THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT MASAKA

MISC. APPLICATION NO. 120 OF 2019

(ARISING FROM CIVIL SUIT NO. 16 OF 2016)

UGANDA POST LIMITED :: APPLICANT/DEFENDANT

VESRSUS

1. MUGABE KLEIN
2. MUGABE KELLY
3. MUGABE KYRA
4. MUGABE NATASHA (Suing through their Next of friend MUGABE PATIENCE) ::::::::::::::RESPONDENTS/PLAINTIFFS

Before; Hon Lady Justice Victoria N.N. Katamba

RULING

This application is brought under Section 6(3) of the Law Reform (Miscellaneous Provisions) Act Cap 79, Section 98 of the Civil Procedure Act Cap 71, Order 7 Rule 11 (d) and Order 7 Rule (19) of the Civil Procedure Rules SI 71 and all enabling laws, seeking orders that this Court dismiss Civil Suit No. 16 of 2016 for being statute barred and costs of the application to be provided for.

The grounds of the application as contained in the affidavit of Charles Opio-Ogwal, the Applicant's Company Secretary, are briefly that the Respondents brought an action against the Applicant on the 15th day of April, 2016 under the Law Reform (Miscellaneous Provisions) Act Cap 79 in respect of the death of their father, Mugabe Alex Arnold to recover damages for loss of dependency, interest and costs. The alleged accident occurred on the 14th day of September 2012 at about 12:58 pm involving the Applicant`s Motor

Vehicle UAP 387U and Motor Vehicle UAE 019R driven by the deceased. The applicant filed its Written Statement of Defence and denied all allegations and further stated that it will move court to dismiss the suit for statutory time bar as it was brought after the expiry of 3 years as provided for by the Law Reform (Miscellaneous Provisions) Act as amended. The Respondents did not show any reasons why the suit had been filed out of time nor did they plead any exceptions. A suit that is filed out of time is illegal and no court can grant a remedy in favour of a claimant therein;

In her affidavit in reply, the Respondents' next friend stated that it is true that the accident occurred on the 14th of September 2012 and that the suit was filed in April, 2016 as stated by the Applicant. At the time of instituting the suit, the Respondents were minors of ages 10,08,06 and 02 years respectively and for that reason they were under disability as infants, to institute the suit as provided in the Limitation Act Cap 80 and therefore, are not bound by the limitation period under the Law Reform Miscellaneous Provisions Act. The Respondents immediately after the accident in 2012 had been in negotiations with the Applicant who had been promising to compensate the Respondents but the Applicants failed to pay until 2015 when the Respondents instituted the suit. The Applicant accepted liability and entered into a Deed of Settlement with the Respondents on the 28th day of March, 2018 which was duly signed by both parties and also sealed with seal of court. In the settlement, the Applicant agreed to pay UGX. 130,000,000/=in five monthly installments starting April 2018 but only paid three installments of 80,000,000/= and neglected to pay the remaining balance of 50,000,000/=. The Applicant wrote to the Registrar of this Court on the 22nd day of August, 2018 expressing willingness to pay the remaining amount and the Applicant is estopped from denying liability on the basis of limitation.

The Applicant in rejoinder averred that the Law Reform (Miscellaneous Provisions) Act Cap 79 operates independent from the Limitation Act and thus the exemption of disability due to being infants is not available to the Respondents. The Respondents mother or any other family member should have brought the suit within time. No negotiations were

carried out prior to the suit and the Settlement Deed was entered under mistaken belief that the Respondent`s claim was properly before court. The Applicant refused to enter into a consent judgment once it realized that the case had been barred by statute and it would not continue with the settlement which arises from an illegality.

Counsel for the Applicant raised two issues to be determined by this court;

a) Whether Civil Suit No. 16 of 2016 is time barred;
b) What remedies are available to the parties

In arguing the first issue, Counsel cited Section 6 (3) of the Law Reform (Miscellaneous Provisions) Act which provides that actions shall be commenced within twelve months after the death of the deceased person, and the case of Velestom Onyom Versus Stephen Wekomba & two others Cs No. 34 of 1997, in which Justice Yorokamu Bamwine clarified that the provision of twelve months was made in error and an action should be filed within 3 years. It is not in dispute that the suit was brought out of time. Section 32 of the Limitation Act Cap 8 provides that the Act shall not apply to any action for which a period of limitation is prescribed by any other enactment and this Section 6 (3) of the Law Reform (Miscellaneous Provisions) Act operates on its own. The Respondents' reliance on the Limitation Act is therefore inapplicable.

Under Order 7 Rule 11 (d) a suit that is statute barred shall be rejected and thus the Respondents claim is time barred and has to be dismissed. The payment of 80,000,000/= made under the settlement deed was made erroneously and should be refunded because they were illegally paid out.

