

# THE REPUBLIC OF UGANDA

## IN THE SUPREME COURT OF UGANDA AT KAMPALA

(Coram: Odoki, CJ., B.M Katureebe, C.N.B Kitumba, J. Tumwesigye, and E.M. Kisaakye, JJSC)

### CIVIL APPEAL NO. 02 OF 2011

#### BETWEEN

1. CHARLES LUBOWA

2. W.N.E. KISAMBIRA MASABA

3. Y.B. KAGWA ..... APPELLANTS

4. E.J. BAMPATA

5. J.C. KIGULI MAYANJA

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#### AND

MAKERERE UNIVERSITY ..... RESPONDENT

*[Appeal from the Judgment of the Court of Appeal, (AEN Mpagi-Bahigeine.,DCJ, A. Twinomujuni, A. S. Nshimye, JJA) Dated 1<sup>st</sup> day of February 2011 arising from Civil Appeal No. 11 of 2008].*

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### **JUDGMENT OF KATUREEBE. JSC.**

The appellants were staff of the respondent. They filed a suit in the High Court against the respondent alleging that the respondent had introduced new salary scales which had the effect of placing them in a lower salary scale than the one they were in before, and thereby prejudicing them in their employment terms and benefits. At the trial in the High Court the respondent raised a preliminary point of law, namely, that the suit was time- barred by virtue of the provisions of the Limitation Act.

The High Court upheld the preliminary objection and dismissed the suit. The appellants appealed to the Court of Appeal which upheld the decision of the High Court and dismissed the appeal; hence this appeal.

The appellants have filed, in this Court, 4 grounds of appeal as follows

- 10            ***“1. That the learned Justices of the Court of Appeal erred  
in law and fact when they held that the appellants<sup>9</sup>  
suit was time-barred.***
  
- 15            ***2. That the learned Justices of the Court of Appeal erred  
in law and in fact when they failed to appreciate and  
consider the effect on accrual of the cause of action  
each time the appellants were removed from one salary  
scale to another till the last endeavour; and further  
that they also failed to appreciate and consider the  
effect of the respondent’s action of paying monthly  
salaries and allowances to the appellants under the  
20            *M6 salary scale and not under M9 salary scale by the  
time of filing the suit.****
  
- 25            ***3. Alternatively, the Court below erred in law and in fact  
when it failed to find that the respondent’s conduct  
and actions made the appellants believe that the***

***respondent's rights under the Limitation Act had been waived and would not be insisted on.***

***4. That the learned Justices of Appeal erred in law and fact when they failed to consider the legal authorities cited by the appellants - which authorities support the appellants' contention in this case."***

When this appeal came up for hearing in this Court, the appellants were represented by Mr. G.S. Lule, S.C together with Mr. Jimmy Walabyeki.

Mr. Andrew Kabombo represented the respondent. Although both counsel had filed written submissions, we allowed them to orally elucidate on a number of points in their written submissions.

Counsel for the appellants argued grounds 1 and 2 together, and then grounds 3 and 4 also together. Counsel for the respondents responded likewise. I also intend to deal with the appeal likewise.

On grounds 1 and 2, counsel for the appellants contended that the appellants were employed as Chief Technicians by the respondent under U2 Salary Scale. On conversion to the M Scales, they had been wrongly placed on the scale M9, which, to

them, was tantamount to a demotion. Counsel further stated that the appellants brought this to the attention of the respondent who conceded that the scale M9 was inadequate and moved them first to M7 and then to M6. Later the Vice chancellor of the respondent informed them that they had indeed been placed on M5 and that formal communication would follow later. This was never done and finally in November 2001, the respondent formally informed the appellants that they would be kept at M6.

