

THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE NO 27 OF 2014
(ARISING FROM H.C.C.S 313 OF 2012)
JULIUS RUGUMAYO.....CLAIMANT
VERSUS
UGANDA REVENUE AUTHORITY.....RESPONDENT
BEFORE:

Hon. Justice Asaph Ruhinda Ntengye

Chief Judge

Hon. Justice Linda Lillian Mugisha Tumusiime

Judge

PANELISTS:

1.Mr. Micheal Matovu

2. Mr. Mavunwa Edsison Han

3. Mr. Ebyau Fidel

RULING

This ruling arises from a preliminary objection concerning limitation of actions raised by counsel for the respondent.

Briefly the background is that the claimant was employed by the respondent on 16/6/2005 as officer in the commissioner's office. He was dismissed from employment on 8/8/2005 on allegations of being involved in fraudulent activities having been earlier on 5/8/2005 charged with obtaining money by false pretense, abuse of office, causing financial loss and conspiracy to defraud. 2

The claimant was convicted by the Chief Magistrates court but on appeal he was acquitted. Following this acquittal the claimant on 7/6/2012, issued a Statutory Notice of intention to sue to the respondent which was received on 8/6/2012. The claimant also sought reinstatement on his job but the respondent refused hence the claimant filed a suit in the Civil Division of the High Court which referred it to this Court.

Counsel for the respondent argued strongly that this matter being founded on contract and having been filed on 10/10/2012 was barred by statute, having been filed out of time. He prayed for it to therefore be struck out. He referred this Court to a number of precedents both of the High Court and Superior Courts. As a matter of emphasis he submitted that time limits were not technicalities envisaged under Article 126(c) of the constitution but of substantive law.

He argued that since nothing in the pleadings of the claimant showed any exemption, the claim ought to be struck out.

Counsel for the claimant on the other hand strongly objected to these submissions and prayed that this Court over rules the Objection.

He argued strongly that since the claimant could only be dismissed without notice after being found guilty of a crime, the cause of action arose after his acquittal by the High Court on 21/10/2011.

He submitted that the reply to the letter of the claimant seeking reinstatement written on 2/5/2012 rejuvenated the cause of action since it was the final determination of the claimant's contractual relationship with the respondent. It was his submission that where a cause of action in a matter that is subject to investigation by way of criminal proceedings, the cause of action arises at the final determination of those proceedings. He further argued that the claimant having been acquitted after 7 years as a result of prolonged proceedings constituted a legal disability. 3

We have listened carefully to the submissions of both Counsel and we have also perused and internalized the legal authorities provided by both counsel, We are appreciative of their effort in assisting this court to reach a decision on the preliminary matter raised.

It is not in dispute that the Limitation Act provides for limitation of actions in a sense that one is barred from filing an action in courts of law after a specific period has elapsed from the time that the cause of action arose. In the case of causes arising from contract, the Act provides that such actions must be filed in courts of law within six years of the accrual of such cause of action.

Both parties agree that the cause of action in this matter arises out of contract. The legal question for this court therefore is: **Whether the filing of this matter did or did not offend the provisions of the Limitation Act.**

We agree with the submission of Counsel for the claimant that in order to determine whether a matter is barred by limitation, the court must, first ascertain when the cause of action arose.

Under paragraph 4 of the Complaint filed at the Civil Division of the High Court the circumstances constituting the cause of action are enumerated (among others) as;

- (a) The fact that the claimant was employed by the respondent on 16/06/2005.
- (b) The fact that the respondent dismissed the claimant on 8/8/2005.
- (c) The fact that on 5/8/2005 the claimant was charged in court with offences relating to his job.
- (d) The fact that on 21/10/2011 the claimant was acquitted of the charges.

In his submission Counsel for the claimant pointed out that the cause of action arose at the determination of the criminal proceedings which was when the claimant was acquitted, on 21/10/2011. Counsel seemed to base his submission on the provision of the appointment letter of the claimant to the effect that he would be dismissed on being found guilty.

The appointment letter of the claimant in paragraph 3 provides; 4

"3.1 You will be bound by the provisions of the authority's Human Resources management manual (HRMM) and the staff code of conduct as amended from time to time.

3.2 The terms of your employment will be interpreted in conformity with the HRMM and in the event of conflict between this letter of appointment and the said HRMM the provisions of the HRMM will prevail. 6.1 Dismissal without notice.

