

**THE REPUBLIC OF UGANDA**  
**IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA**  
**LABOUR DISPUTE CLAIM No.015 OF 2015**  
**[ARISING FROM HCT-CS No. 0028/2016]**

**BETWEEN**

**ASSUSI JOSEPH.....CLAIMANT**

**VERSUS**

**UGANDA ELECTRICITY BOARD .....RESPONDENT**

**BEFORE**

1. Hon. Chief Judge Ruhinda Ntengye
2. Hon. Lady Justice Linda Tumusiime Mugisha

**PANELISTS**

1. Mr. Ebyau Fidel
2. Mr. Fx. Mubuuke
3. Ms. Harriet Mugambwa

**AWARD**

**Brief facts**

The Claimant was employed by the respondent by letter dated 8/5/1969 as a Mechanical Technician effective 1/7/1969. Whereas the claimant claims that he was forced into exile in 1976 by the then Military Government which did not give him opportunity to resign, the respondent claims that the claimant absconded from duty in 1976 and for that reason he was terminated by letter of 27/11/1976.

Upon his return and by letter dated 21/9/1988 (**exhibit R 7, Respondent's Scheduling Memorandum and trial bundle**), the claimant applied to be re-engaged by the respondent

company. By letter dated 31/1/1989 (**exhibit R9, respondent's trial bundle**) the claimant was offered appointment as Technician, on probation for 3 months.

The claimant reported on duty on 12/1/1990. By letter dated 3/09/1991 the claimant requested the respondent to consider including his 7 years past services before he went in exile in 1976 payable upon his retirement. (This is exhibit R13, Respondent's trial bundle). By letter dated 15/10/1991 the Personnel Manager wrote to the claimant informing him that the request for consideration of his past service was not successful.

By letter dated 27/1/1999, the Ag. Managing Director of the respondent informed the claimant about a restructuring exercise a result of which would render his services to the company redundant and also informed him of a retrenchment package that was arrived at using a certain formula taking into account the number of years served. This letter by the Ag. Managing Director ended by saying **"on behalf of management and the entire Board I wish to thank you for the tireless effort you have put in to keep Uganda Electricity Board afloat for 29 years and 7 months."**

By a Joint Scheduling Memorandum filed in this Court on 14/8/2017 the following issues were framed by both parties and agreed

- 1) Whether the claim is time barred.**
- 2) Whether the memorandum dated 27<sup>th</sup> January 1999 Reference HQ /ann/68 contains an error as to claimant's period of service with the respondent.**
- 3) Whether the claimant is entitled to pension and terminal benefit as claimed.**
- 4) Whether the claimant is entitled to the remedies sought in the claim.**

### **SUBMISSIONS**

In his submission on the above first issue, counsel for the claimant argued that the memorandum of claim under paragraph 4, complied with **Order 7 rule 6 of the Civil Procedure Rules** which provides that once a plaint is filed outside the limitation period it has to show the grounds upon which exemption from limitation is claimed. Relying on the payment of 1,587,303/= made by the respondent counsel contended that this was part payment of the total claim and that in accordance with the case of **Scilendra Oscar Ltd Vs the Government of Sri Lanka (1977) I.K.L.R 565** (which was not provided to this court) such a claim could not be

time barred. Counsel also relied on **Section 23 of the Limitation Act** which according to him acknowledges part payments as renewing causes of action.

Counsel for the claimant argued together the 2<sup>nd</sup> and 3<sup>rd</sup> issue. He contended that the absence from work by the claimant having not been intentional but as a result of Political reasons/unrest, it was an act of God and the respondent could not therefore rely on desertion of duty as a reason for termination.

He contended that the letter of 27/01/99 by Ag. Managing Director recognised the fact that the claimant had worked for 29 years and 7 months and therefore entitled him to all benefits accrued to him for this period of time.

On the last issue counsel contended that the respondent's denial of benefits to the claimant and termination of the first contract without notice led him to having exceptional harm entitling him to general damages which he put at 200,000,000/= and prayed for 20% interest on all monetary awards.

We did not see any submissions from the respondent on the file. Consequently we shall decide the matter without the respondent's submissions.

### **Decision of Court**

#### **ISSUE 1: Whether the claim is time barred.**

From the endorsement on the plaint, it is clear to us that the suit was filed in the High Court on 18/1/2006. According to the memorandum of claim, the dispute is about employment benefits of the claimant dating back from 1969 instead of 1989 when he was re-employed by the respondent after he had left employment in 1976 allegedly because of the political turmoil in the Country under Idi Admin.