Counsel submitted that as pleaded in paragraph 17 of the plaint, the cause of action arose in November 2001 when the respondent made the final decision to keep the appellants at M6. Counsel relied on various correspondences and minutes of meetings to show that the issue continued to be a subject of discussion

between the parties until final decision was made. He contended that each time the appellants were shifted from one scale to another; it constituted a new contract of employment under that new salary scale. To counsel, the last contract had been that when the Vice Chancellor had confirmed that they were put at M5 scale which only awaited formal communication. This was in

1994. To counsel, this contract was breached on 22<sup>nd</sup> November 2001 when the University Council finally made the decision to keep them at M6. Counsel contended therefore that the cause of action only arose on that date because that was when the breach occurred. Therefore, the filing of the suit on 30<sup>th</sup> April 2004 was within time. Therefore, counsel argued, the suit was not time barred and the Courts below were wrong to find that the suit was time barred under the Limitation Act, and rejecting the plaint under Order 7 Rule 2 of the Civil Procedure Rules.

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Furthermore, counsel contended that the restructuring exercise of the respondent's staff was carried out over a long period of time between 1983 when the circular was first published until 2001 when the final decision was made. Counsel argued that in so far as the suit was based on the cause of action arising from payment of salaries to the appellants on the M6 salary scale between 1994 and 2001 instead of the M5 salary scale, it constituted a continuing breach of contract. Counsel cited the American case of ***Gillette -Vs- Turker, 65 N.E. 865 (Ohio 1902)*** on the issue of continuing breach of contract. Alternatively counsel argued that each time the appellants were paid under

the M7 or M6 scale, it amounted to part payment under M5 which they claimed. Therefore time began to run each time a payment was made to the appellants on those scale.

Furthermore, counsel contended that the above payments constituted an acknowledgment of the appellant's claim to be put on M5 scale.

With respect to grounds 3 and 4 which were alternative grounds, counsel argued that the conduct of the respondent throughout 10 the long period of protracted negotiations was indicative of the fact that the final decision had not yet been made. Counsel cited **CHITTY ON CONTRACTS** 28<sup>th</sup> Edition Vol. 1 at paragraph 2 - 025 on the subject of ***“continuing negotiations***

15 Counsel further contended that by the conduct of the respondent and its officers, the respondent had waived the necessity to raise the issue of limitation of action since they had represented to the appellants that they had been placed on M5 as requested and that all that remained was formalising the matter. The appellants had a legitimate expectation that the respondent would live up to its commitment. To counsel this had also meant

that the respondents were estopped from raising the defence of limitation. In that regard counsel cited **KAMMINS BALLROOMS Co. LTD -Vs- ZENITH INVESTMENTS (TORQWAY) LTD (1970) 2 ALL E.R. 871 (HL)** at page 894 as authority for the proposition **5** that if one party by his conduct leads another to believe that the strict rights arising under the contract will not be insisted on, intending that the other should act on that belief, and he does act on it, then the first party will not afterwards be allowed to insist on the strict legal rights. Counsel also cited **NATIONAL INSURANCE CORPORATION-Vs- SPAN INTERNATIONAL, 1997 - 2001 UGANDA COMMERCIAL LAW REPORTS, 100**, a decision of the Uganda Court of Appeal, on the issue of waiver which cited and relied on the KAMMINS case (supra).

15 On the issue of legitimate expectation, counsel cited the Irish case of **GLENCAR EXPLORATION-Vs- MAYO COUNTY COUNCIL [2002] I.R. 84** which sets down the conditions that must be fulfilled before a claim of legitimate expectation can succeed. Counsel submitted that those conditions are met by the appellants in this case, in that their claim that scale M9 was not their proper scale had been accepted by the respondent who then

moved them first, to M7 and then M6, and the Vice Chancellor informed them that they had indeed been placed on M5. They legitimately expected that the matter would be concluded as promised. This was not done and the respondent only made that decision on December 2001 when its University Council finally made the decision. Therefore, Counsel argued, the respondent was estopped from pleading limitation even if it were to be held that the contract had been breached earlier. Counsel therefore prayed that the appeal be allowed, the Judgment of the Court of Appeal be set aside, and the suit remits to the High Court for consideration of the merits. He also prayed for costs.

In reply, Mr. Kabombo, for the respondent reiterated their written submissions and fully supported the decisions of the lower Courts. He reiterated the position that the appellants and the respondent were in a contractual relationship as employees and employer who alleged that their terms of service were breached by the Circular of 1983 whereby they were placed in salary scale M9. Counsel contended that the time within which to file a suit for breach of contract ought to have been filed within six years from 1983 in accordance with the Limitation Act. The appellants



failed to do so and opted for lengthy negotiations with the respondent.

