



THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
MISCELLANEOUS APPLICATION NO. 019 OF 2024
LABOUR DISPUTE REFERENCE NO. 33 OF 2020
(Arising from NAKAWA HIGH COURT CIVIL SUIT NO. 237 of 2013)

FREDERICK MUSISI KABUYE.....**APPLICANT**

VERSUS

AFRICA 2000 NETWORK UGANDA & 12 ORS.....**RESPONDENT**

Before:

The Hon. Justice Anthony Wabwire Musana

Panelists:

1. Hon. Adrine Namara,
2. Hon. Susan Nabirye &
3. Hon. Michael Matovu.

Representation:

1. *Ms. Rebecca Nansukusa of M/s. Makeera & Co. Advocates for the Claimant*
2. *Mr. Henry Busobozi of M/s. H & G Advocates for the Respondent*

RULING

Introduction

- [1] This ruling concerns an application for leave to amend pleadings brought under Section 98 Civil Procedure Act Cap 71(*from now C.P.A.*), Section 33 Judicature Act Cap 13(*from now J.A.*) and Order 6 rr19 and 21 Civil Procedure Rules S.I. 71-1(*from now C.P.R.*).
- [2] In his supporting affidavit, the Applicant avers that most of the prayers sought in the original plaint¹HCCS NO. 237 of 2013 have been overtaken by events. He now seeks to include prayers for compensation for wrongful dismissal, payment in lieu of notice, severance pay, and interest since the original prayers are not enforceable due to the passage of time.

¹ In Nakawa HCCS No. 237 of 2013, a prayer was for reinstatement.

- [3] The Respondent opposes the claim. In the affidavit in reply, Patrick K. Byamukama suggests that the proposed amendments are statute-barred and, if allowed, would deprive the Respondent of the defence of limitation.
- [4] The Applicant filed his written submissions on 27th February 2024. Strangely, Counsel for the Respondent filed its submissions on 12th March 2024, after the Court had held its coram. Our Court filing directions are driven by statute. Under Section 14(1) of the Labour Disputes(Arbitration and Settlement) (Amendment) Act 2021, the Industrial Court's decisions are reached first by consensus. This means that filing submissions after the coram date does not permit a discussion by the panel. It is a practice that is to be discouraged.

Applicant's submissions

- [5] Ms. Nansukusa, appearing for the Claimant, submitted that the Applicant was not introducing a new cause of action but simply substituting his prayers. Counsel cited **Dr. James Bunoti v A.A.R. Healthcare Uganda Ltd & Anor**² for the principle considerations in a grant of leave to amend pleadings, contending that this application falls within the parameters for amendment.

Respondent's submissions

- [6] Citing Section 3(1) of the Limitation Act Cap. 80, it was submitted for the Respondent that the Applicant's prayers under the proposed amendment are founded on the employment contract. He ought to have sought the amendments before 29th August 2019. His failure to do so renders the proposed remedies statute barred.

Determination

- [7] The question this Court should consider is whether the Applicant should be granted leave to amend his memorandum of claim. Order 6 rule 19 C.P.R. provides that the Court may, at any stage of the proceedings, allow either party to alter or amend his or her pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.
- [8] The principle considerations for the amendment of pleadings, which we summarized in Bunoti(ibid) are very well-articulated.³ These are that (i) amendments are allowed so that the courts can determine the real questions in controversy and administer justice without undue regard to technicalities;(ii) the amendment should not occasion injustice to the opposite party; (iii) it should be granted if it is in the interests of justice and to avoid multiplicity of suits, (iv) the application should be made in good faith, (v) no amendments should be allowed where any law expressly or impliedly prohibits it

² LDMA No. 140 of 2022

³ See *Gasu Transport Services (Bus) Ltd vs Obene* (1990-1994) E.A. 88, *Mulwooza & Brothers Ltd vs Shah & Co. Ltd*, SCCA No. 26 of 2010; and *Nicholas Serunkuma Ssewagudde & 2 Others vs Namasole Namusoke Namatovu Veronica* HCMA No. 1307 of 2016

and (vi) the Court shall not exercise its discretion to allow an amendment which has the effect of substituting one distinctive cause of action for another.⁴

