THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL DIVISION

CIVIL SUIT No. 201 OF 2012

1. **DR. ARINAITWE RAPAEL**
2. **BEINEBYABO ADRIAN**
3. **OCHAN LIVINGSTONE**
4. **MUGABE JAMES**
5. **MUCUNGUZI BURUNGO ERIC**
6. **MASEMBE KAJJUBI DANIEL**
7. **MUGISHA SAM**
8. **KABERA MUSIGIRE STEPHEN**
9. **BWIRE OROTO PETER**
10. **NSEREKO MIKE**
11. **RUTAMWEBWA ENID MOLLY**
12. **JUSTINE NAGUJJA**
13. **MARY KAMUTERA**
14. **MUGEMA MARY**
15. **TAAKA MARY FELICITAS**
16. **KATUSHABE FLORENCE**
17. **KATUNGI CHARLES**
18. **KAGGWE SEMION**
19. **LETI ELLY**
20. **KABIBI ELIAS**
21. **OTIM PETER J.**
22. **DRAVILE BEN**
23. **MUGABE LAWRENCE**
24. **BERIMBIRA FRED**
25. **MUWANGUZI PETER**
26. **KAMYA FRANCIS**
27. **LUKWAGO ABDALAH**
28. **MUROKOZI EMMANUEL**
29. **ENDEKU NASON**
30. **MORIS OMVIA MONDAY**
31. **MAGUMBA FREDRICK**
32. **JUSTUS PETER OTIM**
33. **KATABAZI WILLIAM**
34. **BUSINGYE ANDREW**

:::::::::::::::::: PLAINTIFFS

35. MUYINDA MOHAMED
36. MAKURU FRANCIS SEEZI
37. TURYAMUREEBA STEVEN
38. RWATANGABO ELIFAZ

VERSUS

THE ATTORNEY GENERAL :: DEFENDANT

BEFORE: HON. MR. JUSTICE STEPHEN MUSOTA

RULING

Thirty eight plaintiffs represented by Kampala Associates Advocates filed this suit against the Attorney General for special damages amounting to 686,972,828.8/= being emoluments due and owing to the plaintiffs and arising out of a breach of the plaintiffs' contracts of employment with the Inspector General of Government.

The plaintiffs also claimed for general damages for breach of contract and defamation as well as compensation for loss of their employment for which the defendant is vicariously liable to the tune of shs.3bn/= and interest on the claims at the rate of 25%. The plaintiffs also claimed for remittance of all the plaintiffs' outstanding National Social Security Fund contributions to the said fund and costs of the suit.

The defendant denied liability and avers that the plaintiffs are not entitled to either special or general damages as there was no subsisting or existing contracts amongst the parties that were breached by the Inspectorate of Government to call for vicarious

liability from the defendant. The defendant prayed that the suit be dismissed with costs.

At the commencement of the hearing of this suit, Mr. Adrole (PSA) for the defendant raised a preliminary point of law that the plaint in this case be rejected under order 7 rule 11 (d) of the Civil Procedure Rules and the suit be dismissed with costs. Learned counsel premised his objection on paragraph 6 of the plaint where it is revealed that the cause of action is a result of a contract of employment with the Inspector General of Government. That section 3 (2) of the Civil Procedure and Limitation (Misc. Provisions) Act states that no action founded on contract shall be brought against government or local government after 3 years from the date the cause of action arose. Learned counsel revealed that this cause was first filed in 2007 as Civil Suit No. 349/2007. That in that suit, the parties were the same plaintiffs against the Inspector General of Government. They filed MA 221/2011 which was heard and disposed of by Mwangusya J then. The said application was for orders that the name of Inspector General of Government be struck off as defendant and be replaced by the Attorney General.

Mr. Adrole further explained that in the Judge's ruling at P.3, it was held that the only option available was to withdraw against the Inspector General of Government and file another suit if the action would not be time barred. That this was done and the current Civil Suit No.201/2012 was filed. That according to paragraph 7 (g) of the plaint, it is stated that the plaintiffs' termination was on 28/3/2006. That is

when the cause of action arose. That this renders the present suit time barred. Learned counsel referred to **MA 42/2008 (CA) Muhamed B. Kasasa Vs Jasphar Buyonga Sirasi Bwogi** wherein the Court of Appeal held *inter alia* that statutes of limitation are in their nature strict and inflexible enactment not concerned with merits.

Learned counsel urged this court to strictly interpret section 3 (2) of the Civil Procedure and Limitation (Misc. Provisions) Act and find that this suit is time barred, since the plaintiffs have not pleaded disability. That the suit be dismissed with costs.

In reply Mr. Jet Tumwebaze learned counsel for the plaintiffs submitted that the objection by the defendant be overruled with costs because the cause of action was on 28/3/2006 after the plaintiffs' contracts of employment with the Inspector General of Government were terminated. That the plaintiffs filed CS No. 349/2007 the following year 2007 against the Inspector General of Government who was the employer. That by that time there was a debate whether the Inspector General of Government can be sued or not and many suits were pending. That position was harmonized in 2010 by the case of **Gordon Sentiba & 2 ors Vs IGG SCCA 06/2008** which held that the Inspector General of Government cannot be sued. That only the Attorney General can be sued under Article 119.

