



THE REPUBLIC OF UGANDA  
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA  
LABOUR DISPUTE REFERENCE NO. 208 OF 2021  
(Arising from Labour Complaint No. KCCA/NDC/LC/037/2021)

AURAHAM AVIVI:.....CLAIMANT

VERSUS

SBI INTERNATIONAL HOLDINGS AG UGANDA:.....RESPONDENT

BEFORE:

The Hon. Mr. Justice Anthony Wabwire Musana

THE PANELISTS:

1. Hon. Jimmy Musimbi,
2. Hon. Robinah Kagoye &
3. Hon. Can Amos Lapenga.

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RULING

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**Introduction**

- [1] This ruling is in respect of two preliminary points of law raised by the Respondent to the effect that the Claimant's claim is barred by limitation, and this Court does not have jurisdiction to entertain the claim.
- [2] By way of background, the claim relates to unremitted Social Security contributions in the sum of US\$ 245,000, general damages and costs. It is the Claimant's case that he was an eligible employee between 2002 (*when aged 48*) and 2009 (*when he reached 55 years*). The Respondent contests the claim and suggests that having been filed in 2021, it is 12 years, too late. Further, that claims relating to Social Security contributions can only be instituted by the National Social Security Fund (*the Fund*) and filed before the Magistrate's

Court and not a Labour Officer who referred this matter to the Industrial Court.

#### Submissions of Counsel for the Claimant

- [3] Mr. Raymond Ndyagambaki, appearing for the Claimant, argued that the claim is solely for Social Security benefits and is not an employment dispute. In his view the Claimant was last eligible for Social Security benefits in 2009 and not 2015 when he was allegedly terminated. Counsel cited Section 3(1)(d) of the Limitation Act Cap 80 and the cases of **Justice Olwedo vs A.G H.C.S No. 381 of 2005**, **Julius Rugumayo Vs URA LD No. 27 of 2014** and **Osilo Jackson Vs Industrial Security Services LD 210 of 2015** in support of the proposition that the claim was time-barred and ought to be dismissed.
- [4] In respect of the jurisdiction of this Court, Counsel cited Sections 46, 47 and 48(1) of the National Social Security Fund Act Cap 222 (*from now the NSSF Act*) in support of the proposition that the claim could only be brought by the Fund and filed in the Magistrate's Court.

#### Submissions of Counsel for the Claimant

- [5] Mr. Richard Obonyo, appearing for the Claimant, took a converse view. He submitted that the employment relationship between the Claimant and Respondent (which gives rise to this action) was terminated in September 2016. Having filed the claim in February 2021, the claim was 4 (four) and a half years within the time limit set in the Limitation Act. Counsel also submitted that the cause of action for Social Security benefits does not arise only on attainment of 55 years of age. Alternatively, Counsel submitted that the claim fell within exceptions to limitation on account of the Respondent's fraudulent concealment and misrepresentation that it had made contributions to the fund. For this proposition, Counsel cited the case of **NSSF vs Makerere University Guest House H.C.C.S No. 525 of 2015**.
- [6] On jurisdiction, Mr. Obonyo countered that the matter was a labour dispute within the meaning of **Section 2 of the Labour Disputes(Arbitration and Settlement) Act, 2006** (*from now the LADASA*). Counsel prayed that the objections be dismissed.
- [7] From the pleadings and submissions of Counsel, the questions this Court has to determine two issues viz:
- (i) Whether the Claimant's claim is barred by the law of limitation?

(ii) Whether the Industrial Court has jurisdiction to entertain this claim?

### Analysis and Decision of the Court

#### Issue One: Limitation

- [8] According to Section 3(1) (a) and (d) of the Limitation Act Cap. 80, actions founded on contract or tort, or to recover any sum by virtue of any enactment (except penalty or forfeiture) or certain other actions shall not be brought after the expiration of six years from the date on which the cause of action arose. To put it simply, the law of limitation means that there are time-limits for different causes of action within which an aggrieved person can sue for redress. A case brought before a Court after the time-limit would be out of time and struck out. It implies that limitation is an absolute defence to a claim. It collapses a claim.<sup>1</sup>
- [9] In *Madhvani International S.A vs A.G*<sup>2</sup> it was held that a statute of limitation is strict in nature and inflexible. It is not concerned with the merits of the case. The period of limitation begins to run against the plaintiff from the time the cause of action accrued until when the suit is actually filed.<sup>3</sup> This Court has held that actions may be brought before a labour officer at any time before the expiry of six years from the date the cause of action accrued.<sup>4</sup> In computing time for infringement of employment rights, the cut-off date is therefore six years before the date of filing of the initial complaint at the labour office.
- [10] In the case before us, it was a common position of Counsel that the claim before the labour officer was filed in February 2021. The Claimant contended that he was terminated in September 2016. The Respondent countered, in rejoinder, that the Claimant was terminated on 28<sup>th</sup> August 2015. In the case of the Claimant, the cutoff date for filing a complaint before the labour office would be September 2022 while in respect of the Respondent's position, the cut-off date would be 12<sup>th</sup> of August 2021. In both of these instances, the complaint filed at the labour office in February 2021 would be clearly within the time-limit of six years from the date of termination. To this extent, we are of the persuasion that the Respondent's submission that the claim is time-barred is misconceived. Our determination is that the Claimant would be entitled to bring an action for any infringement of his employment rights

