

**THE REPUBLIC OF UGANDA  
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA  
LABOUR DISPUTE REFERENCE NO.103 OF 2017  
(ARISING FROM MGLSD NO. 426/2017)**

**JULIET KYESIMIRA.....CLAIMANT**

**AND**

**STANBIC BANK (U) LTD.....RESPONDENT**

**BEFORE**

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

**PANELISTS**

1. Mr. Adrine Namara
2. Ms. Suzan Nabirye
3. Mr. Micheal Matovu

**RULING**

This ruling arises from a preliminary objection raised by counsel for the respondent. On 21/11/2018 Mr. Zere J. appeared for the respondent and M/s. Bukenya N. appeared for the claimant. Ms. Bukenya having not been involved in the case before, Mr. Zere informed court he had served the previous counsel with submissions on the instant point of law and it was agreed that M/s. Bukenya would be served by the next day. This court ordered Ms. Bukenya to file replies on 07/1/2019 so that the ruling would be delivered on 25/1/2019.

Subsequently on 17/1/2019 M/s. Platform for Labour /action for which organization Ms. Bukenya works filed a notice of withdrawal. This was too late as this court had started working on this ruling.

The background is that the claimant by a memorandum of claim filed in this court on 05/09/2017 claimed that on 17/08/2005 she was summarily terminated from employment without a hearing or notice.

In the submission of Mr. J. Zere, the memorandum of claim was filed out time and it was barred by statute and therefore it should be rejected. He relied on **Order 7 rule 11(d) of the Civil Procedure Rules** and **Section 3(11)(a) of the Limitation Act**. He also cited various case authorities including **Madhvani International S.A Vs Attorney General SCCA Appeal 23/2010**

**07 rule 11(d) of CPR** provides

**“Rejection of plaint.**

**The plaint shall be rejected in the following cases**

- (a) ....
- (b) ...
- (c) ...
- (d) **Where the suit appears from the statement in the plaint to be barred by any law.**

**Section 3(1)a of the Limitation Act** provides

**“3 Limitation of Actions of contract and tort in certain other actions.**

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

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

We form the opinion that all employment contracts are contracts ordinarily governed by the above **Section of the Limitation Act**. This is despite **Section 71(2) of the Employment Act** that provides for a limitation of 3 months from the day of dismissal once the labour complaint is lodged to the labour officer. Even then, the Employment Act gives the labour officer a discretion to entertain the dispute filed outside 3 months if he/ she is satisfied with the cause of the delay. We form the opinion that the discretion of the labour officer cannot go beyond the limits provided under the Limitation Act. We have no doubt that the claimant, according to her pleadings, was terminated on 17/08/2005 but she filed her memorandum of claim on 05/09/2017, 12 years later on.

We have searched the court record and we have failed to find any evidence that the matter was ever handled by a labour officer as provided for under **Section 71 of the Employment Act**. Had there been such evidence this court would have verified the time when the claimant first made a complaint to the labour officer and depending on how long the matter stayed with the labour officer then this court would establish whether or not the date of filing of the memorandum of claim in this Court or the date of filing in the labour office would be the relevant date that commenced the proceedings in the court system.

In the absence of this evidence, it must be presumed that somehow the claimant lodged the case in this court as if it was a court of first instance although we take note that some documents on the file state that the claim originates from the **MGLSD (Ministry of Gender, Labour and Social Development) No. 426/2017**.

This court can only entertain referrals as provided under **Section 8 of the Labour Disputes (Arbitration and Settlement) Act, 2006**. This court is not a first instance court. It is a reference court.

As already noted the claim was lodged in this court after 12 years of dismissal of the claimant. We agree with the respondent that this offends **order 7rr 11 of the CPR and as was held in Madhivani International Vs Attorney General** (supra) the Limitation Act is stuck in its nature and inflexible and is not concerned with merits of the case. Accordingly the memorandum of claim is hereby rejected and therefore dismissed. No order as to costs.

**Signed by:**

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

**Panelists**

1. Mr. Adrine Namara .....
2. Ms. Suzan Nabirye .....
3. Mr. Michael Matovu.....

Date: 25/01/2019