwe Allan, Grade One of the Chief Magistrate’s Court of Jinja, delivered on the 19<sup>th</sup> April 2016, appealed to this Honourable Court against the whole decision/Ruling and Orders on the following grounds: -

1. That the Learned Trial Magistrate failed to properly interpret and apply the relevant principles of law to the matter before him and thereby came to the wrong decision dismissing the Appellant's Application.
2. That the Learned Trial Magistrate erred in law and fact in not holding that the Plaintiff's claim instituted under the **Law Reform (Miscellaneous Provisions) Act Cap 79** was time-barred.

**They prayed that:-.**

- a) That the Orders of the lower court be set aside and substituted with an Order dismissing the suit with costs.
- b) That the costs of this appeal and of the court below be granted to the Appellant.

## **REPRESENTATION**

When this matter came before me for hearing, the Appellant was represented by Learned Counsel Mrs. Atukunda Faith of M/S. Kibeedi & Co. Advocates, while the Respondent was represented by Learned Counsel Mr. Bagorogoza David of M/S. Bagorogoza, Kaali and Co. Advocates.

Both sides were directed by Court to file Written Submissions, but it is clear that it is only the Appellant who filed while the Respondent never complied. Be that as it is, in this case, I will exercise my powers as an appellate Court to resolve this Appeal.

## **THE BACKGROUND**

The brief facts according to learned counsel for the Appellant is that the Appellant is the Defendant in **Civil Suit No. 241 of 2011** whereas the Respondent is the Plaintiff in the same suit.

That from the Plaint filed by the Respondent in the Main Suit, the Respondent instituted the Main Suit under the **Law Reform Miscellaneous Provisions Act Cap 79**. The said suit was filed in Court on the 1<sup>st</sup> of December 2011. A close look at paragraph 4 of the Plaint clearly shows that the Plaintiff's cause of action arose on the 23<sup>rd</sup> day of September 2004.

The law under which the Respondent instituted his claim clearly states that such actions should be brought within twelve (12) months from the date of the death of the deceased person. Instead, the Respondent filed his case in Court in December 2011, more than six (6) years after the date of the death his brother Mr. Enangu James.

The Appellant filed **Miscellaneous Application No. 73 of 2015** under the provisions of **Order 7 Rule 11(d), Order 6 Rules 28 & 29, and Order 52 Rules 1 & 3 CPR** seeking the following orders:

- a) That the point of law raised by the Applicant's/Defendant's pleadings in **Civil Suit No. 241 of 2011** to the effect that the Respondent's action is time barred, be set down for hearing and disposal before the hearing of the main suit.

- b) That upon the determination of the said point of law, a consequential order be issued dismissing or striking out or rejecting the main suit with costs to the Applicant.
- c) That the costs of the Application be granted to the Applicant

**(The above application appears on pages 17 to 32 of the Record of Appeal).**

The Trial Magistrate dismissed the Application and accordingly ordered that the Main Suit should be placed before another Magistrate and the same be determined on its merits, hence this appeal.

**The Ruling appears on pages 57 to 60 of the Record of Appeal while the Order appears on page 61 of the Record of Appeal.**

*"The Appellant filed **Miscellaneous Application No. 57 of 2016** in which the Appellant sought for leave to appeal against the Ruling in **Miscellaneous Application No. 73 of 2016** and the same was granted TO under **Section 2 (Supra)** is not a unilateral action by court to extend the period merely because the action is founded on fraud. No such power, whether residual or inherent, resides into part to extend time fixed by statute. It is up to the Plaintiff to raise a plea that conforms to the dictates of **Section 25 (Supra)** before he can benefit from exemption from limitation for the period he was unaware, or could not have with reasonable diligence been aware of the fraud. It is not that just because a cause of action is founded on fraud the limitation period will automatically apply".*

The opening statement to **Section 25 of the Limitation Act** is that where, in the case of any action for which a period of limitation is prescribed by this Act. They argued that the limitation we are dealing with in this particular instance is prescribed by the **Law Reform (Miscellaneous Provisions) Act Cap 79** and not the **Limitation Act**. The Learned Trial Magistrate held that the Respondent (the Plaintiff in the main suit) is protected by **Section 25 of the Limitation Act**.

