

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KABALE**  
**HCT-00-CV-CS-NO.008 OF 2012**

**RUBAHIMBYA SAMUEL BEN**

**PLAINTIFF**

**VERSUS**

**KABALE DISTRICT LOCAL GOVERNMENT**

**DEFENDANT**

**RULING**

On the 13<sup>th</sup> June 2016, this file was placed before me for hearing . On perusal of the file I noted an anomaly regarding the reported date the cause of action arose and the date the Plaintiff was filed. The cause of action arose on the 10<sup>th</sup> November 2005 and the Plaintiff was filed on the 8<sup>th</sup> May 2012.

I required Reverend Bikangiso representing the Plaintiff and Ms. Gafabusa for the Attorney General to address me on the Law of Limitation in view of the above observation. Counsel for the Plaintiff submitted that the Magistrate Grade One at Kabale Court had granted the Plaintiff leave to file the suit out of time hence the late filing. He undertook to provide me with the ruling delivered in that respect. Counsel for the Attorney General requested for time to file written submissions which I declined as it was a waste of Court's time.

I ordered Counsel for the Plaintiff to provide Court with the ruling of the Magistrate which he thankfully did .I promised to deliver this ruling on the 17<sup>th</sup> June 2016.

**RULING**

The Plaintiff was employed as a Gombolola Chief in Kabale District. On the 10<sup>th</sup> November 2005, he was dismissed from employment for reasons that he did not possess the necessary qualifications to serve in that office. He claims the dismissal was unlawful and his entitlement was improperly computed. On the 15<sup>th</sup> February 2012, through M/s Bikangiso &Company Advocates, the Plaintiff filed Civil Miscellaneous Cause No.3 of 2012 in the Magistrates Court for leave to sue the defendant outside the set time frame and for costs. The grounds advanced by Counsel in support of the Application were that the Plaintiff had instructed Lawyer Wilfred Murumba (R.I.P) to file a suit against the defendant which he

never did. The second ground advanced was that the defendant had unsuccessfully engaged him in negotiations to resolve this dispute hence the delay to file the suit. The Application was heard on 19<sup>th</sup> April 2012 without the Attorney General's representative who did not appear in Court despite service of hearing notices on them. The ruling was delivered on the 26<sup>th</sup> April 2012 ordering the Plaintiff to file the present suit within fifteen days from the date of the ruling hence the filing of this suit on the 8<sup>th</sup> May 2012.

The application was premised on Sections 96 and 98 of the Civil Procedure Act interpreted by the learned Magistrate as giving Court power to extend time where a party who instructs an Advocate who does not file a suit cannot be penalized for the latter's mistakes. It was also ruled by the learned trial Magistrate that where parties are caught up by time while trying to reach a settlement Court deems that a sufficient reason to extend time. With all due respect to the learned Magistrate, he misdirected himself on the import of the two provisions and the result was a total abuse of the process of Court instead.

Section 96 is indeed about the discretion of Court to extend time for the doing of particular acts prescribed or allowed by the Civil Procedure Act. It provides;

***“Where any period is fixed or granted by the Court for the doing of any Act prescribed or allowed by this Act, the Court may in its discretion from time to time, enlarge that period, even though the period originally fixed or granted may have expired”.***

This provision is only applied to enlarge time for doing acts prescribed or allowed by Court and not for periods set by Legislation. The Civil Procedure and Limitation (Miscellaneous Provisions) Act specifically sets time within which particular suits are filed and no extension of time can be allowed to defeat the provision of a statute.

The Section can also only be invoked in regard to matters already filed in Court and by a Court seized with jurisdiction to entertain the dispute before it. There was no case filed yet in Court and even when it was filed, though irregularly, it was beyond the monetary jurisdiction of the learned trial Magistrate.

Section 98 of the same Act provides;

***“ Nothing in this Act shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of Court.”***

I read nothing in this provision that could be interpreted as empowering a Court without jurisdiction to extend time stipulated in a statute. The inherent power of Court can only be invoked in matters filed before it and not otherwise. There was no matter filed in Court to invoke this provision.

In summary, the act of the learned trial Magistrate in entertaining and granting Miscellaneous Cause No.3 of 2012 was null and void and the Order resulting there from is a nullity in Law. Similarly, reliance on the same Order by Counsel for the Plaintiff to file the present suit is to say the least untenable and an abuse of the Court process .

The Law governing limitation for filing of suits against Local Governments is the Civil Procedure and Limitation (Miscellaneous Provisions ) Act. Unlawful termination of employment as claimed by the Plaintiff is a tort. Section 3(1) of the Act specifically relates to the Local Governments like the Defendant in the following words;

*“No action founded on tort shall be brought against a local authority after the expiration of two years from the date on which the cause of action arose”.*

The present suit was filed after a period of seven years from the date the cause of action arose. The Plaintiff does not particularize any grounds of disability based on which Court can determine whether indeed late filing can be allowed before hearing of the suit. This is the known and accepted procedure in such matters.

What I find even more peculiar is that even the Order of the learned trial Magistrate, null as it is, was not attached to the Plaintiff as proof of leave to file the suit outside the limitation period. In **CIVIL APPEAL NO.53/2000 KAPEEKA COFFEE WORKS LTD &ANOR vs NPART**, it was held that

*“ Court must only look at the Plaintiff and its annexures, if any, to determine whether or not a Plaintiff discloses a cause of action...”*

My perusal of the Plaintiff reveals that it offends section 3(1) of the Civil Procedure and Limitation (Miscellaneous Provisions) Act and under Order 6 and 11 (d) of the Civil Procedure Rules and it is accordingly rejected.

In **M.O PETRORITCH vs PRENCHANDRA SHANOI &ANOR C/S 802/1987{1998} V KALR 119** it was held;

***“ the power of arresting an action and deciding it without trial was one to be sparingly used and rarely if ever, except where it is clearly an abuse of Court process....”.***

The present case is one where the trial Magistrate assumed jurisdiction he was not clothed with and it is regrettable that Counsel for the Plaintiff did not properly advise his client

As held in **HILTON VS SULTON STEAM LAUNDRY {1946}1KB 81,**

***” statutes of limitation are strict in nature and not concerned with the merits of the case. Once the axe falls, the defendant who benefits from it has to insist on his strict rights.”***

The Plaintiff is hereby rejected. I however decline to grant the defendant costs of the suit. They should have corrected the apparent abuse of process occasioned by the lower court way back in 2012, but no serious effort to dispose of this matter is reflected on the court file.

**Moses Kazibwe Kawumi**

**Judge**

**17<sup>th</sup> June 2016**