The Respondents were in court on the 14th day of December when the schedule to file submissions was given. Their lawyer did not file submissions and I will proceed to determine the application based on the law and evidence.

Determination of the Application;

To give a brief background, the gist of this application is that the Respondents instituted a civil suit under the Law Reform (Miscellaneous Provisions) Act Cap 89 seeking to recover damages as a result of their father's death which was occasioned vicariously by an employee of the Applicant. The suit was filed out of time and the Applicant/Defendant expressed intentions of raising the objection as to the statutory bar. However, the suit proceeded to mediation successfully with the Appellant and Respondents agreeing to a settlement of UGX 130,000,000/= to discharge the claim and any future claims.

This application seeks to dismiss the said suit for being statute barred under Section 6 (3) of the Law Reform (Miscellaneous Provisions) Act Cap 79.

Section 6 (3) of the Law Reform (Miscellaneous Provisions) Act cap 79 provides the limitation period for bringing actions under the Act, to be twelve months which has been corrected in some cases to be three years. (See ***H.C.C.S No.548 of 2001: Lydia Agnes Mujaju Vs Makerere University & Another)*** Civil suit No. 16 of 2016 was instituted after the expiry of three years limitation period as stipulated under the Act. The Respondents do not dispute that the suit was statute barred but rather, in their affidavit in reply, pleaded disability of infancy an exception to limitation provided under the Limitation Act Cap. This was rebutted by the Applicant who submitted that the Law Reform Miscellaneous Provisions Act operates independently from the Limitation Act as per the provision of Section 32 of the Limitation Act to the effect that the Limitation Act does not apply to any action to which a period of limitation is prescribed by other enactments.

I agree with the submissions of Counsel for the Applicant that the Law reform Miscellaneous Provisions Act Cap 79 operates independently and for that reason, the exception of disability by infancy cannot stand. Civil suit No. 16 of 2016 would therefore for that reason, be statute barred.

However, it is important to note that despite the intentions to raise a preliminary objection that the suit was statute barred, the matter was referred to mediation and the parties reached

a settlement which was endorsed by this court. What then is the effect of that settlement and can the Applicant seek to challenge the same by relying on a preliminary objection?

I find it imperative to determine the competence of this application in as far as it seeks to dismiss a suit that was referred to and settled through mediation.

The main ground on which the Applicant seeks for an order dismissing Civil Suit No. 16 of 2016 is that the suit was statute barred as it had been instituted out of the stipulated time of three years.

Preliminary points of law should be set down and determined before trial. However, the appeal before this court is against a consent judgment that was recorded by court at the end of the respondent's case. ***(See Mitchell Cotts Ltd Vs Peter Mulira MA 249 of 2012)***

The Applicant stated in its Written Statement of Defence that it intended to raise an objection that the suit was statute barred. However, on mediation the Applicant agreed to enter into a settlement. This was an acknowledgement of liability to the Respondents which determined the suit by settlement. The Applicant proceeded to make payments towards the mediation sum until its accounts were attached by garnishee as stated in the letter from the Applicant dated 22nd August 2018 and the garnishee order dated 17th August 2018. It seems that the Applicant only brought this application because it had no means of fulfilling its obligations under the deed settlement/consent judgment. That is an abuse of court process and the justice of this case requires for it to be brought to an end. The civil suit was determined and disposed of through mediation by this court.

Civil suit No. 16 of 2016 was referred to mediation by this Honourable Court which mediation was successful, and the parties reached a settlement which was signed by both Parties and endorsed with a seal of this court. As far as the trial of the suit is concerned, let the matter rest.

Rule 16 (4) of the Judicature (Mediation) Rules 2013 provides that the agreement filed with the Registrar, magistrate or authorised court officer responsible for mediation under

subrule (3) shall be endorsed by the court as a consent judgment. It is clear that the parties intended to be bound by the settlement and the Applicant acknowledged liability by entering into the deed of settlement which was further enforced by payment of the first three installments of the mediation sum agreed to. In fact, had the Applicant's accounts not been attached, the balance on the mediation sum would have been paid as stated in the letter from the Applicant.

A deed of settlement is in itself a contract and in the instant case, the Parties clearly stated in their deed that;

- *"After entering in to the agreement, money would be paid in full and the final settlement of the High Court of Uganda in Civil Suit No. 16 of 2016, and further that the Defendant accepts the sum in full payment, settlement, satisfaction, discharge and release of the said claim(s) and any further/future claims therefrom.*
- *Upon signing of these presents, all claims whether now or pending against the Defendant or contemplated in future, related to or arising from the claim(s) referred to herein shall be fully and finally settled."*

Counsel for the Applicant submitted that the sums paid should be refunded because they were illegally paid out and in the affidavit in rejoinder, the Applicant states in paragraph 10 that … it would not continue with the deed of settlement or proposed consent judgment/decree which arises from an illegality.