Without prejudice to the above submission, that a clear perusal of the Plaintiff's Complaint does not show any pleading relating to fraud or mistake. As such, even if the Court was to be inclined to accept the submission that the Respondent's case is covered by the exemption in **Section 25 of the Limitation Act** which they vehemently disagreed with, the Court has no basis as the said exemption is not even pleaded in the Respondent's/Plaintiff's pleadings on record.

That **Order 7 Rule 11(d) of the Civil Procedure Rules** states that *“the Plaintiff shall be rejected where the suit appears from the statement in the plaint to be barred by any law”*.

They cited the case of **Madhivani International S. A vs Attorney General S. C.C.A No. 23 of 2010**, while considering whether the Plaintiff is barred by law, court confines itself only to the Pleadings.

A perusal of the Plaintiff's Plaintiff does not show any pleading relating to any exemption; as such, even if the Court was to be inclined to accept the submission that the Respondent's case is covered by any exemption which they vehemently disagree with, the Court has no basis as the said exemption is not even pleaded in the Respondent's/Plaintiff's pleadings on record.

They therefore submitted that the Respondent's claim in the main suit is time barred.

The Appellants further relied on the Court of Appeal decision in **URA vs Uganda Consolidated Properties Ltd C.A.C.A No. 31 of 2000** where Twinomujuni, J.A at page 10 held that *“time limits set by statutes are matters of substantive law and not mere technicalities and must be strictly complied with”*.

Further, that in the case of **Hammermann Ltd & another vs. Ham Ssali & another Misc Application No. 449 of 2013 arising from Civil Suit No. 756 of 2006**, while quoting the case of **Re Application by Mustapha Ramathan, C.A.C.A No. 25 of 1996** per Berko JA, it was held that *“the purpose of limitation is to put an end to litigation. That statutes of limitation are by their nature strict and inflexible enactments. Their overriding purpose is interest republicaeut fins litum, meaning that litigation shall automatically be stifled after a fixed length of time, irrespective of the merits of a particular case”*.

Also in **Hilton vs. Satton Steam Laundry (1946) I KB 61** at page 81, it was held that statutes of limitation are not concerned with merits. Once the axe falls, of it falls, and a defendant who is fortunate. The Ruling in **Misc. Application No. 57 of 2016** (Appears on 2-64 Of the record of Appeal).

That on 27<sup>th</sup> September 2016, the Appellant filed a Memorandum of Appeal.

**From my own analysis**, the Plaintiff's case is that the Plaintiff/Respondent filed **Civil Suit No.241 of 2011** against the Appellant as one of the surviving relatives to the late James Enangu and he brought this suit against the Defendant as one of the surviving relatives of the late James Enangu.

He asserted that this action for the unlawful death of the late James Enangu which was caused by Ocen Francis, a security guard then working with the Defendant Company and his fellow colleagues. The Plaintiff's claim was for both special, general damages arising out of the death of the said James Enangu which claim arose as hereunder.

That on the 23<sup>rd</sup> day of September 2004, one of the employees of Tight Security Limited the Defendant Company, while in the course of his employment with his colleagues at Masese Fish Parkers, Jinja where they had been deployed to provide security did severely beat and cause serious injuries to the said James Enangu. After the said beating, the said Enangu was rushed to Jinja Main Hospital where was pronounced dead. **(A copy of the medical certificate of cause of death is he attached and marked Annexure "A").**

The Plaintiff contended that the death of Enangu James was caused beatings the deceased sustained from the employees of the Defendant Company; and that since the security guards who beat and subsequently caused the death of the late Enangu James did so while in the course of their employment as workers /servants of the Defendant Company then the Defendant is vicariously liable for the death of the late Enangu.

That the deceased was survived by the following; Aweko Olwa aged 23 years (wife); Echanu Derrick aged 4 ½ years (son); Eryau Michael aged 69 years (father); Ayo Regina aged 50 years (mother); Elabu William aged 17 years (brother); and Echanu Joseph aged 45 years (brother).

