

**THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
MISCELLANEOUS APPLICATION NO. 27 OF 2022**

*(Arising from Labour Dispute Reference No. 353 of 2019 and Labour Complaint No.
KCCA/RUB/LC/560/2019)*

GASHIRABAKE CHRISTOPHER:.....:APPLICANT

VERSUS

SAMANTHA MWESIGYE:.....:RESPONDENT

BEFORE:

1. THE HON. JUSTICE ANTHONY WABWIRE MUSANA

PANELISTS:

1. Ms. ADRINE NAMARA,
2. Ms. SUSAN NABIRYE &
3. Mr. MICHAEL MATOVU.

RULING

Introduction:

1.0. This ruling is in respect of an application brought under Section 3 of the Limitation Act Cap.80, Section 98 of the Civil Procedure Act Cap.71, Sections 3 and 40 of the Labour Disputes (Arbitration and Settlement) Act 2006 and Order 7 Rule 1(e) and 11(a), (d) and (e) of the Civil Procedure Rules S.I 71-1. The Applicant seeks orders that Labour Dispute Reference No. 353/2019 be struck out together with Labour Dispute No. KCCA/RUB/LC/560/2019 and costs of the application are provided for.

Grounds

2.0 The grounds in support are set out in chamber summons and elaborated in the affidavits in support and rejoinder sworn by Applicant. In sum, he deposed that the Respondent's memorandum of claim does not show the particulars of the alleged sexual harassment, including dates and places, and the memorandum is defective. Further, the claim is brought after 13(thirteen) years, is statute-barred, frivolous and vexatious, and should be struck out.

3.0 In reply, the Respondent deposed that the Applicant sexually harassed for 13(thirteen) years. She expressly referred to her email dated 11th June 2018 requesting the Applicant to cease harassing her. She deposed that her claim commenced when she took a stand against the harassment in the year 2018.

She also deposed to having provided particulars of dates, times and places where the alleged sexual harassment took place. Finally, she deposed that the offensive notes were subject to proof by an expert at trial and that the Applicant had owned the statement "Love you" in his own witness statement.

Submissions of Counsel for the Applicant

- 4.0 Mr. Maxim Mutabingwa, appearing for the Applicant, took the view that the sexual harassment occurred 13 years before the claim was filed. It was the Applicant's case that such an action would be barred by Section 3(1) of the Limitation Act Cap.70. In support of this proposition, he cited the case of **Uganda Railways Corporation Vs Ekwaru & Ors C.A.C.A Na. 185 of 2007**. He prayed that the memorandum of claim be struck out in accordance with Order 7 Rule 11 of the Civil Procedure Rules S.I 71-1("CPR").
- 4.1 In respect of lack of particulars, Counsel submitted that the memorandum of claim did not state when and where the alleged sexual harassment took place. In his view, this contravened Rules 5 and 16 of the Labour Disputes (Arbitration and Settlement) (Industrial Court Procedure) Rules 2012("LADASA Rules") and Order 7 of the CPR. Absent of particulars, the claim was bad in law and could not be allowed to stand.
- 4.2 Finally, he suggested that the claim was frivolous and vexatious. He cited the case of **Mpaka Road Development Ltd vs Kana. (2004) E.A pg 161** in support of the proposition that the claim was unserious and annoying.

Submissions of Counsel for the Respondent

- 5.0 Mr. Isaac Mugerwa, appearing for the Respondent, took a converse view. He submitted that the alleged sexual harassment started from the time the Respondent was a clerkship student and continued throughout her employment over a period of 13 years. That she took a stand against the unwelcome behavior in 2018, and this should be when time is reckoned. Counsel referred this Court to the Employment (Sexual Harassment) Regulations 2012, S.I No.15 of 2012 for the description of sexual harassment. He cited the case of **National Railroad Passenger Corporation vs Morgan, United States Supreme Court 523,101(2002)** in support of the view that one act of harassment within the relevant filing period invited action for cumulative acts outside the relevant filing period.
- 5.1 Fortified by the decision in the case of **Mutebi Sula vs Nam Chau Trading Co. Ltd. Misc App. No. 4 of 2020**, Counsel submitted that in establishing whether the plaint discloses a cause of action, a court looks at the pleadings and nothing more. In his view, the Respondent's case would not be properly disposed of at a preliminary stage because some of the evidence required an expert opinion.

