

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
(CIVIL DIVISION)
MISCELLANEOUS CAUSE NO.365 OF 2020

RA/153458 PTE AISU TOM (RETIRED) ----- APPLICANT

VERSUS

ATTORNEY GENERAL ----- RESPONDENT

BEFORE: HON. JUSTICE MUSA SSEKAANA

RULING

The Applicant brought this application by way of Notice of Motion against the respondent under Article 20, 21, 40(2), 43, 45 and 50, 126(2)(c) & 139 (1) of the Constitution, The Human Rights (Enforcement)Act 2019, The Judicature (Fundamental and Other Human Rights and Freedoms) (Enforcement Procedure Rules, 2019, Section 33 of the Judicature Act cap 13 and Section 98 of the Civil Procedure Act and Order 52 rule 1,2,3 of Civil Procedure Rules for the following reliefs;

- 1. An order of Court validating the Application filed after ten (10) years.*
- 2. A declaration that the actions of Uganda Peoples Defence Forces (UPDF) working together with the Ministry of Defence and Veteran Affairs, agents of the Respondent, in retiring the applicant and failing or refusing to pay applicant's his full retirement benefits, was unfair, unconstitutional and illegal.*
- 3. A Court Order compelling the respondent to pay to the applicant:-*

- a) *Pension of UGX 20,000,000/= for the 3 years full military service computed in accordance with the law.*
- b) *Gratuity of UGX 18,645,532/= for the period of 3 years full military service computed in accordance with the law.*
- c) *UGX 9,300,000/= payment in lieu of untaken leave for 3 years of full military service.*
- d) *UGX 14,400,000/= unpaid housing allowances of the full military service.*
- e) *UGX 3,000,000/= unpaid transport allowance for the 3 years of full military service.*
- f) *General damages for the stress and inconveniences caused to the Applicant as a result of the illegal and unconstitutional acts of the Respondent's servants who refused and/or failed to pay the Applicant's full retirement benefits.*
- g) *Aggravated damages for the illegal and unconstitutional acts of the Respondent's servants.*
- h) *Interest to the Applicant at 24% on (i to v) above from the date of retirement until payment in full.*
- i) *An order awarding costs of this application to the Applicant.*

The grounds in support of this application are set out in the affidavit of PTE Aisu Tom (Retired) dated 4th October 2021 which briefly sets out the background of the applicants case as hereunder:

- a) The Applicant joined the Uganda People's Defence Forces (UPDF) on **17/01/1999** and he courageously served in several capacities for three years.
- b) The Applicant was deployed and served in the 79th Battalion of the Uganda Peoples Defence Forces (UPDF) until he was retired.
- c) On **17/01/2003** the Applicant was discharged from UPDF by UPDF and the Ministry of Defence and Veteran Affairs in the Government of Uganda for which the Respondent is the legal representative of the Government, the Applicant was retired from UPDF on account of reduction in forces.
- d) The Applicant actively participated in the military operations of the Uganda Peoples Defence Forces (UPDF) against the Lord's Resistance Army (LRA) between the years 1999 and 2003 and in the process the Applicant sustained serious injuries, to wit, a serious wound on his head caused by a bomb fragment that hit his head. The bomb fragment is still stuck in the head of the Applicant to date.
- e) The Applicant became unconscious as a result of the bomb fragments in his head and he has been getting periodic and momentous brain and body unconsciousness rendering him into a state of temporary insanity/unsound mind and he only recovered and gained full consciousness and sound mind on **02/09/2019**.
- f) The Applicant, through his Advocates then, M/s United Advocates, wrote several demand letters to Uganda Peoples Defence Forces (UPDF) and the Ministry of Defence and Veteran Affairs, agents of the Respondent, demanding for his full retirement benefits but he did not receive any reply to the date.
- g) As a result of the illegal and unconstitutional acts of the Respondent's servants of refusing to pay the Applicant's full retirement benefits, the Applicant has suffered stress and inconveniences for which the Respondent liable to pay general and aggravated damages to the Applicant.

The applicant raised the following issues for determination by this Court:

ISSUES

- 1. Whether the Application is time barred?***
- 2. Whether the Applicant is entitled to calculation of his retirement benefits basing on a consolidated pay?***
- 3. Whether the Applicant is entitled to General and aggravated damages?***
- 4. Whether there are any other remedies available to the parties?***

In the interest of time the respective counsel were directed to file written submissions and i have considered the respective submissions. The applicant was represented by *Mr Lubulwa Peter* whereas the respondent was represented by *Mr. Ojambo Bichachi*.

The court has found it necessary to redraft the 1st issue as hereunder for efficient determination of any issues of legality and competency of the application.

Whether the application before the court is proper and competent?

The applicant's counsel submitted that the applicant has set out justifiable reasons why he was unable file this specific Application within the stipulated time of ten years. The Applicant prays that the honourable Court be pleased to exercise its judicial discretion and find that the Application is proper before the honourable Court and grant the reliefs sought by the Applicant in the Application.

