**THE REPUBLIC OF UGANDA**

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

**LABOUR DISPUTE 024 OF 2015**

**ARISING FROM HCCS 136/2014**

**OKONG KULAO …………………………………….. CLAIMANT**

**VERSUS**

**UGANDA WILDLIFE AUTHORITY ……………………………... RESPONDENT**

**BEFORE**

1. **THE HON. CHIEF JUDGE, ASAPH RUHINDA NTENGYE**
2. **THE HON. JUDGE, LINDA LILLIAN TUMUSIIME MUGISHA**

**PANELISTS:**

**1.MS JULIAN NYACHWO**

**2.MR. MAVUNWA EDSON HAN**

**3.MR. BWIRE ABRAHAM.**

**RULING**

**BRIEF FACTS:**

The claimant filed his case in the High Court in Gulu on the 27/11/2013. The case was referred to the Industrial Court at its regional session in December 2016 in Gulu. When the matter came up by consent the parties agreed to strike the A.G and Substitute him with the Uganda Wild Life Authority. The A.G was discharged by consent of the parties.

Counsel for the new respondents entered appearance on the 27/07/2017 and sought leave to raise a Preliminary Objection that he believed would dispose of the matter. Leave was granted, both parties were directed to file written submissions which were done.

**SUBMISSIONS**

Counsel for the respondents raised 3 points of law.

1. He argued that the claimant was time barred because the cause of action arose in 1996 when the Uganda Wildlife Authority was established. According to Counsel the Authority had advertised for new staff and the claimant like any other staff had applied and was employed under new terms from 1996 to 2006 when he opted for and was granted early retirement. He submitted that on retirement the claimant was fully paid all the benefits owed to him for that period, therefore the Authority was not liable for any claim arising prior to 1996 when the claimant was employed by the Uganda National Parks. It was his submission that even then, the claimant should have brought his claim within 6 years after the dissolution of Uganda National Parks in 1996. He asserted that the matter having been brought after 6 years, it was time barred. He cited **JULUIS RUGUMAYO Vs UGANDA REVENUE AUTHORITY, LDC No. 27 OF 2014 and MOHAMMED KASASA VS JASPHER BUYONGA CA 42/2008.**

2. He further argued that the claimant had not raised any cause of action against the Respondent because It did not exist prior to 1996. He insisted that the claim lay against Uganda National Parks which was under the Ministry of Trade and Industry at the time. He argued that Section 96 of the then Uganda Wildlife Authority statute provided that;

***“All property and assets which were vested in the game department or the Uganda National Parks Board of Trustees immediately before the commencement of this statute shall vest in the Uganda Wildlife Authority subject to all interests, liabilities, charges, obligations and trusts affecting the property.”***

In his opinion, this provision excluded any liabilities that were not related to property and assets, therefore any liability that stretched beyond assets and property was the responsibility of the Ministry of Tourism and Industry who were in turn the responsibility of the Attorney General.

In addition he argued that the claimant had violated Section 93 of the Employment Act 2006 because he did not commence this matter which he stated was a new matter, before the Labour officer because the one against the Attorney General had been withdrawn by consent.

Counsel asserted that this Court was empowered by Order 6 Rule 30 of the Civil Procedure Rules SI 71-1, to strike out pleadings on the grounds that they did not disclose a cause of action against the respondent. He prayed that the claimant’s pleadings are struck out for being improperly before this Court, time barred and because he did not disclose a cause of action against the respondents . He prayed it is dismissed with costs.

In reply Counsel for the claimant addressed 1 and 2 concurrently

**Limitation of time and Disclosure of cause of Action against Respondent.**

Counsel submitted that the claimants claim was for the period 1962 to 1996 when he was employed by the Uganda National Parks. He cited “The Murchison Falls National Park Management Plan -1992-1997” which described the management of the Uganda National Parks. He did not dispute the dissolution of the Uganda National Parks and the establishment of the Uganda Wildlife Authority in 1996. He also cited section 96 of Uganda Wildlife Statute (Supra) and according to him the Uganda Wildlife Authority was managed by a Board of Trustees who had in addition to receiving the other Assets of the Uganda National Parks, they had also received the 10% monthly deductions from the claimant and other employees therefore it was responsible for the payment of their gratuity.