In answer to the contention by the appellants that they had been moved from Scale M9 to M7 and then to M6 and then been informed by the Vice Chancellor in 1994 that they had indeed been placed on M5, counsel argued that this would only have had the effect of pushing their cause of action to 1994. They would still be time-barred given that they filed the suit in 2004.

Counsel argued that the pleadings contained in the plaint had based the cause of action on the circular of 1983 and the appellants must be bound by their pleadings. As to the lengthy negotiations that had taken place, counsel contended that negotiations did not preclude the appellants from filing their suit in time and that negotiations could not act as a bar to a statute. Counsel cited section 3(l) (a) of the Limitation Act and ***Halsbury's Laws of England, 4<sup>th</sup> Edition, Vol. 28 para 622*** with regard to when the cause of action arose. Citing paragraphs 4, 5, 6 and 14 of the plaint, counsel contended that the cause of action arose on 15<sup>th</sup> March 1983 when the circular by which the appellants were placed on M9 was published. Counsel further contended that the

appellants had not pleaded any exemption under the Limitation Act, and therefore the lower court was right to strike out the suit under Order 7 Rules 6 and 11 of the Civil Procedure Rule.

Counsel cited this Court's decision in **ERIDAD OTABONG -Vs- 5 ATTORNEY GENERAL S.C.C.A. 6/1990 (1991) ULSLR 150** to the effect that the time of Limitation begins to run from the time when the cause of action accrues, and any exemption must be pleaded. Counsel dismissed the argument by the appellants that their pleadings in paragraph 7 of the plaint did not amount to any legal acknowledgement of liability and did not constitute grounds of exemption. Counsel fully supported the findings and decision of the Court of Appeal in that regard.

With regard to the alternative grounds 3 and 4, counsel 15 submitted that there was no waiver of the respondent's right to set up an objection based on the law of limitation. Counsel distinguished the case of **National Insurance Corporation -Vs- Span International Ltd [1997-2001] UCL 100** from the instant case. In counsel's view, that case dealt with a period of limitation set by contract, whereas the instant case deals with limitation set by statute. Whereas in the former case there were exception

where there were pending action or arbitration, and negotiations between the parties were regarded by court as **“pending action** there was no such exception in the Limitation Act.

Counsel therefore fully supported the decision of the Court of Appeal and prayed that the appeal be dismissed and the decisions of the Court of Appeal and High Court be upheld. Counsel also prayed for costs.

This case concerns one issue, i.e. the preliminary point of law raised at the High Court hearing that the suit was time barred by virtue of the operation of the Limitation Act. To my mind, central to that issue, is the determination as to when the cause of action arose. The alternative issue is whether there were any grounds upon which the respondent could be prevented from pleading limitation of action under the Limitation Act. I agree with the decision of this Court in the **OTABONG** case (supra) that limitation begins to run from when the cause of action arose.

But one has to determine when the cause of action arose. To do that, in my view, one has to look at all the facts and peculiar circumstances of the case.

**According to HALSBURY'S LAWS OF ENGLAND, 4 Edition Vol. 28  
para 622 it is stated thus:-**

***“Apart from any special provision, a cause of action normally accrues when there is in existence a person who can sue and another who can be sued, and when there are present all the facts which are material to be proved to entitle the plaintiff to succeed.” (emphasis added).***

It would appear to me that in establishing when the cause of action arose it is necessary to consider the pleadings in their entirety to be able to conclude that there were present all the facts which were material to be proved to entitle the plaintiff to succeed. In a case like this one the plaintiff itself states in paragraph 17:-

***“The cause of action arose in November, 2001 when the defendant finally refused to place the plaintiffs in their right M5 Salary scale and this was at Makerere University within the jurisdiction of this Honourable Court.”***

On the other hand, the respondent, supported by both Courts below, maintains that the cause of action arose in 1983 when the

circular placing the appellants on scale M9 was issued. The question that comes to my mind is this: when were all the facts present?

