

THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE APPEAL NO. 09 OF 2020
ARISING FROM LABOUR COMPLAINT NO. 01 OF 2018

NATIONAL BANK OF COMMERCE LTD

(IN LIQUIDATION)

.....APPELLANT

VERSUS

1.FRED TWINOBUSINGYE

2.MUTAREMWA FRANK & 59 OTHERS

..... RESPONDENT

BEFORE:

- 1. THE HON. CHIEF JUDGE, ASAPH RUHINDA NTENGYE**
- 2. THE HON. JUDGE, LINDA LILLIAN TUMUSIIME MUGISHA**

PANELISTS

- 1. MR. EDSON MAVUNWA**
- 2. MR. ABRAHAM BWIRE**
- 3. MS. JULIAN NYACHWO**

AWARD

BRIEF FACTS

This appeal arises out of an award of Mr. Ndyabawe Swizeen, the labour officer of Kabale, which he delivered on 14/11/2019, in labour complaint No.01/2018(*Fred Twinobusingye*)

And Mutaremwa Frank & 59 Others) in which he awarded a sum of Ugx. 2,478,061,806/= to the Respondents as terminal Benefits. The Appellant being dissatisfied with this award filed this appeal with prayers that the award is quashed and or set aside and for costs of the Appeal.

BACKGROUND

The Respondents were former employees of the National Bank of Commerce (In Liquidation). They filed a Representative action vide High Court Civil Suit No.22 of 2016, against the Central Bank (Bank Of Uganda) and the National Bank of Commerce(In Liquidation)(NBC) for payment of alleged employment terminal Benefits.

The Central Bank raised a Preliminary objection to the effect that they were wrongly sued. The Hon. Justice Moses Kazibwe Kawumi of the High Court sitting in Kabale, ordered that the Central Bank is struck off the Plaint and held that, the Respondent's only recourse in law was to continue the suit against the Appellant NBC. On 16/10/2019 the Respondents filed a suit against the Appellant, NBC before the Labour officer, Mr. Ndyabawe Swizeen, who heard and determined the matter *exparte* and made an award in their favour amounting to Ugx. 2,478,061,806/=.

The Appellant being dissatisfied with this award filed this appeal with prayers that the award is quashed and or set aside and for costs of the Appeal.

GROUND OF APPEAL

- 1. The Labour Officer erred in law when she proceeded to hear and determine Labour Complaint No.01 of 2018 in spite of Constitutional Court Order arising from miscellaneous Application No. 390f 2012 which Court order stayed any further proceedings in liquidation of the Appellant.***

- 2. The award is further illegal as the Respondents did not obtain the leave of court pursuant to Section 91 of the Financial institutions Act, 2004 to commence the proceedings against the Appellant**
- 3. The Labour officer erred in law when she denied the Appellant the non derogable right to be heard;**
- 4. The award is unlawful as the claim was barred by the Limitation Act, Cap 79, as the a labour Dispute from which it arises was filed on 16/10/2018 a period well over 6 years from the 28/09/2012 the date the Respondents were terminated by the Appellant;**
- 5. The award is further unlawful as the claim is barred by section 71(2) of the Employment Act no. 6 of 2006 which require the Labour claims to be filed within 3 months from the date of the cause of action;**
- 6. The award is illegal as it purports to have been obtained pursuant t an non existent Representative order by the two named Respondents, without the participation of the othert alleged 59 Claimants who were never in Court at all;**
- 7. The Labour officer erred in law and fact by awarding the sum of Ugx. 2,478,061, 806/- which sum as never proved at all nor supported in evidence as none of the two Respondents (Claimants) testified nor could never have testified on behalf of the other 59 purported Claimants claims;**
- 8. The Labour officer erred in law when she awarded reliefs not prayed for, to wit repatriation;**
- 9. The labour officer's award of 25% interest per annum for 7 years on the respondents' terminal benefits was excessive in the circumstances and without basis in law.**

REPRESENTATIONS

The Appellant was represented by Mr. Micheal Akampurira of M/S Akampurira and Partners, Kampala and the Respondent was represented by Mr. Nsubuga Ssemakula of MMAKS Advocates, Kampala.