He cited 2(two) cases including **Yuda Lutta Musoke Vs Greenland Bank(In Liquidation) HCCS No. 506 of 2001**, in support of this proposition. In sum, it was the respondent's case that the memorandum of claim disclosed several instances of the alleged sexual harassment. He prayed that the application be dismissed.

Rejoinder by Counsel for the Applicant

- 6.0 In rejoinder, Counsel for the Applicant reiterated his written submissions.
- 7.0 From the pleadings and submissions of Counsel, this Court has to determine 3(three) issues to wit;
- (i) Whether the Claimant's action is barred by limitation?
 - (ii) Whether the memorandum of claim lacks sufficient particulars?
 - (iii) Whether the Claimants action is frivolous and vexatious?

The Decision

ISSUE I Limitation

- 8.0 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.
- 8.1 The jurisprudence on limitation has been fairly clear. In **Madhvani International S.A vs A.G**¹ 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.²
- 8.2 This Court has applied the law of limitation to actions arising out of infringements of the Employment Act 2006. The 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.³ In effect, time is computed from the date the complaint is filed with the labour officer (*the court of first instance*). In other words, the cut-off date for an action for infringement of employment rights is six years before the date of filing of the initial complaint at the labour office.

¹ Per Kitumba J.S.C in S.C.C.A No. 23 of 2020

² Per Musoke J. in H.C.C.S No 381 of 2005 Justice Olwedo vs Attorney General

³ See LDR 081/2017 Kizza Gerald & Anor Vs Camusat U Ltd and LDR 139/2019 Akoko Joseph vs Uganda Manufacturers Association(Both unreported)

- 8.3 In the case before us, Counsel for the Applicant invited us to find that the allegations of sexual harassment occurred 13 years ago. In this context, the computation of time would mean that the allegations occurred 13 years before the action was first filed. The incidents complained would have occurred in 2006. Going by this contention, 13 years from the date of filing the complaint would be the 12th day of September 2006. The cut-off date for any action filed for an infringement of employment rights in September 2006, would be the month of September of 2012. Were this to be the Respondent's case, then her present action which was filed in September 2019 would be time-barred. But that is not the Respondent's proposition if we understand it correctly.
- 8.4 The Respondent's case is that the alleged sexual harassment went on from her clerkship into employment as a state attorney until the date at which she took a stand against it. It is her case that as a result of taking a stand against this harassment, she lost her employment and filed a complaint with the labour office on 12th September 2019.
- 8.5 Our reading of the pleadings is that the Respondent reported a case of sexual harassment and unfair termination to the Directorate of Gender Community Services and Production at Kampala Capital City Authority on 12th September 2019. At paragraph 6(a) of her memorandum of claim she was employed as a State Attorney from 1st February 2007 until she was left employment sometime in 2018 or 2019. Our understanding of the complaint and claim as it appears in the memorandum of claim is that the Respondent alleges that she was sexually harassed for a period of **over** 13 years. The allegations of sexual harassment were not **over** 13 years ago as the Applicant submits but for a period of **over** 13 years. The Applicant's connotation is that the alleged sexual harassment was 13 years from the date of filing the complaint. In our view, the reckoning of time would be 6(six) years from the date of filing the complaint with the labour officer and that is the 12th of September 2019. By that computation, the cut-off date for when the cause of action accrued would be the 12th September 2013 and not the year 2006 which is 13 years from 2019.
- 8.6 In view of the above, we are of the persuasion that the Applicant's submission that the claim is clearly time-barred is misconceived. Our determination is that the Respondent would be entitled to found and bring any action for any infringement of her employment rights within 6 years from the 12th of September 2019. To this extent, any of the Respondent's claims for infringements of her employment rights after the 12th day of September 2013 would not be time-barred. The claim is therefore, not statute-barred.

ISSUE II Lack of Sufficient Particulars

9.0 Under Rule 5(2) of the LADASA Rules, it is provided that:

“The memorandum referred to in sub-rule(1) shall set out, in the case of the claimant, the nature and particulars of each item of the claim involved in the dispute and the claimant shall serve a copy of the memorandum on the respondent”

Nothing in the LADASA rules provides what the particulars should be. This Court has adopted the position that where there is a lacuna in the rules, the standards under the CPR apply. Under Order 6 rule 3 CPR it is provided as follows;

“In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, willful default or undue influence, and in all other cases in which particulars may be necessary, the particulars with dates shall be stated in the pleadings.”


