THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL DIVISION

CIVIL SUIT NO.756 OF 2006

MOSES NJUBA::PLAINTIFF

VERSUS

ATTORNEY GENERAL::DEFENDANT

BEFORE: HON. LADY JUSTICE ELIZABETH MUSOKE

JUDGMENT

The plaintiff sued the defendant for the recovery of his salary arrears, damages, interest and costs.

The plaintiff alleges that he joined the army (NRA as it then was) on the 28th day of August 1981. After the war in 1986, he was given army number RO 2741 and the rank of 2nd Lieutenant. This number was later changed to RO 01345 in 1988 with the rank of Full Lieutenant. He used the new number until 1995 when it was changed again to RA 127665. He was subsequently given a temporary identity card and later discharged from the army on April 1st, 1997.

The plaintiff instituted this suit and prayed for among others; salary arrears of Ug. Shs. 450,000/= (Four Hundred and Fifty

Thousand shillings only) per month from the 1st April 1997 until the final disposal of this suit; pension and gratuity; general damages; interest on the above and costs of this suit.

In the written statement of defense filed by the Attorney General, the defendant denied the plaintiff's claim in its entirety.

At the hearing, the plaintiff was the only witness and the defense did not produce any witness.

At the scheduling conference, only one fact was agreed upon;

1. The plaintiff served in the Uganda People's Defense Forces (UPDF)/NRA.

Two issues were agreed as follows;

1. Whether the plaintiff is entitled to pension and gratuity as a former army officer.
2. Remedies available to the plaintiff.

Issue 1: Whether the plaintiff is entitled to pension and gratuity as a former army officer;

Relying on the Uganda Peoples Defense Forces (Pensions and Gratuities) Regulations, SI 307-5 Regulation 4(a), Counsel for the plaintiff submitted that pension may be granted to every officer who retires, or a militant who is discharged from service having completed at least thirteen years reckonable service. He stated further that the same statute defines '***reckonable service***' under

Regulation 2(c) to mean "***continuous full pay service in the armed forces, and includes any prior full pay service with the Uganda Peoples' Defense Forces.***" He added that in the present case, the plaintiff had served in the army from 1981 until 1997 and by the time he was discharged, he had previously served under different numbers until 1995 when he was given Army Number RA 127665, which he used until 1997 with a temporary identity card which was admitted in evidence as **EXH P2**. Upon the plaintiff's dismissal, he was issued with a Certificate of Service admitted in evidence as **EXH P1**.

Counsel concluded that the above evidence indicated that the plaintiff was a militant in the armed forces of Uganda and that he had proved beyond doubt that he joined the army and was recognized as a member of the army force until 1997 when he was forcefully discharged. He was therefore, entitled to pension having served in the army for more than 13 years of reckonable service.

In reply, Counsel for the defendant raised a preliminary point of law that the plaintiff's claim for salary arrears was time barred as the cause of action arose in 1997 when the plaintiff claims to have been discharged from the army. Counsel relied on ***Order 6 Rule 28*** of the Civil Procedure Rules which states:

> ***"Any party shall be entitled to raise by his or her pleading any point of law, and any point so raised shall be disposed of by the court at or after the hearing; except that by consent of the parties, or by order of the court on the application of either***

party, a point of law may be set down for hearing and disposed of at any time before the hearing*".*

Counsel contended that from the allegations in the plaint, it was clear that the plaintiff's claim for salary arrears was founded on contract. He relied on **Section 3(2)** of the Civil Procedure and Limitation (Miscellaneous Provisions) Act which states;

"No action founded on contract shall be brought against the Government…after the expiration of three years from the date on which the cause of action arose".

Counsel further relied on Order 7 Rule 6 of the Civil Procedure Rules which states:

"Where the suit is instituted after the expiration of the period prescribed by the law of limitation, the plaint shall show the grounds upon which exemption from that law is claimed".

He also relied on ***Eridadi Otabong Vs Attorney General S.C.C.A 6/1990***, for the proposition that where a period of limitation is imposed, it begins to run from the date on which the cause of action accrues and that where the plaint did not plead disability as an exemption as required by Order 7, Rule 6 of the Civil Procedure Rules, which is couched in mandatory terms, the omission was fatal to the claim outside limitation.

In conclusion, Counsel asked court to reject the claim for salary arrears with costs to the defendant under the provisions of **Order 7 Rule 11(d)** which requires that the plaint be rejected where the

suit appears from the statement in the plaint to be barred by any law.

In regard to issue number one, Counsel for the defendant submitted that it defeated logic to state as the plaintiff did that he served in UPDF since 1981 without a service number only to get it 5 years later. This went to prove that the plaintiff did not join UPDF in 1981 as alleged and that is why he was not given a service number. Counsel further relied on regulation 4 (a) of the Uganda Peoples' Defense Forces (Pensions and Gratuities) regulations which states;

> ***"Subject to these regulations, a pension may be granted to every officer who retires or a man who is discharged from the service.***
>
> ***(a) Having completed at least thirteen years reckonable service…".***

On the meaning of "reckonable service", counsel relied on Regulation 2(c) (iv) Uganda Peoples' Defense Forces (Pensions and Gratuities) Regulations, which states:

"Regulation 2(c);

> ***"reckonable service" means continuous full pay service in the armed forces and includes any prior full pay service with the Uganda Peoples' Defense Forces or any other forces recognized by the Uganda Peoples' defense forces council in respect of which a pension is not in issue or from which a gratuity has not been granted but excluding from that service;***

(iv) Any period of service undergone prior to the man attaining the apparent age of eighteen years".

