

**THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA HOLDEN AT MBARARA
LABOUR DISPUTE REFERENCE NO. 06 OF 2024**

BAMWENEGWIRE THADDEUS ::::::::::::::::::::::::::::::::::::::CLAIMANT

VERSUS

KABALE DISTRICT LOCAL GOVERNMENT::::::::::::::::::::::::::::::::::::RESPONDENT

Before:

The Hon. Mr. Justice Anthony Wabwire Musana

Panelists: Hon. Adrine Namara, Hon. Susan Nabirye & Hon. Michael Matovu.

Representation:

1. Mr. Julius Arinaitwe Bwesigye of Ms. Barungi, Baingana & Co Advocates for the Claimant
2. Ms Fiona Bamanya Assimwe, State Attorney holding brief for Ms. Rita Kalembe, for the Respondent

Limitation- limitation of a labour dispute- Claim filed before labour officer 22 years after dismissal- Commissioner for Labour, Industrial Relations and Productivity granted an extension of time-Claim barred by the statute of limitation under Civil Procedure and Limitation(Miscellaneous Provisions) Act Cap. 283. The Claimant filed a claim of unfair dismissal filed against the Kabale District Service Commission. The Claimant's initial attempts to resolve the matter through lower courts were unsuccessful due to jurisdictional issues. Subsequently, the claimant sought redress through the Labour Officer and later filed a claim in the Industrial Court. The Court dismissed the claim because it was time-barred under the Civil Procedure and Limitation (Miscellaneous Provisions) Act, exceeding the three-year limitation period for actions against government entities. The court found the claimant's arguments regarding extensions of time and res judicata to be unpersuasive. No order for costs was made.

RULING

Background facts and procedural history

- [1]** By a memorandum of claim filed in this Court on the 6th of November 2024, the Claimant sought a declaration that his dismissal from service was unfair and unlawful. He asked for general, punitive and aggravated damages and payment of severance allowance, basic compensation, service pay and costs of the claim.
- [2]** The background facts were that he was employed as a clerical officer from 1980 to 1986 and sub-county chief from 1986 until the 29th of May 2002 when he was interdicted on

allegations of misappropriation of UGX 1,500,000/=. He filed a defence to the allegations and on the 11th and 18th days of October 2002, he appeared before the District Service Commission to defend himself. On the 13th of December 2002, he was dismissed from service. He instituted criminal proceedings against one Kukundakwe Godfrey whom he believed was responsible for the said misappropriation. In criminal case, KE-00-CR-142/2004, Her Worship Juliet Nakitende, Magistrate Grade One, convicted Kukundakwe Godfrey of the offence of theft contrary to Section 254 of the Penal Code. The Magistrate sentenced Mr. Kukundakwe to a fine of five hundred thousand shillings or a term of two years in default and directed him to refund the sum of UGX 1,500,000/=. The Claimant served the Magistrate's decision on the Respondent in a bid to be reinstated. When the Respondent was unresponsive, the Claimant filed High Court Civil Suit No. 101 of 2006 at Mbarara and it was dismissed.

- [3] The Claimant then filed Civil Suit No. 047 of 2016, in Chief Magistrates Court at Kabale. On the 21st of July 2020, His Worship Isaac Rukundo, Grade One Magistrate, found that the Respondent unfairly dismissed the Claimant. The Respondent was ordered to pay the Claimant all the benefits he would have been entitled to until his retirement including half salary during interdiction, salary arrears from interdiction to retirement and all other public service benefits. The Magistrates also made orders for general damages and costs of the suit and citing *Natural Medical Stores v Penguins Ltd*, (the proper case citation is *National Medical Stores v Penjuines Ltd (HCT-00-CC-CA 29 of 2010) [2012] UGCommC 39 (3 May 2012)*) forwarded the file to the High Court for appropriate orders on the figures on general damages and special damages since these would be beyond the Magistrates pecuniary jurisdiction.
- [4] When the file was placed before the Honourable Mr. Justice Moses Kazibwe Kawumi, then Resident Judge Kabale, His Lordship formed the opinion that the Magistrates Court at Kabale did not have the requisite jurisdiction to hear and determine Civil Suit No. 047 of 2010. In a letter dated the 2nd of February 2020, returning the case papers to the Magistrate, his Lordship computed the terminal benefits to be more than UGX 70,520,000/= exceeding the UGX 20,000,000/= pecuniary jurisdiction. It was the judge's position that the proceedings were a nullity and he urged the trial Court to investigate whether the matter should not have been handled by the District Labour Officer first.
- [5] On the 13th of May 2022, Messrs. Bakanyebonera & Co. Advocates acting on behalf of the Claimant, sought the Commissioner of Labour's leave to be heard out of time. By letter dated the 1st of June 2022, the Commissioner granted the Claimant leave to lodge his complaint out of time.
- [6] On the 23rd day of October 2024, the Labour Officer at the Ministry of Gender, Labour and Social Development referred the matter to this Court.
- [7] As indicated in paragraph [1] above, the Claimant filed his memorandum of claim before this Court on the 6th of November 2024. In its memorandum in reply, the Respondent denied the claim and indicated its intention to raise a preliminary objection on *res judicata*. It was also contended that the Claimant's salary arrears and retirement benefits had been