In effect, read together with Order 6 Rule 3 CPR, a claimant under Rule 5(2) of LADASA Rules, would be required to plead and state particulars of the alleged infringement with dates in the memorandum of claim. To this end, the Applicant contended that the memorandum of claim would offend Order 7 Rule 1 (e) in that it should contain *“the facts constituting the cause of action and when it arose”*.

9.1 The question would be what kind of particulars would be expected of a claim such as the present one. Under Section 7 of the Employment Act 2006, sexual harassment in employment involves direct or indirect requests for sexual intercourse, contact or other form of sexual activity that contains an express or implied promise of preferential treatment in employment, threat or detrimental treatment in employment or threat about present or future employment. Sexual harassment involves use of written or spoken language of a sexual nature, use of visual material and showing behavior of a sexual nature. These directly or indirectly subject the employee to unwelcome or offensive behavior that has a detrimental effect on the employee’s employment, job performance or satisfaction. This definition is repeated under Regulation 2 of the Employment(Sexual Harassment) Regulations, 2012⁴

9.2 The provisions of Section 7 of the Employment Act describe sexual harassment. It follows therefore that a memorandum of claim founded on sexual harassment will contain particulars as listed in paragraph 8.1 above and supported by times and places of the alleged harassment.

⁴ S.I No. 15 of 2012. See also Vishaka & Others v State of Rajasthan & Others [JJ, 1997][7][SC384] as cited in Ooko & Another V SRM & 2 Others [2022]KECA 44(KLR)

- 9.3 According to the International Labour Organisation's Declaration of Fundamental Principles and Rights at Work, sexual harassment is defined as a sex-based behaviour that is unwelcome and offensive to its recipient. It may take two forms: 1) Quid Pro Quo, when a job benefit - such as a pay rise, a promotion, or even continued employment - is made conditional on the victim acceding to demands to engage in some form of sexual behaviour; or; 2) hostile working environment in which the conduct creates conditions that are intimidating or humiliating for the victim.⁵
- 9.4 What emerges from the definitive expressions of what constitutes sexual harassment is that the recipient perceives the behavior to be unwelcome and offensive. There is a dearth of jurisprudence on the subject of sexual harassment in our jurisdiction. However, in the case of **Domini Ooko vs SRM & G4S Security Services(K) Ltd**⁶ the Court of Appeal of Kenya citing **Black's Law Dictionary**, defined sexual harassment as a type of employment discrimination consisting of verbal or physical abuse of a sexual nature, including lewd remarks, salacious looks and unwelcome touching. The court found that main elements of sexual harassment in that case were that firstly there was unwanted verbal, non-verbal or physical conduct of a sexual nature and secondly the purpose or effect of the conduct was to violate the victims' dignity or create an intimidating, hostile, degrading, humiliating or offensive environment for him or her. In the **National Railroad Passenger Corporation vs Morgan (Supra)** what emerges is that the recipient determines certain behavior to be unwelcome, thereby giving rise to a claim.
- 9.5 From the above, it is to be expected that a claim founded on sexual harassment would contain particulars of behavior, language (verbal and non-verbal) and conduct of a sexual nature perceived to be unwelcome and offensive by the recipient.
- 9.6 In the case before us, it was a common position of the parties that for the Court to resolve the question whether the memorandum of claim has facts constituting the cause of action, the Court shall look at the pleadings and nowhere else.
- 9.7 We shall therefore proceed to examine the pleadings and particularly, paragraph 6 (c) of the memorandum of claim.


⁵ <https://www.ilo.org/wcmsp5/groups/public/->

[ed_norm/declaration/documents/publication/wcms_decl_fs_96_en.pdf](#) last accessed 12.3.2022.10.03 pm