Further, that at the time of his death, Enangu James was still vibrant, healthy full of life aged 26 years and working at Masese Fish Parkers in the Production Department, earning a good salary where he was able to sustain both himself and his dependent relatives.

In addition, that as a result of the beatings and the subsequent death of Enangu James, the Plaintiff and the rest of Enangu's surviving relatives incurred special damages for which the Defendant Company is vicariously liable. They presented the particulars of special damages as follows:-

#### **PARTICULARS OF SPECIAL DAMAGES.**

- (i) Five goats each at 18,000/= each = 90,000/=
- (ii) Two cows to feed mourners at Ug. Shs. 210,000/= each =420,000E
- (iii) Hiring 4 tents at Ug. Shs. 11,000/= each = 44,000/=
- (iv) Hiring chairs 115,000/=

- (v) Two bags of rice = 40,000/=
- (vi) Cooking oil = 15,000/=
- (vii) 2 bags of posho at Ug Shs. 50,000/= each = 100,000/=
- (viii) One bag of beans = Ug. Shs. 60,000/=
- (ix) 11 crates of soda = 104,000/=
- (x) Malwa 17 Jerricans = 170,000/=
- (xi) Waragi (Crude) 2 Jerry cans at Ug. Shs. 18,000/= each = 36,000/=
- (xii) Beer (7) crates = 210,000/=
- (xiii) Firewood = 35,000/=
- (xiv) Sugar - 1 bag = 50,000/=
- (xv) Transport from Jinja to Arua to take the dead body & some mourners = 550,000/=
- (xvi) Cost of coffin = 50,000/=
- (xvii) Cloth to cover the coffin = 20,000/=
- (xviii) Wire mesh for the grave = 11,000/=
- (xix) Angle Bars = 10,000/=
- (xx) Bricks and sand = 27,000/=
- (xxi) iron sheets = 11,000/=
- (xxii) 2 bags of cement at Ug. Shs. 18,000/= = 36,000/=
- (xxiii) Labour = 15,000/=
- (xxiv)

**Total 2,539,000/=**

The Plaintiff also alleged that as a result of the beatings and subsequent death of Enangu James, the Plaintiff and Enangu's surviving relatives have suffered loss damage for which the Plaintiff claims general damages.

#### **PARTICULARS OF GENERAL DAMAGES**

- a) Loss of dependence on deceased and assistance from the deceased.
- b) General damages for anguish, psychological torture due to the death of Enangu James.
- c) General damages for the total deprivation caused to the family /dependents of Enangu James.
- d) An order that the Defendant pays the costs of this suit.

#### **DEFENDANT'S CASE**

**In reply**, the Defendant/Appellant contended that the Defendant shall by way of a Preliminary Point of Law or otherwise object to the suit as it is barred by the **Law Reform (Miscellaneous Provisions) Act, Cap. 79**.

**In the alternative**, but without prejudice to the aforesaid, the Defendant shall in specific reply to paragraphs 2, 3, 4, 5, 6 & 7 of the Plaintiff contend that Ocen Francis was employed by the Defendant as a security guard and he was deployed for the day shift at Masese Fish Packers.

That the incident from which the death took place occurred at night when Mr. Ocen was off duty and on a frolic of his own while attending a party at Masese Fish Packers in his individual capacity and outside the scope of his employment and/or duties as an employee of the Defendant.

In the premises aforesaid, the Defendant denied being vicariously liable for the death of the late Enangu James as claimed by the Plaintiff or at all; and contended that the death was as a result of and/or contributed to by the deceased. The deceased allowed himself to be involved in a scuffle with the said Mr. Ocen which resulted in the death.

The Defendants further alleged that it is not responsible for the damages suffered by the Plaintiff as indicated therein and makes no admission of the cause of action pleaded in the Plaintiff, nor is the Plaintiff entitled to the reliefs laid out in the Plaintiff or at all.