Mr. Tumwebaze further submitted that all along the suit by the plaintiffs was pending. That when the Supreme Court decided on the

locus standi of the Inspector General of Government, there was an attempt to substitute the Inspector General of Government with the Attorney General but the High Court refused the prayer prompting the plaintiff to withdraw the suit in 2012. That when the plaintiffs filed the present suit, they pleaded disability. That this objection be overruled and the suit be heard on merit and the injustice meted out to the plaintiffs be remedied.

In rejoinder, Mr. Adrole submitted that the Attorney General was served with Notice of Intended Suit and in that notice, the suit was clearly against the Attorney General. Therefore the reasons for filing against the Inspector General of Government are not satisfactory. That Article 250 of the Constitution is very clear and by 2006 one could not sue the Inspector General of Government. That the lawyers knew this and the argument that they did not know who to sue is a lame excuse which should not be accepted and ignorance of the law is no defence. Regarding the plea of disability, learned counsel submitted that it is a cover up because the position of the law was known to the plaintiffs. That this plea be rejected for not being genuine. That the suit be dismissed with costs.

I have considered the submissions by respective counsel regarding the objection by Mr. Adrole learned counsel for the defendant. I have also considered the law applicable and the authorities cited for my assistance.

It is undisputed that the plaintiffs' cause of action arose on 23rd March 2006 when their respective contracts with the IGG were terminated. The plaintiffs filed civil suit 349 of 2007 the following year after serving the Attorney General the requisite statutory notice. The plaintiffs' cause of action is therefore hinged on breach of contract of service. At the time there was uncertainty whether the IGG could be sued in its own right and this uncertainty was resolved by the Supreme Court in case of **Gordon Sentiba Vs IGG SCCA 06 of 2008.** In which it was held that the IGG could not be sued. That only the Attorney General could be sued under Article 119 of the Constitution. Armed with that decision the plaintiffs filed in this court Misc. Application 221 of 2011 seeking substitution of the IGG by the Attorney General as defendant. This request was refused and the parties were advised to withdraw the case and file a fresh case if they were within time. This was done and Civil Suit 349 of 2007 was withdrawn and the current suit was filed.

As rightly submitted by Mr. Adrole, the cause of action is based on contract of employment. It follows that the determination of whether or not the suit is time barred is governed by S. 3(2) of the Civil Procedure and Limitation (Miscellaneous Provisions) Act Cap 72 which provides that:

> "***No action founded on contract shall be brought against the government or against a local authority after the expiration of three years from the date on which the cause of action arose".***

In the instant case, the cause of action arose on 28th March 2006 after the plaintiffs' contracts of employment with IGG were terminated. They filed Civil Suit 349 of 2007 in time against the IGG who, unfortunately happened to be a wrong party because the IGG had no capacity to be sued. When the plaintiffs sought to substitute the IGG with the Attorney general, the request was refused. They accordingly withdrew Civil Suit 349 of 2007 marking the end of that suit.

Thereafter, the plaintiffs filed the present suit on 28th June 2012 over five years since the cause of action arose which was contrary to the law of limitation as provided in S. 3(2) of the Civil Procedure and Limitation (Miscellaneous Provisions) Act. There is no way this court can salvage the plaintiffs' suit in view of the strict law of limitation.

It is trite law that statutes of limitation are in their nature strict and inflexible enactments. Their overriding purpose is interest *reipublical ut sit finis litum* meaning that litigation shall be automatically stifled after a fixed length of time irrespective of the merits of the particular case. See: ***An Application By Mustapha Ramathan CAl 25 of 1996.***

The ruthlessness of the law of limitation is explained in ***Hilton Vs Sulton Steam Laundry [1946] 1 KB 61,81***, per Lord Greene MR where he said:

> "***But the statute of limitation is not concerned with merits, once the axe falls, it falls, and a defendant who is***

fortunate enough to have acquired the benefit of the statute of limitation is entitled of course, to insist on his strict rights."

I will find that the new suit filed in 2012 was statute barred and the defendant has a right to enforce its benefit under the law.

Learned counsel for the plaintiff submitted that they pleaded disability because there was a debate whether the IGG could be sued or not. On this plea, I agree with the submission by Mr. Adrole that that plea is not available to the plaintiffs. It is not disputed that the plaintiffs served the Attorney General with notice of intended suit and in that notice the suit was clearly against the Attorney General. Therefore as far back as that time, the plaintiffs knew that they had to sue the learned Attorney General. It is not explained why they turned around and instead sued the IGG. By 2012, Article 250 of the constitution was in force. By 2006, one could not sue the IGG and learned counsel for the plaintiffs ought to have known this. Arguing that they did not know who to sue is a lame excuse which cannot be accepted by court. In any case ignorance of the law especially by an advocate is no defence.

I agree with Mr. Adrole that the plea of disability is a mere cover up because the law was known to the plaintiffs. I will reject this plea because it does not show any reasonable ground for the plaintiffs to benefit from any exemption on grounds of disability. Deciding otherwise would be to overstretch the plea of disability.

Consequently I will uphold the preliminary objection by Mr. Adrole learned counsel for the defendant and reject this plaint under O. 7 r 11(d) of the Civil Procedure Rules. The suit is dismissed with costs.

Stephen Musota

J U D G E

07.10.2014.