⁶ Civil Appeal 195 197 of 2019(Consolidated)[2022]KECA 44 KLR

- (i) Paragraph 6(c) (i) (a) refers to continuous attachment of unwelcome love notes of a sexual nature. There are no references to dates, places and times on the said love notes. Annexure C reads "With love from Gash".
- (ii) Paragraph 6(c) (i) (b) refers to continuous unwelcome flirtatious messages on WhatsApp and other platforms. Attached is what appears to be a work related chat thread.
- (iii) Paragraph 6(c) (i) (c) makes reference to an allegedly sexually offensive reference to "SAMANTHA GASH".
- (iv) Paragraph 6(c) (i) (d) makes reference to a request to dance at a work retreat at Munyonyo and a subsequent mistreatment at work the incident.
- (v) Paragraph 6(c) (i) (e) makes reference to a job offer at KCCA and a proposition for sex.
- (vi) Paragraph 6(c) (i) (f) makes reference to propositions for sexual intercourse.
- (vii) Paragraph 6(c) (i) (g) makes reference to the Applicant having spoken of a relationship after the Respondent had sent him an email saying she had had enough.
- (viii) Paragraph 6(c) (i) (h) refers to the Applicant making sexual gestures showing the Respondent the "*expanse of his groin*".
- (ix) Paragraph 6(c) (i) (i) refers to threats of disciplinary action and disparaging of her professionalism.
- (x) Paragraph 6(c) (i) (j) refers to disclosures of the sexual harassment to several colleagues.
- (xi) Paragraph 6(c) (ii) refers to the Respondent's protests to the Applicant to stop the harassment.
- (xii) Paragraph 6(c) (iii) refers to all avenues to have a peaceful resolutions.

9.8 The above particulars appear to be within the definitions of sexual harassment. However, they do not give details of the dates, places and times when the said perceived unwelcome and offensive behavior occurred. It is not clear when the alleged offensive statements were made. Each of the above paragraphs does not contain mention of dates. There is mention of places such as Munyonyo but there is a paucity of dates. Considering the absence of dates in the particulars of the alleged sexual harassment, we would be unable to accept the Respondent's submission that the Respondent has disclosed the dates, times and places when she was harassed. Our examination of Paragraph 6(c) (i) to (iii) does not support this proposition. Applying the provisions of Order 6 Rule 3 of the CPR to the above memorandum of claim would return a rendering of deficiency.

9.9 However, it appears to us that pleadings on sexual harassment would not seem to be confined to a strict construction and application of the rule in Order 6 Rule

3 of the CPR. We have already noted that cases of this nature are novel in our jurisdiction. In the Ooko case(Supra) at page 11 of the judgment of the Court of Appeal of Kenya, the particulars of sexual harassment as had been listed in the memorandum of claim consisted of persistent comments about the complainant's body and dressing style, persistently requests for company, and denial of an office driver for refusal to succumb to sexual advances. These particulars did not include dates. This approach is consistent with the present constitutional dispensation under the 1995 Constitution which enjoins the Court to administer substantive justice without under regard to technicalities.⁷ The Courts, in the administration of justice would normally be required to investigate the substance of all disputes and decide the cases on the merits and that error and lapses should not necessarily debar a litigant from pursuit of his rights. ⁸Additionally, this Court is established as a Court of equity. In the case of **Tembo Steels (U) Ltd Vs Wamala Collins**⁹ this Court observed that it sits as a court of equity. One dictum of equity is that it looks at intent rather than form. In the present case, at this stage of proceedings, the Respondent has made several allegations against the Applicant. These allegations are subject to a trial. The Applicant would have ample opportunity to challenge all these allegations. For these reasons, we would not be inclined to a strict construction of the Order 6 rule 3 of the CPR in the present circumstances.

9.10 As a final point on the matter of particulars, a further reading of the memorandum of claim demonstrates that the Respondent's allegations of sexual harassment against the Applicant first became apparent by her email of the 11th of June 2018. Paragraph 6(c) (iv) refers to a meeting at which the Applicant is alleged to have ridiculed the Respondent after the Respondent sent the email of the 11th of June 2018. The meeting is alleged to have taken place on the 28th day of September 2018. There are further particulars listed from Paragraph 6(c) (v) to 6(c) (xix) of the memorandum of claim. These particulars relate to the employer's actions or inactions in respect of addressing the Respondent's complaints. They also relate to the Respondent being removed from the payroll of the Ministry of Justice and Constitutional Affairs and attach to the duty of the Employer upon receipt of sexual harassment complaints in the workplace. In our opinion they do not constitute particulars of sexual harassment as alleged against the Applicant but relate to the Respondent's grievance against the Employer in respect of a sexual harassment policy and regulations. For emphasis and illustration, in paragraph 9 of the memorandum of claim, the Respondent contends that the Ministry of Justice and Constitutional Affairs neglected its duty of setting up a sexual harassment committee. This averment is materially against the Employer. In paragraph 11,

⁷ Article 126(2)(e)

⁸ Banco Arabe Espanol v. Bank of Uganda [1999] 2 EA 22, Tiberio Okeny & Anor v. The A.G C.A.C.A No. 51 of 2001 and LDMA No.145/2017 The Registered Trustees of Kasese Diocese vs Benuza Jane.

