

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL COURT DIVISION)

HCT- 00- CC-MC- 0350 - 2005

Caltex oil (U) LtdAPPLICANT

VERSUS

Attorney GeneralRESPONDENT

BEFORE: HON. MR. JUSTICE W. M. MUSENE

RULING:

When this case last came up for hearing on 27.3.2012 Mr. Gerald Batanda for the Defendant Attorney General raised a preliminary objection. The objection was that since the claim under paragraph (3) of the plaint originates in a contract, and as paragraph 2 of the plaint gave the particulars of the claim to the effect that the plaintiff learnt of their entitlements on 13.8.2001. He added that a suit filed on 21.4.2005 was barred by the provisions of S.3 (2) of the Civil Procedure and limitation (miscellaneous provisions) Act and no exceptions to the rule were stated by the plaintiff.

Mr. Batanda for the Defendant cited the **Supreme Court case of Eridad Etabongo Wailmo Vs Attorney General, SCCA No 6 of 1990** where the quoted provisions were held to be mandatory. He concluded that since the claims by the plaintiff are not in respect to trust properties, then the provisions of S. 19 of the

limitation Act nor S. 31 of the same Act are not applicable and so the suit is time barred. He prayed for the dismissal of the same.

In reply, Mr. Paul Ekochu for the plaintiff submitted that no contract was or had been showed by counsel for Defendant so as to invoke S. 3 of the limitation Act. Counsel for the plaintiff further contented that the cause of action is a policy directive that established the transport fund, and that the plaintiff had no alternative but to comply with the policy. Mr. Ekochu also submitted that the Attorney General was served with statutory Notice in October, 2004. He emphasised that the claim does not fall within the period of limitation as it is not founded on a contract.

Mr. Batanda for the Attorney General on the other hand reiterated that S.3(1) (d) of the limitation Act envisages an enactment, which is different from policy and that since claim was based on rights and obligations, it was therefore based on contract. Mr. Batanda concluded that suits are commenced in courts and not by issuance of Statutory Notice. Section 3(2) of the Civil Procedure and Limitation (miscellaneous provisions) Act, Cap 72, laws of Uganda provides:

“S. 3(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 on which the cause of action arose.”

And section 5 of the same act provides for extension of limitation period in case of disability. An examination of the plaint, paragraph 4, reveals that the claim is based on an understanding between the plaintiff and the Ministry of Energy to

deposit and withdraw monies until the fund was dissolved. S. 10 (I) and (2) of the Contract Act, N. 7 of 2010 defines a contract as follows:-

(1) A contract is an agreement made within the free consent of parties with capacity to contract for a lawful consideration and with a lawful object with the intention to be legally bound.

(2) A contract may be oral or written or may be implied from the conduct of the parties.

The reliefs being sought by the plaintiff are based on an understanding between itself and the ministry of Energy and for all practical purposes and intends, such an understanding qualifies to be a contract within the meaning of section 10 (I) and (2) of the Contract Act, No 7 of 2010. The contention by counsel for the plaintiff that the claim originates from a policy does not stand because a policy does not operate in a vacuum or in air. The basis of the policy is the understanding between the plaintiffs and the Ministry of Energy (Government), which qualified to be a contract.

Having ruled that the understanding between the plaintiff and Ministry of Energy (Government) was a contract, then the next issue is whether the action is time barred. In considering whether or not a cause of action is time barred, one has to look at the plaint and nothing else. And in the case of **Gulu HCT-CV- No 16 of 2006**, before Honourable Justice Kasule, (**Okeng Washington Vs attorney General and Mike Okello**) it was emphasised that a suit that is time barred by statute must be rejected by court. The rationale of rejecting such a claim was given in the case of **Mohamed B. Sarasi, Court of Appeal Civil Appeal No. 42 of**

2008, where the court noted that the purpose of the law of limitation was to put an end to the litigations and that the law was to be applied strictly by the courts. Other authorities are to the effect that statutes of limitation is not concerned with the merits of the case. That was the position stated in **Re-Application of Mustapha Ramathan, Civil Appeal No. 25 of 1996**. It was held:-

“statutes of limitation are in their nature strict and inflexible enactments. Their overriding purpose is interest reipical itut sit firms, meaning that litigations shall be automatically stifled after a fixed length of time, irrespective of the merits of a particular case.....”

And in **Uganda Revenue Authority Vs Uganda Consolidated Properties Ltd (1977-2000) UCLR 149** their Lordships of the Court of Appeal held that time limits set by Statutes were matters of substantive law and not mere technicalities and should be strictly complied with.

Turning to the present case it is clear from the plaintiff that the plaintiff learnt of the claim in the year 2001. The plaintiff then filed the present suit in the year 2005, after four years. This was clearly after the limitation period of 3 years under S.3(2) of the Civil Procedure and Limitation (Miscellaneous provisions) Act stated above. The plaintiff has not pleaded any fraud or mistake within the meaning of S. 6 of the said Act and neither has any disability warranting extension of limitation within the meaning of S. of the Limitations Act been raised. In the circumstances, and in view of what I have outlined, I find and hold that the present case was filed after the limitation period. The same is therefore time barred and is accordingly hereby dismissed. Each side will however, meet their own costs.

Judge

10.4.2013

Mr. Paul Ekochu for plaintiff present

M/s Eva Kabundu for Attorney General

Mr. Ojambo Court Clerk present

Court: Ruling read out in open court

Hon. Mr. Justice W. M. Musene

High Court Judge

10.4.2013