THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA

(CIVIL DIVISION)

CIVIL APPEAL NO. 10 OF 2018

(ARISING FROM NAKAWA CHIEF MAGISTRATES COURT CIVIL CASE NO. 580 OF 2016)

KABUYE GODFREY---------- APPELLANT

VERSUS

CROWN BEVERAGES LIMITED…….. RESPONDENT

BEFORE HON. JUSTICE SSEKAANA MUSA

JUDGMENT

The facts giving rise to this appeal are that the appellant was employed by the respondent company and on 11th day of February 2010 the applicant sustained injuries in an accident as he was reporting to work and was rushed to Mengo and Rubaga hospital.

The appellant filed an application 2016 seeking the following reliefs against the respondent company;

(i) Payment of 20,698,665/= for the assessed permanent partial disability.
(ii) Interest at 24% per annum from the date of cause of action until payment in full.
(iii) General damages.
(iv) Costs of the suit.

The applicant as a result of the said injuries suffered permanent partial incapacity assessed by the Medical doctor of Mulago hospital at 25% as a result of lumber spine injury.

When the matter came up for a scheduling conference the learned counsel for the respondent raised a preliminary objection that the application was brought out of time since the accident occurred on 11th February 2010 and the application was filed on 26th October 2016 which was after 6 years provided under the Limitation Act.

The learned trial chief magistrate upheld the objection and found that the the application was brought over six years provided by the Limitation Act and therefore the claim was time barred.

Being dissatisfied with the ruling, the appellant appealed to this court and set out 1 ground of appeal as hereunder;

The ground of appeal as it appeared in the Memorandum of Appeal was;

1. The learned trial Magistrate erred in law and in fact when he held that the Appellant's cause of action for permanent partial disability arising from accident injuries was time barred.

The appellant prayed for the appeal to be allowed, the ruling of the lower court be set aside, varied and substituted with an order that the case be remitted back for trial before another Magistrate.

At the hearing of the appeal, the appellant was represented by *Learned Counsel Kizito kasirye* and the respondent was represented *Learned Counsel Aruho Raymond*. In the interest of time the court directed that the matter proceeds by way of written submissions. I have considered the respective submissions of the parties as filed.

It is true that the duty of this Court as first appellate court is to re-evaluate evidence and come up with its own conclusion.

This position was reiterated by the Supreme in the case of ***Kifamunte Henry v Uganda SCCA No. 10 of 1997***, where it was held that;

> "*The first appellate court has a duty to review the evidence of the case and to reconsider the materials before the trial Judge. The appellate Court must make up its own mind not disregarding the judgment appealed from but carefully weighing and considering it*."

I have taken the above principles into account as I consider the Appeal. I have considered the record of proceedings and the lower Court and have considered the written submissions of the appellant.

The learned trial Magistrate erred in law and in fact when he held that the Appellant's cause of action for permanent partial disability arising from accident injuries was time barred

The appellant's counsel submitted what a cause of action is and when it starts to run for the purpose of determining the limitation date; A cause of action has been defined in a dearth of authorities to mean a fact or combination of facts which give raise to a right of action. It is also a group of operative facts giving raise to one or more bases for suing; a factual situation that entitles one person to obtain a remedy in court from another person. See ***Balikudembe Mukasa vs TASO (U) LTD in HCT-CS-215-2016 at Page 9***

The appellant's cause of action was for recovery of Ushs. 20,689,665/= being compensation for his permanent partial incapacity resulting from the injuries sustained from an accident that he suffered while in course of his employment with respondent company. The appellant's counsel contended that any finding of permanent disability can only be by medical examination after exhaustion of treatment. In his applicant before the trial court, the Appellant pleaded that the injuries suffered from the accident caused him permanent partial disability of 25% according to an assessment made by Mulago National Referral Hospital on the 17th day of October 2016.

