

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION
CIVIL SUIT NO. 383 OF 2012

DR MAJ (RTD) OKULLO ANTHONY JALLON : PLAINIFF

VERSUS

ATTORNEY GENERAL : DEFENDANT

BEFORE: HON JUSTICE STEPHEN MUSOTA

RULING

Prior to the commencement of the hearing of this suit the learned Attorney General through the Senior State Attorney Mr. Bafirawala Elisha raised a preliminary point of law which is also contained in the joint scheduling memorandum that the claim by the plaintiff, Dr. Major (Rtd) A.J Okullo is barred by limitation.

The brief background to the plaintiff's claim is that the plaintiff alleges that he was in 1998 tasked and/or authorized by the Ministry of defence through the office of Secretary for Defence Major General Emilio Mondo to offer personal medical services to the late Lt Col Angel Okello within Uganda, Kigali, Jeddah, Brussels and Rome. The late Lt Col Angel Okello was one of the leaders of Uganda Peoples Democratic Army/Movement (UPDA/M) who negotiated and signed a peace accord with the Government of Uganda at Pece Stadium in Gulu District. For his service, the plaintiff billed government \$93,150 as

in 1989. Since no payment was forth coming from the Ministry of Defence it was allegedly agreed between the then Secretary of Defence Major General Emilio Mondo and the plaintiff that an interest rate of 24% p.a be imposed on the sum of US \$93,150. However no payment was made by the defendant. The plaintiff contends that the defendant made a part payment of Uganda shs 138,455,750= on 17th November 2011. Thereafter another part payment of Ug shs 94,200,000= was made on 17th May, 2012. All these payments were out of a total claim of US \$10,579,372.60.

In his submission, Mr. Bafirawala contends that the claim by the plaintiff is barred by limitation in view of the well settled law on time limitation. Learned counsel relied on the provisions of S. 3(2) of the Civil Procedure and Limitation (Miscellaneous Provisions) Act Cap 72 which bars any action against government founded on contract to be instituted after the expiration of three years from the date on which the cause of action arose. Learned counsel relied on the case of **Re: Application of Mustapha Ramathan Civil Appeal No. 25 of 1996** wherein court relied on a statement by Lord Greene MR in **Hilton Vs Sutton Steam Laundry [1946] 1 KB 61 at 81** that:

“But the statute of limitation is not concerned with merits. Once the axe falls, it 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.” _

Learned counsel appears to blame the plaintiff for delaying to assess his claims since 1988 arguing that he ought not to have gone to sleep or slumber on his right to sue. That the plaintiff should have had the zeal and motivation to enforce his rights. Learned counsel further submitted that the effect of filing actions out of time stipulated by statute of limitations is to make the claim an illegality and this illegality cannot be overlooked as mere technicality since rules are made to be observed and must not be taken for granted:

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NO. 20 OF 2006

Finally learned counsel for the defendant submitted that by 1988, the axe had fallen and thus the plaintiff could not bring an action on 17th December 2012 after a period of 20 years on the basis of the same facts because this amounts to unreasonable delay. That court should apply the law of limitation strictly and dismiss this suit with costs for being time barred.

In reply Mr. Ndyomugabe assisted by Mr. Wacha for the plaintiff contended that the defendant's preliminary point of law is misconceived and should be dismissed with costs because the plaintiff's pleadings contain exemptions that brought the suit outside the statute of limitation. He relied on the provisions of Section 22(4) Cap and S 23(3) of the Limitation Act Cap 80.

Section 22(4) thereof provides that:

***“where any right of action has accrued to recover any debt or other liquidated pecuniary claim, or any claim to personal estate of a deceased person or to any share or interest in it, and the person liable or accountable therefore acknowledges the claim or makes any payment in respect of the claim, the right shall be deemed to have accrued on and not before the date of acknowledgement or the last payment*”**

Mr. Ndyomugabe further submitted that the above provision of the law apply to Government under S. 30 of the Limitation Act which provides that:

“Subject to S. 31 and the other provisions of this Act, this Act shall apply to the proceedings by or against government as they apply to proceedings between private persons.”

