



THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT MBARARA
LABOUR DISPUTE REFERENRCE NO. 07/2021
(ARISING FROM 007/KDLG/2020)

TURINAYO AMOSCLAIMANT

VERSUS

BOARD OF GOVERNORS SESEME GIRLS SECONDARY SCHOOLRESPONDENT

Before:

The Hon. Mr. Justice Anthony Wabwire Musana,

Panelists:

1. Hon. Adrine Namara
2. Hon. Robinah Kagoye &
3. Hon. Michael Matovu.

Representation:

1. *Mr. Alex Byaruhanga Asimwe holding brief for Mr. Rogers Bikangiso of M/s. Bikangiso & Co Advocates for the Claimant.*
2. *Ms. Rebecca Ayesiga of M/s. Beitwenda & Co Advocates for the Respondent.*

RULING

Introduction

- [1] When this matter came up for pre-session on the 23rd of November 2023, Ms. Ayesiga indicated that she wished to raise some preliminary points of law. We directed the filing of written arguments which we have considered in rendering this ruling. From our review of the arguments, the preliminary points revolve on the resolution of the following issues:

- (i) Whether the memorandum of claim discloses a cause of action against the Respondent?
- (ii) Whether the claim is barred by the law of limitation?

Analysis and decision of the Court

Issue One: Whether the memorandum of claim discloses a cause of action against the Respondent?

- [2] On the authority of **Kapeeka Coffee Works Ltd v NPART CACA No. 3 of 2000**, it was submitted for the Respondent, that the Claimant had not attached his contract of employment or any pay slips as proof of employment and therefore his pleadings did not satisfy the definition of an employee within **Section 2 of the Employment Act, 2006**.
- [3] In reply, Counsel for the Claimant submitted that the cause of action is unlawful and illegal forced leave. It was submitted that by a letter dated the 12th of April 2012, the Respondent sent the Claimant on forced leave to pave way for an investigation of allegations of theft of money in the sum of UGX 15,144,550/=. The Claimant attached a judgment from the Chief Magistrates Court at Kisoro and documents indicating an appeal from that judgment. It was suggested that the forced leave was continuing and had not been lifted and therefore, there was a cause of action.

Decision of the Court

- [4] The three elements of a cause of action were set out in the case of **Auto Garage v Motokov**¹ where a plaintiff would be required to show that he enjoyed a right, that the right had been violated and that the defendant is liable. For a more elaborate narrative on what constitutes a cause of action, in **Al Hajj Nasser N. Ssebagala v Attorney General**² the Constitutional Court of Uganda held that;

"a cause of action means every fact, which if traversed, would be necessary for the plaintiff to prove in order to support his right to a judgment of Court. It must include some act done by the defendant

¹ [1971] EA 314

² Constitutional Petition No. 1 of 1999

and, is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded. It does not comprise evidence necessary to prove the facts but every fact necessary for the plaintiff to prove to enable him obtain a decree and, everything that if not proved would give the defendant a right to an immediate judgment must be part of the cause of action. It has no relation to the defence, which may be set up by the defendant, nor does it depend upon the character of the relief prayed for by the plaintiff. The cause of action must be antecedent to the institution of the suit"

Put plainly, a cause of action encompasses both a legal wrong the person claims to have suffered and the relief Court is asked to grant.³

- [5] In the matter before us, the Claimant's claim is for unlawful and illegal forced leave. It is his case that he was placed on forced leave by the Respondent. Attached to his memorandum of claim (*from now MOC*) is a letter dated the 12th of April 2012, indicating that the Respondent's Board of Governors resolved to send the Claimant on forced leave for one month to carry out investigations. He seeks a declaration that the Respondent's action was illegal and unlawful and asks for damages. In our view, the Claimant has met the definitive threshold for establishing a cause of action. His complaint is against the Respondent sending him on an illegal and unlawful forced leave. We are, therefore, of the persuasion that the Respondent's preliminary objection would be unsustainable and is accordingly overruled.