Counsel insisted that UWAs Executive Director one Okello had acknowledged that the claimant had worked with UWA for over 40 years and that when UWA was celebrating World life day in 2014 he was recognized in a News Paper supplement as one of UWAs staff since 1962. According to counsel the claimant was employed and was promoted to Chief Park Warden while with UWA. He refuted the respondents’ assertion that Government was responsible for the payment of gratuity when the deductions made from the workers were never remitted to Government by either UNP or UWA.

Counsel insisted that the claimant had proved that he was employed by UWA and therefore he had disclosed a cause of action against them.

On whether the claimant was time barred counsel submitted that according to Section 18(1) of the Pensions Act which provides;

***“Every pension or other allowance granted under this Act, shall, unless it has sooner ceased, cease upon the death of the person to whom it is granted.”***

According to counsel the respondent through its board of trustees consistently deducted 10% of claimant’s salary from 1962 until 1996 under Uganda National Parks but did not pay his gratuity. He relied on **ADONIA TUMUSIIME &318 ORS VS BUSHENYI DISTRICT LOCAL GOVERNMENT and ATTORNEY GENERAL HCT-05-V-CS 0032-2012**. According to him the holding in this case emphasized the mandatory requirement to promptly pay gratuity upon ones retirement which had not been done in this case.

With regard to the Court procedure the claimants had followed in pursuit of this matter, Counsel insisted that the matter in court had not been withdrawn but rather the Attorney General had by consent been replaced by UWA in accordance with Order 1 rule 13 of the CPR which provides;

***“Any application to add or strike out or substitute a plaintiff or defendant may be made to the Court at any time before trial by motion or summons or at the trial of the suit in a summary manner.”***

He therefore prayed that the Court finds no merits in the Preliminary point of the Law and that court grants the claimant the remedies sought in his claim.

In rejoinder the respondent insisted that the respondents did not exist at the time and was only created in 1996 by the Uganda Wildlife Statute cap 2000. He restated that section 96 of the statue (supra) only vested property and assets formerly belonging to the Game Department to UWA and this did not amount to a merger.

He cited **TUKAMUHEBWA GEORGE AND 2720 OTHERS VS AG AND UGANDA WILDLIFE AUTHORITY, CONSTITUTIONAL PETITION NO.59 OF 2011** whose holding was to the effect that the UWA would not be liable for any claims that arose in 1992 because the UWA was only created in 1996. Counsel insisted therefore that the respondents were not responsible for paying the claimants terminal benefits.

He also argued that the Pensions Act did not apply to the instant case because whereas the Act applies to Civil Servants, the staff of UWA were governed by the UWA Statute as per section 11(3), although counsel made reference to section 10(3). Relying on **AG VS TINYEFUZA CONSTITUTIONAL APPEAL No.1 OF 1997,** he argued that the Directors letter and the newspaper extract were hearsay evidence and therefore inadmissible.

He insisted that the withdrawal of the Attorney General as defendant required receipt of new pleadings from new defendants thus rendering the previous matter withdrawn and that the current one should have commenced with the labour office.

He reiterated his prayer to have the matter dismissed.

**RULING**

After carefully analysing the submissions of both counsel, the law and the record, we find that the following are the issues arising therefrom:

1. **Whether the claimants disclosed a cause of action against the respondents?**
2. **Whether the claim was time barred?**
3. **Whether the claimant followed the right court procedure.**
4. **Whether the claimants disclosed a cause of action against the respondents?**

It was not disputed that the claimant was employed by the Uganda National Parks from 1962 to 1996 when it was dissolved and the Uganda Wildlife Authority was established as a body corporate under the Uganda Wildlife Statute, 1996. The claimants claim is for the payment of gratuity accrued from 1962 to 1996. This period preceded the establishment of the Uganda Wildlife Authority. Section 96 of the then Uganda Wildlife Statute provided that;

***“All property and assets which were vested in the game department or the Uganda National Parks Board of Trustees immediately before the commencement of this statute shall vest in the Uganda Wildlife Authority subject to all interests, liabilities, charges, obligations and trusts affecting the property.”***

We think that this section is to the effect that the liabilities referred to, as Counsel for the respondents stated, related to property and not employees. We do not think that the employees of an organization such as Uganda National Parks were its property. Employee as defined in section2 of the Employment Act ***“means any person who has entered into a contract of service or an apprenticeship contract, including, without limitation, any person who is employed by or for the Government of Uganda , including the Uganda Public service, a local Authority or parastatal organization but excludes a member of the Uganda Peoples defence forces.”*** This in our view presupposes that the employee voluntarily enters into a relationship with the employer based on a contract of employment. The employer therefore does not own this person, or cannot do as he or she pleases outside the contract that binds both of them which is not the case with one’s property which he or she can use or dispose of at will.