budgeted for and were being processed for payment. The Respondent asked that the claim be dismissed.

- [8] In rejoinder, the Claimant contended that he premised the filing of the present action on the advisory of Justice Kazibwe asserting a reasonable cause of action.
- [9] On the 12th of December 2024, we directed the taking of arguments on the preliminary points. When the matter came before us on the 21st of January 2025 we took oral arguments, as the Court was prevented from sitting on the 16th of January 2025¹. We have considered each party's submissions, summarised below, for which the Court is grateful, in this ruling, which we now render.

Respondent's submissions

- [10] Ms. Fiona Bamanya Assimwe, State Attorney, holding brief Ms. Rita Kalembe, Senior State Attorney, for the Respondent raised 2 preliminary points on limitation and *res judicata*.
- [11] It was argued that Section 3(2) of the Civil Procedure and Limitation (Miscellaneous Provisions) Act Cap. 283 (**CPLMPA**) limits actions on contract against the Government or local authority to three years and the period of limitation begins to run on the date of the cause of action. The Learned State Attorney submitted that the claim was filed on 6th November 2024, twenty-two years after the cause of action arose on 13th December 2002 when the Claimant was dismissed. It was also submitted that limitation prevents stale actions and the present case ought to be dismissed.
- [12] On *res judicata*, Ms. Assimwe cited Section 7 of the Civil Procedure Act Cap. 282 and the cases of *Ponsiano Semakula v Susane Magala & Others*² and *Maniraguha v Nkundiye*³ in support of the proposition that judgment in the former suit was delivered on 21st June 2020 and the Claimant had commenced the present claim against the same party, with the same claim. In the State Attorney's view, this would be a retrial. If there was any other issue, the claimant should have sought a revision under Section 81 CPA. We were asked to uphold the objections and the matter be dismissed with costs.

Claimant's submissions

- [13] Mr. Bwesigye chose to start with *res judicata*. Learned Counsel for the Claimant countered that *res judicata* was based on Section 3 CPA and had three principles:
- (i) The issues substantially in issue in the former case must be the same as the issues in the current case.
 - (ii) There must be homogeneity of parties.
 - (iii) The previous suit must have come before a court with competent jurisdiction.

¹ A national court case census was conducted from 13th to 15th January 2025 affecting Court fixtures in that week.

² 1993 KALR 213

³ [2014] UGCA 1

Counsel cited *Kasumba v Jaffer* in support of these propositions.

- [14] He told us that the main point was in jurisdiction. Citing Section 207(b) Magistrates Courts Act Cap.19, Counsel submitted that a Grade One Magistrate's pecuniary jurisdiction was limited to UGX 20,000,000/= and the Magistrate did not have jurisdiction per Kazibwe J. It was his view that the matter had not been heard and determined and there ought to have been enforceable remedies. He told us that *res judicata* was not to defeat justice. The Respondent had not been vexed and had not paid the Claimant and therefore the objection ought to be overruled.
- [15] Regarding limitation, it was suggested that the CP&LMPA was not applicable because the matters had been under litigation on various fronts commencing with a judicial review application that had been dismissed for being filed out of time. The suit was then placed before a Magistrate. It was Mr. Bwesigye's view that because the matter was a labour dispute it was properly before this Court and Section 71(2) of the Employment Act 2006 (*this is now Section 70(2) of the Employment Act Cap. 226 per the Revised Edition of the Laws of Uganda 2023*) gave discretion to the Labour Officer to extend time as long as it is deemed just and fair. Counsel cited *Florence Nabuumba v Uganda Development Bank Ltd*⁴ submitting that objection to time should be raised before the labour officer. The remedy is to appeal a decision of the labour officer under Section 93(1)EA. Learned Counsel asked us to reject the objection.