Counsel stated that from the above provision of the law, the plaintiff could not get pension without reckonable service. From the outset of the cross examination, the plaintiff stated that he was enlisted into the army as a "Kadogo" at around the age of 14 or 15 years. This meant that he attained the apparent age of 18 years four years after 1981, which is some time in 1985. The plaintiff's evidence in chief as entailed in paragraph 3 of his sworn witness statement meant that the plaintiff worked in the UPDF for 14 years. Therefore and in line with Regulation 2(c)(iv)(supra), the 4 years when he had not yet attained 18 years had to be discounted from the 14 years, leaving him with 10 years, thus taking him out of the operation of Regulation 4 (a) (supra).

Counsel concluded that Regulation 2(c) (iv) (supra) precluded the plaintiff from being a pensionable person and, therefore, a claim for pension could not arise.

On the claim for gratuity, Counsel relied on Regulation 15(1) of the Uganda Peoples' Defense Forces (Pensions and Gratuity) Regulation which grants the pensions authority the discretion to grant gratuity to any officer who did not qualify for pension.

It states:

> ***"The pension's authority may grant a gratuity to any officer or a man who is not qualified for a pension after having completed at least nine years reckonable service".***

Counsel submitted that from the above provision of the law, the pension's authority is given the discretion to grant gratuity to any officer not qualified for pension after completing nine years' reckonable service. The plaintiff could not claim gratuity as of right as it is a matter within the discretion of the pension's authority. Consequently, court cannot compel a person or an authority to exercise a discretion conferred under statute. The court could only interfere with the discretion of the pension's authority if the authority abused or misused the discretion.

I have carefully considered the submissions of counsel for the defendant in regard to the point of law raised. I will refer to the judgment of the Court of Appeal in ***Civil Appeal No. 25/96*****.** In the Matter of an Application by Mustapher Ramathan, where it was held that litigation would automatically be stifled after expiry of a prescribed length of time irrespective of the merits of a particular case. The court agreed with the statement of lord Greene MR in ***Hilton Vs Steam Laundry (1946) 1 KB 61 AT PAGE 81*** that:

> ***"…the statute of limitation is not concerned with merits. Once the axe falls, it falls, and a defendant who is fortunate enough to have acquired the benefit of the statute of limitation is entitled, of course, to insist on his rights".***

Basing on the above authorities, it is clear that non-adherence to time limits is not a mere technicality. It amounts to non-compliance with substantive law. In the circumstances, the claim for salary arrears is not sustainable as it is barred by statute.

With regard to the claim for pension and gratuity, it is clear from the evidence on record that the plaintiff joined the army as a "kadogo" on 28th August 1981 around the age of 14 or15 years. He served for a total of 15 years up to 27th January 1997 as per **EXH P1**. For him to qualify as a pensionable person, he ought to have completed at least 13 years of reckonable service in the army. Applying Regulation 2(c) (iv) (supra) in force, the plaintiff's reckonable service begun to run when he attained the age of 18, which is around the year 1984-1985. It implies therefore that he served the army for a maximum of 12 years under reckonable service.

I find therefore that he does not qualify to be granted pension as per regulation 4 (a) SI 307-5.

Gratuity, as per SI 307-5 above, is discretionary and it's up to the Pension's Authority to grant it or not. Court cannot interfere with the exercise of discretion of the Pension's Authority. The prayer for gratuity also fails.

Issue 2: **Remedies available to the plaintiff;**

Counsel for the plaintiff relying on the case of ***Kasekya Kasaija Sylvan Vs AG HC CS NO.1147 /1998 [2009] HCB VOL.1 at page 73***

submitted that general damages are damages which the law implies or presumes naturally to flow or accrue from the wrongful act of the defendant and may be recovered without proof of any amount. He further contended that the actions of the defendant left the plaintiff jobless and destitute with no source of income after having been discharged from the army without being paid his pension yet he sustained great injuries during his time of service as evidenced by the fact that he was discharged from the causality wing, thus he could not engage in gainful employment.

It was the case for the plaintiff that the suit was filed in 2006 but has dragged on mainly due to the delay caused by the defendant thereby causing mental anguish and economic hardship to the plaintiff.

The plaintiff therefore requested to be granted costs of the suit and interest and stated that S. 27 of the Civil Procedure Act, Cap 71 are a wide discretion to court to award costs. Counsel submitted that the plaintiff had pursued this matter for long in court given his current economic hardships. He therefore prayed that court exercises its discretion and grants general damages as well as costs to the plaintiff over and above any other reliefs granted by court.

In reply, the defendant’s Counsel submitted that the position of the law was that such damages flow from the type of wrong complained of.

He concluded that in the instant case, since the plaintiff did not have a right to pension, it could not be said that he suffered any wrong as a result of the defendant's action of denial of his pension and gratuity. He prayed that court dismisses the suit with costs to the defendant.

After analyzing the evidence on record, and having resolved issue 1 in the negative, court notes that no wrongful act was committed by the defendant to warrant payment of general damages. Though the plaintiff alleged that the acts of the defendant had left him jobless and destitute without meaningful employment, there was no claim for wrongful termination of employment.

I therefore find that the plaintiff is not entitled to general damages.

The suit is, therefore, hereby dismissed.

On costs of the suit, the justice of this case demands that each party meets its own costs.

It is so ordered.

Elizabeth Musoke

JUDGE

29/08/2014