- [9] Juxtaposed against the original memorandum of claim filed in Court on 3rd March 2020, the draft amended memorandum of claim attached to the Applicant's supporting affidavit makes three substitutions in paragraph 4 of the memorandum. It introduces a prayer for compensation for wrongful dismissal, payment in lieu of notice, and severance pay in place of a temporary injunction restraining the 2nd to 12th Respondents from making decisions on behalf of the 1st Respondent and an order for reinstatement. These prayers must be examined against the principle considerations in paragraph [8] above.
- [10] Counsel for the Respondent argues that the proposed prayers are statute-barred. As observed in paragraph [8] above, the objection points to the consideration that no amendments should be allowed where any law expressly or impliedly prohibits it.
- [11] Limitation is an absolute bar, an absolute defence. It collapses a claim. In **Madhvani International S.A. vs A.G.**⁵ it was held that a statute of limitation is strict in nature and inflexible. In the application of the law of limitation to employment disputes, this Court, in **Auaram Avivi v Sbi International Holdings AG Uganda**⁶ observed that actions may be brought before a labour officer at any time before the expiry of six years from the date the cause of action accrued.⁷ (See also **Juliet Kyesimira vs Stanbic Bank Ltd**⁸) In computing time for infringement of employment rights, the cut-off date is, therefore, six years before filing the initial complaint at the labour office. Thus, in the matter before us, the Applicant's cause of action began on 13th August 2013 when he was suspended. He was entitled to file his complaint before the labour officer or this Court by the 13th day of August 2019. Any action brought after that date would be statutorily barred.
- [12] We find that the prayers sought by the Applicant are statutorily barred. The application for amendment of the memorandum of claim fails. It is the spirit of the law of limitation that they are "*statutes of repose.*" According to the Honourable Justice Cheborion Barishaki J. A in **Jamada Luzinda v Attorney General**, this expression⁹ means that once a matter is statute-barred, it is always statute-barred.
- [13] It is essential to point out that exceptions exist to the inflexible rule on limitation. The Supreme Court of Uganda has provided very reliable and binding guidance. In **Nyeko Smith and two others v Attorney General**¹⁰ the Honourable Justice Jotham Tumwesigye J.S.C observed that Section 5 of the Limitation Act provides for an extension of the period in which an action in case of disability may be brought. It is extended to any time before the expiration of twelve months from when the person

⁴ Per Wamala J in **Okello Wilbert v Obel Ronald** (Civil Miscellaneous Application No. 97 of 2020) [2021] UGCommC 9 (26th March 2021)6

⁵ Per Kitumba J.S.C in S.C.C.A No. 23 of 2020

⁶ LDMA 208 of 2021

⁷ See LDR 081/2017 Kizza Gerald & Anor Vs Camusat U Ltd and LDR 139/2019 Akoko Joseph vs Uganda Manufacturers Association(Both unreported)

⁸ Labour Dispute Reference 103 of 2017

⁹ C.A.C. A No. 090 of 2012

¹⁰ LDR 14 of 2021(Unreported)

seeking an exemption ceases to be under a disability. In Nyeko, the Plaintiffs suggested they had been in constant dialogue with the Government of Uganda and under war conditions. The Court did not agree that these were grounds for exemption. In the matter before us, the Applicant has not pleaded any grounds of disability to benefit from the exemption.

- [14] We find that the prayers sought are barred by limitation and no grounds for exemption have been pleaded. Accordingly, this application is dismissed with no order as to costs.


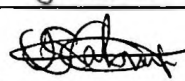
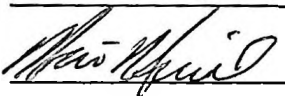
It is so ordered.

Delivered at Kampala this 15th day of March 2024.

Anthony Warwire Musana,
Judge, Industrial Court

The Panelists agree;

1. Hon. Adrine Namara
2. Hon. Suzan Nabirye
3. Hon. Michael Matovu

15th March 2024

10.56 a.m.

Appearances

1. Ms. Rebecca Nansukusa
2. Mr. Ambrose Naleba &
Dr. Christopher Kyeswa - CEO

For the Applicant

For the 1st Respondent

Court Clerk:

Mr. Samuel Mukiza.

Mr. Naleba:

Matter for ruling, and we are ready to receive it.

Court:

Ruling delivered in open Court.

Anthony Warwire Musana,
Judge, Industrial Court