

REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA SITTING AT KOLOLO

CIVIL DIVISION

MISCELLANEOUS NO. 111 OF 2012

PADDE PHILIP ALEX:..... PLAINTIFF/APPLICANT

VERSUS

MAKERERE UNIVERSITYDEFENDANT/RESPONDENT

BEFORE: THE HONOURABLE MR. JUSTICE AKIIKI – KIIZA

RULING

This is an application by way of Judicial Review by way of a Notice of Motion and is taken out under The Judicature (Judicial Review) Rules, 2009 and the University and other Tertiary Institutions Act 2001, as amended. When the matters came up for hearing, the Learned Counsel for the Respondents raised a preliminary point of law, in that, the applicant's action is time barred by virtue of Section 57 (3) of the Universities and other Tertiary Institutions Act, 2001 whereby a member of staff aggrieved by the decisions of the tribunal set up under S. 57 (2) of the same Act, may, within 30 days from the date, he or she is notified of the Tribunal's decision apply to the High Court for Judicial Review.

On the other hand, the Learned Counsel for the applicant was of a view that, though he was alive to the Provisions Section 57(3) of the Act, as cited by his Learned colleague, and that, the decision against his client was made on the 14/06/2012, he never filed the proceedings till the 15/08/2012, about 2 months later but this notwithstanding, it was during court vacation from the 15/7/2012 till 15/8/2012, hence it could not be said he was time barred, as I understood him, such period was to be deducted. Hence his filing of the proceedings on 15/8/2012 was still in time. Although he did not cite any case during his submission, he however availed a case of **KULUO JOSEPH ANDREW & 2 OTHERS VS. A.G. HCC MISC. APP. 106/10**. Whereby Bamwine J, as he then was, held inter alia, that, article 126 (2) (e) of the Constitution took care of the matter and though the application was time barred, the court could overtook it and proceed to hear the application.

On the other hand, the Learned Counsel for the Respondent had cited the case of **BANK OF UGANDA VS NSEREKO JOSEPH & 2 OTHERS, UCA CIVIL APPEAL NO. 72/2000**. Where it was held by Uganda Court of Appeal that, it was trite law that a Judge is barred from granting relief or remedy in a claim that is time barred by law.

I have carefully considered all the submissions of both Learned Counsel and I have carefully perused the relevant Legal provisions and the authorities cited by Counsel. The following are my findings;

It is not in dispute that, the applicant was in the respondent's employment.

Secondly, it is not disputed that, the applicant was dismissed by the Respondent.

Thirdly it is not disputed that, there Respondent Staff Tribunal heard the matter and dismissed the applicant on the 14/6/2012. This was done under S. 57 (1) of The Universities and other Tertiary Institutions Act 2006.

Under S. 57 (3) of the same Act, it is provided as follows:-

“ 57 (1).....

(2).....

(3) A member of staff aggrieved by the decision of the Tribunal under Sub-Section (2) may within thirty days from the date he or she is notified of the Tribunal's decision, apply to the High Court for Judicial Review”

Hence the application for Review to the High Court was due by the 14/7/2012. But the applicant filed his papers on the 15/8/2012 which is about 2 months over due. Mr. Nagemi the Learned Counsel for Applicant submitted that apart from both the 14th and 15th July falling on a weekend hence could be excluded, the 16th August was Court vacation, hence he could not file the papers in court.

My research reveals that, the court vacation (Amendment) Rules were made by Hon. Justice S.W.W. Wambuzi on 8/7/1994. They are embodied in S.I./87/94.

Rule 3 was amended to provide as follows;

“3: In each year the Court shall be in vacation from the 15th July to the 15th August inclusive and from 23rd December to 7th January, inclusive.”

4. In vacation the Court shall deal with criminal business but shall not sit for discharge of Civil business other than such Civil business as shall, in the opinion of the presiding judge, be of an urgent nature.”

It is obvious from the above provisions that, the 30 days within which the applicant was to file his application runs from the 14/6/2012 when the applicant was informed of his dismissal by the tribunal. The 14/7/2012 was a Saturday and Courts in Uganda do not work, hence it could be taken as a public holiday within the meaning of Rule 2 of Order 51 of C.P.R.

The next day, the 16/7/2012 was also excluded by the same O. 51 r. 2. Rule 4 of the Court vacation Rules, as we have seen herein above, talks of the court, “shall not sit for the discharge of Civil business” other than those of urgent nature. My interpretation by the above provision, is that, the Court is prohibited to “hear” Civil matters. It does not stop anybody to file court papers in respect of Civil Matters.

Actually the same Rule gives Court power to hear urgent business, upon application and obtaining a Certificate of urgency (**See East African Plans Ltd. Vs. Bickford Smith [1971] HCB 225.**

This is done by filing the relevant papers applying for a certificate of urgency. In the premises therefore, it is my considered view that, the applicant was not precluded for filing his application within the court vacation, hence the filing on 15/8/2012 was clearly out of time. Mr. Nagemi, forwarded a case decided by the Hon. Bamwine J, as he then was, of **KULUO JOSEPH ANDREW & 2 OTHERS VS. A.G.** (cited above) whereby the Learned Judge, rightly in my view held to the effect that time for Judicial Review could be extended. However, this case is distinguishable from the current one, as this case involved rules by procedure. Whereas the one before me involves time fixed by Statute. It has been held from time to time that, the Court cannot extend time fixed by a Statute. (See the case of **MAKUGA INTERNATIONAL LTD VS. CARDINAL NSUBUGA & ANOTHER [1982] HCB 1**

Their Lordships of the Uganda Court of Appeal held as follows:-

- (1) **Order 47 r 4 (O. 51 r 4) of C.P.R. indicates that computation of time appointed or delivered by the rule of.....filing any pleading or for doing any other act, is applicable only to the time appointed or allowed by the rule 2 Civil Procedure given the time in question was not appointed or allowed by rules of Civil Procedure, the order would not apply.**
- (2) **A court has no residual or inherent Jurisdiction to enlarge a period of time laid down by a Statute and therefore the judge’s order extending the time within which to appeal several months after the expiry of Statutory period was made without jurisdiction was a nullity and would be set aside.**

In the premises, therefore as the S. 57 (3) of the Universities and other Tertiary Institutions Act 2001, fixed the time for aggrieved member of staff by the decision of the Tribunal to apply for Judicial Review within 30 days, then the applicant's action is clearly time barred as it was filed 2 months later.

In the premises, I uphold, the preliminary objection raised by the Respondents and the matter stand struck out for incompetence. He will have their taxed costs.

Justice Akiiki – Kiiza
Judge
28/05/2013.

Order: The Assistant Registrar to read this Ruling to the parties.

Justice Akiiki – Kiiza
Judge
28/05/2013