SUBMISSIONS

The Appellant chose to submit on the grounds as follows: grounds 1 and 2 together, grounds 4 and 5 together and grounds 6,7,8, 9 and 3 in that order.

We believe the resolution of ground 5 and 4 in that order, will dispose of this appeal.

5.The award is further unlawful as the claim is barred by section 71(2) of the Employment Act no. 6 of 2006 which require the Labour claims to be filed within 3 months from the date of the cause of action;

It was submitted for the Appellant that, Section 71(2) of the Employment Act 2006, bars filing of a labour claim beyond three (3) months from the date the complaint arose. According to Counsel the cause of action arose on 10/10/2012, the date of termination and the claim was filed on 16/10/2012, well over 3 months. He contended that there was no application for leave to extend time within which to file the labour claim out of time and the proceedings do not show that the labour officer exercised his discretion to extend time to file the labour claim out of time. According to him in the circumstances, the claim as filed out of time and the resultant award is null and void and should therefore be set aside.

In reply Counsel for the Respondent insisted that the matter was filed in the High Court from where it was later referred to the Labour Courts. Citing **Kyesimira Vs Stanbic Bank (U) Ltd LDR No.103/2017**, he asserted that the Respondents were justified to make the complaint to the Labour officer outside the time stipulated under Section 71(2) (supra). It was his submission that, the labour officer has the discretion to

entertain a dispute filed outside three(3) months if he or she is satisfied with the cause of the delay.

Decision of Court

Section 71(2) of the Employment Act, 2006, provides that:

“(2) A complaint made under this section shall be made to a labour officer within three months of the date of dismissal, or such later date as the employee shall show to be just and equitable in the circumstances.”

The Court of Appeal in **John Eric Mugenyi vs Uganda Electricity Generation Co. Ltd, CA No. 167 of 2018**, held that,

“... Section 71 deals with the minimum period of employment which would entitle an employee to lodge a complaint

... section 71(2) is not a limitation period for the commencement of any action in a court of law or a court of Judicature... a limitation period is a bar to an action, but section 71(2) of the Employment Act just prescribes the period within which to lodge a complaint with the Labour officer with the rights of the labour officer to allow the complaint outside a period of three months. It does not limit the Labour office as to when to allow the application. It only requires the complainant to justify the filing of the complaint outside the period of three months. In this case the labour officer without making notes allowed the complaint to be filed. In any case, he had powers to abridge the time within which to allow the complaint to be filed.”

The import of this holding is that, that section 71(2) grants the labour office the discretion to entertain a matter which is filed outside the time prescribed under it. Given this discretion, we have no reason to fault him for entertaining the claim in the

instant appeal even if it was filed out of time prescribed under section 71(2), even if there was no record of any application to extend time. This ground lacks merit is therefore disallowed.

4. The award is unlawful as the claim was barred by the Limitation Act, Cap 79, as the a labour Dispute from which it arises was filed on 16/10/2018 a period well over 6 years from the 28/09/2012 the date the Respondents were terminated by the Appellant;

It was submitted for the Appellant that the claim was filed on 16/10/2018 and received by the labour officer on the 16/10/2018, as evidenced by his embossment of receipt, at page 8 of the record of proceedings.

Counsel stated that, on 27/09/2012, the Central Bank took over the management of the Appellant and the Respondents employment was terminated on 10/10/2012.

According to him, this being an employment claim, the cause of action lies in contract or breach thereof. He cited Section 3(1) (e) of the Limitation Act which mandatorily prevents an action founded on contract from being brought after the expiry of 6 years. According to him the employment of the Respondents in the instant appeal was brought to an end on 10/10/2012, but they brought their claim on 16/10/2012, exactly after 6 years and 6 days, which was beyond the limitation period. He relied on **Osilo Jack vs Industrial Security Services (LDC No. 215/2015)**, in which this courts holding cited with approval **Lion King international (U) Ltd vs URA, HCCS No. 004/2009**, among others and concluded that the “... *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 time limits must be struck out irrespective of any merits in the case.*”

Counsel contended that the Respondents were at all times aware of their rights but they filed their claim out of time, moreover without showing any exceptional circumstances why they did so. He argued that having filed out of time the proceedings and award arising therefrom are illegal and unlawful because the claim is barred by law, therefore, the award should be set aside.