 Although we are convinced that the claimant was employed by the Uganda National Parks, we did not find any provision in the Wildlife Statute of 1996, to show that the staff of the Uganda National Parks would be absorbed by the new Authority nor was there any documentary evidence adduced by the claimant to that effect. There was no provision in the statute providing for the merger of the Uganda National Parks with the Uganda Wildlife Authority as claimed by the claimant. Further Section 11 of the Statute provided that the Board would be responsible for appointing senior staff and the Executive Director would appoint junior staff. It also provided that the board with the advice of the Executive Director would establish or review staff positions and determine their terms and conditions of service. We shall not delve into discussions about the commendation of the claimant and the newspaper extract because we think to do so would be to descend into the merits of the case. It is our considered opinion that in the absence of a provision in the Statute to show that the staff of Uganda National Parks would be absorbed by the Authority, there is no cause of action against the respondents, Uganda Wild Life Authority. We however believe that the Uganda National Parks under the Ministry of Trade and Industry had the responsibility to pay the claimant. The objection is therefore sustained.

1. **Whether the claim was time barred?**

Although Section 3 of the Limitations Act Cap 80, provides that actions founded on contract shall expire after 6 years from the date on which the cause of action rose. The holding in RUGUMAYO **VS UGANDA REVENUE AUTHORITY LABOUR DISPUTE NO. 27 OF 2014,** was to the effect that;  ***“… time limits set by statute are not mere technicalities but are of substantive law and must be strictly complied with and therefore any matter filed outside these time limits must be struck out irrespective of any merits in the case,”*** We already found that the claimant was employed by the Uganda National Parks which was under the Ministry of Trade and Industry. This being the case, he was a Civil Servant and as a Civil Servant his pension and gratuity were governed by Article 254 of the Constitution, the Public Service Act, and the Pensions Act. Section 18(1) of the Pensions Act provides;

***“Every pension or other allowance granted under this Act, shall, unless it has sooner ceased, cease upon the death of the person to whom it is granted.”***

Since the claimant was a civil servant we are inclined to agree with counsel for the claimant and the holding in **ADONIA TUMUSIIME &318 OTHERS(SUPRA)** that Section 18(1) of the Pension Act(Supra) applies to him and we think his Pension according to this section is still accruing. The claimant is therefore still within time to file for his gratuity from the Ministry of Trade and Industry.

With regard to the procedure followed. Order 1 rule3 provides

13. ***“… Any application to add or strike or substitute a plaintiff or defendant may be made to the court at any time before trial by motion or summons or at the trial of the suit in a summary manner”***

We do not agree with counsel for the respondents that the substitution of a party necessarily creates a new cause of action. The case was before this court when with leave of court the parties agreed by consent to replace the AG with the respondents. We do not think the intention was to create a new cause. The cause of action against the AG was for the payment of gratuity and it was maintained against the respondent. In the premises we do not think the claimant had to invoke section 93 of the Employment Act to institute a fresh labour complaint before a labour officer and therefore the claimant’s followed the right Court procedure.

In conclusion we find that indeed the claimant did not disclose a cause of action against the claimant as provided under Order 6 rule 30 and is therefore dismissed. The Claimant however still has a remedy as provided under section 18(1) of the Pensions Act, to claim from the Ministry of Trade and Industry. No order as to costs is made.

**1.THE HON. CHIEF JUDGE, ASAPH RUHINDA NTENGYE …………………**

**2.THE HON. JUDGE, LINDA LILLIAN TUMUSIIME MUGISHA …………………**

**PANELISTS:**

**1.MS JULIAN NYACHWO …………………….**

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