Issue Two: *Whether the Respondent's claim is barred by the law of limitation?*

- [6] It was submitted for the Respondent that the MOC was filed out of time, is barred by law and should be rejected. Counsel for the Respondent premised these arguments on Order 7 Rule(11)(d) of the Civil Procedure Rules S.I 71-1(*from now CPR*) and Section 3(11)⁴(a) of the Limitation Act Cap. 80 which provides that actions of contract and tort shall not be brought after the expiration of six (6) years. It was suggested that the present action had been lodged with the Labour Officer nine years after the cause of action arose. It was also submitted that no exceptions such

³ Per M. Ssekaana J. and SN Ssekana in their treatise "Civil Procedure and Practice in Uganda" at page 111

⁴ This may not have been an accurate citation.

as disability, fraud or mistake had been pleaded to warrant an extension of time. On the authority of **Madvani International S.A v Attorney General CACA No. 48 of 2004**, and **Juliet Kyesimira v Stanbic Bank(U)Ltd LDR No. 103 of 2017**, we were invited to find this action time-barred.

- [7] Counsel for the Claimant submitted that the Claimant was employed as a public servant and would have worked until age 60. He was sent on forced leave to pave way for investigations and to date he has not been told about the results of the investigations. He was arrested, prosecuted and acquitted of the charges of theft by the Chief Magistrate's Court of Kisoro. An appeal was filed and dismissed for want of prosecution. It was the Claimant's case that his cause of action accrued after his acquittal on the charges of theft. It was also suggested that the claim was for orders of specific performance to which Section 3(6) of the Limitation Act did not apply.

Decision of the Court

- [8] Under **Section 71(2)EA**, a complaint should be filed before a Labour Officer within three months of dismissal, or such later period as the employee shall show just and equitable in the circumstances. The Claimant was sent on forced leave on the 12th of April 2012. It was contended at paragraph 4(f) of the MOC, that on the 13th of April 2019, the Respondent wrote to the Claimant indicating the end of the leave. This letter was not attached to the MOC. It was suggested that the Claimant has been on forced leave for over nine years. The Complaint was lodged with the Labour Officer on the 24th day of August 2020.
- [9] This Court has held that the law of limitation in labour matters is that a Labour Officer is entitled to extend the time to file a complaint beyond the statutory three months but not beyond six years.⁵ In the case of **Eng John Eric Mugyenzi v Uganda Electricity Generation Co. Ltd C.A.C.A No 167 of 2018**, the Court of Appeal did not find **Section 71(2) EA** to constitute a limitation to filing an action in a Court of law. A Labour Officer has powers to enlarge time within which a complaint can be brought before him beyond the statutory three months or twelve weeks. In **National Bank of Commerce Ltd(In Liquidation) v Fred Twinobusingye & 19 others**⁶ the Industrial Court observed that statutes of limitation are strict and inflexible enactments and not mere technicalities but substantive laws which must

⁵ See *Kizza Gerald & Anor v Camusat U Ltd(LDR081/2017)* and *Akoko Joseph v Uganda Manufacturers Association LDR 139/2019*

⁶ LDA 09 of 2020

be strictly complied with. The Court observed that Section 3(1) (e) of the Limitation Act limited causes of action on contract and tort to six years from when the cause of action arose. The Court found this provision to extend to matters before a Labour Officer.

- [10] In the matter before us, the pleadings show that the Claimant was placed on forced leave on the 12th of April 2012. In May 2012, Ezra Ndagije-Seruhungu, the Respondent's Board Chairperson invited the Claimant to a one-on-one discussion. By letter dated 13th June 2012, the Respondent's Chairperson advised the Claimant of the end of the one month's leave and invited the Claimant to handover key documents. By a letter dated 10th January 2013, the Claimant was invited to answer audit queries not later than 17th January 2013. On 17th May 2013, the Claimant was invited to meet the Respondent's Finance Committee on the 21st of May 2013. On the 10th of June 2013, the Ag. Chief Administrative Officer of Kisoro District advised that the matter should have been submitted to the Permanent Secretary of the Ministry of Education and Sports. There is no evidence that this submission was made.
- [11] It is common that the management of the education function has divested to the local governments. This would render the Claimant a local government employee. Under Section 55(1) of the Local Governments Act Cap.243(*from now LGA*), the functions of a District Service Commission (**DSC**) include the power to appoint persons to hold or act in any office in the service of a District or Urban Council, including the ability to confirm appointments, to exercise disciplinary control over persons having or acting in such offices and to remove those persons from office, is vested in the DSC. Under Section 61(1) LGA, the terms and conditions of service of local government staff shall conform to those prescribed by the Public Service Commission (**PSC**) for the public service generally. The management of the education function is divested to the local governments. This would render the Claimant a local government employee. The procedure for interdiction of a local government employee is set under Regulation 38 of the Public Service Commission Regulations S.I 1 of 2009(*from now PSC Regulations*) which provides:

"38. Interdiction.

