

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(CIVIL DIVISION)

CIVIL SUIT NO. 365 OF 2019

TUSHABE CHRIS KAROBWA-----PLAINTIFF

VERSUS

UGANDA RAILWAYS CORPORATION-----DEFENDANT

BEFORE: HON. JUSTICE SSEKAANA MUSA

JUDGMENT

The facts of the plaintiff's case are that on 3rd November 1972 the plaintiff was offered employment by the defendant and thereafter was confirmed as a permanent and pensionable staff on 24th September 1973. He served in several capacities as Service Station Master at various stations, Instructor and Chief Instructor at the defendant's Training School at Jinja, Traffic Officer General Kampala and lastly the defendant's Resident Representative at Nairobi Kenya.

By letter dated 26th October 1992 Ref MD/32373 addressed to the plaintiff at his work station in Nairobi, the defendant terminated the plaintiff's employment with immediate effect. The plaintiff was immediately evicted from his official residence by the defendant on the 31st day of October 1992.

AGREED FACTS

According to the record of proceedings/Joint Scheduling memorandum, the following are the agreed facts;

- That the plaintiff was the defendant's employee from 3/11/1972 until 26th October 1992 when the contract of employment was terminated.

- That at the time of the termination the plaintiff was earning a salary of \$2,208.5

AGREED ISSUES.

- (1) *Whether the plaintiff's cause of action is barred by the Limitation Act?*
- (2) *Whether the defendant is in breach of the Plaintiff's statutory right to be repatriated?*
- (3) *Whether the plaintiff is entitled to terminal benefits from the defendants?*
- (4) *Whether the plaintiff is entitled to the remedies sought?*

The plaintiff was represented by *Counsel Waisswa Ramathan* while the defendant was represented by *Counsel Apenya Robert and Counsel Rita Nakalema*

At the trial both parties led evidence of one witness each in proof of their respective case and other evidence was by way of documentary evidence that were exhibited at trial.

Whether the plaintiff's cause of action is barred by the Limitation Act?

The plaintiff counsel submitted that the plaintiff's cause of action is not barred by the Limitation Act since the plaintiff's claim is acknowledged in writing by the defendant and in fulfilment of that acknowledgement, the defendant has promised to pay what it thinks it owes the plaintiff.

The plaintiff claims and brings this suit to recover statutory post termination entitlement like repatriation and terminal benefits. As a pensionable employee, the plaintiff is protected until his death. It was counsel's argument that pension, gratuities and other allowances in respect to public service under the government of Uganda are emoluments which are protected by Section 18(1) of the Pensions Act.

The defendant's counsel submitted that following the plaintiff's termination of employment, the plaintiff filed a suit on 11th November 1992 in the high Court of Kenya challenging his dismissal and termination of employment contract by the defendant which action was heard and determined in favour of the defendant.

The plaintiff has construed as a breach of statutory action is in effect a breach of contract. The plaintiff is merely disguising an action in breach of contract of employment which is statute barred. Under Halsbury's Laws of England vol 1 2001 paragraph 186, the question whether the breach of duty imposed by statute gives rise to civil liability will be determined according to the same principles that apply generally to creation of statutory duty.

Secondly, the plaintiff claim for pension is unsustainable since the said pension allowance was already paid being a computation of pension and monthly pension.

The defendant's counsel submitted that section 23 requires such acknowledgement should be in writing and signed by the person making it. There is no evidence on record indicating that the defendant acknowledged liability for the plaintiff's claim.

The plaintiff's further in rejoinder contended that there were several meetings 24th April 2019 and 3rd May, 2019 wherein the defendant acknowledged liability and promised to pay the defendant.

Analysis

Where the issue of limitation is raised in defence of an action, it is only proper that the issue should be addressed first, as it makes no sense to decide the merit of a matter that is statute barred. In the event of a successful plea of limitation law against a plaintiff's right of action, the action becomes extinguished and unmaintainable at law.

The purpose of limitations, like equitable doctrine of laches, in their conclusive effects are designed to promote justice by preventing surprises through revival of claims that have been allowed to slumber. Once the action is stale and statute barred, no matter how well it is conducted and determined all the efforts put in it comes to naught and the court has no jurisdiction to deal with it.