In my opinion, the deed of settlement is an independent agreement that the Parties entered into freely, with full knowledge of the facts of the matter between them, and they agreed to be bound by its terms. The Applicant was well aware that the suit was statute barred as stated in its pleadings but opted to settle through mediation, agreed to be bound by the terms of the agreement which finalized and terminated the suit, and enforced the agreement by paying out sums to the Respondents. The preliminary objection that the Appellant intended to raise was rendered nugatory when it chose to settle with the Respondents other than by the court process.

The court will not on its own motion interfere with the agreement of the parties unless it is illegal or void or for any reason that would render an agreement inoperative or unenforceable through the court process. (See Odong Jackson Vs Odongkara Joe Civil Appeal No. 110 of 2018). The Applicant had the option of challenging Civil Suit No. 16 of 2016 and raising the preliminary objection for the determination of court but rather entered into an understanding and settlement with the Respondents with the intention of terminating the suit. Upon settlement, the preliminary objection was overtaken by events and the suit being statute barred cannot be relied on to challenge the legality of an agreement which was made deliberately with full knowledge of the law and facts. I therefore find that the Applicant`s preliminary objection that the suit was statute barred has been overtaken by events and cannot be relied upon to challenge a suit that was already terminated by the parties.

The Respondents in the affidavit in reply state that based on the Deed of Settlement and partial payment by the Applicant, the Applicant is estopped from denying liability on the basis of limitation.

The doctrine of estoppel which is provided for under ***Section 114 of the Evidence Act Cap 6***, acts to prevent a party from asserting a different position from what they previously agreed to.

Paragraph 1 of the Deed of Settlement is to the effect that; upon signing of the Deed, all claims against the Defendant related to or arising from the claim referred to in the settlement shall be fully and finally settled. I find that there are no grounds for setting aside the Deed of Settlement between the Parties and that they are indeed bound by its terms as agreed.

Res judicata;

Justice Mubiru in ***Odong Jackson Vs Odongkara Jose Civil Appeal No. 110 of 2018*** stated that "*Where a point, question or subject-matter which was in controversy or in dispute has been authoritatively and finally settled by mediation, the mediation agreement is conclusive as between parties to the mediation proceedings or their privies in subsequent proceedings*."

I associate myself with the above observation and emphasize that mediation and out of court settlement is a means to expeditious disposal of suits which should be embraced and promoted to avoid creating disincentives to settlement.

Section 7 of the Civil Procedure Act bars court from trying any suit or issue that has already been adjudicated upon by a court of competent jurisdiction. It provides as follows:-

"No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try the subsequent suit or the suit in which the issue has been subsequently raised and has been heard and finally decided by that court. Six explanations are made under that section to clarify on matters that may be mistaken".

According to ***Black's Law Dictionary 7th Edition***, the term *res judicata* is a Latin word that refers to an issue that has been definitively settled by judicial decision.

Justice Mubiru in Odong Jackson Vs Odongkara Joe (supra) further stated that a final mediation agreement on the merits of a controversy is conclusive of rights of parties in all later controversies on points and matters determined in the former mediation and that the doctrine of res judicata applies to mediation settlement in as far as it can be shown that;

a) There was a former controversy between the same parties or their privies that was mutually referred to mediation,
b) a final settlement on the merits was made in that mediation, and,
c) the fresh controversy concerns the same subject matter and parties or their privies.

The Deed of Settlement entered into by the Parties to the instant application was endorsed and sealed by this court as the final settlement of the claim. Since it has already been determined, it cannot be tried again in the guise of an application as it is res judicata.

In the instant application, the Applicant did not enter into the settlement by mistake as it had already stated in its pleadings that it would raise the objection that the suit was statute barred. Proceeding to enter into a settlement therefore acts to estop the Applicant from turning around to rely on the preliminary objection in order to avoid fulfilling its obligations under the Deed of Settlement. My view is that by settling to enter into a Deed of Settlement at mediation, the Applicant waived his rights to challenge the suit on the preliminary objection of limitation.

In the result, I find that Civil Suit No. 16 of 2016 between the Parties was terminated by the Deed of Settlement. The deed of settlement between the Parties was endorsed by this court as the final settlement of the claim and this court shall not interfere with the agreement of the parties. The Applicant is therefore ordered to adhere to the agreed terms of the settlement and make the outstanding two installments of 50,000,000/= within 30 days from the date of this Ruling.

This application is dismissed with costs.

I so order.

Dated at Masaka this 11th day of February, 2021

Victoria Nakintu Nkwanga Katamba

Judge