

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**CIVIL SUIT NO.108 OF 2011**

**OMUNUK JAMES**.....  
**PLAINTIFF**

**VERSUS**

**ATTORNEY GENERAL** .....  
**DEFENDANT**

**BEFORE: THE HON. LADY JUSTICE ELIZABETH MUSOKE**

**RULING**

This suit is brought under Article 50(1) of the Constitution of the Republic of Uganda 1995. The plaintiff's claim against the defendant is for a declaration that he was unlawfully terminated from his employment as a bursar by the Ministry of Education on the 1<sup>st</sup> day of April 2006. The plaintiff also claims for a declaration that he is entitled to be paid terminal benefits by the defendant as he had served for a period of 18 years when his services were terminated in April 2006. He further seeks for a declaration that he is entitled to compensation for unlawful and unfair termination as well as costs of the suit.

Before the scheduling conference could be held, the representative of the Attorney General, a State Attorney, Mr. Batanda Gerald raised a preliminary point of law that the

plaintiff's cause of action was time barred and filed submissions to that effect.

Mr. Batanda submitted that their objection stemmed from the plaintiff's allegation under paragraph 4(b) and (c) of the plaint that:

***“b) After serving for a period of one year probation, the plaintiff was confirmed as Assistant Bursar on the 5<sup>th</sup> August 1985 and later promoted as Bursar on the 4<sup>th</sup> November 1985 and had served for a period of 18 years when his services were terminated in April 2006.***

***c) The Education Service Commission carried out what it termed as a regularization and validation of appointments in 2005 and as a result of this, the plaintiff's services were unlawfully and unfairly terminated....”***

Counsel contended that this claim is founded on contract. He relied on section 3(2) of the Civil Procedure and Limitation (Miscellaneous Provisions) Act Cap 72 which states that:

***“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 submitted that it is pertinent to establish when the cause of action arose in order to determine whether the plaintiff is still within the time. He further submitted that according to paragraph 4(C) of the plaint, the plaintiff's services were “unlawfully and unfairly” terminated in 2005. The suit was filed six years later from the date of the alleged unlawful and unfair termination, making the claim three years outside the time within which he was

supposed to institute the claim. The plaintiff claims being founded on contract, could not be brought against the government three years from the date of termination of services.

Counsel further submitted that where a suit is instituted after the expiration of the period prescribed by the law of limitation as is the case here, the grounds of exemption from limitation had to be embodied in the plaint in strict compliance with Order 7 Rule 6 which states that;

***“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.”***

Mr. Batanda relied on a number of authorities, but specifically relied on ***Eridad Otabong Vs Attorney General, S.CC.A No. 6/1990 (1991) ULSLR 150***, to state that where a period of limitation is imposed, it begins to run from the date on which the cause of action arose; and that where a plaint does not plead disability as an exemption from limitation 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. Mr. Batanda also relied on Order 7 Rule 11(d) which provides for rejection of the plaint where the suit appears from the statement in the plaint to be barred by any law.

Counsel prayed that the plaint be rejected.

In reply, Counsel for the plaintiff, Mr. Omongole, submitted that the claim was not a matter brought under the Civil Procedure and Limitation\_(Miscellaneous Provisions) Act Cap 72, or an ordinary case for enforcement of the employment contract. It was brought

under Article 50 of the Constitution of the Republic of Uganda that protects the fundamental rights and freedoms of an individual. The defendants seem to have misunderstood under which law the cause of action of the plaintiff was brought, which is under the Constitution which does not have any time limit within which to enforce ones right.

Counsel further contended that Article 2(1) of the Constitution of the Republic of Uganda, 1995, made the Constitution the supreme law of the land, and all other laws derive their validity from it. The Civil Procedure and Limitation (Miscellaneous Provisions) Act, cap 72, could not therefore, override the Constitution which did not have any time limit within which to file a suit. He also relied on ***Julius Ochen and Another Vs A.G, H.C.C.S NO. 292 of 2010***, where Justice Elizabeth Ibanda Nahamya overruled a similar preliminary objection on the grounds above stated.