The question is **when did the cause of action arise?**

The gist of the claim is pension entitlement which according to the claimant arises from calculation of benefits beginning with 1/July 1969.

The limitation period of this claim which is under the Employment act dealing with employment contracts between Employer and Employee is provided for under **Section 3 of the Limitation Act** which provides

### **“3 Limitation of actions of Contract and tort and certain other actions**

**1) The following actions shall not be brought after the expiration of six years from the date on which the cause of action arose**

**a) Actions founded on contract or tort. ”**

The claimant's employment ended on 15/2/1999 when by letter dated 17/1/99 from the Ag. Managing Director, the Claimant was expected to cease duty by virtue of a restructuring exercise. Consequently the cause of action arose from the 15/2/1999. The claim was first filed in the High Court on 18/1/2006 which was after 7 years.

It was the submission of counsel for the claimant that having been paid 1,587,303 on 05/11/2005 as part payment of the total claim, the cause of action is deemed to have occurred on the date that the part payment was paid.

The question to be answered is **whether the payment by cheque of 1,587,303 was part payment of the total claimed?**

We take the position that in the absence of an admission or acknowledgement of the whole claim, the date that one paid a certain amount would not affect the Limitation Period prescribed under the Limitation Act. In our considered view time in the instant case started running on the date that the claimant was asked to stop working i.e. 15/2/1999. The fact that the respondent paid on 05/11/2005 to the claimant what it considered was owed to him did not discharge the claimant from the burden or responsibility to file in Court what he believed was owed to him within the prescribed period from the date of cessation of employment which gave rise to the claimed pension. It was not an acknowledgement of the total claim of the claimant and it was not part payment of the total claim. The claimant therefore ought to have filed his plaint in the High Court on or before 15/2/2005 which made 6 years from the date of the cause of action. We are not in the least convinced by the submission of counsel for the claimant that political turmoil or political unrest tantamount to an act of God.

Accordingly, it is our holding that the suit was filed out of the period prescribed and on this ground alone the claim would be struck out.

However, for the sake of completeness we shall consider both the second and third issues together.

When we look at the evidence adduced it is very clear that the claimant left the service of the respondent way back in 1976 without permission and he was terminated on 27/12/1976 for failure to report on duty from his leave which was over by 27/08/1976. This means he was terminated after failure to attend to duty for 4 months after his leave. We do not accept the submission that the claimant was justified to abandon work and ran out of the country because of political turmoil, since the definition of “political turmoil” may depend on which side of the political divide one may be. Evidence is clear that the claimant went to Kenya and got employed at a better pay than he was paid while in the respondent’s company. There is no justification whatsoever for a person who was earning better during a period he was not working for the respondent, to turn around and claim benefits for the same period. If this were to be the case, it would be in our view, the most unjust that justice could be. But even if the claimant was not earning any money for the said period, having abandoned his work he would not be entitled to benefits arising from the same period.

The respondent having refused the request of the claimant to consider his 7 year service, it is not possible that there was any intention later on to consider the same when the Ag. Managing Director in his letter of 27/1/99 referred to the tireless effort of the claimant **“to keep the Uganda Electricity Board afloat for 29 years and 7 months.”** To our understanding this was circular meant for every staff who was working with the respondent but who had been affected by the restructuring, the reason that the letter showed a .....to indicate the period each concerned employee had served the respondent.

Accordingly, we agree with the respondent’s assertion that the statement in the Memo of 27/01/1999 to the effect that the claimant served the respondent for 29 years and 7 months was made in error, given that he himself admitted in cross examination that he abandoned duty and fled to Kenya and was then terminated. In the result we find that the claimant is not entitled to pension and terminal benefits as claimed. The claim therefore fails and it is hereby dismissed with no orders as to costs.

**Delivered and signed by:**

1. Hon. Chief Judge Ruhinda Asaph Ntengye .....
2. Hon. Lady Justice Linda Lillian Tumusiime Mugisha .....

**PANELISTS**

1. Mr. Ebyau Fidel .....
2. Mr. F. X. Mubuuke .....
3. Ms. Harriet Mugambwa Nganzi .....

Dated: 25/02/2021