⁹ LDMA NO.261 of 2019

the Respondent's complaint is that her termination was not in accordance with the Public Service Standing Orders. Each of these paragraphs relates to specific dates and time. In terms, this part of the Respondent's memorandum of claim contains full particulars.

- 9.11 It is our considered opinion that from reading the memorandum of claim, the Respondent's case is that as a result of her taking a firm stand against the Applicant for allegations of sexual harassment, she lost her employment for which she holds the Attorney General of Uganda (the 1st Respondent in Labour Dispute Reference 353 of 2019) vicariously liable. The Respondent cases against the Applicant and her erstwhile employer are somewhat inter-twined. It would not be in the interests of justice to strike out the Respondent's claim as against her employer on account of not having sufficient particulars and dates in respect of the claim as against the Applicant. These are subject to proof at the trial. For these reasons, we would be unable to accept the Applicant's prayer to strike out the memorandum of claim.

ISSUE III Frivolous and Vexatious Claim

- 10.0 The Applicant invited this Court to find that the claim is frivolous and vexatious. According to **Black's Law Dictionary** a frivolous suit is one which lacks legal basis or merit. Counsel for the Applicant submitted that the undated allegations of sexual harassment were totally unserious. He cited the case of **Mpaka Road Development Ltd vs Kana (2004) E.A pg 161** where it was held *that a pleading is frivolous if it lacks seriousness. It would be vexatious if it annoys or tends to annoy. It would annoy or tend to annoy if it is not serious or contains scandalous matter, irrelevant to the action or defence. A scandalous and/or frivolous pleading is ipso facto vexatious.*
- 10.1 We have already observed in paragraph 9.11 above that the present action relates to a complaint of sexual harassment and unlawful termination. On the basis of our conclusions in paragraph 9 above, we do not think that it is possible to make the inference that the present action is frivolous and vexatious. In the case of **Zachary Olum and Anor v Attorney General Constitutional Petition No. 6 of 1999** it was held that court will dismiss any action if it is frivolous or vexations in the sense that the pleadings disclose no reasonable cause of action or answer, or are so plainly frivolous that to put them forward would be an abuse of process of the court as they are not likely to lead to any practical result.
- 10.2 In the present action, the Respondent seeks a determination that she was sexually harassed and unfairly terminated following her sexual harassment complaint. The claim must lead to a practical determination as to whether she was sexually harassed and whether following her report of the same,

unlawfully and unfairly terminated. We are therefore unable to accept the Applicant's contention that the suit is frivolous and vexatious.

Orders

11. In the final analysis, this application stands dismissed. In the interests of timely resolution of the matter, we direct the parties to Labour Dispute Reference No. 353 of 2019 to complete and file all pre-trial documents (joint scheduling memorandum, respective trial bundles and witness statement) by the 30th day of January 2023. The matter is fixed for scheduling on the 20th of February 2023. Costs of the application shall abide the outcome of the primary reference.

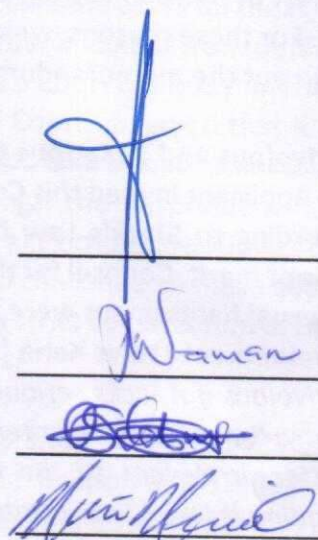
Dated at Kampala this 19th day of December, 2022

Signed by:

1. ANTHONY WABWIRE MUSANA, Judge

PANELISTS

1. Ms. ADRINE NAMARA,
2. Ms. SUSAN NABIRYE &
3. Mr. MICHAEL MATOVU.



The image shows three handwritten signatures in blue ink, each written over a horizontal line. The top signature is the most stylized. The middle signature appears to be 'Wamara'. The bottom signature is 'Susan Nabirye'.

Ruling delivered in open Court in the presence of:

1.
2.
3.
c.c Mr. Samuel Mukiza.