It would appear to me that the plaint, sets out a chronology of events that give rise to the cause of action. That is why, I believe, paragraph 3 thereof is in the following formulation;

***“3. The plaintiffs and the other Chief Technicians whom they represent claim arrears of salaries and allowances plus interest and costs from the defendant as a results of the breach of the terms of their respective contracts of services by the defendant’s council/agents in the circumstances set out herewith.” (emphasis added).***

What follows is a narration of events beginning from 1976 when the government of Uganda is said to have introduced the Revised Salaries and Conditions of Service which introduced the U-Scale and placed the plaintiffs on the U2 Scale. The narration goes to 15<sup>th</sup> March 1983 when the new General Circular No. 631 was promulgated by the Government of Uganda jointly with the respondent by which Makerere University was given its own salary scales - the M scale ranging from M1 to M5. The issue then became, for all staff, where their U. Scale levels would be on

the new M Scale. A conversion Histogram was made for the appellants, they were placed on the M9 Scale. The appellants protested and the respondent undertook to look into their complaint. Subsequently, the respondent abolished M9 altogether and placed the appellants on, first M7 and then M6.

The appellants still contended that they ought to be on M5. In subsequent meetings with the Vice Chancellor of the respondent on March 1994 and 11<sup>th</sup> July 1994, the Vice Chancellor informed the appellants' representatives that a decision had been made to place them on M5 and that formal communication would be made later and implementation would follow. No such communication was ever made and the decision was never implemented. The appellants subsequently filed a complaint with the Inspector General of Government.

The question that comes to mind is this: why did it take so long for the appellants to file a complaint with the IGG, let alone file proceedings in court. According to the respondents, the appellants sat on their rights and failed to file their suit based on contract within six years stipulated in the Limitation Act. To the respondent, time started to run from March 1983 when the

circular which placed them on M9 was issued. Indeed, the Court of Appeal echoed that position. In the lead judgment, Mpagi- Bahigeine, DCJ, stated thus:-

***“A lot of time had passed since 1983 when the appellants started to suffer damage. On the proper application of the principles governing limitation, there can be no escape from the conclusion that the appellant’s suit is clearly time barred. Perhaps it might be some solace to the appellants that the initial damage caused in 1983 has been mitigated. There was absolutely no reason why the appellant did not resort to courts for a prompt and decisive remedy.***

***The observation by Kanyeihamba, JSC in Iga’s case [supra] is apposite:***

*I agree with Mr. Sekandi that an offer to negotiate terms of settlement between parties to an action, admirable as it may be, has no effect whatsoever on when to serve statutory notice or file a suit in time. It is my opinion that even when genuine and active negotiations are going on or contemplated between the parties, it is still incumbent upon those who need to file documents to do so within the time allowed. Thereafter, they are at liberty to seek adjournments for purpose of negotiations.”*

***In fact had the appellants filed suit immediately it would have given them leverage to negotiate from a vantage position. The appellants allowed themselves to be kept in suspense indefinitely while the respondent was testing them out. They have only themselves to blame.”***

Although the learned DCJ does not state how the initial damage caused in 1983 had been mitigated, it is safe to assume that she has in mind the placement of the appellants from the M9 scale to M7 and then M6. But then how does one explain the abolition of the M9 altogether. I am also unable to accept that there was *“absolutely no reason why the appellants did not resort to Courts 15 for a prompt and decisive remedy.”* From the records attached it is clear to me that both parties were not sure about the proper equivalency of the two salary scales. The movement of the appellants from M9 to M6 was not done so as to mitigate the “initial damage.” It was done because the respondent was not so sure as to the proper placement for the appellants. That is why the respondent set up the Rwendeire Committee to study the problem. Indeed that is why even the Vice Chancellor, the Chief



Executive of the respondent, could, after the Rwendeire Report, inform the appellants in 1994 that they were now placed on M5, which position had been recommended by the Rwendeire Committee in its Report to the respondent.

