



**THE REPUBLIC OF UGANDA**  
**IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA**  
**LABOUR DISPUTE MISCELLANEOUS APPLICATION NO. 005/2023**  
*(Arising from Labour Dispute Reference No.310/2022)*

**1. GLOBAL TRUST BANK LIMITED:.....APPLICANTS**  
**2. DFCU BANK LTD**

**VERSUS**

**SSEMOMBWE JOSEPH:.....RESPONDENT**

**Before:**

The Hon. Mr. Justice Anthony Wabwire Musana,

**Panelists:**

1. Hon. Jimmy Musimbi,
2. Hon. Robinah Kagoye &
3. Hon. Can Amos Lapenga.

**Representation:**

1. *Mr. Kenneth Kiapi holding brief for Mr. Bwogi Kalibbala of M/s. MMAKS Advocates for the Applicants.*
2. *Mr. Charles Oundo of M/s. Luzige, Lubega & Kavuma Advocates for the Respondent.*

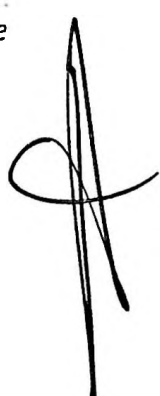
**RULING**

**Introduction**

- [1] By motion under Order 7 Rules 11(a) and (d) of the Civil Procedure Rules S.I 71-1(*from now CPR*) and Section 3(1)(a) and (d) of the Limitation Act Cap. 80, the Applicant sought an order that the memorandum of claim(*from now MOC*) in Labour Dispute Reference 310 of 2022 be struck out and rejected for being barred by limitation, not disclosing a cause of action, and for having been filed against a non-existent party.

### The Supporting and Opposing Affidavits

- [2] The application was supported by the affidavit of Ms. Lorna Gariyo Karungi, who was deposed to the Claimant's alleged unlawful dismissal from employment on 12<sup>th</sup> May 2008 and seeking relief in 2022, fourteen years after the alleged cause of action arose. The deponent was also deposed to the Claimant having been dismissed from Commercial Microfinance Limited (*from now CML*) and not the Applicant's and to the 1<sup>st</sup> Applicant improper impleading as a non-existent party.
- [3] The Respondent opposed the application. In his affidavit in reply filed on the 28<sup>th</sup> of September 2023, the Respondent adverted to medical conditions which prevented him from taking immediate action after his dismissal and the powers of the Labour Officer to allow lodgment of a claim outside the stipulated timeframe. He was deposed to a good work record while at CML, his entitlements to unpaid commission, the lack of a fair hearing at dismissal, and the acquisition of all assets and liabilities of CML by the First Applicant, which the Second Applicant subsequently purchased. He also averred to bailiffs demanding an outstanding loan due to CML.
- [4] In her affidavit in rejoinder, Ms. Karungi was deposed to the Respondent's claim being made thirteen years after his contract of employment ended. She denied the powers of a Labour Officer to extend time and was deposed to the requirement to plead disability, where a claim is filed after the statute of limitations has expired. She was deposed to bipolar disorder not being a disability and that the insolvency process of the 1<sup>st</sup> Applicant did not stop the Respondent from bringing his claims. She denied that the 2<sup>nd</sup> Applicant acquired the 1<sup>st</sup> Applicant's assets, that the Employment Act 2006 governed timelines, and that a reciprocal obligation arose from the bailiff's recovery of an outstanding loan.
- [5] When the matter was called before us on the 28<sup>th</sup> of September 2023, we directed the filing of written submissions. In their written submissions, Counsel for the Applicants proposed three issues for determination viz:
- (i) *Whether the Respondent's claim is barred by the law of limitation?*
  - (ii) *Whether the memorandum of claim discloses a cause of action against the Applicants?*
  - (iii) *Whether the Respondent's claim against Global Trust (In liquidation) was brought against a non-existent entity?*



## Analysis and decision of the Court

### *Issue One: Whether the Respondent's claim is barred by the law of limitation?*

- [6] It was submitted for the Applicant that Section 3(1)(a) and (d) of the Limitation Act Cap. 80 set a timeline of six years for actions based on contract and tort. On the authorities of **Christopher Gashirabake v Samantha Mwesigwa**(LDMA No. 27 of 2022), **Osilo Jack v Industrial Security Services**(LDC No. 215 of 2015), and **Aroga v Hajji Muhamed Anule** (Civ Appeal No 10 of 2016, it was submitted that the action was statute barred and no disability had been pleaded. The Court did not have the power to extend the time, and it should be dismissed with costs to the Applicants.
- [7] In reply, it was submitted for the Respondent, that the Labour Officer has powers to extend time in **Section 71(2) of the Employment Act, 2006**(from now EA). On the authority of **National Bank of Commerce Ltd (In Liquidation) v Fred Twinobusingye & 19 others** LDA 09 of 2020(from now NBCL case), it was argued that the Labour Officer had extended time, based on bipolar affective disorder. We were invited to consider this a disability under Section 21(1) of the Limitation Act and overrule the objection. It was submitted that the Claimant brought his action in 2021, before the expiration of six years since he ceased to be under the disability.

