

UGANDA / JUDGMENT

Mugeme v Wakiso District Local Government (Labour Dispute Reference 38 of 2023) [2024] UGIC 66 (11 October 2024)

[2024] UGIC 66

COURT

Industrial Court of Uganda

BEFORE

Wabwire Musana, J, Namara, Panel Member,
Nabirye, Matovu

CASE / FILE NUMBER

Labour Dispute Reference 38 of 2023

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THE REPUBLIC OF UGANDA IN THE INDUSTRIAL COURT OF UGANDA HOLDEN AT
FORT PORTAL LABOUR DISPUTE REFERENCE NO. 038 OF 2023 *(Arising from
Labour Dispute MGLSD/LC/528/2020)*

MUGEMA PETER

VERSUS

WAKISO DISTRICT LOCAL

GOVERNMENT:::RESPONDENT

Before: The Hon. Mr. Justice Anthony Wabwire Musana**Panelists:** Hon. Adrine Namara, Hon. Susan Nabirye & Hon. Michael Matovu.***Representation:******1.** The Claimant appeared pro se.****2.** Mr. James Katono and Mr. Ceaser Mateka on brief for Mr. Nelson Nerima of Ms. Nambale Nerima & Co Advocates for the Respondent.*

Case Summary:

Limitation- limitation of employment, labour and industrial claims-Claim filed fifteen years after deletion from public payroll- Whether a claim filed against the Government or scheduled corporation is barred by law of limitation-Claim barred by statute of limitation under Civil Procedure and Limitation(Miscellaneous Provisions) Act Cap. 283

RULING**Background facts and procedural history**

- [1] In a complaint filed at the Ministry of Gender, Labour and Social Development(the MGLSD) on the 15th of November 2021, the Claimant alleged that he had been unlawfully removed from the Government payroll for six months between September 2005 and February 2006 for which he sought accrued salary arrears, payment of compensation and damages. He claimed to have been appointed in the year 2000, and in 2005, he was transferred from Buwate C/U Primary School to Kabonge Primary School before returning to Buwate. He said there had been a failed transfer to Palisa District, and he had been removed from the payroll in September 2005.
- [2] The Respondent argued that in March 2005, the Claimant asked to be released to join Pallisa District Local Government. He then requested a cancellation and was posted to Kabonge Primary School, to which he refused to report. His salary was withheld from September 2005 until March 2006, when he resumed work.

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- [3] In his award dated the 18th of November 2022, Mr. Apollo Onzoma, the Assistant Commissioner of Industrial Relations(ACIR) at the MGLSD, found that the Claimant was unlawfully removed from the payroll and awarded UGX 1,005,780/= as the outstanding salary. The questions on damages was referred to this Court.
- [4] In his memorandum of claim filed before this Court on the 17th of April 2023, the Claimant, based on ACIR's award, sought general damages for UGX 45,000,000/=.
- [5] On the 24th of August 2023, the Respondent filed a memorandum in reply contending that the claim was time-barred, having arisen in 2007.
- [6] When the matter came before us on the 13th of November 2023, we directed the parties to prepare a joint scheduling memorandum. On the 26th of March 2023, Mr. Katono, for the Respondent, informed us that no agreement had been reached on framing a question on the limitation of the Claimant's action. We noted that limitation is an absolute bar to proceedings and can be resolved as ^a preliminary point of law. We directed the filing of written submissions on the point.

Respondent's submissions

- [7] The Respondent's Counsel, citing Section 3(1) of the Limitation Act Cap. 290(LA), argued that the claim was filed 15 years after it arose, the limitation being six years for actions founded on contract. We were referred to **Ndaula v NadulF, Lwanqa v Uganda Electricity Board*[1] (#page-1-0) ², *Hilton v Sulton Steam Laundry*[3] (#page-1-1) 4*and **Khayiyi v Wanambwa*^{**} for the proposition that the claim should be dismissed.

Claimant's submissions

- [8] The Claimant submitted that he had been vigilant in pursuing his claim, and the Respondent had frustrated him. He argued that he wrote a letter in 2006, visited offices of personnel officers, Chief Administrative Officers, and the Inspector General of Government, and served a demand letter in 2020. When he filed the labour complaint, the Respondent did not turn up. He also said the Respondent could have raised his preliminary objection before the labour officer and was not under the cover of LA wasting the Court's time.
- [9] In his analysis and referring to **Winfield & Jolowicz on Tort, Anns v Merton Borough Council, Masaka Municipal Council v Takaya Frank** and the Uganda Public Service Standing Orders, the Claimant submitted the Respondent had a duty to pay his salary and was in breach of this statutory duty as ^a continuous tort. He relied on the authority of **Eridad Otabong v Attorney General**, where the Court approved a passage from Clark and Lindel Seel on Tort to the effect that where there is a continuing tort, every fresh continuance constitutes a fresh cause of action. He also quoted Oder JSC in **Otabong**, where his Lordship held that a wrong that is continuing tort, the cause of action accrues continuously. Due to the Respondent's continuous breach of duty, the claimant submitted that his action was not caught by limitation. He also cited Article 173(b) of the 1995 Constitution to protect ^a public officer against discrimination in

¹ Election Petition Appeal No. 20 of 2006

² [2013] UGHCCD 28

³ [1946] 1 KB at p 81.

⁴ [2015] UGHCCD 42

executing his or her duties. He also cited **Angewe Kalanga v Attorney General** and a European Court of Justice decision whose citation he did not provide and asked us to dismiss the preliminary objection.