(1) Where— (a) a responsible officer considers that public interest requires that a public officer ceases to exercise the powers and perform the functions of his or her office; or (b) disciplinary proceedings are being taken or are about to be taken, or if criminal proceedings are being instituted against him or her, he or



she shall interdict the officer from exercising those powers and performing those functions.....

(4) An officer who is under interdiction may not frequent the office or leave Uganda without the permission of the responsible officer.

(6) The responsible officer shall make a detailed report to the Secretary of the circumstances that led to the interdiction including a statement of the allegations and charges, if any, preferred against the officer, a copy of letter of interdiction and the disciplinary or criminal proceedings which are being taken or about to be taken against the officer for the Commission to note the interdiction.

(7) On conclusion of investigations by the Ministry or department or Police, the responsible officer, if he or she considers that the officer is innocent or the case against him or her is not serious enough to warrant criminal prosecution or dismissal shall— (a) make a detailed report on the investigations carried out, a copy of the Court charge, proceedings and judgment of the case against the officer; and (b) make appropriate justification and recommendations on the lifting of the interdiction.

(8) The interdiction of the officer shall remain in force until the Public Service Commission has noted the lifting of interdiction.

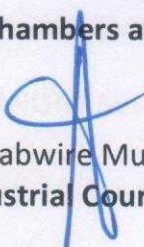
(9) Where there is failure to conclude investigations within the time stipulated in sub-regulation (5), the officer shall be free to appeal to the Commission to have his or her interdiction lifted.

- [12] From the pleadings before use, it has not been shown that the forced leave or interdiction was effectively lifted. This implies that the Claimant's complaint is subsisting. There is a formal process of lifting the interdiction in accordance with Regulation 38 of the PSC Regulations above or in completing any disciplinary processes against the Claimant. There has also not been a formal termination. On the 19th of June 2013, the Claimant was charged and prosecuted for the offence of theft of UGX 37,422,750/= from the Respondent. Under Regulation 38(1)(b) of the PSC Regulations, where criminal proceedings are instituted against a public officer, the responsible officer shall interdict the officer. Regulation 38(4) of the PSC Regulations, prohibits and an employee on interdiction from frequenting the office. The pleadings show that the Claimant was prosecuted and on the 17th day of November 2019, the Grade One Magistrates Court at Kisoro acquitted him.

[13] Given that the formal disciplinary process against the Claimant does not appear to have been concluded, he would, in the opinion of this Court, be entitled to bring or make a complaint or claim before the Labour officer or the Court. In the result, we would find the preliminary objection unsustainable and would overrule it, accordingly.

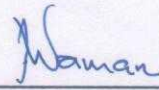
[14] As this matter was set to be handled during the present session, and both parties have filed their respective witness statements, trial bundles and a joint scheduling memorandum, this matter shall be heard on Tuesday the 19th of December 2023 at 11:00 a.m. All witnesses should be in Court on that day.


Signed in Chambers at Mbarara this 15th day of December 2023



Anthony Wabwire Musana,
Judge, Industrial Court

The Panelists Agree

1. Hon. Adrine Namara,
2. Hon. Robina Kagoye &
3. Hon. Michael Matovu.







15th December 2023
10.58 a.m.

Appearances

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| 1. For the Claimant: | Mr. Charles Twinebyoona holding brief for Mr. Rogers Bikangiso |
| 2. For the Respondent: | Ms. Rebecca Ayesiga |
| Court Clerk: | Mr. Samuel Mukiza. |

Ms. Rebecca Ayesiga : Matter for ruling, and we are ready to receive it.

Court: Ruling delivered in open Court.


Anthony Wabwire Musana,
Judges, Industrial Court.