

UGANDA / JUDGMENT

Bhatt v Principal Immigration Officer (Civil Appeal No. 10 of 1954)

[1955] EACA 135 (1 January 1955)

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COURT

East African Court of Appeal

BEFORE

Connell J

CASE / FILE NUMBER

Civil Appeal No. 10 of 1954

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APPELLATE CIVIL

Before CONNELL, J.

VENILAL CHATURBHAI BHATT. Appellant

v.

THE PRINCIPAL IMMIGRATION OFFICER, Respondent

Civil Appeal No. 10 of 1954

Limitation—Public Officers' Protection Ordinance, Cap. 63, section 2 \$(a)\$ —Appeal from declaration by Principal Immigration Officer—Appeal filed more than six months after declaration—Whether appeal time-barred.

The appellant was declared by the Principal Immigration Officer to be a prohibited immigrant, under section 5 (1) \$(h)\$ of the Immigration (Control) Ordinance, 1948. Against this declaration he appealed to the Resident Magistrate, Nairobi, who, without deciding the appeal on its merits, dismissed it on the ground that it was time-barred by the limitation period of six months contained in section (2) (a) of the Public Officers' Protection Ordinance, Cap. 63. Against that decision the appellant appealed, by way of second appeal, to the Supreme Court on the ground that the magistrate had erred in holding that the Ordinance applied so as to preclude the magistrate from hearing the first appeal on its merits.

Held (3-5-55).—The word "appeal" is not included in the words "action, prosecution or proceeding" in section 2 (a) of the Public Officers' Protection Ordinance, Cap. 63, which words cannot be extended to embrace an "app had been filed more than six months after the date of the declaration by the Principal Immigration Officer.

Semble: Article 14 of the Second Schedule to the Indian Limitation Act, 1877 (as saved by the Limitation Ordinance, Cap. 11), which, expressly, legislates for appeals to be within the limitation period of one year, might apply to the appeal.

Appeal remitted to the lower court with a direction that, in the event of the appeal not being found time-barred by the Act it was to be heard and decided on the merits.

Bhandari for the appellant.

Webber, Crown Counsel, for the Principal Immigration Officer.

JUDGMENT.—I am concerned for the most part in this appeal with the supplementary memorandum of appeal filed by Mr. Bhandari on 13th October, 1954, though a further issue of law appears to me to be disclosed on a perusal of the lower court record.

Grounds 1 and 2 submit that the Public Officers' Protection Ordinance (Cap. 63, Laws of Kenya), does not apply to an appeal filed before the resident magistrate under section 5 (4) of the Immigration Control Ordinance (Cap. 51, Laws of Kenya), and that the six months' limitation period in Cap. 63 does not apply.

Ground 3 submits that, in any event, the jury done to the appellant by the Principal Immigration Officer, on 26th April, 1949, declaring the applicantappellant a prohibited immigrant and requiring him to leave the Colony within 14 days, is a continuing injury.

It is unnecessary to go into the facts of the case, except to state that the applicant-appellant in fact, returned to India after the order of 26th April, 1949, and that he did not file an appeal until 9th September, 1953. Yet for some

reason, which I must confess I do not understand, the all-important question as to whether the appeal was time-barred under any provision of the Indian Limitation Act of 1877, which is expressly saved "in respect of any such act, matter or thing" which is not provided for in the Kenya Limitation Ordinance (Cap. 11, Laws of Kenya), was never mooted or argued before the resident magistrate. Now, section 3 of the Indian Limitation Act, which is headed "Limitation of suits, appeals, and applications", states "subject to the provisions contained in sections. 5 to 25 (inclusive), every suit instituted, appeal presented and application made, after the period of limitation prescribed therefor by the Second Schedule, heretoannexed, shall be dismissed, although limitation has not been set up as a defence".

Article 14 of Schedule II is as follows: —

"To set aside any act or order of an officer of Government in his official capacity, not herein otherwise expressly provided for: one year from the date of the act or order."

As I have stated, it is a matter of surprise to me that this point was not. argued in the lower court; nor in fact was it there specifically pleaded, and I draw the attention of Mr. Webber to section 40 of the Limitation Ordinance which lays down the requisite of specific pleading so far at any rate as the matter in question is a suit, application or proceeding, Moreover, neither side have argued this point before me on appeal and it is not for me to advise the Crown whether they should plead Article 14 in the event of my remitting the case to the magistrate.

I will now confine myself to the points taken by Mr. Bhandari in his supplementary grounds of appeal. Mr. Webber had strenuously argued that the original order made by the Principal Immigration Officer was in the nature of an order in a declaratory suit and that though the appellant has filed an appeal against that order, such appeal was time-barred by section 2 (a), Cap. 63, on the ground that the appeal was in the nature of "an action, or proceeding" which was not commenced within six months of the "act, neglect or default complained of".

It should be noted that "suit" which I should have thought was to be regarded as synonymous with "action" in Cap. 63, is defined in the Civil Procedure Code as "all civil proceedings" commenced in any manner prescribed. In the definitions in section 3 of the Indian Limitation Act "suit" does not include an appeal. In Stroud's Judicial Dictionary, quoting the Judicature Act it is said, "Any proceeding is equivalent to any action", and the definition of action is "a civil proceeding commenced by writ or in such other manner as may be prescribed by Rules of Court".

I am satisfied that the word "appeal" cannot be included in the words "action," prosecution or proceedings" in section 2 (a), Cap. 63, and having come to that conclusion I find it unnecessary to express any view as to whether the applicant/appellant suffered any "continuing injury", as in my view the extension of a period of three months for filing an action, prosecution or proceeding, has no application whatever to the question of the requisite time necessary to file an appeal.

The case is directed to be remitted to the resident magistrate with a direction to make a finding as to whether the appeals or appeal filed against the order of the Principal Immigration Officer dated 26th April, 1949, were barred by limitation. In the event of the resident magistrate finding that the appeals or appeal were: time-barred the appeals will stand dismissed; if the resident magistrate finds that the appeals or appeal against the order of the Principal Immigration Officer are= not time-barred, he is directed to hear the appeals or appeal on the merits.

The question of costs is reserved.

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