In reply Counsel Akampurira submitted that, the matter was first brought within time before the court under Civil Suit No.24 of 2016. It was then referred to the labour Court and filed as **Labour complaint No.1 of 2018** stemming from **Labour Dispute No.16 of 2017** and later under **Labour Dispute Appeal No. 11 of 2017**.

According to him this court in **Labour Dispute No.16 of 2017**, quoting the holding of Justice Kawumi, of the High Court Kabale emphasised that, the matter should continue against the current Appellant. The Court then referred it to the Kabale Labour officer for redress.

He refuted the submission by Counsel for the Appellant that the matter commenced in 2018 and asserted that even if that were the case, the Respondents were still within time given that, the Appellant invited claims in November 2019 and the Respondents were entitled to bring this claim under Section 105(c) of the Financial Institutions Act.

Decision of Court

Having resolved that the Claimant was not barred from handling any matter that is filed outside the 3 months as stipulated under section 71(2), what needs to be resolved is whether **the labour officer can exercise this discretion beyond the limitation prescribed under section 3(1) (e) of the limitation Act cap 80?**

Indeed, a claim was first brought before, under Civil suit No. 24 of 2016, at the High court sitting in Kabale, but it was against 2 parties; **Bank of Uganda and the National Bank of commerce (in liquidation)**. The matter was heard and resolved on a point of

law in which Bank of Uganda was struck off the plaintiff and the Respondents were directed to continue with the matter against NCB(in liquidation), the current Appellant. However, in total disregard of the Court order, when they appeared before the labour office, the Respondents argued that they were *dominus litis* and decided to proceed against Bank of Uganda instead. This Claim was heard by the labour officer and determined in favour of the Respondents. Bank of Uganda being dissatisfied with the labour officer's decision, lodged an appeal in the Industrial court challenging its inclusion as a party in the matter, having been earlier struck off as a party by the High Court sitting in Kabale under Civil Suit 24/2016. This Industrial Court heard the Appeal and determined it in favour of Bank of Uganda and set the labour officer's decision against her aside.

The citation of his Lordship Moses Kazibwe quotation in Civil suit No 24 of 2016, regarding the referral of the matter to the labour office, as the decision of this Court in Labour Dispute Appeal No. 11 of 2017, is therefore misleading. This court only laid emphasis on his Lordship's directive to the Respondent to pursue the matter before Kabale Labour office, hence the quotation of his Lordship Kawumi's directive. The reference of the matter to the labour office was therefore made by the High Court sitting in Kabale and not the Industrial Court as Counsel would want Court to believe.

We further do not subscribe to the assertion by the Respondents that, the case against NBC(in liquidation) was a continuation of the Civil suit No. 24 of 2016, because the High Court heard and disposed of matter and ordered the Respondents to continue the case against NBC(in liquidation). However, in total disobedience of the Order of the High Court of Kabale (supra), the Respondents decided to file labour compliant No. 11/2017 against Bank of Uganda Instead. Complaint No 11/2017 was also heard and disposed of by the Labour Officer against Bank of Uganda. Bank of Uganda being dissatisfied with the Labour officers decision, filed an appeal in this court contesting

the suit, on the grounds that they were the wrong party to be sued, having been struck off the plaint in High Court Civil suit 24/2016. This Court maintained that Bank of Uganda were sued in error and set the labour officers decision aside.

In the circumstances, the claim which was filed before the labour officer on 16/10/2018 against NBC (in liquidation) was new claim filed against a singular party NCB(in liquidation) and is not a continuation of the preceding matters which as already discussed above, were individually heard and determined by the different Courts, including the labour office of Kabale. Notably, whereas the labour officer in Labour Claim 11/2017 against Bank of Uganda, awarded the Respondents severance pay of Ugx. 716,374,211/ with interest of 8% per annum from date of termination till payment in full, in the un referenced claim of 2018, against NBC(in liquidation), he made a declaration that the Respondents were unlawfully terminated and awarded them Ugx 2,478,061,806/- as entitlements under their contracts, he also made an award of interest of 25% per annum until payment in full and costs of the Claim. Clearly these were different claims against 2 different defendants.