## Decision of the Court

- [8] From the parties' submissions, there are two limbs to the matter of limitation; the first relates to the Labour Officer's power to extend time beyond the statutory time limit under **Section 71(2) EA**. This section provides that a complaint should be filed before a Labour Officer within three months of dismissal. This implies that as a starting point, the Respondent, who was terminated on the 12<sup>th</sup> of May 2008, would have three months to file his complaint. Counsel for the Applicants argued that the Respondent's cut-off date was 12<sup>th</sup> June 2008. That is not entirely correct. The cut-off date of three months from the 12<sup>th</sup> of May 2008 would have been the 12<sup>th</sup> of August 2008.
- [9] The Respondent's Counsel contended that the Labour Officer had power to extend time and did so after receiving the complaint on the 3<sup>rd</sup> of May 2021. This argument appears to be anchored in the latter half of **Section 71(2) EA**, which grants the Labour Officer discretion to extend time for just and equitable reasons. Counsel

relied on the Industrial Court's decision in the **NBCL** case (*supra*) for this proposition.

[10] Powers of the Labour Officer were dealt with in considerable detail by the Court of Appeal in the oft-cited case of **Eng John Eric Mugenzi v Uganda Electricity Generation Co. Ltd C.A.C.A No 167 of 2018**. In that case, the Appellant had filed his complaint to the Labour Officer after the expiry of three months. The Court of Appeal did not find Section 71(2) to constitute a limitation to filing an action in a court of law. It also found that the provision gave the Labour Officer power to enlarge time within which a complaint can be brought before him or her and would be required to justify the reasons for such extension. Following the dicta of the Court of Appeal, a Labour Officer is entitled to enlarge the time within which a complaint may be brought beyond the statutory three months or twelve weeks. To this extent, the Respondent makes a valid point. This takes us to the second ambit of limitation. The question is, how much more time can a Labour Officer grant?

[11] In the **NBCL** case (*supra*), the Industrial Court considered the effect of Section 3(1)(e) of the Limitation Act. The Court, citing **Hilton v Sulton Steam Laundry [1946] 1 KB at 81** and **Osilo Jack (supra)**, observed that statutes of limitation are strict and inflexible enactments and not mere technicalities but substantive laws which must be strictly complied with. The Court observed that Section 3(1) (e) of the Limitation Act limited causes of action on contract and tort to six years from when the cause of action arose. The Court found this provision to extend to matters before a Labour Officer notwithstanding the discretion granted to him or her under **Section 71 EA**. In the words of the Industrial Court, the Court

*" did not think that the legislature intended the Labour Officer's discretion should be exercised indefinitely.....therefore the Labour Officer can only exercise the discretion granted to him or her under Section 71(2)(supra), beyond three months, but within the limitation prescribed under Section 3(1) (e) of the Limitation Act."*

[12] Put otherwise and plainly, the law of limitation in labour matters is that a Labour Officer is entitled to extend the time to file a complaint beyond the statutory three months. However, such extension is not to exceed six years from the date of dismissal or termination.<sup>1</sup>

[13] Applying the above principles to the matter before us, it is common to both parties that the Respondent's employment with the CML ceased on the 12<sup>th</sup> day of May

<sup>1</sup> See *Kizza Gerald & Anor v Camusat U Ltd (LDR081/2017)* and *Akoko Joseph v Uganda Manufacturers Association LDR 139/2019*

2008. He should, therefore, have filed his claim before the Labour Officer by the 12<sup>th</sup> day of August 2008. He did not. He had the opportunity to file his claim before the Labour Officer between the 12<sup>th</sup> of May 2008 and the 12<sup>th</sup> of May 2014, which he did not do. We think that the dicta of the Industrial Court in the **NBCL** case (*supra*) applies to the Applicant's case. While the Labour Officer had the power to extend the time to file the complaint beyond the 12<sup>th</sup> day of August 2008, she did not have the power to extend time, indefinitely. The cut-off date, in keeping with Section 3(1)(e) of the Limitation Act Cap. 80 would be the 12<sup>th</sup> of May 2014. We would therefore find that the complaint and claim are statute-barred. In the case of **Gashirabake** (*supra*) this Court observed that limitation is an absolute defence to a claim and collapses a claim. The Respondent's claim collapses, given the limitation.

