**THE REPUBLIC OF UGANDA**

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

**LABOUR DISPUTE REFERENCE No. 150 OF 2016**

***(Arising from Labour Dispute: No. 364 OF 2015)***

JIMMY KATO NYOMBI....................................................... CLAIMANT

Versus

SAVE THE CHILDREN INTERNATIONAL..................... RESPONDENT

**BEFORE**

1. Hon. Chief Judge Ruhinda Asaph Ntengye

2. Hon. Lady Justice Linda Tumusiime Mugisha

**PANELISTS**

1. Mr. Ebyau Fidel
2. Mr.F. X. Mubuuke
3. Mr. Anthony Wanyama

**RULING**

This ruling arises out of a preliminary objection raised by counsel for the respondent.

Counsel argued that **section 5 of the limitation Act** limits actions based on contract to a period of six years after which no action based on the same is actionable. He submitted that since the claimant was dismissed on 30/9/2005 but he lodged this claim on 24/11/2014 before the Labour officer and in this court in 2016, the claim was time barred.

She also argued that this court had no jurisdiction to entertain the matter whose cause of action arose before the establishment of the Employment Act 2006.

In reply counsel for the claimant argued that in accordance with **order 7 rule 6** of the **Civil Procedure Rules**, this action could not be time barred because it was brought under the exceptions provided for and pleaded in paragraph 11 of the claim. He argued that the claimant’s trial bundle contained a history of the claimant’s sickness from 2005-2014 and that such sickness was a disability under the exceptions. He submitted that limitation was not part of the issues before this court and that the same was argued before the Labour officer who resolved it.

There is no doubt that the Limitation Act provides for timelines as to when certain causes of action may be brought to courts of law.

Many authorities including **LIONKING INTERNATIONAL (U) LTD VS UGANDA REVENUE AUTHORITY HCCS 004/2009; MOHAMMED KASASA VS JASPHER** **BUYONGA CIVIL APPEAL 24/2008 (Court of Appeal)** are of the legal proposition that time limits set by statutes are not mere technicalities but are of substantive law and must be strictly complied with.

Any matter filed outside the limits must therefore be struck out irrespective of the merits. The only safe guard is found in order 7 rule 6 of CPR which provides

**“When a suit is instituted after the expiration of the period prescribed by the law of limitation, the plaint shall show the grounds upon which exception from such law is claimed.”**

The claim against the respondent was based on contract and it ought to have been brought to court within six years of the accrual of the cause of action. Under the **Employment Act, section 71 (2)** an employment dispute is expected to be brought to the Labour officer 3 months after the claimant is dismissed or terminated from Employment unless the claimant shows good cause for not having complied with the said limitation, in which case the Labour officer is authorized to admit the claim and entertain it.

**(See LUBANDI EMMANUEL VS UGANDA ELECTRICITY GEENERATION COMPANY LTD, SURE TEELECOM VS BRAIN AEM CHAP, LDC 008/2015).**

We must emphasize, though, that the Labour Officer is not given jurisdiction under the Employment Act to exercise jurisdiction where the claimant was dismissed and terminated six years before the claim was lodged. This is because after six years, the time lines are governed by the legal regime under the limitation Act.

It is our strong view that once the claim finds itself in this bracket, only the exceptions provided for under the Limitation Act, and not the discretion of the Labour officer (or even the judge) would save the claim. Thus in **HILTON VS SUITON STEAM LAUNDRY (1946) 1 KB 61, 81** lord green MR 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.”**

The question therefore is whether the exceptions provided for under the law apply to the circumstances before us.

Did the claimant fail to bring his claim to the courts of law within six years as a result of a disability? Did he file his claim without any delay after the disability was extinct?

