**THE REPUBLIC OF UGANDA**

**THE INDUSTRIAL COURT OF UGANDA HOLDEN AT KAMPALA**

**LABOUR CLAIM NO.210/2015**

**OSILO JACKSON.....CLAIMANT**

**VERSUS**

**INDUSTRIAL SECURITY SERVCES.....RESPONDENT**

**RULING**

By memorandum of claim the claimant alleged that he had been employed by the respondent between 1996 and 2005 as a security guard. He fell sick in August 2005 and with the knowledge of the respondent was treated at an accredited medical facility. When he reported for work he was informed that he had been discontinued from service.

In his submission on a preliminary point counsel for the respondent contended that the claimant having been dismissed on 27/08/2005 the memorandum of claim was filed long after the time within which it ought to have been filed and therefore it was barred by statute.

He argued that the claimant acknowledged that he was terminated in August2005 but only filed his claim in 2015 , 10 years later. He submitted that the claimant was complacent about enforcing his rights and since he never pleaded any exemption as required under the Limitation Act the claim was not maintainable. He relied on the cases **of CHARLES LUBOWA AND 4 OTHERS VS MAKERERE UNIVERSITY S.C.C.A NO.2/2011 and ERIDARD OTABONG VS A.G S.C.C.A NO6/1990 as well as IGA VS MAKERERE UNIVERSITY (1967) E.A. 65**.

In reply counsel for the respondent submitted that there was no evidence of the date of termination and nor was there evidence that the claimant received communication on a certain date before 2014. He argued that without a letter of dismissal he was made to believe that he was still an employee of the respondent until October 2014 when he was made aware that there was no job for him and therefore according to counsel time begun running from 2014. According to him termination was a matter of evidence which needed to be proved. He relied on the case **of**

**MPIIMA VS A.G (1993) KAL 1 and U.R.A VS UGANDA COMMUNICATIONS COMMISSION H.C.A011/2006.**

In rejoinder the respondent insisted that all the pleadings of the claimant showed that all facts that would entitle the claimant to succeed were available and he could therefore not be heard to say that he still did not believe that he was terminated. counsel pointed out that the fact that the claimant opted to seek intervention of several government and non governmental offices pointed to his acknowledgement that he had been dismissed and wanted to challenge the dismissal not through the courts of law but by going elsewhere. He submitted that the fact that the claimant had been informed by one Akorikim Emanuel put him to notice that he was terminated.

There is no doubt that the Limitation Act provides for limitation of actions such that one is barred from filing a suit or any action if the respective cause of action arose outside a certain limited period of time. In the case of actions founded on contract ,the cause of action must have arisen within six years of filing the suit or the claim.

We are not in doubt that the cause of action in the instant case arises out of an employment relationship between the claimant and the respondent which is governed by (among others) the law of contract. The question therefore is when the cause of action in the instant case arose and whether the claim was filed within the time allowed by the Limitation Act.

In order to ascertain the date of the cause of action the court is obliged to peruse the pleadings in order to be satisfied that all facts material to the case of the plaintiff or claimant are in the pleadings. it is from the pleadings given the sequence of the events and the facts, that the court will determine the date of the cause of action.

Paragraph 4 of the memorandum of claim asserts that the claimant was employed between 1996 and 2005 and that in August 2005 he fell sick and informed the respondent and went for medical treatment. On return he was informed by one Akorikin Emanuel, the officer in charge of guards, that he, the claimant was discontinued from the service.

Paragraph 6 of the same pleadings asserts that the claimant's termination without a letter made him believe that he was still a company employee until October 2014 when he was made to know that there was no job for him. On perusal of the whole file we find that the claimant

complained **to " Legal Aid For Worker's Programme**" and a letter from this Programme dated 22/4/2015 addressed to the respondent sought a solution to the alleged unfair termination. The letter stated;

**"The Legal Aid For Worker's Programme of central organization of trade unions(COFTU) has received a complaint from the above named person who was your employee for 10 years until 2005 when you unfairly terminated ....."**

From the pleadings and from the above letter it is very hard for this court to believe that the cause of action arose after 2005. By his own pleadings the claimant seems to acknowledge that he ceased to be employed by the respondent in the year 2005.

We agree with the submission of the respondent that the claimant having been verbally informed by the officer in charge of guards that he had been terminated he in fact knew that he had been so terminated. The fact that he was not deployed nor paid a salary thereafter should have rung a bell in his ear and he should have therefore filed the matter in the appropriate court at the time.

We gather from the pleadings as well as from communication from president's office on the file that the claimant sought intervention from other sources instead of seeking redress from the courts of law and this in our view stretched the period outside the Limitation Act.

W agree with the respondent that the claimant was complacent when it came to enforcing his rights. He ought to have pleaded any of the exemptions under the Limitation Act which he did not.

We do not accept the submission that the claimant was under the impression that he was still employed by the respondent simply because he had not received a written termination letter. We are fortified in this by the provisions of section 65 of the Employment Act which states that termination of employment is deemed to take place in the following circumstances:

(a) .....