## **THE LAW**

It is now settled law that it is the duty of the Plaintiff to prove his or her case on the balance of probabilities. In relation to the onus of proof in civil matters, the burden of proof lies on he who alleges a fact and the standard is on the balance of probabilities, and not beyond reasonable doubt as in criminal case. It is provided for in **Sections 101, 102, and 104 Evidence Act** and is discharged on the balance of probabilities. The standard of proof is made if the proposition is more likely to be true than not true.

The standard of proof is satisfied if there is greater than 50% that the proposition is true and not 100%. As per Lord Denning in **Miller v Minister of Pension [1947] ALLER 373**; he simply described it as 'more probable than not.' This means that errors, omission and irregularities that do not occasion a miscarriage of justice are too minor to prompt the appellate court to overturn a lower court decision. See **Festo Androa & Anor vs Uganda SCCA 1/1998**.

It is also the position of the law that in the proof of cases, unless it is required by law, no particular form of evidence (documentary or oral) is required and no particular number of witnesses is required to prove a fact or evidence as per **Section 58 Evidence Act and Section 33 Evidence Act**. A fact under evidence Act means and includes: -

- (i) Anything, state of thing, or relation of thing capable of being perceived by senses as per **Section 2 1(e) (i) Evidence Act.**

On the duty of the first appellant court, the first appellate Court is mandated to subject the proceedings and Judgment of the lower Court to fresh scrutiny and if necessary make its own findings. ***Bogere Charles vs Uganda, Criminal Appeal No. 10 of 1996***, where Supreme Court held that “*The appellant is entitled to have the first appellate Court's own consideration and views of the evidence as a whole and its own decision thereon. The first appellate Court has a duty to rehear the case and reconsider the materials before the trial Judge. Thereafter, the first appellate Court must make its own conclusion, but bearing in mind the fact that it did not see the witnesses. If the question turns on demeanor and manner of witnesses, the first appellate Court must be guided by the trial Judge's impression.*”

This being the first appellant court, it is duty bound to evaluate evidence and arrive on its own conclusion, bearing in mind that it did not have benefit of the observing the demeanor of the witnesses. The duty of the first appellate court is to re-evaluate, assess and scrutinize the evidence on the record. This duty was well stated in ***Selle vs. Associated Motor Boat Co. [1968] E.A 123*** and followed in ***Sanyu Lwanga Musoke vs. Galiwango, S.C Civ. Appeal No.48 of 1995; Banco Arabe Espanol vs. Bank of Uganda S.C.C. Appeal No.8 of 1998.***

A failure to re-evaluate the evidence of the lower court record is an error in law. The appellate court has a duty to re-evaluate the evidence as a whole and subject to a fresh scrutiny and reach its own conclusion. ***See Muwonge Peter vs Musonge Moses Musa CACA 77; Charles Bitwire vs Uganda SCCA 23/95; Kifamunte Henry vs Uganda SCCA No. 10/1997.***

It is also trite law that the appellate court can only interfere and alter the findings of the trial court in instances where misdirection to law or fact or an error by the lower court goes to the root of the matter and occasioned a miscarriage of justice. ***See Kifamunte Henry vs Uganda SCCA No. 10/1997.***

Having satisfied myself and taken due recognition of the Law and rules of evidence applicable to a first appellate court, I will now turn to the substantive matters as raised in the Memorandum of Appeal and proceed to re-evaluate the evidence on record.



## **RESOLUTION OF THE GROUNDS OF APPEAL**

- 1. The Learned Trial Magistrate failed to properly interpret and apply the relevant principles of law to the matter before him and thereby came to the wrong decision dismissing the Appellants Application.**
- 2. That the Learned Trial Magistrate erred in law and fact in not holding that the Plaintiff's claim instituted under the Law Reform (Miscellaneous Provisions) Act Cap 79 was time-barred.**

**In resolving the sole ground in this Appeal**, I have carefully analyzed the typed and certified record of proceedings and Judgment of the lower court as availed to me and taken into account the submissions of both learned counsel.