<sup>1</sup> See LDMA No.27 Of 2022 Gashirabake Christopher Vs Samantha Mwesigye.(Unreported)

<sup>2</sup> Per Kitumba J.S.C In S.C.C.A No. 23 Of 2020

<sup>3</sup> Per Musoke J. In H.C.C.S No 381 Of 2005 Justice Olwedo Vs Attorney General

<sup>4</sup> See LDR 081/2017 Kizza Gerald & Anor Vs Camusat U Ltd and LDR 139/2019 Akoko Joseph vs Uganda Manufacturers Association( Both unreported)

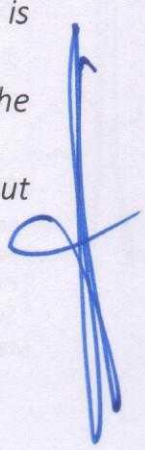
within six years from the 28<sup>th</sup> of August 2015. The claim would not be barred by the law of limitation and we so find.

- [11] The second ambit of the objection on limitation, if we understand the Respondent correctly, is that the Claimant ought to have filed his age benefit claim at the attainment of 55 years, in the year 2009. Having found, as we have in paragraph 6.2 above, that the Claimant's action is not time-barred, it would be unnecessary to consider the second ambit of the objection. For probity however, we shall resolve the question.
- [12] The Respondent submitted that the Claimant is either 12 years too late or 20 years late as the claim for Social Security Fund d benefits ought to have been made in the year 2002. On his part, citing Sections 10 and 13 of the NSSF Act, the Claimant submits that he was under no duty to access his benefits immediately upon attainment of 55 years of age. It was submitted, from the bar, that the Respondent fraudulently concealed non-remittance of contributions to the fund. In rejoinder, the Respondent suggested that the limitation for recovery of penalty under Section 14 of the NSSF Act was shorter than that for an action for infringement of employment rights.
- [13] The NSSF Act and Regulations made thereunder do not seem to provide a statutory time-frame within which a member of the fund should claim a benefit. Section 19 of the NSSF Act provides for various categories of benefits. It provides for age benefits, withdrawal benefits, invalidity benefits, emigration benefits, and survivor's benefits. Under Section 20(1) of the NSSF Act, a member of the fund shall be entitled to an age benefit if he or she attains the age of 50 years and has retired from regular employment or attained 55 years of age. Our interpretation of this provision is that the right to an age benefit for a member of the fund arises at the attainment of the age of 55 years. The right accrues on the attainment of the statutory age.
- [14] Under Section 34(2) of the National Social Security Amendment Act, 2022 it is provided that;

*"(a) a members account shall be closed when an emigration grant is paid;*

*(b) when a member voluntarily opts out of the fund upon receipt of the members total age benefit under section 20 of this Act;*

*(c) or when a member dies and his or her survivors benefits are paid out in accordance with section 24 of this Act."*



And under Section 34(3), it is provided that if on closing of a members account, any sum of money is standing to the member's credit and is unclaimed for, a period of seven years, that money shall vest in the Minister responsible for finance, who shall pay it into the reserve account.

- [15] From the legislative provisions above, there appears to be no statutory limit for making a claim for any benefit. Closing of an account as provided under Section 34(2) is limited to payment of an emigration account, payment of a benefit or death of a member. The rules provide for payment of the unclaimed benefit into the reserve account after a period of 7 years. Under Regulation 2 of the National Social Security Fund (Benefits and Refunds) Regulations S-I 222-5 no specific provision is made for the time within which a benefit claim must be made. Accordingly and in all circumstances, the time limits set under the Limitation Act Cap. 80 would not apply.
- [16] Counsel for the Claimant suggested a matter of exception to limitation. He contended certain exceptions under Sections 10 and 13 of the NSSF Act. Section 10 relates to voluntary membership and contribution to the fund. Under Section 10(3) of the NSSF Act it is provided;

*"Any member of the fund in respect of whom the standard contribution has ceased to be payable under this Act may apply in the time and in the manner prescribed to make voluntary contributions to the fund....."*

In the matter before us, the Claimant's eligibility for age benefit was not contested. However, neither of the parties' pleadings demonstrate voluntary contributions made by the Respondent after the year 2009 when the Claimant attained 55 years. It follows that the exception under Section 10 of the NSSF Act would be inapplicable to the Claimant's case.