He further contended that the plaintiff's claim accrued from the date of the defendant's last part payment. Learned counsel relied on the cases of:-

- **NATIONAL PHARMACY LTD Vs KAMPALA CITY COUNCIL [1979] HCB 256.**
- **JK PATEL Vs UGANDA REVENUE AUTHORITY HCCS 14 OF 2003.**
- **GREENLAND BANK (IN LIQUIDATION) Vs DR. APUULI KIHUMURO & ANOTER HCCS 790 OF 2003.**

Mr. Ndyomugabe further submitted that after several notices of demand to pay the principal sum of \$93,150 plus the agreed interest of 24% pa from 21.02.1989 which were acknowledged, payment of shs 138,455,750= and 94,200,000= respectively were remitted to the plaintiff's account. That these developments meant that the cause of action accrued afresh.

I have considered the preliminary point of law raised by the defendant, I have also considered the counter arguments by learned counsel for the plaintiff as contained in his submissions. I have studied and considered the law applicable and the authorities cited by both learned counsel for my assistance.

I am in total agreement with the submission by learned counsel for the plaintiff that the preliminary point raised by the defendant's counsel is misconceived. A look at the

pleadings shows that the plaintiff pleaded exemptions in paragraph 4(k) of the plaint wherein it is stated that:-

The plaintiff further avers that after so much delay and protracted negotiations, plaintiff was paid a paltry shs 138,455,750= on 17.11.2011 and shs 94,200,000= on 17.05.2012.”

and in paragraph 4(l) where he avers that :-

The plaintiff further avers and contends that the two belated payments are insufficient and did not fully cover the debt due from government which now stands at US \$19,362,821 or its equivalent in Uganda shillings.”

In the plaintiff's reply to the Written Statement of Defence he avers that:-

“2. The plaintiff specifically denies the contents of paragraph 4 of the written statement of defence and avers and contends that the defendant in acknowledgment of the said debt made part payments on the 17.11.2011 and May 17, 2012. In the premises by virtue of S. 22(l) and 33(2) of the Limitation Act cap 80, the plaintiff's right to recover the outstanding claim accrued on 17 May, 2012 and not before the said date which is within the prescribed time.”

In view of the above pleadings and following court precedents and the law applicable, I agree with learned counsel for the plaintiff that the defendant having made part payment of the debt, and the plaintiff having pleaded part payment as an exemption as required under O.7 r 6 of the Civil Procedure Rules, the plaintiff's claim accrued from the debt of the defendant's last payment.

The effect of acknowledgement or part payment of a debt or other liquidated sum is that time which had started to run against the creditor started afresh by an acknowledgment of liability made by the debtor; see **JK Patel (Supra)**. It is the law that time which has started to run against the creditor may be stopped and made to start afresh by acknowledgment of liability or by a part payment made by the debtor.

If a debt is acknowledged it is immaterial that the amount claimed is disputed in the acknowledgment.

In the instant case, the plaintiff made several notices of demand to pay the principal of US \$93,150 plus agreed interest of 24% pa from 21.02.1989. The notices were received and acknowledged and payment of shs 138,455,750= and 94,200,000= respectively were remitted to the plaintiff's account. Ipsa facto, that payment meant that the balance became due for which the plaintiff filed the present suit regardless of whether the same is disputed or not.

The plaintiff having pleaded Sections 22(4) and 23(2) of the Limitation Act and given that under S. 3(1) of the Limitation Act the Act applies to proceedings by or against government as they apply to proceedings between private persons, the claim by the plaintiff in this suit is not time barred. It was legally revived by the defendant's part payments.

Consequently, I will find that preliminary objection by the defendant has no basis and will be dismissed with costs to the plaintiff.

Stephen Musota

J U D G E

23.01.2014