**THE REPUBLIC OF UGANDA**

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

**LABOUR DISPUTE REFERENCE No. 128 OF 2015**

***(Arising from Labour Dispute: No. 08.05 OF 2015)***

KIVIRI SAMUEL....................................................... CLAIMANT

Versus

CIVIL AVIATION AUTHORITY..................... RESPONDENT

**BEFORE**

1. Hon. Chief Judge Ruhinda Asaph Ntengye

2. Hon. Lady Justice Linda Tumusiime Mugisha

**PANELISTS**

1. Mr. Ebyau Fidel
2. Ms. Nyachwo Julian
3. Mr. Anthony Wanyama

**RULING**

We have heard and listened carefully to the submissions of both counsel on the respective preliminary points of law. Counsel for the respondent submitted that the claim was barred by the **Limitation Act**, having been filed after 6 years of the accrual of the cause of action. After perusal of **section 22 of the said Act** we find that acknowledgement of a debt is the beginning of the cause of action.

After perusing paragraph 4(c) of the Memorandum of claim we find that the respondent by issuance of a letter, exhibit “C” dated 19/1/2015 acknowledged that the claimant was entitled to terminal benefits and therefore the cause of action arose from 19/1/2015 and not 1999 as counsel for the respondent argued.

The claimant’s contention is that although he had secured a loan and was therefore indebted to the respondent, the counterclaim of this indebtedness was barred by the Limitation Act having accrued in 1999 when it was due.

A counterclaim is a distinct cause of action from a suit from which it arises. It is therefore governed by the same rules and legal framework as the suit. Therefore the limitation Act applies to a counterclaim with the same force it applies to the suit from which it arises.

The respondent in paragraph 5 of the reply to the memorandum of claim states that the claimant owes them 4,607,118/= in personal advances incurred by the time he resigned. They claim also that he owes the CAA Employees Co-operative Savings and Credit Society Ltd. 3,326,052/=. It is our considered opinion that the respondent was entitled to set off the debt of the claimant from the entitled benefits and this entitlement cannot be divorced from the benefits. It is our opinion therefore that in as much as the acknowledgement of the existence of the benefits is the beginning of the cause of action, it is at the same time a reciprocal beginning of the entitlement to set off the debt of the respondent.

The claimant after resignation did not within the prescribed time apply for his benefits. It is not far-fetched to say that this was because he knew he had debts with the respondent which could easily set off the benefits. The respondent therefore was entitled to a set off at the time of resignation of the claimant and exhibit “C” relating to terminal benefits was only a reply to the claimant’s claim for the same which clearly explained that there had been a set off.

Therefore the submission that it is now time barred collapses.

We accordingly hold that both preliminary objections are devoid of any merit and both are overruled. Both the claim and the counter claim will be heard on merits.

**Signed by:**

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

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

**PANELISTS**

1. Mr. Ebyau Fidel ………………………………
2. Ms. Nyachwo Julian ………………………………
3. Mr. Anthony Wanyama ………………………………

Dated: 02/02/2018