Was the Claim barred by time?

It is trite that statutes of limitation are strict and inflexible enactments. Their intention is to limit litigation after a fixed length of time irrespective of the merits of a particular case. They are not mere technicalities but are substantive law and must be strictly complied with (see **Hilton vs Sulton steam Laundry[1946] 1 KB at 81, Osilo Jack vs Industrial Security Services (LDC No. 215/2015)**). Section 3(1) (e) of the Limitation Act Cap 80, provides for the limitation of actions founded on contract and in such matters the cause of action must have arisen within 6 years of filing the suit.

The statute of Limitation in our considered opinion is also applicable to the labour office notwithstanding the discretion granted to him or her under section 71(supra), to handle matters outside the 3 months prescribed thereunder. We do not think that

the legislature intended that the labour Officer's discretion should be exercised indefinitely. Like any other causes, Labour disputes must be litigated and completed within a limited time to avoid endless litigation and pursuit of stale claims. In any case they should be expedited.

Given that the matters brought to the labour officer under section 71 are founded on contract, the Limitation Act is applicable, therefore the Labour Officer can only exercise the discretion granted to him or her under section 71(2) (supra), beyond 3 months, but within the limitation prescribed under section 3 (1) (e) of the Limitation Act.

Further Section 4 of the Limitations Act, Cap 80, provides that a cause of action can only arise for limitation purposes, where there are competent parties, a plaintiff/claimant who can succeed and a defendant/Respondent against whom a case can be established. In the instant case, the letters of termination at pages 14-18 of the record of proceedings, indicate that the Respondents were terminated on 10/10/2012, which is the date on which the cause of action accrued. As already discussed above, on 21/11/2016, the High Court of Kabale directed the Respondents to pursue their claim against NBC(in liquidation), which they only filed on 16/10/2018, which was after 6 years and 6 days from 10/10/2012.

We are therefore inclined to agree with Counsel for the Appellants that the Respondents were always aware of their rights having filed high Court Civil suit No.24 of 2016. They did not plead any form of disability, for filing out of time, save for the assertion that the Appellants invited claims in November 2019, which according to Counsel for the Respondents, stopped time. We found no documentary evidence of the said invitations for claims on the record; therefore, this reason cannot hold.

As a general rule, time begins to run when the suit is filed against the party. In this case the matter was filed against the Appellant on 16/10/2018, 6 years and 6 days after the

cause action accrued on 10/10/2018, the date of termination. Clearly the matter was filed 6 days out of the prescribed time of 6 years, therefore it is statute barred. Once a cause of action is statute barred, it is statute barred and the Court has no power to extend it. In **Iga vs Makerer University[1971] EA 65**, the East African Court of Appeal while considering Order 7 rule 11 of the Civil Procedure Rules, held that a plaint barred by limitation is a plaint that under the rule is “barred by law” and should be rejected under that order. Also see, **Makula International Limited vs His Eminence Cardinal Nsubuga[1982] HCB11**.

In the circumstances, even if the Labour officer in the instant case, had discretion to extend time under section 71(2), it was wrong for him to do so outside the time prescribed under section 3(1) (e) of the Limitation Act. He therefore, erred when he proceeded to hear and determine the case, having been barred by the expiry of time.

We are therefore, inclined to agree with Counsel Nsubuga for the Appellant that the proceedings and the award resulting from the Labour officers award are illegal and unlawful because the claim was barred by the Statute of limitation. The Labour officers award is therefore set aside.

This ground succeeds and since it has the effect of resolving the entire appeal, we shall not delve on the other grounds. This appeal therefor succeeds. No Order as to costs is made.

1. THE HON. CHIEF JUDGE, ASAPH RUHINDA NTENGYE

2. THE HON. JUDGE, LINDA LILLIAN TUMUSIIME MUGISHA

PANELISTS

1. MR. EDSON MAVUNWA

2. MR. ABRAHAM BWIRE

3. MS. JULIAN NYACHWO

DATE: 10TH MARCH 2021