The plaintiff filed this suit on 26th August 2019 seeking compensatory damages for breach of statutory provisions of employment laws, special damages, general and punitive, costs and interest.

The plaintiff's contract of employment was terminated on 26th October 1992 which termination was challenged in the High Court of Kenya No. 5994 of 1992 seeking to recover a sum of Kshs. 2,450,346 being a total sum for loss of net salary, commuted pension, transport allowance, 3 months emoluments, terminal leave settlements, long service award and transportation of personal effects as per Exh DE11.

It is indeed not in dispute that the plaintiff was not paid some terminal benefits as per exhibit DE13 in which the in which the AG Corporation Secretary requested the financial controller to hold on to Tushabe's terminal benefits until the issue of accounting for sum funds he had obtained is settled.

The plaintiff for a period of 27 years abandoned the claim until he made attempts to resuscitate the stale claim in 2019 through meetings which he now claims are an acknowledgment of indebtedness. The plaintiff has referred to exh PE 8 & 9 as the basis of bringing this claim and has called them minutes of the said meetings.

Section 22(4) of the Limitation Act provides that:

Where any right of action has accrued to recover any debt or other liquidated pecuniary claim, or any claim to the personal estate of a deceased person or to any share or interest in it, and the person liable or accountable therefor acknowledges the claim or makes any payment in respect of the claim, the right shall be deemed to have accrued on and not before the date of acknowledgement or the last payment; but a payment of the rent or interest due at any time shall not extend the period of claiming the remainder then due, but any payment of interest shall be treated as a payment in respect of the principle debt.

Section 23(1) provides;

Every such acknowledgment as is mentioned in section 22 shall be in writing signed by the person making the acknowledgement.

In the case of ***Tabitha Lalango Lutara v Attorney General CACA No. 026 of 2011*** Justice Egonda Ntende approved the definition of acknowledgement as stated in the Supreme Court in ***Madhivani International v Attorney General SCCA No. 023***

of 2010 by holding that; “An Acknowledgement is an admission which must be clear, distinct, unequivocal and intentional. There must be no doubt that the debt is being admitted although the amount does not need to be stated.”

The plaintiff's purported acknowledgment falls far short of an acknowledgment within the above definition. The said minutes exh PE 8 & 9 do not state person who attended the said meeting in which the acknowledgement was made and neither does it bear any signature of the person who allegedly attended or signature of the defendant representative who signed on behalf of the defendant. The plaintiff merely relies on a stamp embossed on the alleged minutes which are unsigned or owned by any person as the author and even the plaintiff who claims to have attended the same meetings never signed the same.

The discussion about the plaintiff's claims would not amount to an acknowledgement as the plaintiff wants this court to believe. The plaintiff is responsible for the delay of 27 years and cannot use trickery to bring a stale claim which he abandoned for such a long period of time. A statute of limitation is a law that bars claim after a specified period. The purpose of such a statute is to require diligent prosecution of known claims thereby providing finality and predictability in legal affairs.

This court should not aid the plaintiff to resuscitate such a claim which is 27 years old. The essence of a limitation law is that the legal right to enforce an action is not perpetual right but a right generally limited by statute. A statute of limitation is designed to stop or avoid a situation where a plaintiff can commence action anytime he feels like doing so, even where human memory would normally have faded and therefore failed. Put in another language, by statute of limitation, a plaintiff has no freedom of air to sleep or slumber and wake up at his own time to commence an action against a defendant. The different statutes of limitation, which are essentially founded on the principle of equity and fair play, will not such a slumbering plaintiff. ***See Sulgrave Holdings Inc. v F.G.N (2012) 17 NWLR p. 309 (SC)***

If an action succeeds on a plea of statute limitation, the court should not proceed to determine the merits of the case, irrespective of the evidence.

The defendant's defence to the plaintiff's action as being statute barred is accordingly sustained by this court and the plaintiff's claim is dismissed.

The defendant is awarded costs of the suit.

It is so ordered.

SSEKAANA MUSA
JUDGE
17th March 2023