(b).....

(c) Where the contract of service is ended by the employer with or without notice as a consequence of unreasonable conduct on the part of the employer towards the employee.

(d).....

(e) The date of termination shall unless the contrary is stated be deemed to be

(a).....

(b).....

(c) In circumstances governed by section 1(c) the date when the employee ceases to work for the employer.

From the pleadings we deduce that the claimant alleges that the respondent's conduct of refusing him to go for medical treatment and of denying him the job after his treatment for having failed to turn up for training while he was sick was unreasonable. In our view this having been the case, termination was effective from the date that the claimant ceased to work in accordance with the above legal provision. Time therefore started running in 2005.

The remedy in the case **of JUSTUS KALEBO VS U,R.A HCCS 405/2006** cannot rescue the claimant either. In this case Hon. Justice Yorokamu Bamwine had this to say:

**"The status quo 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"**

Whereas in the above case there was no communication whatsoever about the status of employment of the plaintiff by the defendant, in the instant case the claimant acknowledged that employment ended in 2005 which as already stated makes the claim that he believed he was still

employed until October 2014 unbelievable. Moreover no where in the pleadings does the claimant say how in October 2014 he came to know of his dismissal.

The claimant through his counsel submitted that even if the cause of action was to be in 2005, the several correspondences culminating in the respondent's issue of a cheque of 300.000/- as full and final settlement of terminal benefits of the claimant re-ignited the cause of action. He relied on the authority **of MATAGALA VINCENT VS U.R.A CICIL SUIT NO.274/2008**.

Relying on the authority **of MADHVANI INTERNATIONAI S.A VS A.G S.C.C.A NO.23/2010** , counsel for the respondent argued that the claimant's own writing to the respondents that they were indebted to him could not revive the claim since the respondent never admitted liability and never undertook to act on the same.

After carefully perusing both decisions, it is our considered opinion that both are distinguishable from the instant case. The subject matter in the instant case **is UNLAWFULL TERMINATION OF EMPLOYMENT**. In **the MATAGALA case(supra**) cited by counsel for the claimant, the subject matter was **A REWARD** to be given after giving information on tax evasion. The Judge said:

> **"It is clear that the plaintiff's claim which otherwise had been time barred was brought to the attention of the defendant by the I.G.G and the C.G to verify the claim although it was never finalized. That process revived the cause of action and it was only when it failed to yield fruits that the right to bring an action for breach of contract accrued to the plaintiff**"

Counsel argued that the correspondences between the respondent and the claimant(through the lawyers), correspondence of the ministry of Gender, correspondence of C.O.F.T.U and that of State House had the effect of reviving the matter that had arisen in 2005.

We respectfully disagree. Whereas in the above cited case the Commissioner General(C.G) suggested to verify the claim which verification was not finalized, there is nothing in the various correspondences in the instant case to suggest that the termination of the claimant was to be

reconsidered. It is therefore not acceptable that any of such correspondences re-ignited the cause of action.

Issuing of a cheque by the respondent did not in any way, in our view, suggest that the issue of termination of the claimant was to be reconsidered, although we appreciate that the cheque should have been issued at the time that termination took effect since it was for terminal benefits. We also take note of the fact that the respondent wrote to the claimant on 23/10/2008 to collect his outstanding salary payments and annual leave pay although there was no evidence that he received this letter. Nonetheless, in our view, none receipt of this letter by the claimant did not negate his acknowledgement of his dismissal in 2005 communicated to him by the O.C guards, as earlier discussed in this Ruling.

**Order 07 rule 6 of the Civil Procedure** rules stipulates:

**" When a suit is instituted after the expiration of the period prescribed**

**by the law of Limitation, the plaint shall show grounds upon**

**which exemption from such law is claimed**"

**Rule 11 of the same order** stipulates:

**" The plaint shall be rejected in the following circumstances;**

**(a).....**

**(b).....**

**(c).....**

(d) Where the suit appears from the statement in the

plaint to be barred by Statute"

The cases **of LIONKING INTERNATIONAL(U) LTD VS U.R.A H.C.C.S 004/2009 and MOHAMMED KASA VS JASPPER BUYONGA C.A 42/2008(court of Appeal**) which were cited by this court **in JULIUS RUGUMAYO VS U.R.A Labour Dispute 27/2014** are authority for 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.

As pointed out earlier in this ruling pleadings in the instant case show that the cause of action arose in 2005. Given the above provisions of the law and the judicial precedents, we find the preliminary objection of substance and it is hereby upheld. The claim is struck out for being filed out of time. No order as to costs is made.

**SIGNED**

1. Hon. Justice Ruhinda Asaph Ntengye Chief Judge.....

2.Hon. Lady Justice Linda Lillian Mugisha Tumusiime.....

**PANNELLISTS**

1. Mr. Ebyau Fidel.....

2.Mr. Wanyama Anthony.....

3.Mr.Michael Matovu.....

Dated the **15th** day of **July 2016**