Section 19(2) of the Human Rights (Enforcement) Act 2019 confers upon the High Court discretion to allow an Application filed after ten years after being satisfied that the victim of the human rights violation was unable, for justified reasons, to bring such action (the Application) within the prescribed time of ten years.

Counsel further submitted that **Section 19(3) of the Human Rights (Enforcement) Act 2019** specifically excludes the applicability of the Civil Procedure and Limitation (Miscellaneous Provisions) Act, Cap 72 and that law does not apply to proceedings instituted under the **Human Rights (Enforcement) Act 2019**.

Counsel for the applicant invited the honourable Court to adopt its earlier decision in the case *of Denis Bireije vs Attorney General Misc. Appn. No. 902 of 2004*, where this honourable Court held that the provisions of the Constitution on Fundamental Human Rights must be given a broad, purposive construction to give full measure to it.”

It was the applicant’s contention that the deliberate refusal and/or failure by the Respondent (through UPDF) to pay the terminal benefits of the Applicant, which is continuous, is an illegality and breach of the fundamental rights of the Applicant, for which the Applicant can seek redress from this honourable Court.

The respondent opposed this application and submitted that it is incurably defective after a period of 10 years. In addition the applicant has not presented/pleaded any violation of a right/enforcement thereof. The applicant was discharged from the forces in 2003 and it is 16 years later that he has filed a suit.

The respondent counsel further submitted that the application before the court is not one for enforcement of human rights but rather a claim for payment of compensation and retirement benefits arising out of the applicant’s employment. Therefore, Civil Procedure (Limitation) Act applies to the current application and the same ought to have been filed within 3 years.

The law provides that an applicant must file suit within 1 year after the disability. The respondent contends that the law requires the applicant to demonstrate that the nature of disability prevented him from instituting a suit. The applicant has not offered any sufficient evidence to show his periods of temporary insanity/unsound mind but merely attaches photographs without any medical/expert evidence.

Analysis

The applicant has brought the application under the cited laws and clearly labelled it an application for enforcement of rights under the Human Rights (Enforcement) Act. The cited act gives a time frame within which an application for enforcement of rights must be brought.

The **Human Rights (Enforcement) Act** section 19(1) provides that;
Save for rights and freedoms guaranteed under article 44 of the Constitution, actions for enforcement of human rights shall be instituted within 10 years of the occurrence of the human rights violation.

Section 19(2) provides for exception to limitation period of 10 years;
Notwithstanding subsection 1 the competent court may allow an application to be brought after the expiry of the period referred to in subsection 1 on being satisfied that the victim of the violation was unable, for any justifiable reasons within the time prescribed under subsection 1.

The applicant had to show this court why he was unable to bring his alleged application for enforcement of human rights within 10 years. He has stated in his affidavit that: “Applicant became unconscious as a result of the bomb fragments in his head and he has been getting periodic and momentous brain and body unconsciousness rendering him into a state of temporary insanity/unsound mind and he only recovered and gained full consciousness and sound mind on **02/09/2019.**”

This is a ‘naked’ statement without any clothing of documentary evidence from any hospital or medical experts to confirm this strong statement and status which has affected the applicant for over 15 years. It would appear to be a statement from an ingenious advocate who tried to find a reason why he should come to court as belated as he did.

The applicant has opted to run away from the strict rules of procedure for ordinary suits which give a shorter limitation period by ‘baptising’ the applicant’s claim an enforcement of rights which has a longer limitation period with an option of extension at the discretion of court upon showing inability to institute proceedings within 10 year.

This court will not allow such a litigant to run away from stricter timeframe under the ordinary civil procedure in order to circumvent the limitation period of three years set under the Civil Procedure and Limitation (Miscellaneous Provisions) Act which provides that; *“No action founded on contract shall be brought against the Government or against a local authority after the expiration of 3 years from the date on which the cause of action arose”*. In the case of ***Nyeko Smith & Another v Attorney General SCCA No. 1 of 2016***, the court held that the delay on filing a claim for gratuity, pension and terminal benefits for a period of 20 years offended the provisions of Civil Procedure and Limitation (Miscellaneous Provisions) Act.

The set procedure which gives a short time frame within which to bring a suit would have been an ordinary suit. The applicant is only trying to access court through the back door because it appears wider rather than the front door that has been prescribed by the Constitution.

Justice is to be rendered in accordance with the law and set principles and procedure. The necessary procedure must be followed from the existing legislation like the Judicature Act or Civil Procedure Act. The court is empowered to refuse relief and deny access to the court were claims are stale or on ground of laches because of several considerations e.g it is not desirable to allow stale claims to be canvassed before the court; there should be finality to litigation.

