**THEREPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA HOLDEN AT MASINDI**

**HCT-12-CV-CS-0022 OF 2013**

**KAMYA ANDREW …………………………………………………PLAINTIFF**

**VERSUS**

**KINYARA SUGAR LIMITED …………………………………..DEFENDANT**

**RULING**

The plaintiff sued the defendant for damages by way of compensation, general damages, interest and costs of the suit. Facts from which the suit arose are fairly simple. The plaintiff was employed by the defendant as a Laboratory Clerk. He was also a member of the defendant’s football club. In 1999, while playing football for the club, he sustained injuries. He sought damages by way of compensation from the defendant company in vain. In 2007 he resigned from the employment of the defendant because of difficulties of working with the injuries. The claim for compensation and damages remained unpaid. In 2013, he filed this suit with prayers as stated above.

At the commencement of hearing the suit, the defendant raised a preliminary point of law that the suit was barred by statute, having been filed outside the period of limitation. The argument of the defendant was that the plaintiff suffered the injuries complained of in 1999. There was no dispute about that. He filed the suit in 2013. That was not disputed either. Section 3(1) of the Limitation Act put the period in which actions founded on contract or on tort at 6 years.

The claim of the plaintiff was in negligence arising from the contract of employment. He was suing the company under vicarious liability. The suit which was filed in 2013 i.e. 14 years from the time the cause of action arose was time barred.

In reply, it was submitted that the plaintiff was injured in 1999, but remained an employee of the defendant. The defendant company kept promising to pay him compensation and damages in vain. When he could no longer continue in their employment, he resigned, and that was on 11th September 2013. Even then, the company through its Secretary kept promising to pay. This was not done till much later, and moreover after the suit was filed.

It was submitted that therefore, first by the promises to pay, the defendant was stopped from denying liability and or knowledge of the cause of action. That was the reason the defendant paid the compensation albeit belatedly after filing the suit in 2015. That was part settlement of the suit. Court was now being asked to proceed with the determination of those issues which were not covered in the settlement.

Secondly, in any event, the period of limitation would commence when the plaintiff resigned from the employment of the company on 11th September 2007. The plaint having been filed on 10th September 2013, it was still within the 6 years period allowed under the Limitation Act.

The defendants vehemently denied that the payment was part of the settlement of this suit. It was submitted that this suit was different and separate from the compensation claim, which the Labour Officer determined and the company paid. The present suit was, it was submitted a claim in negligence.

 The Limitation Act in S. 3(1)(a) provides thus;

*The following actions shall not be brought after the expiration of six years from the date on which the cause of action arose –*

1. *Actions founded on contract or on tort;*

An action which is founded on the above, and which is filed outside of the period stipulated shall be said to be barred by statute. O. 7. r 11of the Civil Procedure Rules, provides that a plaint` which is barred by statute is to be rejected. *Iga v. Makerere University [1872] EA 65*.

But r. 6 of the same Order provides that, “Where the suit is instituted after the expiration of the of the period prescribed by the law of limitation the plaint shall show the grounds upon which the exemption from such law is claimed. Odoki J., (as he then was) in *Siyokwe Mirome v. Kuko and Another, [1985] HCB 68*, put it succinctly that if a plaint is brought after the expiration of the period of limitation, and this is apparent from the plaint, and no grounds of exemption are shown in the plaint, the plaint must be rejected.

The plaintiff was an employee of the defendant company. Among other duties, he was a football player for the company football club, and was duly registered as such according to the annextures to the plaint. He suffered injuries while he was so playing football in 1999. According to the plaint, he was promised compensation. None was forthcoming, but he stayed on as an employee of the defendant. On 11th September 2007, he threw in the towel and resigned. The injuries he had sustained could not allow him to continue so serving. The promise of the expected compensation and damages were not forthcoming, and on 10th September 2013, he filed this suit.

The CA emphasized that,

*‘If a suit is brought after the expiration of the period of limitation, and this is apparent from the plaint and no grounds of exemption are shown in the plaint, the plaint must be rejected’.*

See *Uganda Railways Corporation v. Ekwaro D.O. and 504 Others. CA MA No. 185 of 2007*. The court is enjoined to only look at the plaint in order to decide the question whether the suit is barred by limitation in view of the facts alleged.

There was no intimation that the plaintiff suffered a disability to bring the suit under S.21 of the Limitation Act. The assertion was that the cause of action arose and therefore time began to run on 11th September 2007. That was only the date of resignation. There was nothing to stop the plaintiff from filing the suit before then. Her did not and kept hoping that the defendant would make good their promise at compensation. So they did according to the submissions from both Counsel, but he wants more than just compensation. He put himself at the risk of being caught by limitation, and he was actually caught.

It has been emphasized that there must be clear pleadings, which bring a reasonable inference from the plaint that the suit is time barred. For such a plaint to stand any chance of not being rejected, it must show grounds upon which it is exempted from the law of limitation. If this is satisfactory to the court, the plaint will not be rejected. *Iga v. Makerere University (supra).*

The payment of the compensation by the defendant could not be held to be part settlement of the suit. If this were so, both the defendant and the plaintiff would have stated so, and then court would have been asked to determine the remaining points of disagreement. It was alleged that such payment came after the filing of the suit. If that was the case, an amendment of the plaint would have sufficed to correct the impression.

In the premises, I find that the plaint was filed outside the time allowed by the Limitation Act. The suit is accordingly time barred. The suit is therefore dismissed. Considering the period which the plaintiff spent banking of failed promises from the defendant’s Company Secretary to pay, I will not condemn him in costs. I will therefore order that each party shall bear their own costs.

**Rugadya Atwoki**

**Judge**

**08/11/2017.**