- [14] It was suggested that upon filing his complaint before the Labour Officer on the 3<sup>rd</sup> of May 2021, Ms. Kulabako considered the lengthy liquidation process of the 1<sup>st</sup> Applicant, the successor to CML, and the Respondent's bipolar affective disorder. On this basis, she extended the time beyond three months. While she had the power to extend time, this extension was after thirteen years and three months from the Respondent's termination. In the **Mugyenzi** case (*supra*), the Court of Appeal concluded that a limitation period expressly provided for by Parliament cannot be extended by a Court of law unless extension is permitted under the same law. We have not found any legal basis for the hypothesis that a Labour Officer would have power to extend time under the Limitation Act Cap. 80. On this limb of limitation, we are not persuaded by the Respondent's contention that the Labour Officer validly extended time.
- [15] There are also exemptions to the absolute defence of limitation. Under Section 21 of the Limitation Act. Cap. 80 extension of the limitation period in case of disability is provided for. The law provides for an action to be brought at any time before the expiration of six years before the date when the person ceased to be under the disability. Under Order 7 Rule 6 CPR, a Plaintiff relying on an exemption to limitation is required to show the grounds upon which the exemption from that law is claimed. It was argued by Counsel for the Applicant, and we agree with this proposition that the pleadings must show the grounds of exemption.<sup>2</sup> In the case of **Gastapo Company Limited v Attorney General**,<sup>3</sup> the Honourable Mr. Justice Mubiru observes that Order 7 Rule 6 CPR requires that where a suit is instituted after the expiration of the period prescribed by the law of limitation, the plaint should show the grounds upon which the exemption from the law is claimed.

<sup>2</sup> See *Uganda Railways Corporation v Ekwuru D.O and 5104 Others*

<sup>3</sup> H.C.C.S No 030 of 2011



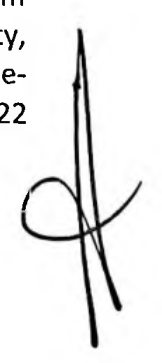
[16] Counsel for the Respondent contends that the affidavit in reply makes the case of an affective bipolar disorder having been a disability within the meaning of Section 21 of the Limitation Act Cap. 80. Counsel for the Applicant argued on the authority of the *Aroga* case (*supra*) that time had started running and the subsequent disability did not stop time from running. Counsel for the Applicant also argued that the Respondent did not plead disability in the memorandum of claim. In our view, the requirement to plead disability is couched in mandatory terms under the provisions of Order 7 Rule 6 CPR. In effect, the grounds of exemption must be shown in the plaint, and if they are not shown, then the plaint must be rejected.

[17] We have perused the memorandum of claim, which would be the equivalent of the plaint. It was lodged in the registry of this Court on the 13<sup>th</sup> day of December 2022 under Labour Dispute Reference No. 310 of 2022. In trying to explain the delay in filing the claim, in paragraph 17 of the memorandum of claim, it was pleaded as follows;

*"THAT the said acquisition and liquidation process delayed my filing this complaint because didn't know who in process was liable for my claims until Quest Holdings Ltd wrote to me indicating that the 2<sup>nd</sup> respondent inherited the loan and other liabilities of my former employer"*

[18] This quotation in paragraph 17 of the memorandum of claim is at polar opposites with the affidavit in reply filed by the Respondent on the 28<sup>th</sup> day of September 2023. It is in the affidavit that the Respondent first introduces the medical condition of bipolar affective disorder. It is not in the memorandum of claim, which places the Respondent in two difficulties: first, a careful perusal of the memorandum of claim indicates that the claim arose on the 12<sup>th</sup> day of May 2008, and the complaint was only filed thirteen years and three months after termination. Secondly, the medical condition is introduced in the affidavit in reply for the first time. It is not entirely believable or sufficiently supported. In keeping with the dicta in the cases cited above, the Respondent did not plead disability in the memorandum of claim, and as such, it should be and is rejected.

[19] In the circumstances and for the reasons above, this application succeeds because we find that the Respondent's cause is barred by Section 3(1) of the Limitation Act Cap.80, and no ground of exemption is pleaded in the memorandum of claim. It would, therefore, be moot and unnecessary to consider whether the claim discloses a cause of action or whether it is sustainable against a non-existent party, as the Respondent is precluded from bringing the claim. It is statute and time-barred. The application succeeds, and Labour Dispute Reference No. 310 of 2022



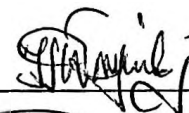

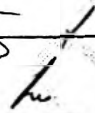
stands dismissed. As our dicta is that costs do not necessarily follow the event in employment disputes, there shall be no order for costs.

Signed in Chambers at Kampala this 28<sup>th</sup> day of November 2023

  
Anthony Wabwire Musana,  
Judge, Industrial Court

**The Panelists Agree**

1. Hon. Jimmy Musimbi,
2. Hon. Robina Kagoye &
3. Hon. Can Amos Lapenga.

28<sup>th</sup> November 2023  
9.41 a.m.

**Appearances**

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|----|----------------------------|---|
| 1. | <b>For the Applicant :</b> | Mr. Kenneth Kiapi holding brief for<br>Gulam Hussein for Applicants.<br>No representative of Applicants in Court. |
| 2. | <b>For the Respondent:</b> | Mr. Charles Oundo<br>Respondent in Court.   |
|    | <b>Court Clerk :</b>       | Mr. Amos Karugaba.  |

<b>Mr. Charles Oundo :</b>	Matter for ruling, and we are ready to receive it.
<b>Mr. Kenneth Kiapi :</b>	That is the position.
<b>Court</b>	Ruling delivered in open Court.

  
Anthony Wabwire Musana,  
Judges, Industrial Court.