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I also do not agree with the learned DCJ that the appellants ***“allowed themselves to be kept in suspense indefinitely while the respondent was testing them out.”*** That would imply that the respondent was acting in bad faith all along, just to test out 10 the appellants.

I do not believe that the respondents were acting in bad faith, just to test out the appellants. It appears to me that the respondent formed the view that the whole exercise of determining the equivalences of the salary scales was more complicated than thought and it required careful professional study and advice. This was not just a matter of negotiations, or in any case, the type of negotiations envisaged by Kanyeihamba, JSC, in the IGA case (supra). This was a case, where the respondent formed the view that the matter required serious study and advised the appellants to wait for those studies.

Thus according to the Minutes of the First meeting between the Vice Chancellor and representatives of the Chief Technicians on the 11<sup>th</sup> July 1994, it is reported that the Vice Chancellor informed the meeting:

***“2. That the delay in effecting his decision was mainly due to the ongoing Public Service Exercise of Restructuring the Civil Service salary structure and scales for all categories of staff including the University which was expected to be completed by the end of 1994”***

***“3. That the amalgamated M. Scale, to his best knowledge, contained many anomalies which were resented not only by Chief Technicians but also by other staff such as the academic and administration staff’***

***“4. That there was therefore real need to solve these problems once and for all.”<sup>99</sup> (emphasis added).***

To me the importance of this information from the Vice Chancellor was to let the appellants know that the matter was being studied and the results of that exercise would be used to guide the decisions made. Indeed as already indicated, the respondent had itself commissioned Dr. Abel Rwendeire to study

the issue of *“Chief Technician Grade And its Equivalence to Academic Grade.”* This report had been produced on 10<sup>th</sup> February 1992. This report had recommended in para 4.1 and 4.3 as follows

***“4.1 - “Having noted that previous scales of the University service equated Chief Technicians to senior lecturers and noting that the Chief Technicians do sign senior terms of service, it is recommended that their equivalence to senior lecturer’s grade be restored immediately.”***

***“4.3 - “Having noted that the change over from U-Scale to M-Scale created distortion in scales of Makerere employees, we recommend that the M - Scales be revised in view of eliminating the anomalies that were introduced in the system. Specifically M9 should be abolished that all those in this category are included in M5. It is also recommended that M8 should be abolished.” (emphasis added).***

It is clear to me that when the Vice Chancellor subsequently met the appellants’ representatives, he was echoing the above recommendations, but which recommendations appear to have been subsequently rejected by the University Council. It is to be noted, and it was submitted so by counsel for the respondent,

that the University Council is the supreme decision making authority. It is evident that that authority did not make its final decision until 2001. It is apparent that even after the Rwendeire Report was submitted, the respondent still wanted to commission other studies before a final decision was made.

In his letter to the Inspector General of Government dated 29<sup>th</sup> October 1998, the Vice Chancellor wrote, on the subject of Regrading of chief Technicians to M5 salary scales, as follows in paragraph 3 thereof:-

***“To resolve this problem the University has decided to carry out a job evaluation (by bench marking all positions in the university) and a restructuring exercise. These two exercises are to be funded by the World Bank and facilitated by the Ministry of Public Service. Part of the study is already done. We are waiting for the funds to embark on the next phase. Mr. David Court of the World Bank is already here to discuss with the Ministry of Public Service and the University the modalities of carrying out the two exercises. Unless a proper job evaluation is done, there is no way we can resolve a problem involving qualifications and rank. We have told the Chief Technicians to wait until the exercise is completed.*”**

***That is the best we can do at the moment (emphasis added).***

In my view, this was not a case of negotiations between the Parties. It was a case of where the parties wanted to scientifically determine the facts with regard to the equivalence for the Chief Technicians on the M Scales. The various studies and reports indicate to me that until a final decision was made, the parties did not have all the facts necessary to commence legal proceedings. Indeed, had the appellants filed a suit then, it is conceivable that the respondent might have raised the defence that the action was premature since the issue was still a subject of study. It is indeed amazing to me that the respondent should have raised the issue of limitation given the above background. If what the learned DCJ, stated were to be true that the respondent was merely "*testing them out*" then the conduct of the respondent would at best be described as dishonest and dishonourable. It would be most inequitable to allow them to now turn to the defence of limitation. But, as I have indicated, I think they were genuinely trying to scientifically establish the facts that would enable both sides to make appropriate decisions.