Rejoinder

- [16] In rejoinder, Ms. Assimwe submitted that the letter of Kazibwe J was not a decision and the Claimant should have taken other action on the nullity. On limitation, the Learned State Attorney countered that the Claimant did not plead any disability under Section 5CP&LMPA.
- [17] On remedies, it was submitted that the Claimant arrears had been computed and submitted to the Ministry of Finance and were being processed. We were asked to uphold the preliminary objections.

Decision of the Court

- [18] Limitation has been held to be an absolute defence. It collapses a suit. In *Madhvani International v Attorney General*⁵ 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 filed. Lord Greene's M.R. in *Hilton v Sulton Steam Laundry*⁶ observed that the statute of limitations is not concerned with merits. Once the axe 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. To this Court's mind, these dicta are binding and instructive on the nature of limitation to the extent that if a suit is time-barred, then there is

⁴ LD 061 of 2016

⁵ [2012] UGSC 14

⁶ [1946] 1 KB at p 81.

nothing beyond what the law permits that a Court can do. In *Madhvani*, our apex Court employed the phrase strict and inflexible.

- [19] The effect of Section 3 CPMPLA is an already resolved question. In *Dr. Peter Kisakye v Attorney General & Anor*⁷ and *Mugema v Wakiso District Local Government*⁸ we found actions against the Government or a local authority to be regulated under Section 3 (2)CPLMPA which provides:

Limitation of certain actions

.....

(2)No action founded on contract shall be brought against the Government or a local authority after the expiration of three years from the date the cause of action arose.

- [20] The Claimant had an employment contract with the Kabale District Service Commission and he was dismissed on the 13th of December 2002. The present claim was filed as an employment dispute against a local government. He sought the Commissioner's leave to file his claim out of time on the 13th of May 2022, 17 years after the time to file the claim had lapsed.
- [21] Mr. Bwesigye suggested that the provision of Section 71(1) granted discretion to the labour officer to extend time and that on the authority of *Nabuumba*, whether an application to extend time was made was immaterial to the exercise of the Labour Officer's discretion. We think that there may be a misapplication of the principle in *Nabuumba*. In that case, a preliminary objection was raised to the filing of a complaint before a labour officer after the expiry of the 3 months set out in Section 71(now Section 70)EA. The labour officer entertained the dispute without giving reasons for extending time outside the three-month statutory timeframe. The Industrial Court found that the Commissioner had properly exercised her discretion to entertain a matter when it was reported out of time. But that is not the matter in the present case. The Claimant reported to the Labour Officer 17 years after the cause of action arose.
- [22] In instances such as the present case, the Industrial Court has ruled that limitation applies to the period within which the Complaint should be brought before the labour officer and not the exercise of discretion after the limitation period has occurred. In *Akoko v Uganda Manufacturers Association*⁹ and *Kyesimira v Stanbic Bank (U) Ltd*¹⁰ the provisions of Section 3(1)(a) of Limitation Act Cap. 290(LA) were found to apply to employment contracts. The Industrial Court observed that while Section 71EA(now Section 70) permitted a labour officer to extend time to file a complaint beyond three months, such extension could not exceed the six years stipulated in the LA. In other words, a labour office has the discretion to extend time beyond the statutory three months within which an aggrieved employee may lodge a complaint provided it is within the time set by the acts of limitation. In terms of the LA, this would be six years for actions against private entities and individuals

⁷ LDR 011 of 2023, Industrial Court(28th August 2024)

⁸ [2024] UGIC 46

⁹ [2022] UGIC 14

¹⁰ [2019] UGIC 16

and in terms of the CP&LMPA, three years for actions against the government. Going by Section 3 CP&LMPA, the time for filing an action lapsed on the 13th of December 2005.