Learned counsel for the Appellant argued both grounds jointly; and submitted that the Respondent's/Plaintiff s claim instituted under the **Law Reform (Miscellaneous Provisions) Act Cap. 79** is time-barred. That Paragraph 4 of the Plaint shows that the death upon which the claim is based occurred on the 23<sup>rd</sup> day of September 2004. That the received stamp of Court shows that the Plaint was filed in Court on the 01 of December 2011 **(A copy of the Plaint with the received stamp of Court appears on pages 4 to 9 of the Record of Appeal)**. That a simple calculation shows that there is a lapse of seven whole years and about three months between the date of the death of Enangu and the date of filing the suit.

**Section 6(3) of the Law Reform (Miscellaneous Provisions) Act Cap 79** provides that actions brought under **section 5 of the Act**, actions maintainable when death is caused by negligence) shall be commenced within twelve calendar months after the death of such deceased person.

They added that the Learned Trial Magistrate relied on the case of **Hammermann Ltd & Another vs. Ham Ssali & another Misc Application No. 449 of 2013 arising from Civil Suit No. 756 of 2006** which refers to **Section 25 of the Limitation Act** to support his finding. That the part of the Judgment specifically relied on by the Trial Magistrate on page 4 states thus:-

*“The main thrust of the provision (Section 25 of the Limitation Act) is essentially that in actions founded on fraud, the limitation period does not*

*begin to run until such a time when the Plaintiff is invariably aware of the fraud. This must be pleaded and it is premised on such a plea that Court may exercise its power under Section 2 not to reckon with the period the Plaintiff was unaware of the fraud in computation of the limitation period. Thus the "extension" of the limitation period".*

That they have acquired the benefit of the Statute of Limitation to insist on this; and the effect of a suit being time barred is that it shall be rejected.

That during the hearing of the Application, the Respondent claimed that his counsel is the one to blame for the main suit being filed out of time and the Learned Trial Magistrate based his finding on the Respondent's claim. They relied on the case of ***Hammermann Ltd & another vs. Ham Ssali & Another Misc. Application No.449 of 2013 arising from Civil Suit No. 756 of 2006***, where it was held that on the claim that the mistakes of the former lawyers should not be visited on the Respondents, it needs to be emphasized that a client is bound by actions and omissions of his counsel.

Further, that as was held in ***Captain Philip Ongom vs Catherine Nyero, S.C.C.A No. 14 of 2001 (unreported)***, negligently drafting the Plaint incompetence in doing the same is not an excuse for a client to escape being bound by his counsel actions or omissions.

That going by the same principle, it would be absurd to allow the Respondent to flout the strict law of limitation on the ground that his counsel was negligent. **If at all Counsel acted negligently or incompetently, the Respondents have the option to sue for professional negligence (Emphasis added).**

In conclusion, that the Learned Trial Magistrate erred in law and fact in not holding that the Plaintiff's claim instituted under the **Law Reform (Miscellaneous Provisions) Act Cap 79** was time-barred.

They prayed that this appeal be determined in the Appellant's favour and as a consequence, the orders of the lower court be set aside and substituted with an order dismissing the Respondent's suit with costs.

I have carefully examined the record and found that the procedure under the **Law Reform (Miscellaneous Provisions) Act Cap 79** is a very specialized procedure; and the action brought must be founded on death as a cause of action.

In this case, the Written Statement of Defence asserts that James Enangu was beaten up by the Employees of the Appellant and he was admitted.

The **Law Reform (Miscellaneous Provisions) Act Cap 79** also dictates who may sue and this includes the administrator or executor or by any of the members of the family of the deceased and the law is clear that whoever commences the action does so in a fiduciary position for the rest of the beneficiaries.

In this case, the action was brought by a family member on behalf of other mentioned beneficiaries in the Plaint. The Plaintiff in this case was a brother and therefore had a right to bring this action.