In my considered view, all the material facts necessary to constitute a cause of action were not present while all these studies and exercises were going on since no final position had been made by the responsible organ of the respondent.

The respondent raised the issue of limitation. However, to me, from the analysis of the events as they unfolded, the respondent could not have intended that the appellants be led on a wild goose chase until their action was time-barred, as seems to be implied by the learned DCJ. It appears that the respondent actually believed that the appellants did have a genuine concern but one which could not be resolved without further study - hence the appointment of various study committees on the subject. Indeed at the meeting of the respondent's University Council of 4<sup>th</sup> September, 2001, the Management reported to council under Minute 4(f) :

***“That the University was in conjunction with Public Service, undertaking a University wide restructuring exercise that would involve job evaluation of all members of staff and re-grading of posts accordingly. Phase one, covering administrative staff was already in advanced stages. That the issue of re-grading, given***

***its complexities should await the said exercise*** (emphasis added).

While all that had been going on, the appellants had been advised “to wait.” That could only mean that they do not take any further action until those studies were completed. Indeed the said meeting of the Council reviewed all those reports and reached the decision that the correct position for the appellants was M6 not M9 where they had originally been placed. The Council also thereby rejected the recommendation of the Rwendeire report, communicated to the appellants by the Vice Chancellor, that the appellants be place on M5. The Council confirmed the abolition of M9 and M8. I find it all the more surprising that the respondent can now plead that the appellants’ cause of action arose when they were put on M9 in 1983.

In my view, the cause of action arose when the final decision was made by the respondent’s council. The suit was therefore not time-barred. Accordingly ground 1 and 2 should succeed. That In effect disposes of this appeal, and it would not be necessary to go into grounds 3 and 4 which were grounds presented and argued in the alternative.

I propose, however, to make some comments on those grounds as they raise an interesting point, i.e. whether a party may, by conduct and or representations waive its rights to plead 5 limitation under the Limitation Act.

Section 3(1) of the Limitation Act (Cap. 80 of the Laws of Uganda) states as follows

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

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

***b)      c)***

***d)***

***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 of provision made by or under an enactment or independently of any such contract or any such provision) whether 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 substituted a reference to three years”***

In this case we are concerned with an action based on contract. Part III of the Act makes allowance for extension of the period of limitation in cases of disability, acknowledgment, part payment, fraud or mistake. A person who is affected by any of the above would, by express pleadings, seek an extension of time. The issue raised by the alternative grounds 3 and 4, however, is whether a party who would be entitled to a defence of the action being time-barred, could be defeated by his/her conduct and or representations to the other party that the defence would not be raised.

There seems to be authority for the proposition that indeed representations made by a party to another or conduct on the part of that party which make the other party to believe that proceedings may be delayed, can act to defeat that party's defence of the action being time-barred.

**HALSBURY LAWS** of England (supra) paragraph 608 states as follows:-

***“608. Effect of negotiations between the parties. The mere fact that negotiations have taken place between a claimant and a person against whom a claim is made does not debar the defendant from pleading a statute of limitation, even though the negotiations may have led to delay and caused the claimant not to bring his action until the statutory period has passed. It seems, however, that the defendant will be debarred from setting up the statute if during the negotiations, he has entered into an agreement for good consideration not to do so, or, after he has represented that he desires that the plaintiff should delay proceedings and that the plaintiff will not be prejudiced by the faith of his representation.” (emphasis added).***

Counsel for the appellants raised the issue of waiver, contending that the respondents by their conduct as well as by their representation had waived the right to rely on the defence of limitation of time. On the other hand, counsel for the respondents argued that there can be no waiver from a statute.

There is a view that a lot has to depend on how one interprets the Limitation Act. A literal interpretation would indeed mean

that an action founded in contract is prohibited once six years elapse from the date of the accrual of the cause of action. However, there is authority to suggest that one needs to take a purposive approach in the interpretation of the Act. One needs to look at all the circumstances of the transaction including the conduct of the parties and representations the parties made to each other, and determine whether the purpose of the Act is defeated where the parties promise each other to give more time to study a problem between them, or where one party makes the other to believe that he will not raise the issue of time bar.