- [17] Section 13 of the NSSF Act provides for special contributions by employers. It relates to contributions for a non-resident employee who is not an eligible employee and an employee of or above the age of fifty-five years in respect of whom the Minister has specifically applied this section by statutory order. Under this section, the dispensation for special contributions for an employee over the age of 55 years rests with the Minister. At paragraph 4(c) of the reply to the memorandum of claim, the Respondent pleads that it paid a special contribution for the Claimant during the period of age 48 to 55 years. The Respondent suggests that these payments were in accordance with the NSSF Act and that evidence of the same would be adduced at the trial. By the Respondent's own admission, which the Claimant referred to as bar claims,

this is a question of evidence. It is a matter to be disposed of at trial and not at this preliminary stage.

- [18] As a final point on the exceptions to limitation, it was suggested by the Claimant that the claim falls within exceptions based on the Respondent's fraudulent concealment and misrepresentation that it made remittances for the Claimants benefit whereas not. The memorandum of claim filed by the Claimant does not make specific reference to fraud, misrepresentation or fraudulent concealment as constituting the cause of action. The Claimant contends that no evidence of remittances has been attached to the memorandum in reply and submits that this would be a matter for trial. In the said reply, the Respondent states that N.S.S.F clearances and acknowledgments shall be adduced at the trial. What appears as a common position on this point is that no evidence has been provided to support the position that remittances were made to the Fund. We therefore agree with Counsel for the Claimant that a disposal of the point at this preliminary stage would be procedurally incorrect.
- [19] In the circumstances, it is our determination that the claim is not statute-barred. The preliminary objection on limitation is therefore overruled.

#### Issue Two: Jurisdiction

- [20] The Respondent submits that Sections 46, 47 and 48 of the NSSF Act do not grant jurisdiction to this Court to hear, determine or adjudicate NSSF benefit claims. The Claimant suggests that the present claim is a labour dispute within the meaning of Section 2 of the LADASA upon which this Court may adjudicate. It is trite the jurisdiction of the Court can only be granted by law and if proceedings are conducted by the Court without jurisdiction, they are a nullity.<sup>5</sup> In the case of **Baku Raphael Obudra and Another VS Attorney General**<sup>6</sup> it was held that jurisdiction is a creature of statute. Jurisdiction cannot be assumed even with the consent of parties. Proceedings made by a Court lacking competent jurisdiction are both illegal and amount to a nullity.<sup>7</sup>
- [21] The Industrial Court is established under Section 7 of the LADASA. Its functions are spelt out in Section 8 and these include to arbitrate disputes referred to it under the LADASA and adjudicate upon questions of law and fact arising from references to the Industrial Court by any other law. The

<sup>5</sup> Desai Vs Warsaw, 1967, E.A 351.

<sup>6</sup> S.C.C.A No. 1 of 2005

<sup>7</sup> The term jurisdiction is defined in Owners of Motor Vessel Lillian "s" v Caltex Oil Kenya Limited [1989] KLR 1 which was cited in the case of Ozuu Brothers vs Ayikoru Milka H.C.C.R 006 of 2016

Court therefore has referral and appellate jurisdiction. The Industrial Court has concurrent jurisdiction with the High Court of Uganda, but does not have unlimited original jurisdiction in labor disputes. <sup>8</sup> Under Section 94 of the Employment Act, 2006 (from now EA) the Industrial Court has appellate jurisdiction from decisions of the labour officer. The Court of Appeal of Uganda has provided invaluable jurisprudence on the jurisdiction of this Court in the case of **Engineer John Eric Mugyenzi vs Uganda Electricity Generation Co. Ltd.** <sup>9</sup> The Court of Appeal held that the Industrial Court should use its jurisdiction to adjudicate on issues of fact or law under Section 8(1)(b) and 8(2) of the LADASA to handle all labour disputes referred to it including claims for general, special and punitive damages which come under any other law and can be adjudicated by the Industrial Court. In terms, the Industrial Court has jurisdiction to arbitrate and adjudicate on all labour disputes referred to it or as a matter of appeal from a decision of a Labour Officer. Such matters include issues of fact, law arising from the references to the Court by any other law.