According to the appellant, the final medical assessment made on 17th October 2016, that put the appellant's permanent partial disability at 25%, constituted *"the factual situation"* that entitled the appellant to claim for compensation under Sections 6(1)(b) and 14 of the Workers Compensation Act Cap 255. It naturally follows that the appellant's cause of action for compensation of the permanent partial disability, as presented in his application before the Learned Chief Magistrate, did not arise until the 17th day of October 2016 when a final medical assessment of his percentage of permanent disability was made by Mulago National Referral Hospital, and <u>NOT</u> on 11th February 2010 when the accident occurred. Our conclusion is further fortified by the absence of any provision in the

Workers Compensation Act or any other law that provides for the time period within which such final medical assessment should be carried out to ascertain the percentage of disability.

It is true that Section 3(1) (d) of the Limitation Act Cap 80 renders suits for recovery of sum by virtue of any enactment filed after expiry of three years time barred.

However, since the final medical assessment of the appellant's permanent partial disability was made on 17th October 2016; it was an error for the Learned Chief Magistrate to hold that the Appellant's application for compensation for the permanent partial disability filed on 26th October 2016 was barred by the Limitation Act, especially where appellant expressly pleaded that his claim for compensation was solely hinged on the assessed permanent disability.

The appellant prayed that the appeal be allowed with costs and in the terms proposed in the memorandum of appeal.

The respondent equally submitted on their understanding of a cause action;A **cause of action** has been defined several times to mean that a plaintiff enjoys a right, that right has been violated and the defendant is liable. See **AUTO GARAGE vs MOTOKOV [1971] EA 514.**
In **READ Vs BROWN 22 QBD 31,** it was held that;

"A cause of action means every fact which is material to be proved to enable the plaintiff to succeed or every fact which, if denied, the plaintiff must prove in order to obtain judgment".

In the present case before Court, the appellant's case rests first on the fundamental claim/fact that an accident did occur on **11/02/2010.** The appellant cannot divorce the fact of the accident of 11/02/2010 from his material facts which he must plead and prove in order to obtain judgment. The occurrence of the accident six (6) years before the filing the suit, therefore becomes a fundamental fact of this case, as the starting point.

Worker's Compensation as a remedy itself is premised on the fact that injury to a worker by accident of whatsoever nature must occur, leading to other steps along the chain flow of obtaining such compensation. BUT for the accident, there cannot be any claim by the appellant to workers compensation in Court. On the

occurrence of the accident, the appellant's right to an injury free work environment was violated and the defendant was viewed as the liable party. **That clearly encompasses the three aspects of right, violation and liability.** Therefore, **the occurrence of the accident on 11/02/2010 gave rise to the appellant's cause of action.**

In this case, it is rather surprising that the appellant opted to sit back, continued working with the respondent for over five (5) consecutive years for monthly pay and when he was retrenched in March 2016; he thereafter started orchestrating claims of permanent disability due to the accident of 11/02/2010. How unfortunate!

(a) Limitation Period.

The appellant undeniably filed the suit on 26/10/2016 after 6 years from the date of the accident on 11/02/2010. This puts the matter beyond the statutory limitation period and the suit is barred in law.

Section 3(1) (d) of the **Limitation Act** Cap 80, provides that damages for personal injuries are not recoverable by court action after the expiration of **three (3) years** from the date the cause of action arose. My Lord, in the present case, the action premised on personal injuries was filed after six (6) years from the date of the very accident that allegedly caused these personal injuries. That is a worse position.

In **F.X.S MIRAMAGO Vs ATTORNEY GENERAL [1979] HCB 24**, it was held that;

"The time begins to run from the date when the cause of action accrued up to the time the suit is filed'.

The respondent's counsel submitted that the appellant's accident cannot be severed from the appellant's claim and thus constitutes the cause of action. No claim for personal injuries can be sustained without factual reference to the accident of 11/02/2010.

The respondent's counsel contends that the appellant has tried to reason that his cause of action arose on 17/10/2016 when an assessment of the alleged disability was made. We respectfully disagree. Assessment of disability under the Workers Compensation Act has its legal provisions that make it a mandatory obligation of the respondent (employer) to refer the appellant (employee) to a medical practitioner for medical examination and treatment.