This matter of waiver and the purposive approach to interpretation of a statute of Limitation was considered by the House of Lords in the case of **KAMMINS BALL ROOMS Co. LTD - Vs- ZENITH INVESTEMENTS (TORQUAY) LTD [1970]2 ALL. ER,871** where the Court was considering the Landlord and Tenant Act, 1954. Lord Diplock stated at page 893 as follows:-

***“On the purposive approach to statutory construction this is the reason why in a statute of this character a procedural requirement imposed for the benefit or protection of one party else is construed as subject to the implied exception that it can be “waived” by the party for whose benefit it is imposed even though the***

**statute states the requirement in unqualified and unequivocal words. In this context “waived” means that the party has chosen not to rely on the non-compliance of the other party with the requirement, or has disintitiled himself from relying on it either by agreeing with the other party not to do so or because he has so conducted himself that it would not be fair to allow him to rely on the non-compliance. This is the construction which has been uniformly applied by the courts to the unqualified and unequivocal words in statutes of limitation which prohibit the bringing of legal proceedings after the lapse of a specified time.” (emphasis added).**

*I note that the above case was cited with approval by the Court of Appeal in the case of **National Insurance Corporation -Vs- Span International Ltd NCLR [1997-2001] 100** on the issue of waiver. It would appear therefore that it is possible, on the peculiar circumstances of a given case, to hold that the conduct of a party or representations by the party to the other may preclude that party from raising the defence of time-bar.*

The appellants in this case would have been obligated to file their case within six years of the issuance of the circular of 1983. But the respondents assured them that the matter was being studied. They followed that up by shifting them to M8 then M7 and M6. The appointed Study Committee even recommended that they be placed on M5, which was communicated to the appellants by the

Vice Chancellor. Then they were told that more study was needed. In effect the respondent was telling the appellants this:-

***“I think you have a case. Let us study it and handle it properly once and for all. You may well be right. We are not sure. Do not do anything yet. ”***

The appellants were asked to wait for the outcomes of those studies.

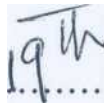
Having done that, I find it puzzling that the respondent should now plead that the contract was breached in 1983. It cannot be the intention of the legislature that a party could mislead another into not taking legal proceedings and then use the limitation clause to defeat the claims. It would be so unfair and unequitable. The Court, in my view, should not ignore all the representations made by the respondent to the appellants. It is conceivable that the alternative grounds might have succeeded had it been necessary to determine them.

In the circumstances I would allow the appeal and remit the suit to the High Court to determine the substantive issue of whether the appellants should be placed on M5. The details of who of the

appellants was affected are also issues to be determined at the High Court.

Accordingly I would set aside the decision of the Court of Appeal and High Court, and allow the appeal in respect of the preliminary point, with costs in this Court and the Courts below.

**Dated** at Kampala this

A small rectangular box containing the handwritten date "19th June 2013".

day of..June...2013.

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A rectangular box containing the handwritten signature of Bart M. Katureebe.

**BART M. Katureebe JUSTICE OF THE SUPREME COURT**

**THE REPUBLIC OF UGANDA**

**IN THE SUPREME COURT OF UGANDA AT KAMPALA**

**(CORAM: ODOKI C.J; KATUREEBE, KITUMBA, TUMWESIGYE AND  
KISAAKYE, JJ.SC.)**

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**APPELLANTS**

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**MAKERERE UNIVERSITY ..... RESPONDENT**

*[Appeal from the judgment of the Court of Appeal at Kampala (Mpagi-Bahigeine DCJ,  
Twinomujuni & Nshimye JJ.A) dated 1<sup>st</sup> February 2011 in Civil Appeal No.11 of 2008]*

**JUDGMENT OF ODOKI, CJ**

I have had the advantage of reading in draft the judgment prepared by my learned brother Katureebe, JSC and I agree with him that this appeal should be allowed. I concur in the order he has proposed as to costs.