Our determination

- [10] The question confronting this Court is whether the Claimant's action is time-barred.

- [11] The facts of this matter, which are common cause and can be gathered from the pleadings, the Claimant's trial bundle and his scheduling memorandum, are that the Claimant was appointed as a teacher in 2000. He was posted to Kasangati Moslem Primary School. In 2005, he was transferred to Buwate C/U Primary School. In September of 2005, he was removed from the payroll. In March 2006, he was reinstated. By an award of the labour officer dated 18th of November 2022, he was granted his unpaid salary of UGX 1,005,780/= He now seeks general damages of UGX 45,000,000/= and interest on the accrued salary at 30% from default until payment in full.
- [12] The Respondent, on the other hand, firmly maintains that the action is indeed time-barred. The Claimant, however, counters this argument by asserting that the Respondent is responsible for a continuing tort. This legal dispute over the nature of the action adds a layer of complexity to the case, which we must resolve first. Is the Claimant's action in tort or contract?
- [13] In **Mpandi v Prism Trading and Construction Co. Ltd,** Madrama J.(as **then was*)* cited Halsbury's Laws of England Fourth Edition Reissue volume 45 (2) paragraph 301 at page 221:

"Those civil rights of action which are available for recovery of unliquidated damages by persons who have sustained injury or loss from acts, statements or omissions of others in breach of duty or contravention of right imposed or conferred by law, rather than by agreement, are rights in tort. The proposition thus formulated shows that the nature of tort can, perhaps, best be approached by way of distinctions. The principle distinctions to be drawn are distinctions between the claim in tort and a claim in the contract and the distinction between a civil wrong and a civil crime. However, the same circumstances may give rise to claims for breach of contract or in tort, and many tortious acts are also crimes. Where facts are such as giving ^a person ^a right of action in tort or ^a right of action in restitution for money had and received, his election to pursue the remedy in restitution, and its pursuance to judgment followed by the satisfaction of the judgment, bar the right to sue in tort."
- [14] From this judgment, the principal difference between a tort and a contract is that a tort is ^a wrongful act that injures another and violates a duty of care imposed by law. It is distinguished from the contract, which is an agreement between the parties, the breach for which may be remedied in damages or declaratory relief.
- [15] The Claimant's action stems from being deleted from the payroll. His name was entered on the payroll by appointment as Respondent's employee. Under Section 2 of the Employment Act Cap. 226(the EA), employment contracts are classified as contracts of service, which means any contract, whether oral or in writing, whether express or implied, where a person agrees, in

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return for remuneration, to work for an employer and includes ^a contract of apprenticeship. The Claimant an attached appointment letter dated the 10th of August 2000, which set out the terms and conditions of his service, including his remuneration. And under Section 42EA, the employer has a duty to pay wages. In our view, the Respondent's entire action is founded on his employment contract, and he seeks to enforce the rights to salary under the employment contract. The action complained of is a breach of the employment contract and not ^a continuing tort, as the Claimant would have this Court believe. In our view, the argument that the Respondent is culpable for ^a continuing tort is misplaced because the action is for breach of contract and not a tort.

[16] What is the law of limitation in employment disputes against local governments? In **Dr. Peter Kisakye v Attorney General & Anor*[5](#page-3-0)* we found actions against the Government to be regulated under Section 3 (2) of the Civil Procedure and Limitation(Miscellaneous Provisions) Act Cap. 283(CPLMPA) which provides:

Limitation of certain actions

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

[17] Therefore, Mr. Katono reference to Section 3(1)of the Limitation Act Cap. 290 is not, in view of **Kisakye,** accurate. The law applicable is the CPLMPA and not LA. And the limitation under Section 3(2) CPLMPA on actions on tort or contract is three years. If the Claimant was deleted from the payroll in September of 2006, his action should have been filed by September 2009 at the latest. Because his action was filed outside the statutory timeframe, as was in **Kisakye,** the action is time-barred. For this reason, we would dismiss the claim. We are fortified in this decision by our holding in **Kisakye,** where we referred to the Supreme Court dicta in **Nyeko Smith & Anor v Attorney General*[6](#page-3-1)*. In that case, an action filed after the three-year limitation was found 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. We also cited **Madhvani International v Attorney General* [7](#page-3-2)* where the Supreme Court unanimously upheld a decision of the Court of Appeal on the limitation of cause of action against the Government. The Court held that a statute of limitation is strict 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. The Court also extracted Lord Greene's M. R. passage in **Hilton vSulton Steam Laundry*[8](#page-3-3)* where it was 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.**

[18] In the present case, the axe fell in September 2009 with an extension of twelve months for disability. After that, the Claimant's action was time-barred and accordingly dismissed.

⁵ LDR 011 of 2023. Industrial Court(28th August 2024)

⁶ [2018] UGSC13

⁷ [2012] UGSC 14

⁸ [1946]1 KB at p 81.

[19] There shall be no order as to costs as per the dicta of this Court in Kalule v Deutsche Gesellschaft Fuer Internationale Zusammenarbeit (GIZ) GMBH9.

It is so ordered.

2. Hon. Suzan Nabirye 3. Hon. Michael Matovu 11th October 2024 10.03 a:m **Appearances:** 1. The Claimant appears *pro se.* Respondent absent. Court Clerk: **Mr. Amos Karugaba.** Matter is for ruling, and we are ready to receive it. Ruling delivered in open Court.

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