- [22] The Respondent suggested that under Section 46 of the NSSF Act which provides that all criminal and civil proceedings under this Act may, without prejudice to any other power in that behalf, be instituted by any inspector or other public officer of the fund in a magistrate's Court. In their view, the Claimant was not entitled to bring the action before this Court. There are two aspects to this provision: The first is whether the Claimant would have a right to originate an action and the second is whether such action is restricted to the magistrates Court.
- [23] In respect of the Claimant's right of action, this Court, in the case of **Aijukye Stanley vs Barclays Bank Uganda Ltd** <sup>10</sup> the Court held that it did;

*"not subscribe to the contention that Section 46 in providing that an inspector or other public officer of the Fund may prosecute or file civil proceedings in Court expressly prohibits an employee from enforcing his right. The Section provides for officers of the Fund to prosecute and/or file civil proceedings "without prejudice to any other power in that behalf". It is our considered opinion that the other power referred to in this section includes the employee who owns the property. We agree with counsel of the Claimant that the NSSF is only a trustee of the money and an employee can successfully sustain a civil claim*

<sup>8</sup> See Asaph Ntengye J. and Linda L.Mugisha J. vs A.G Constitutional Petition No. 33 of 2016

<sup>9</sup> C.A.C.A No 167 of 2018

<sup>10</sup>LDC 243 of 2015

*against his employer for recovery of the same. The same applies to the 10% contribution since by Section 11 of the NSSF Act this money also is transferred from the employer to the employee and it ceases to belong to the employer as soon as it is due by virtue of this section. We must add, however, that the right of the employer will only accrue if the deduction is from "a wage" as properly defined in the employment Act and the NSSF Act and if it was deducted and not paid into the Fund"*

- [24] In the case before us, the Claimant's claim against the Respondent is for non-remittance of his NSSF Contributions, interest on the amount claimed, general damages and costs of the claim. On the basis of the dicta of the Industrial Court in the Aijukye case, (*ibid*) the Claimant is well within his rights to enforce a claim for his benefit which is not vested exclusively in an inspector under the NSSF Act.<sup>11</sup>
- [25] In regard to whether the action is limited to a Magistrates Court, in Section 47 of the NSSF Act, it is provided that a magistrate of any grade has jurisdiction to hear matters of liability of an employer to register as a contributing employer or liability to pay contributions to the fund. Our reading is that this section relates to ensuring compliance by the employer with registration with the fund and payment of the employer's contribution to the fund. We do not agree with the Respondent's view that it ousts the jurisdiction of this Court. In the Aijukye case, the Industrial Court granted relief in the declaratory form, where the employee brings the action as owner of the property in the remittances. The Industrial Court determined the question of entitlement to Social Security Fund contributions but does not proceed beyond declaratory relief. We think this approach to be consistent with the jurisprudence expressed by the Court of Appeal of Uganda in the case of **Makubuya Enock William v Bulaimu Muwanga Kibirige T.A Kwoloon Garment Industry** and **Moses Kirunda** where Madrama JJA (as he then was) held that under Order 2 Rule 9 of the Civil Procedure Rules S.I 71-1 (*from now CPR*), a party is entitled to a declaratory judgment of right whether consequential relief is claimed or not.<sup>12</sup> In that case, the Court of Appeal had allowed an appeal without compensation for properties wrongly attached. Applying this view to the matter before us, this Court may make a declaration in respect of the proprietary interest in Social Security contributions. As

<sup>11</sup> See also the case of Lydia Ndagire v WBS Limited Labour Dispute Claim 213 of 2014) [2019] UGIC 25 (12 July 2019) where the Industrial Court held that an employee could sue for recovery of NSSF contributions. After its recovery, it would be paid to the fund.

<sup>12</sup> Per Madrama JJA(as he then was) in C.A.C.A No. 01 of 2015



section 47 NSSF Act relates to enforcement of compliance, the Industrial Court would not delve into compliance and liability for non-payment.

- [26] Finally, Mr. Ndyagambaki suggested that under section 48 of the NSSF Act, that all sums due to the fund shall be recoverable as debts due to the fund. That is correct. In our view and considering our proposition in paragraph 25 above, matters of enforcement are a preserve of the Fund. The Industrial would still reserve the power to proffer declaratory relief.

**Final orders of the Court**

- [27] In the final analysis, we find that the matter is not barred by limitation. In respect of the second preliminary objection, it is our determination that the Industrial Court has powers to offer declaratory relief. In all, the objections are overruled and the matter is to be fixed for scheduling. There shall be no order as to costs.

Delivered and Dated at Kampala this 24<sup>th</sup> day of May, 2023

**SIGNED BY:**

Anthony Wabwire Musana,  
Judge, Industrial Court

**THE PANELISTS AGREE**

1. Hon. Jimmy Musimbi,
2. Hon. Robina Kagoye &
3. Hon. Can Amos Lapenga.

Ruling delivered in open Court in the presence of:

For the Claimant: Mr. Richard Ceaser Obonyo

For the Respondent: Respondent's Counsel is absent.  
Parties absent.

Court Clerk: Mr. Samuel Mukiza.