The Authority reserves the right to summarily dismiss you from service without notice or payment in lieu of notice if at any time you;

(i)

(ii) Are found guilty of any crime."

Although the HRMM provided by Counsel for the claimant did not disclose clause 11.4b providing for criminal proceedings, in the case of ASIIMWE MOSES VS UGANDA REVEVUE AUTHORITY MISCELLENIOUS CAUSE 140/2011 this same clause was quoted as providing as follows;

"11.4 criminal proceedings.

(a) Staff who commit offences involving the authority may be prosecuted in a court of law irrespective of (or in addition to) any other disciplinary action.

(b) Staff charged with criminal offences shall be suspended in accordance with section2.2(b) of the manual and upon conviction of such criminal offences be terminated in accordance with section13.7. 5

(c) Where criminal proceedings related to or arising from an employee's status in URA have been instituted against the employee, the internal disciplinary process may be deferred pending the completion of the court process, management will review thereafter. "

In interpreting the above provisions in the HRMM of the URA, Hon. Lady Justice Elizabeth Musoke in the above cited case held that both the process of prosecution and internal disciplinary action by the authority could go on concurrently. We have no reason to disagree. We do not think that an employer (URA) is obliged to await the completion of the criminal proceedings including appeals to the Highest court of the land before any other disciplinary action is taken against the offending employee, as counsel for the claimant seems to suggest.

We do not accept the contention of counsel for the claimant that the refusal of the respondent to reinstate the claimant after acquittal by the High court was the final determination of the claimant's contractual relationship with the respondent. On the contrary we are of the firm opinion that as indicated in the plaint the relationship was terminated by dismissal on 8/8/2005.

The authority of **JUSTUS KALEBBO VS UGANDA REVENUE AUTHORITY HCCS 405/2006** cited by Counsel for the claimant is distinguishable from the facts in the present case. Where as in the cited case the letter of dismissal was not delivered to the plaintiff and therefore the fact of dismissal was not proved in the instant case the dismissal was acknowledged by the claimant. Unlike in the cited case where Hon. Justice Bamwine (current Principle Judge of the High court) the then trial Judge stated thus;

"The status of the plaintiff being an employee of the defendant would be obtained till the defendant would communicate to him the final decision on the matter"

In the present case the status of the claimant was known to him through the letter of dismissal which he acknowledged within the time prescribed under the Limitation Act. 6

Consequently we agree with the submission of Counsel for the respondent that the plaint was solely based on the letter of dismissal dated 8/8/2005. We are of the firm conviction that the cause of action arose on the date that the claimant was dismissed that is on the 8/8/2005 or at the latest the date that he received the said letter of dismissal.

As stated earlier on in this Judgment, this matter being an action seeking remedies for termination of employment is based on contract. And as already stated the cause of action arose on 8/8/2005. The suit having been filed on 10/10/2012 was definitely filed out of time thus offending the provisions of the Limitation Act.

The next question is; **what are the remedies?**

There are a number of legal authorities on this question. Unless the claimant is saved by the exemptions under the Limitation Act a matter filed outside the prescribed time must be struck out.

Order 07 rule 6 of Civil Procedure Rules provides as follows;

" When a suit is instituted after the expiration of the period prescribed by the law of limitation, the plaint shall show the grounds upon which exemption from such law is claimed"

And Rule 11 of the same Order provides;

"The plaint shall be rejected in the following cases;

(d) Where the suit appears from the statement in the plaint to be barred by any law."

The cases of **LIONKING INTERNATIONAL (U) LTD VS UGANDA REVENUE AUTHORITY HCCS 004/2009** , **MOHAMMED KASASA VS JASPER BUYONGA CIVIL APPEAL 42/2008** of the court 7

of Appeal , HERMEZDAS MULINDWA VS STANBICK BANK HCCS 046/2004 of the Commercial Court and many others are of the legal proposition that time limits set by statute are not mere technicalities but are of substantive law and must be strictly complied with and that therefore any matter filed outside these limits must be struck out irrespective of any merits in the case.

Accordingly since the present case falls in the category of the above cases the plaint is here by struck out with no order as to costs.

Hon. Justice Asaph Ruhinda Ntengye

Chief Judge

Hon. Justice Linda Lillian Mugisha Tumusiime

Judge

Panelists:

1.Mr. Micheal Matovu

2. Mr. Mavunwa Edsison

3. Mr. Ebyau Fidel

Delivered on 4th June 2015