

5

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CIVIL APPEAL NO. 111 OF 2012

CHARLES TUMUHIMBISE APPELLANT

VERSUS

10 **CENTENARY BANK LTD RESPONDENT**

(An Appeal from the order of the High Court of Uganda at Mbarara before Hon. Justice Andrew Bashaija dated 31st May, 2012 in Civil Suit No. 0109 of 2004)

CORAM: Hon. Mr. Justice Kenneth Kakuru, JA

Hon. Mr. Justice Geoffrey Kiryabwire, JA

15 **Hon. Mr. Justice Christopher Madrama, JA**

JUDGMENT OF THE COURT

This is an appeal from the decision of the High Court of Uganda at Mbarara before His Lordship Andrew Bashaija J, dated 31st May, 2012 in Civil Suit No. 0109 of 2004, in which the learned trial Judge dismissed the appellant's suit on the basis of a preliminary point of law raised by the respondent that the suit was time barred.

The appellant being dissatisfied with the decision of the learned trial Judge filed this appeal on the following grounds:-

1. *The learned Judge erred in law to hold that the whole cause of action was founded on contract whereas parts of the cause of action were founded on unlawful imprisonment and malicious prosecution.*

25

5 2. *The learned Judge erred in law to dismiss the whole action for being time
barred whereas the actions for unlawful imprisonment and malicious
prosecution were within time.*

Representations

At the hearing of this appeal *Mr. Pidson Kaburura* learned Counsel appeared for the
10 appellant while *Mr. Jet Tumwebazi* learned Counsel appeared for the respondent.

Appellant's case

Mr. Kaburura for the appellant submitted that the learned trial Judge wrongly
dismissed the appellant's suit. Counsel conceded to the fact that the cause of action
on contract of employment was time barred however, he argued that, other causes
15 of action such as unlawful imprisonment and malicious prosecution in the plaint
were not barred by limitation.

Respondent's reply

Mr. Tumwebazi argued that, all the causes of action set out in the appellant's plaint
were time barred and the learned trial Judge rightly dismissed the suit. He asked
20 Court to uphold the Judge's findings and dismiss the appeal.

Resolution

We have carefully listened to both Counsel. We have also read the Court record. We
are alive to the duty of this Court to re-evaluate the evidence and make our own
inferences on all issues. See:- *Rule 30 (1) (a)* of the Rules of this Court,
25 *Fr. Narcensio Begumisa & others vs Eric Tibebaaga, Supreme Court Civil Appeal No. 17
of 2002, Kifamunte Henry vs Uganda, Supreme Court Criminal Appeal No. 10 of 1997
and Bogere Moses vs Uganda, Supreme Court Criminal Appeal No. 1 of 1997.*

5 It is clear from the reading of the plaint that the appellant's cause of action was on two grounds. The first ground was wrongful dismissal under Contract of employment. The second ground was malicious prosecution and unlawful infringement.

10 The appellant concedes that from the reading of the plaint the cause of action in respect of contract of employment was barred by limitation. However the action in respect of malicious prosecution only accrued at the time the current case against the appellant was dismissed on 6th June, 2002. The suit from which the appeal arises was filed on 6th September, 2004 clearly this was within the time prescribed by the law for filing actions in tort.

15 We find merit in this appeal which is hereby allowed with costs.

We order that the file be sent back to the High Court for trial in respect of the claim in tort for malicious prosecution and or unlawful imprisonment.

The respondent shall pay costs of this appeal

Dated at Kampala this 8th day of April 2019.

20


.....
Kenneth Kakuru
JUSTICE OF APPEAL

25


.....
Geoffrey Kiryabwire
JUSTICE OF APPEAL

30


.....
Christopher Madrama
JUSTICE OF APPEAL