- [23] It is therefore our judgment that the present claim was lodged with the Commissioner outside the statutory timeframe set out under Section 3 CP&LMPA and is therefore statutorily barred.
- [24] We would be fortified in this decision by *Kisakye*, where we referred to *Nyeko Smith & Anor v Attorney General*¹¹ Tumwesigye JSC confirmed an action filed after the three-year limitation to be stale. The Court considered Section 5 CPLMPA, which provides for an extension of one year should a party be under a disability and unable to file the matter within three years.¹² In the present case, no disability has been pleaded.
- [25] Mr. Bwesigye also half suggested that the preliminary objection ought to have been raised before the labour officer and not before this Court except as an appeal. In our view, this argument is not tenable given the Supreme Court dicta in *Uganda Railways Corporation v Ekwaru D.O and 1330 (5104) Others* found that a limitation period was a point of law, and could be introduced as a ground of appeal, regardless of whether it was brought to the attention of the trial court. The Court also held that an allegation of a suit being barred in law cannot be taken lightly because it touches upon court's jurisdiction to entertain the suit. Proceedings undertaken by a court without jurisdiction are a nullity. In this regard, raising the point of limitation was not restricted to the labour officer as Mr. Bwesigye would have us believe. Indeed in *Ekwaru*, Chibita JSC, with Mwondha, Ekirikubinza-Tibatema, Musota and Madrama JJSC concurring, overturned the Court of Appeal decision which had applied Section 3(1) of the Limitation Act which provided a limitation period of six years. The apex court found Section 52 of the Uganda Railways Corporation Act Cap. 216 which set a twelve-month limitation period to be applicable. We are therefore not persuaded to accept Mr. Bwesigye's argument.
- [26] Being that limitation is an axe, it now must swing on the Claimant's claim. Labour Dispute Reference No.6 of 2024 is barred by limitation and hereby dismissed. The dismissal renders the point on *res judicata* moot because while Mr. Bwesigye makes a very compelling point about *res judicata* not existing to defeat justice but to save parties from being vexed, limitation affects jurisdiction. In a thinking not dissimilar to Chibita JSC on jurisdiction, Associate Justice Benjamin Cardozo¹³ opined that jurisdiction exists that rights may be maintained. Rights are not maintained that jurisdiction may exist. In other words, a court cannot exercise jurisdiction if the cause of action has been extinguished by limitation. Limitation renders the right unenforceable. In sum, there is no room to litigate whether the matter has been litigated.
- [27] Ms. Asiimwe sought costs of the claim. There shall be no order as to costs as per the dicta of this Court in *Kalule v Deutsche Gesellschaft Fuer Internationale Zusammenarbeit (GIZ) GMBH*¹⁴. Expanding access to labour justice requires a balance between the employer and the employee.

¹¹ [2013] UGSC 13

¹² See also *Gastapo Company Ltd v Attorney General* [2018] UGSC 13 and *Lubwama v Attorney General* [2019] UGHCCD 149

¹³ *Berkovitz v Arbib & Houlberg* (1921). 230 N. Y. Benjamin Cardozo was an Associate Justice of Supreme Court of the United States.

¹⁴ [2023] UGSC 24

[28] In the final result, the claim is dismissed with no order as to costs.

It is so ordered.

Signed, dated and delivered at Mbarara this 23rd day of January 2025


Anthony Wabwire Musana,
Judge, Industrial Court

The Panelists agree.

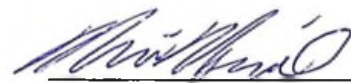
1. Hon. Adrine Namara



2. Hon. Susan Nabirye



3. Hon. Michael Matovu



22nd January 2025

10:19 a:m

Appearances:

1. For the Respondent: Ms. Rita Kalembe, State Attorney.

2. For the Claimant: Mr. Julius Arinaitwe Bwesigye

None of the parties are in Court.

Court Clerk: Mr. Samuel Mukiza.

Ms. Kalembe: Matter is for ruling, and we are ready to receive it.

Court: Ruling delivered in open Court.


10:44 am
Anthony Wabwire Musana,
Judge, Industrial Court of Uganda