Further, **Section 5 of the Law Reform (Miscellaneous Provisions) Act Cap 79** provides for;-

***“Action maintainable when death is caused by negligence***

*If the death of any person is caused by any wrongful act, neglect or default of any person, and the act, neglect or default is such as would, if death had not ensued, have entitled the person injured by it to maintain an action and recover damages in respect of it, the person who would have been liable if death had not ensued shall be liable to an action for damages, notwithstanding the death of the person injured, and although the death was caused under such circumstances as amount in law to a felony”.*

**Section 6.**

***“Beneficiaries of an action; person to bring it***

*(1) Every action brought under section 5 shall be for the benefit of the members of the family of the person whose death has been so caused, and shall be brought either by and in the name of the executor or administrator of the person deceased or by and in the name or names of all or any of the members (if more than one) of the family of the person deceased.*

*(2)...*

Learned counsel for the Respondent relied on **Section 6 (3) of the Law Reform (Miscellaneous Provisions) Act, Cap 79** which provides that;-

*“Not more than one action shall lie for and in respect of the same subject matter of complaint; **and every such action shall be commenced within twelve calendar months after the death of such deceased person...**”*  
***[Emphasis Added].***

The question that Court must answer is whether in view of the law under which the cause of action was brought, Court is at liberty to enlarge time

within which to file a complaint emanating from the **Law Reform (Miscellaneous Provisions) Act, Cap 79?**

To answer this question, I have already pronounced myself earlier in this Judgement that this is a self-standing Statute and the mandatory period within which the action must be filed is clearly set therein. The section of the law is couched in mandatory terms and there is no room for court to invoke any other Statutes to enlarge time.

The above means that time set by a Statute cannot be extended by Court; and once a cause of action is time barred, it always remains time barred. Court can only extend time set in the Rules of Procedure as empowered under the **Civil Procedure Act Cap 71 and the Rules thereunder**, but not in a Statute such as the **Law Reform (Miscellaneous Provisions) Act, Cap 79**.

I have also found that when the learned trial Magistrate Grade One relied on **section 25 of the Limitation Act**, this was erroneous as the two statutes are completely different with each addressing different situations and intended to cure specific mischief.

For those reasons, I'm persuaded by the submissions of learned counsel for the Appellant; and I also find that by the time the suit was filed, it was already time barred and no amount of blame whether put on counsel or any other person or authority can resurrect such a cause of action.

It is therefore my finding that the Learned Trial Magistrate failed to properly interpret and apply the relevant principles of law to the matter before him and thereby came to the wrong decision of dismissing the Appellant's Application. He also erred in law and fact in not holding that the Plaintiff's claim instituted under the **Law Reform (Miscellaneous Provisions) Act Cap 79** was time-barred.

My decision is that the Ruling and Orders of the lower court be and are hereby set aside and substituted with an Orders of this Honorable Court dismissing the whole suit.

Finally, it is now well established law that costs generally follow the event. **See Francis Butagira vs. Deborah Mukasa Civil Appeal No. 6 of 1989 (SC)** and **Uganda Development Bank vs. Muganga Construction Company (1981) HCB 35**. Indeed, in the case of **Sutherland vs. Canada (Attorney General) 2008 BCCA 27** it was held that courts should not

depart from this rule except in special circumstances, as a successful litigant has a 'reasonable expectation' of obtaining an order for costs.

In this Appeal, I have no reason to deny the Appellant costs in this Appeal; and as such they are awarded costs in the Appeal and in the lower court.

**In the final analysis**, it is my decision that:-

- (i) This Appeal has merit and is ALLOWED.
- (ii) The Ruling and Orders of the lower court be and are hereby vacated and substituted with an Orders of this Honorable Court dismissing the whole **CIVIL SUIT NO.0241 OF 2011**.
- (iii) The costs in the Appeal and in the lower court are awarded to the Appellant.

I SO ORDER

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**JUSTICE DR. WINIFRED N NABISINDE**  
**JUDGE**  
**05/04/2024**

This Judgement shall be delivered by the Magistrate Grade 1 attached to the chambers of the Resident Judge of the High Court Jinja who shall also explain the right of appeal against this Judgement to the Court of Appeal of Uganda.

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**JUSTICE DR. WINIFRED N NABISINDE**  
**JUDGE**  
**05/04/2024**