

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT KAMPALA  
HCT-00-CV-CS-0405-2006**

**JUSTUS KALEBO..... PLAINTIFF**

**VERSUS**

**UGANDA REVENUE AUTHORITY ::::::::::::::::::::DEFENDANT**

**BEFORE: THE HONOURABLE MR. JUSTICE YOROKAMU BAMWINE**

**RULING:**

The Plaintiff's claim against the defendant is for special, general and exemplary damages for breach of his contract of service, failure to pay him his salary arrears, refusal to reinstate him after acquittal and maliciously causing his prosecution and generally defaming him.

The defendant denied the claim and pleaded in paragraph 9 of its Written Statement of Defence that it would raise a preliminary point of law that the suit is bad in law, misconceived and should be dismissed with costs. It did not elaborate. When the suit came up for hearing, however, learned Counsel for the defendant Mr. Charles Ouma, moved court to hold that the suit is statute barred. His argument is premised on the ground that the suit is for a claim against the defendant for breach of contract of service of the plaintiff; failure to pay him salary arrears; refusal to reinstate him after the acquittal; and, maliciously causing his prosecution and generally defaming him. He has accordingly categorized these actions into:

- (a). breach of contract.
- (b). actions founded on tort

It is Counsel's view that the following actions are torts:

- (i). refusal to reinstate after acquittal;
- (ii). maliciously causing prosecution; and
- (iii). defamation

Learned Counsel for the plaintiff, Dr. Barya, has submitted that refusal to reinstate the plaintiff after acquittal is not a tort but simply part and parcel of the breach of employment contract complained about.

I agree.

The reinstatement after acquittal must be construed in the context of the contract of employment. The contract of employment either entitled him to be reinstated or it did not. This is a matter of contract and evidence.

Counsel has also submitted that the issue of defamation is not raised substantively and was not part of the issues framed for determination. Other than its mention in paragraph 3 of the plaintiff, there is no mention of it elsewhere and there is no prayer for judgment on it. Counsel's submission is upheld.

Learned Counsel has also submitted that the issue of maliciously causing the prosecution of the plaintiff is also not a substantive issue as malicious prosecution would be against the Government. That it was not raised as a substantive issue for determination. That nevertheless the way the plaintiff was treated could be used to determine general damages in case the issue of breach of contract of service is resolved in his favour.

This appears to be a change of heart on the part of the plaintiff as malicious prosecution is substantially pleaded in paragraph 4 (b) of the plaint and there is a prayer for relief on it.

I now turn to the law.

The Civil Procedure and Limitation (Miscellaneous Provisions) Act (Cap.72) is clear about limitation on actions founded on tort. Section 3 (1) provides:

***“(1) No action founded on tort shall be brought against:***

***(a) the Government***

***(b) a local authority; or***

***(c) a scheduled corporation,***

***after the expiration of two years from the date on which the cause of action arose”***

***(emphasis mine).***

From the evidence, the plaintiff was charged with the offence of causing financial loss in 2000. He was acquitted of the offence in December, 2003. It is submitted by learned Counsel for the defendant that much as the defendant denies maliciously prosecuting him, even if it did, the cause of action arose in 2000 and the suit was filed in 2006, 5 years after the cause action arose.

I am of the view that whether the cause of action arose in August 2000 upon his arrest or December 2003 upon his acquittal, the two year period lapsed before suit was filed. Given that no ground of disability is pleaded in the plaint, even if the defendant were to be held accountable for malicious prosecution and not the Attorney General, the filing was clearly out of time and therefore time. The claim is time barred. Mr.Ouma’s argument on this point would succeed and it succeeds.

Turning now to breach of contract of employment, the Civil Procedure and Limitation (Miscellaneous Provisions) Act (Cap. 72) provides in Section 3 (2) thereof that no action founded on contract shall be brought against the government or against a local authority after expiration of ***three*** years from the date on which the cause of action arose. The defendant is neither Government nor a local authority. It is a Scheduled Corporation. In case of contracts therefore the general law of limitation applies. Under the Limitation Act (Cap. 80), Section 3 (1) thereof, actions based on contract cannot be brought after the expiration of six years from the date on which the cause of action arose.

The plaintiff pleads in paragraph 4 (d) that since the arrest of the plaintiff in August 2000, the defendant has refused to pay the plaintiff his salary, salary arrears, allowances and/or any

other benefits under the terms of his employment, implying that the cause of action arose then, that is, August 2000.

The suit was filed on 29/06/2006, a period of less than 6 years from the date when the cause of action arose. In these circumstances, the issue of limitation does not arise.

Mr. Ouma submitted that in this particular case the period of limitation is reduced to **three** years by virtue of the proviso to Section 3 (1) (of Cap. 89). It reads:

***“except that in the case of actions for damages for negligence, nuisance or breach of duty (whether the duty exists by virtue of a contract or provision made by or under an enactment or independently of any such contract or any such provision) where the damages claimed by the plaintiff for the negligence, nuisance or breach of duty consist of or include damages, in respect of personal injuries to any person, this subsection shall have effect as if the reference to six years there were substituted a reference to three years.”***

Dr. Barya’s take on this is that the proviso was intended to deal with issues of damages claimed ***“in respect of personal injuries to person.”*** That it is not a proviso limiting time for all torts, least of all does it concern contractual obligations.

I have addressed my mind to this issue. I am inclined to learned Counsel’s view that the proviso governs actions of damages for personal injury. The plaintiff’s suit is not any such action. The limitation period that is relevant herein is the years under S. 3 (1) (a) of the Act. Accordingly the action for breach of contract is not statute-barred.

In the event that I am wrong on this point, which I doubt, it is a pleaded fact (by virtue of Exh. P4’s attachment to the plaint) that on 13/08/2004 the defendant wrote to the plaintiff, through his Counsel M/s Oboth - Okumu & Co. Advocates, acknowledging receipt of the plaintiff’s complaint as to non-payment. In that letter, Moses Kazibwe - Kawumi, Assistant Commissioner - Litigation informed the plaintiff that the defendant was studying the issues raised in the letter and the final decision/position on them would be communicated to him at the earliest. At this point, the defendant did not deny the claim or say that the plaintiff had been dismissed. Counsel for the defendant is on record as stating that the letter of dismissal

was written but not delivered to the plaintiff. From this letter, the status of the plaintiff being an employee of the defendant would obtain till the defendant would communicate to him the final decision on the matter. From the pleadings, this was never done, hence the suit. In these circumstances, it would be wrong to hold that the plaintiff's action was time barred. Until his services would be finally terminated, they would still subsist and his claims for salary arrears would be continuous. The action is, therefore, not time barred.

In the final result, the preliminary objection raised by the defendant's Counsel is allowed in part. The tortious action of malicious prosecution is struck out under 0.7 r. 11 (d) of the Civil Procedure Rules. The objection on breach of contract of employment is over ruled. A date shall be set for the determination of the remaining issues on merit.

Costs shall abide the outcome of the suit.

Orders accordingly.

**Yorokamu Bamwine**

**JUDGE**

**22/12/ 2008**