Under Section 11(1) of the Workers Compensation Act, upon the worker giving notice of the accident, the employer must arrange to have the worker medically examined. Indeed, after the accident of 11/02/2010, the appellant was medically examined at Lubaga Hospital on 11/02/2010 and was discharged overnight. At that stage, no permanent disability was ever determined at all. The appellant healed and he continued in the everyday employment of the respondent till 30/03/2016 when he was retrenched with full benefits.

The alleged assessment of 17th October 2016 was denied by the respondent on basis that the respondent did not refer the appellant to Mulago Hospital at all. **By 17/10/2016, the appellant was no longer an employee of the respondent having been retrenched with full benefits on 30/03/2016**.

Decision

The appellant does not state when this disability arose and the only evidence adduced is annexture E to the reply to the answer to the application he was only given a sick leave 3 weeks on 11th February 2010 and it not indicates in his main application when this permanent partial incapacity arose.

It appears that when the applicant was treated in 2010 he never attended any treatment and the employer was never informed of any such incapacity or continued injury. The same injuries treated in 2010 after the accident reappeared on 27th July 2016 after he had been retrenched on 30th March 2016.

The submission by counsel for the appellant that the assessment of permanent partial disability could only be determined after treatment is not derived from the pleadings. The appellant never pleaded any such fact and indeed there is not any evidence on record to show that he ever continued to be treated for the same injuries.

It is indeed surprising that the appellant without informing the respondent went on his own to medical doctors to generate a report about his permanent partial disability without their knowledge. Above all, the appellant went to see the alleged doctors after he had been retrenched from the said employment. May be it was an injury that occurred after he was no longer in the employment of the respondent.

The cause of action of the original accident arose on 11th February 2010 and there is no factual situation the appellant is alluding to as the basis of extending the time of the date of the cause of action.
The submission of appellant's counsel that the application before the Chief magistrate did not arise until the 17th day of October 2016 arose when a final medical assessment of permanent disability was made by Mulago National Referral Hospital and not on 11th February 2010 when the accident occurred is not tenable.

In the first place there is no evidence that the appellant was ever treated for the last 6 years after the said accident injuries before lodging the application.
In the case of ***Uganda Revenue Authority vs Uganda Consolidated Properties Ltd CACA No. 31 of 2000***, the court of appeal noted that; Time limits set by statutes are matters of substantive law and not mere technicalities and must be strictly complied with.

The appellant's cause of action arose 11th February 2010 and there is no other date since then that alludes to such an accident or sustained injuries and by implication this was the date the cause of action arose and the same was not extended by any intervening circumstances that would have extended the date of the cause of action apart from the Medical report made on 17th October 2016. This would imply that the litigation over this accident injuries are restrained by time limit set under the Limitation Act. In the case of ***Re Mustapha Ramathan Court of Appeal Civil Appeal No. 25 of 1996***
The court of appeal noted that;

> *"Statutes of limitations are in their nature strict and inflexible enactments. Their overriding purpose is interest* ***reipublicae ut sit finis litum****, meaning that litigation shall automatically stifled after fixed length of time, irrespective of the merits of the particular case. A good illustration can be found in the following statement of Lord Greene MR in* ***Hilton vs Sutton Steam Laundry [1946] 1 KB 61 at page 81*** *where he said;*
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> > *"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"."*

The court agrees with the submission of the respondent on the challenges associated with prosecuting old cases that are limited by statute; In ***BIRKETT vs JAMES [1977] 3 WLR 38,*** it was stated at pages 58 and 59 as follows;
"Statutory provisions imposing periods of limitation within which actions must be instituted seek to serve several aims. In the first place, they protect defendants from being vexed by stale claims relating to long past incidents about which their records may no longer be in existence and as to which their witnesses, even if they are still available, may well have no accurate recollection…… thirdly, the law is intended to ensure that a person may with confidence feel that after a given time he may regard as finally closed an incident which might have led to a claim against him.."

The respondent's counsel is entitled to enforce the rights that accrue from the statute of limitation and the learned trial Chief Magistrate was right to find that the appellant's cause of action for permanent partial disability arising from the accident injuries was time barred.

In the final result for the reasons stated herein above this appeal fails and is dismissed with costs.

It is so ordered.

SSEKAANA MUSA
JUDGE
26th /10/2018