As the other members of the Court also agree, this appeal is allowed with costs in this Court and Courts below.

Dajgd-at Kampala this.....day of.....2013.



**B. J. O. OKI  
CHIEF JUSTICE**

THE REPUBLIC OF UGANDA  
IN THE SUPREME COURT OF  
UGANDA  
AT KAMPALA

(CORAM: ODOKI C], B.M KATUREEBE, C.N.B KITUMBA, J.TUMWESIGYE

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3. Y. B. KAGWA

APPELLANTS

AND

MAKERERE UNIVERSITY:..... RESPONDENT

*[Appeal from the judgment of the Court of Appeal (Mpagi Bahigeine DCJ, Twinomujuni, Nshimye JJ.A) dated 1<sup>st</sup> February, 2011 arising from Civil Appeal No 11 of 2008]*

JUDGMENT OF KITUMBA, TSC.

I have had the benefit of reading in draft the judgment of my senior brother, Katureebe JSC and I concur that this appeal has merit and should, therefore, succeed.

I agree with the orders he has proposed therein.

Dated at Kampala, this —19th-----day of-----June-----2013

C.N.B. KITUMBA  
**JUSTICE OF THE SUPREME**



**THE REPUBLIC OF UGANDA IN THE  
SUPREME COURT OF UGANDA  
AT KAMPALA**

(CORAM: ODOKI, C.J.; KATUREEBE; KITUMBA; TUMWESIGYE AND  
KISAAKYE; JJSC.)

**CIVIL APPEAL NO. 02 OF 2011 BETWEEN**

- 1. CHARLES LUBOWA**
- 2. W.N.E KISAMBIRA MASABA**
- 3. Y.B. KAGWA**
- 4. E.J. BAMPATA**
- 5. J.C. KIGULI MAYANJA**

>

**APPELLANTS**

**AND**

**MAKERERE UNIVERSITY ::::::::::::::::::::RESPONDENT**

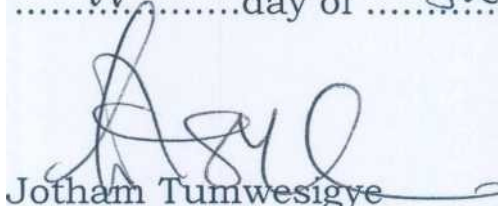
[Appeal from the judgment of the Court of Appeal at Kampala (Mpagi-Bahigeine, D.C.J., Twinomujuni, and Nshimye, JJ.A) dated 1<sup>st</sup> February 2011 in Civil Appeal No. 11 of 2008]

**JUDGMENT OF TUMWESIGYE, JSC**

I have had the benefit of reading in draft the judgment prepared by my learned brother Katureebe, JSC, and I agree with the judgment and the orders he has proposed.

Dated at Kampala this

.....<sup>19<sup>th</sup></sup>.....day of .....June.....2013



Jotham Tumwesigye

**JUSTICE OF THE SUPREME COURT**

**THE REPUBLIC OF UGANDA  
IN THE SUPREME COURT OF  
UGANDA AT KAMPALA**

*(CORAM: ODOKI, C.J., KATUREEBE, KITUMBA, TUMWESIGYE &  
KISAAKYE, JJ.S.C.)*

**CIVIL APPEAL NO. 02 OF 2011**

**BETWEEN**

**1. CHARLES LUBOWA  
2. W.N.E. KISAMBIRA MASABA  
3. Y.B.KAGWA  
4. E.J. BAMBATA  
5. J.C. KIGULI  
MAYANJA :::::::::::::::::::::  
APPELLANTS**

**AND**

**MAKERERE  
UNIVERSITY :::::::::::::::::::::  
RESPONDENT**

***{Appeal from the Decision of the***

I have had the benefit of reading in  
draft the judgment of my learned

I concur with him that this appeal should be allowed with costs in this Court and in the Courts below. I also agree with the

**Dated at Kampala this...19th. day of**

  
**DR. ESTHER KISAAKYE**  
**JUSTICE OF THE**  
**SUPREME COURT**