

THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE REFERENCE NO. 139 OF 2019
(Arising from Labour Dispute No. KCCA/NDC/LC/181/2018)

AKOKO JOSEPH:.....CLAIMANT

VERSUS

UGANDA MANUFACTURERS ASSOCIATION:.....RESPONDENT

BEFORE:

1. THE HON. JUSTICE ANTHONY WABWIRE MUSANA

PANELISTS:

1. Mr. JIMMY MUSIMBI,
2. Ms. ROBINAH KAGOYE &
3. Mr. CAN AMOS LAPENGA.

RULING

1.0 Introduction

On 12th October 2022, when this matter came up for scheduling, Mr. Brian Emurwon, appearing for the Respondent, indicated that he wished to raise a preliminary objection on limitation of the Claimant's action. We directed the parties to file written submissions. Both parties filed succinct submissions, for which the Court is grateful.

2.0. Submissions

2.1. Counsel for the Respondent submitted on the issue whether the law on limitation bars the claims arising in 2011, 2012 and 2013. He argued that following the failure of the mediation proceedings before the labour officer, the matter was referred to this Court for arbitration. The Claimant did not make timely request for referral of his matter in 2018, did not timely file his memorandum of claim and this delayed issuance of mandatory notification of arbitration. The memorandum of claim has not been validated to date. Counsel prays that the claims arising in 2011, 2012 and 2013 be struck out and rejected for being barred by the law of limitation.

- 2.2. Ms. Naima Bukenya, appearing for the Claimant, contended that the complaint was properly filed before the labour officer. The mediation was not successful and the matter was properly referred to this Court in the exercise of its appellate and referral jurisdiction.
- 2.3. The procedural history, as can be gathered from the lower Court record, case report and case papers, is as follows:
- (i) By a letter dated 28th February 2018, the Respondent informed the Claimant that his fixed term contract would expire on the same date. On 6th March 2018, the Claimant was appointed Financial Consultant for a period of 2 months. The Claimant appears to have sought payment of his leave arrears and they were denied. On 24th April 2018, the Claimant, through Masereka, Mangeni & Co. Advocates, served the Respondent with a notice of intention to sue for unlawful termination.
 - (ii) On 19th June 2018, the Claimant, through Masereka, Mangeni & Co. Advocates, filed a complaint against the Respondent with the labour officer at Nakawa.
 - (iii) On 24th June 2018, the labour officer issued a notice of complaint to the Respondent.
 - (iv) On 3rd July 2018, by letter under the name and style of Sebalu and Lule Advocates, the Respondent provided its explanation as to the complaint.
 - (v) On 6th July 2018, the labour officer directed mediation proceedings.
 - (vi) Mediation meetings were held on 23rd July 2018 and at another date. A final mediation date was set for 12th December 2018.
 - (vii) The Labour Officer referred the matter to the Industrial Court on the 28th of May 2019.
- 2.4. By a memorandum of claim dated 30th January 2020, the Claimant sought the sum of **Ugx. 22,050,000/= (Twenty two million fifty thousand shillings only)** being payment in lieu of leave for the years 2011,2012,2013,2014,2015 and 2017 and general damages. By a memorandum in reply, the Claimant contended that the claim was

misconceived, frivolous and vexatious and in direct contravention of written law.

- 2.5. The Respondent framed the issue for determination as whether the law on limitation bars the claims arising in 2011, 2012 and 2013.
- 2.6. By necessary implication, the claims for arrears for 2014, 2015 and 2017 and the claim for damages are not subject of the preliminary objection.

3.0. Analysis and Resolution.

- 3.1. There are 3(three) salient facts from the procedural history that are of key interest;
 - (i) The claim involves leave arrears for the years 2011, 2012, 2013, 2014, 2015 and 2017,
 - (ii) The Claimant's contract expired on 28th June 2018, and
 - (iii) The claim was filed before the labour officer on 19th June 2018.

We shall demonstrate the significance of these key facts shortly.

- 3.2. The Respondent contends that a failed mediation results in an arbitration before the Industrial Court under **Section 8(1) (a) of the Labour Disputes (Arbitration and Settlement) Act 2006, (LADASA)**. In its fullness, **Section 8 of the LADASA** provides for the functions of the Industrial Court including arbitration of labour disputes referred to the Court and adjudication upon questions of law and fact arising from references to the Court by any other law. Is the Court's function limited to arbitration on matters arising from mediation? We think that the answer to this question is no. The exercise of the Court's jurisdiction was laid out elaborately, in the decision in **Eng. John Eric Mugyenzi vs Uganda Electricity Generation Co. Ltd.**¹ Their Lordships found the function of this Court as set out in Section 8 to be the arbitration of matters referred to it under the Act and adjudicating upon questions of law and fact arising from references to the Court. The Court found a claim of general, special and punitive damages to be "under any other law" and could be adjudicated upon by the Industrial Court. We are bound by the decision of the Court of Appeal. This Court's jurisdiction to handle claims of general damages is already established. The Claimant sought leave arrears and general damages. We think that this is a proper case for adjudication and this Court is clothed with the necessary jurisdiction. We

¹ C.A.C.A No. 167 of 2018 At page 19 of the judgment of their Lordships Kenneth Kakuru J.A, Stephen Musota J.A and Christopher Madrama J.J.A(*as he then was*)

are therefore unable to accept the Respondent's contention that our jurisdiction in the present matter is limited to arbitration.

We will now return to the preliminary objection on limitation.