The claimant contended that having been sick and admitted to Hospital, he was incapacitated to file the claim within the stipulated period. This fact is mentioned under paragraph 11 of the claim thus:

**“The claimant avers that due to the deterioration of his health conditions to a point of being hospitalized at various hospitals, health centers and outpatient clinics, he was not able to pursue his cause of action/claim immediately when the cause of action arose.”**

According to the respondent, sickness as described in paragraph 11 of the claim did not amount to a disability and even then under the Act disability refers to being a minor or a person of disability. In her submission, counsel for the respondent contended that there was no proof of recurrent sickness and that it was possible for the claimant to have either engaged a lawyer or his son to file the claim within the prescribed time.

Whereas the Black's Law Dictionary defines 'disability' as 'inability to perform some function: an objectively measurable condition of impairment, physical or mental' ,the interpretation section of the Limitation Act provides

"For the purposes of this Act, a person shall be deemed to be under a disability while he or she is an infant or of unsound mind"

We were availed the authority of **Mayanja Bosco vs Kasikururu Lois Okumu** and **Chris Katsigazi** which seemed to have relied on **Departed Asians Property** **Custodian Board vs Dr. J.M Masambu civil appeal 04/2004 (court of appeal)** which decision was not availed to us. The decision of **Mayanja** suggests that the Court of appeal decision above mentioned expressly stated that the scope of what amounts to disability was limited to a person who was **an infant** and a person of **unsound mind** only.

According to the case of **Okeng Washington Vs Attorney General HCCS 16/2004**and Iga **Vs Makerere University (1992) EA 65** in considering whether or not a plaint is time barred or discloses no cause of action, the court is required only to peruse the pleadings and nothing else and a plaint that is deficient in that it shows the action is time barred or discloses no case of action, it must be rejected.

In **Uganda Railways Corporation Vs Ekware D.O (2008) HCB 61,** it was held that if a suit is brought after the expiration of the period of limitation and no ground of exception from the law of limitation is pleaded in the plaint, the plaint must be rejected.

It is our strong opinion that not every sickness will amount to disability as an exception provided for under the Limitation Act. We think that the person relying on this exception must not only plead it but must show that it was such as would incapacitate him from not only personally filing the claim but also from empowering another person by a power of attorney to file the proceedings. The same would apply to being a minor where the said minor is under the care of somebody who neglects to file proceedings as **“a next friend”** within the proscribed time.

In his submission counsel for the claimant contended that his client was bed ridden from 2005-2014.

Unfortunately for the claimant, neither the claim nor the trial bundle have anything to show that he was admitted in Hospital for that period. What is shown is that the claimant had a sickness which he was handling by regular visits to Health centers and by once in a while being admitted to Hospital.

Whereas we appreciate that the claimant was sick during the period 2005-2014 and that he could be sick even as of now, we do not appreciate that the sickness was such that it disabled him to either personally file the claim or grant power of attorney to someone to do the same. We make this conclusion based on **exhibit C10 in the claimant’s trial bundle**. This is a letter from the medical coordinator of TASO at Entebbe dated May 12/2014. This letter informs whoever is concerned that the claimant registered with TASO on 12/11/2008 and that before this he was in and out of Private clinics on admission. The letter says that his son reported on 18/12/2008 that the claimant had been admitted upon which he had been commenced on anti-retroviral therapy on 17/2/2009. It is our opinion that if the claimant had been vigilant and interested in pursuing his rights, he would in the circumstances not have been prevented to do so by the sickness as described in the above letter.

Given the strictness and ruthlessness of the law relating to limitation of action as described in **Hilton VsSulton Steam Laundry (Supra),** we have no alternative but to hold that irrespective of the merits that may be comprised in this claim, the law of limitation has crushed the same and the objection is upheld with the result that the claim is rejected for having been filed out of time.

No order as to costs is made.

**Signed by:**

1. Hon. Chief Judge Ruhinda Asaph Ntengye ………………………………………

2. Hon. Lady Justice Linda Tumusiime Mugisha ………………………………………

**PANELISTS**

1. Mr. Ebyau Fidel ………………………………………
2. Mr. F. X. Mubuuke ………………………………………
3. Mr. Anthony Wanyama ………………………………………

Dated: ………………………………