

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MASINDI
INTERLOCUTORY APPLICATION NO. 86 OF 2013
(Arising out of High Court civil Suit No. 05 of 2013)

TULLOW UGANDA OPERATIONS PTY LTD:.....APPLICANT

VERSUS

KATO JACOB:.....RESPONDENT

BEFORE HON. JUSTICE W. MASALU MUSENE

RULING

The Applicant, Tullow Uganda operations PTY Limited, filed this application against the Respondent, Kato Jacob under Section 98 of the C.P.A and o. 7 r 11 and O. 6 r 30 of the civil procedure rules.

The applicant was seeking for orders that:-

- a) High court Civil suit No. 05 of 2013 be dismissed
- b) The court makes such other consequential orders as it may deem necessary.
- c) Costs of this application be provided for.

The grounds in support of the Application are contained in the affidavit of Doreen Kansiime, but briefly are:-

- a) High court Civil suit No. 05 of 2013 is from the statements in the Plaintiff barred by law.
- b) The Plaintiff in High Court civil suit no. 05 of 2013 does not disclose a cause of action against the applicant/1st defendant
- c) The Plaintiff's suit is time barred
- d) The Plaintiff in civil suit No. 80 of 2012 is frivolous and vexatious.
- e) That it is just and equitable that the plaintiff in Civil suit no. 05 of 2013 be rejected and the suit be dismissed.

The applicant was represented by M/s Bankya, Kihika & Co. Advocates, while the Respondent is represented by M/s Tugume & Co. Advocates.

In an affidavit in reply, the Respondent, Kato Jacob raised the following pertinent matters in paragraphs 2,4,5,8,9,11 and 13 for avoidance of doubt, they are reproduced below.

- 2) That I have had the benefit of perusing both the chamber summons and its supporting affidavit and having a thorough discussion of the same with my lawyer Tugume.
- 4) That my suit HCCS NO. 005 OF 2013 is not time barred.
- 5) That I have a valid cause of action against all the Defendants.
- 8) That my Lawyer Tugume has informed me that HCCS NO. 005 OF 2013 is not based on tortuous actions as alleged by the Affidavit of Doreen Kansiime but on tortuous acts.
- 9) That the Attorney General whom I am informed by my Lawyer Tugume that the applicant has no locus to represent was dully served with the mandatory statutory Notice of 45 days prior to the filing of the suit. A photocopy of the said Statutory Notice is here to attached and marked “B”.
- 11) That the acts I am complaining about are not acts committed by Judicial officers but by workers of the 1st and 2nd Defendants and Police Officers of the Government of the Republic of Uganda who are not judicial officers.
- 13) That I swear this affidavit in reply to and in opposition Misc. application No. 086 of 2013 which should be dismissed with costs for being an abuse of court process.

Both sides filed written submissions.

Counsel for Applicant submitted that there is not one statement in his prolix plaint that speaks of the statutory notice having been served on the Attorney General . As such, we submit that the plaint falls foul of Section 2 (2) of the civil procedure and limitation (Miscellaneous Provisions) Act and must thus be rejected under O. 7 rule 11 (d).

He added that in any case, the law is that when considering whether to strike out a plaint or not under O. 6 rule 30 and o. 7 rule 11, the court can only look at the pleadings and no more. In our humble submission, this Honourable Court ought not place any reliance on the attachments to

the affidavit in reply for they cannot operate to amend the plaint. In this regard, we wish to cite the authority of **H.M.B Kayondo vs Ag HCCS 442 of 1988**.

On second leg with regard to false imprisonment, that it is false imprisonment is barred by law and the plaint must be rejected under O. 7 rule 11 (d).

He added paragraph 4 of the impugned plaint in HCCS NO. 5 OF 2013 is said to lay out the facts constituting the Plaintiff's cause of action. Under 4 (1) , the Plaintiff alleges that he was remanded at Masindi Government prison for four (4) days until he was granted bail. In 4 (j), he alleges to have been 'tortured' throughout all the above 'orders' His claim for special damages under paragraph 7 includes alleged lost income for the days he was remanded at Masindi Government prison.

He maintained that clearly, what is in question here is the Plaintiff's custody upon remand by court order. Indeed, the plaintiff could only have been remanded pursuant to the orders of the Chief magistrate's court of Masindi. In this respect therefore, what the Attorney general is being called out to answer for is, among others, the actions of a Judicial officer as such.

Counsel for the applicant quoted Section 3 of the civil procedure and limitation (Miscellaneous provisions Act,

“(I) No action founded on tort shall be brought against:-

- a) *The Government ; after the expiration of two years from the date on which the cause of action arose (Emphasis)”.*

Counsel concluded that since no lawful exemption from Limitation is pleaded, in the plaint the plaint be rejected. Counsel also went into detailed submissions about malicious prosecution and concluded that the Plaintiff's suit is forfeited to extort money from Applicant.

In reply, Counsel for the Respondent submitted that statutory Notice to Attorney General was duly served.

Even then, he urged that counsel for the applicant had no mandate to represent the Attorney General and should not self appoint himself for that purpose.

Counsel added that since Tullow Uganda Operations PTY Ltd is not a scheduled corporation, then all cases quoted are out of context. On Limitation, counsel for Respondent submitted that in cases against Attorney General in torts for malicious prosecution, the cause of action arises on the day of acquittal. And that in the present case, since the acquittal was on 11.7.2012, then the present suit filed on 22.4.2013 was within the prescribed time. On non disclosure of cause of action, he submitted that in cases of malicious prosecution, the principal tortfeasor is the one who sets the law in motion against the Plaintiff and in this case it is Tullow Uganda Operations PTY Ltd and G4S Security Uganda LTD since it was their workers in the course of their employment that caused the arrest and imprisonment of the Respondent/Plaintiff. The authority on this point is the case of **Sekaddu vs Ssebaduka [1968] E.A 213**, where Sheridan J held inter alias that:-

“If a person sets the law in motion and causes another to be detained by police it is no defence that the police thereby become responsible for the continued detention.”

I have considered the submissions on both sides as far as the preliminary objections are concerned.

I agree with counsel for the Respondent that much as Advocates are officers of court, counsel for the applicant cannot appoint himself to Act for the Attorney general when the Law and operations of the Attorney General are specific as to who acts for or behalf of the Attorney General. Counsel for the applicant should restrict themselves to the instructions of the applicant, Tullow Uganda Operations PTY LTD. On the issue of whether the present case is time barred, I entirely agree with the judgment of Remmy Kasule J, as he then was in **Kidega Alfonsio vs Attorney general HCCS NO. 04 OF 2000**.

It was held:-

“In tort of wrongful arrest, unlawful detention, false imprisonment and malicious prosecution, the law is that the time within which the Plaintiff can bring an action against the offending defendant begins to run as from the date of release or acquittal of the Plaintiff.

That is the correct position of the law. In the present case, since the Plaintiff was acquitted on 11.7.2012, in Criminal Case No. **MSD -00-CR-CO-182 of 2011**, then time of two years started

running from 11.7.2012. The provisions of S. 3 (1) of the Civil procedure and limitation (Miscellaneous Provisions) Act, Cap 72 are clear .

All in all, I find other detailed submissions and cases quoted by counsel for applicant touching on the merits of the substantive case and they will be considered after hearing of both sides.

I therefore do hereby reject the preliminary objections and order that the hearing of the main case proceeds on the merits. Costs to be in the cause.

.....

W. Masalu Musene

Judge

03/08/2017.