- 3.3. The law of limitation, simply put, 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 be struck out. Limitation is an absolute defence to a claim. It collapses a claim. Under Section 3(1)(d) of the Limitation Act Cap. 80, an action to recover any sum by virtue of any enactment (except penalty or forfeiture) shall not be brought after the expiration of six years from the date on which the cause of action arose. In terms, an action in contract, tort or certain other actions shall not be brought after the expiration of six years after the cause of action arose. The Courts have been forthright in describing and determining limitation. In **Madhvani International S.A vs A.G**² 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.³
- 3.4. In the present case, the Claimant's contract of employment was brought to an end in February 2018. He filed the claim before the labour officer on the 19th of June 2018. He sought payment of his leave arrears from the year 2011, 2012, 2013, 2014, 2015 and 2017. The Claimant had taken leave in the year 2016. The Respondent submitted that the claims for the years 2011, 2012 and 2013 should be rejected. If we understand the Respondent correctly, it reckons time from the date of reference to the Industrial Court or filing of the memorandum of claim or specifically the date of commencement of the arbitration. In the Respondent's view, the date of filing the complaint before the labour officer would not be reckoned. This argument does not gain much purchase in our view because the cause of action is not reckoned from the date the dispute is filed with the Industrial Court rather at filing before the Court of first instance. In the case of **Ozuu Brothers Enterprises Vs Ayikoru Milka**,⁴ the labour officer is established to be a court of first instance on infringement of rights and enforcement of obligations under the Employment Act.

² Per Kitumba J.S.C in S.C.C.A No. 23 of 2020

³ Per Musoke J. in H.C.C.S No 381 of 2005 Justice Olwedo vs Attorney General

⁴ H.C.C.R No. 64 of 2011

- 3.5. Applying the law to the present facts, the period of six years would be reckoned from the date on which the claimant filed his claim before the labour officer *viz* the 19th June 2018. That would represent the initial filing of the suit. We are fortified in adopting this view by the decision of this Court in the case of **Juliet Kyesimira vs Stanbic Bank Ltd**⁵ where the provisions of Section 3(1)(a) of the Limitation Act Cap. 80 were found to be applicable to employment contracts. Their Lordships and Honourable members of the panel, opined that while **Section 71 of Employment Act 2006** permitted a labour officer to extend time to file a complaint beyond the 3 months, such extension could not exceed the 6 years stipulated in the Limitation Act.
- 3.6. Accordingly and in all circumstances, we find that any claim that accrued before the 19th day of June 2012 would be beyond the six year limitation term. The Claimant will be permitted to sustain, for determination by this Court, claims after that date. To this extent therefore, the Respondent's preliminary objection is overruled.

4.0 Counsel for the Respondent also raised a few matters that merit our comments;

- 4.1. We were invited to note that the Claimant did not request a timely referral of his complaint to the Industrial Court-which could have been done after 4 weeks. We have found in the case of **Kizza Gerald & Anor vs Camusat Uganda Ltd**⁶ that where a labour officer has not rendered a decision on a labour complaint within 90 days, a party has an option under **Section 93(7) of the Employment Act** to pursue the matter at the Industrial Court, even after the 90 days period. Similarly, under Rule 3(2) of the **Labour Disputes (Arbitration and Settlement) (Industrial Court Procedure) Rules, 2012**, if a labour officer has not referred or otherwise disposed of a dispute within eight weeks, a party to a dispute “**may**” refer the dispute to the Industrial Court. As with our decision in the Kizza case, we think that the option of referral to the Industrial Court is available to either party to a dispute and that there is no clear sanction for not making a reference within eight weeks. A labour officer would be entitled to dispose of the dispute at a time within or after the eight weeks and a party would equally be entitled to refer a matter after the eight weeks.
- 4.2. We were also invited to note that the Claimant did not timely file his memorandum of claim which he ought to have done in 8 days. He instead took 8 months. We note that under Rules 5(1),(2) and (5) of the LADASA

⁵ Labour Dispute Reference 103 of 2017

⁶ Labour Dispute Reference 081 of 2019

Rules, the Registrar is required to give notice of a reference to the parties to a dispute requiring them to file a memorandum of claim within seven days from the date of receipt of notice by the Claimant and within 7 days from the date of service of the memorandum on the Respondent. Precedent of this Court has been that service of the notice of reference must be personal.⁷ In the absence of proof of personal service this Court would be constrained to pronounce itself on this matter.

- 4.3 In respect of delayed issuance of a notice to the Respondent, the Court takes note of the need to ensure timely service of notices to all parties. What is of added interest to the Court is to ensure timely delivery of labour justice for all in an efficient and effective manner.

5.0 Decision of the Court

- 5.1 The preliminary objection on limitation is overruled excepting for any claims before the 19th of June 2012 with no order as to costs. The matter had been partly scheduled at which point the preliminary points were raised. We direct that scheduling of the matter be completed on the 19th January 2023 on which date the claim shall be set down for hearing.

It is so ordered.

Delivered at Kampala this 9th day of December 2022

SIGNED BY:

1. ANTHONY WABWIRE MUSANA, JUDGE

PANELISTS

1. MR. JIMMY MUSIMBI

2. MS. ROBINAH KAGOYE

3. MR. CAN AMOS LAPENGA

Delivered in open Court in the presence of:

Court Clerk. Mr. Samuel Mukiza.

⁷ See LDMA No.064/2021 National Insurance Corporation Ltd vs Thereza Namatovu