The applicant’s counsel attempted to argue that the court is enjoined under Article 126(2)(e) to administer justice without undue regard to technicalities. This court has always emphasized that the Constitution never intended to disregard all procedural rules in relation to access to justice or grant of reliefs and allow applications filed after inordinate delay. Constitutional provisions are not intended to supersede the available modes and timelines of obtaining relief before a civil court or deny the defences legitimately open in such actions. In the case of ***Uganda Revenue Authority v Uganda Consolidated Properties Ltd CACA 31 of 2000***; The court of Appeal noted that; Time limits set by statutes are matters of substantive law and not mere technicalities and must be strictly complied with. See ***Nakabuye Pauline v Uganda Revenue Authority HCMC No. 372 of 2019***

This therefore means that if the applicant wants to invoke the jurisdiction of a court, he should come to court at the earliest reasonably possible opportunity. Inordinate delay in making the application for enforcement of right without

cogent and sufficient evidence will indeed be a ground for refusing to entertain such an application.

The underlying object of this principle is not to encourage agitation of stale claims and exhumed matters which have already been disposed of or closed. The court is allowed to exercise discretion to accept a claim brought outside the 10 year limitation period depending on the facts and circumstances to determine whether there is sufficient cause or reasons for failure to come to court within the time set under the Human Rights (Enforcement) Act.

Secondly, the application is challenged for its competence since it is not clear whether it is really a proper case for enforcement of rights. Apart from citing the provisions under the Constitution in the application, the applicant has not shown how those rights were violated and the orders that are being sought are clearly employment remedies arising out of his employment and discharge from the army.

The applicant is seeking the following orders;

2. *A declaration that the actions of Uganda Peoples Defence Forces (UPDF) working together with the Ministry of Defence and Veteran Affairs, agents of the Respondent, in retiring the applicant and failing or refusing to pay applicant's his full retirement benefits, was unfair, unconstitutional and illegal.*

3. *A Court Order compelling the respondent to pay to the applicant:-*
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- E. UGX 3,000,000/= unpaid transport allowance for the 3 years of full military service.
- F. General damages for the stress and inconveniences caused to the Applicant as a result of the illegal and unconstitutional acts of the Respondent's servants who refused and/or failed to pay the Applicant's full retirement benefits.
- G. Aggravated damages for the illegal and unconstitutional acts of the Respondent's servants.
- H. Interest to the Applicant at 24% on (i to v) above from the date of retirement until payment in full.
- I. An order awarding costs of this application to the Applicant.

All the above orders clearly do not fall within the ambit of Human Rights (Enforcement) Act and this is an abuse of court process to seek remedies not provided for under the existing legal regime deliberately crafted by counsel for the applicant to confuse or mislead court.

The applicant like all other litigants should not be encouraged to circumvent the provisions made by a specific legislation providing a mechanism and procedure to obtain specific judicial reliefs. Every potential litigant would rush to the court in any manner they deem fit and thus rendering the statutory provisions meaningless and non-existing.

Limitations and procedures set out in legislations are intended to restrict access to courts by seeking some other remedy apart from that provided by a statutory provision enacted specifically to deal with particular situations. Matters of procedure are just as important as matters of substance. Procedural matters are part of the due process and cannot be lightly treated.

It is an abuse of court process to use another remedy under the Constitution to avoid a set procedure. In the case of ***Harrikisson v Att-Gen(Trinidad and Tobago)[1980] AC 265 at 268*** Lord Diplock underscored the importance of limitation to the constitution right of access to courts:

"The notion that whenever there is a failure by an organ of government or a public authority or public officer to comply with the law this necessarily

entails the contravention of some human right or fundamental freedom guaranteed to individuals by Chapter 1 of the Constitution is fallacious. The right to apply to the High Court under section 6 of the Constitution for redress when any human right or fundamental freedom is or is likely to be contravened, is an important safeguard of those rights and freedoms: but its value will be diminished if it is allowed to be misused as a general substitute for the normal procedures for invoking judicial control of administrative action....the mere allegation that a human right or fundamental freedom of the applicant has been or is likely to be contravened is not of itself sufficient to entitle the applicant to invoke the jurisdiction of the court under the subsection if it is apparent that the allegation is frivolous or vexatious or an abuse of process of the court as being made solely for the purpose of avoiding the necessity of applying the normal way for the appropriate remedy....”

In the present case, the applicant’s counsel was fully aware of the set procedure of access the courts as the ordinary procedure of instituting a suit under Order 4 of the Civil Procedure rules. The applicant issued a statutory demand Notice to the respondent on 18th October 2018 and this meant that he intended to file an ordinary suit. It is not clear how he changed from the set procedure to enforcement of rights. Under the Human Rights (Enforcement) Act section 6(4) it is provided; *Statutory notice shall not be a requirement for suits under this Act.*

The applicant has used a wrong procedure which is not applicable to the circumstances of the case which is purely an employment dispute and it was intended to circumvent the strict set time limits and this is an abuse of court process. See ***Lukwago Erias v Electoral Commission HMC No. 393 of 2020.***

In the final result for the reasons stated herein above this application fails and is hereby dismissed with costs.

It is so ordered.

SSEKAANA MUSA
JUDGE
23rd/07/2021