Counsel further contended that objections could not be raised against a person seeking merely declaratory orders, which are not affected by lack of cause of action or limitation periods (see Hulsburly laws of England 4<sup>th</sup> Edition pg 191).

In the present case, the plaintiff brought his action under Article 50(1) seeking declarations, among others, that he is entitled to compensation for unlawful termination which in turn resulted into violation of his rights under Article 26 of the Constitution. The defendant could not therefore, raise an objection on matters over which declaratory judgment was sought.

Mr. Omongole submitted that the plaintiff's action was not barred by time, since the defendant was in continuous breach of the plaintiff's right to his terminal benefits. Counsel relied on ***Gideon Emeru Vs A.G, MISC Cause No. 01 of 2005*** for the proposition that the tortuous action of detinue was a continuing cause of action and as such, the same was not statute barred until delivery of the goods had been made or judgment entered accordingly.

Further, after his termination, the plaintiff did not sue for breach of contract of employment but constantly wrote to the defendants requesting for his terminal benefits to no avail; the last communication being made on the 8<sup>th</sup> November 2011 while this matter was filed on the 27<sup>th</sup> May 2011.

Counsel prayed that court be pleased to dismiss the defendant's preliminary objection with costs.

The issue for court's determination is whether the claim is time barred under Section 3(2) of the Civil Procedure and Limitation (Miscellaneous Provisions) Act Cap 72 which states that:

***"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."***

For this section to apply, the action brought must be founded on a contract. A contract is defined as an agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law. (See Black's law Dictionary, 7<sup>th</sup> edition pg 318). In the present case, upon signing the appointment letter, the plaintiff had entered into an employment

contract with the defendant which gave birth to obligations that are enforceable by law, like the terminal benefits.

I note that, in this case, the plaint was brought under Article 50(1) of the Constitution of the Republic of Uganda 1995, which states:

***“Any person, who claims that a fundamental or other right or freedom guaranteed under this Constitution has been infringed or threatened, is entitled to apply to a competent court for redress which may include compensation”***

It is the plaintiff’s case that the claim is brought under the Constitution which does not have any time limit within which to enforce one’s fundamental rights. In this case, he seeks declaratory judgment which can be made whether there is a cause of action or not and at the instance of any party who is interested in the subject matter of the declaration.

I will direct my mind to the law to which the plaintiff has based his suit, to wit, the Constitution of the Republic of Uganda, 1995. It is my finding that Article 50 is couched in mandatory terms. This means that for a claim to rightly fall under this Article, there must be an infringement or threat to a right or freedom of a person. The plaintiff submitted in his plaint that his right to own property under Article 26 of the constitution had been infringed upon, by the refusal by the defendant to pay his terminal benefits and compensation for unlawful termination.

The issue to be determined by court in regard to this matter is whether the terminal benefits and compensation constitute property.

With reference to Black's Law Dictionary, 7<sup>th</sup> Edition pg 1232, property was defined in its widest sense to include all a person's legal right of whatever description. It goes on to state that the term property includes not all proprietary rights, but only those which are proprietary in rem.

If we are to go by the above definition, an alleged debt which is still in issue, or an alleged benefit of a contract is not property.

In this case, the alleged terminal benefits and compensation which in essence fall under benefits derived from an employment contract are not properly to fall under Article 26 of the constitution since they are not proprietary rights in rem.

The plaintiff bringing the cause of action under Article 50 of the Constitution is barred by law as no fundamental right or freedom has been infringed by the defendant.

The plaintiff is only hiding under the Constitution to enforce a claim which is barred by Section 3(2) of the Civil Procedure and Limitation (Miscellaneous Provisions) Act, cap 72. He seeks, thereby, to evade or avoid the repercussions of the full force of the law. The Court will not lend its hand to a litigant who seeks to circumvent the law, yet he is the one who sat on his rights.

I, therefore, uphold the preliminary point of law and the case stands dismissed with costs.

**Elizabeth Musoke**

**JUDGE**

**7/05/2014**