THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA

(CIVIL DIVISION)

CIVIL SUIT NO. 866 OF 2000

1. **NGOBI JOSEPH**
2. **BALUGAMBIRE SULAI**
3. **SERINA MASIKA & 131 OTHERS----------PLAINTIFFS**

VERSUS

STEEL CORPORATION OF EAST AFRICA LTD----------RESPONDENT

BEFORE HON. JUSTICE SSEKAANA MUSA

JUDGMENT

The Defendant Company, the STEEL CORPORATION OF EAST AFRICA LIMITED was incorporated with limited liability on the 6th of October, 1960; its shareholders at incorporation were various members of the Madhvani family and other persons.

The primary business of the Defendant was the ownership, operation, management and running of a Steel Mill at Masese in Jinja District which the Defendant carried on until 1972 when majority of the shareholders of the Company and its Directors were expelled by the Gen. Idi Amin Government being persons of Asian extraction and/or origin.

After the expulsion of the shareholders/directors of the Defendant Company, the Government of Uganda took over the operations of the Steel Mill that was hitherto owned and managed by the Defendant Company.

The Government of Uganda incorporated a limited liability Company known as EAST AFRICAN STEEL CORPORATION LIMITED. It is under this Company that the Government of Uganda managed the operations and business of the Steel Mill, which was expropriated from the Defendant Company.

Sometime in late February, 1994, the assets of the Steel Mill were handed over to the former shareholders of Steel Corporation of East Africa Ltd.

The Plaintiffs who were employed at various times either by the Steel Corporation of East Africa Ltd or by the East African Steel Corporation Ltd worked at the Steel Mill until they were terminated with effect from 30th July, 1994.

When the Plaintiffs and other workers were terminated, they were paid some terminal benefits but they were dissatisfied with the quantum. One group of 36 workers (mainly senior staff) filed HCCS. No. 640 of 1994 against Muljbhai Madhvani & Co. Ltd and the present Defendant claiming the balance of their terminal benefits.

The Plaintiffs brought the suit on 27.7.2000 seeking a declaration that they are entitled to recover terminal benefits equivalent to the sum of UGX 328,841,896 from the Defendants in their capacity as bodies who took over/shared assets and liabilities of East African Steel Corporation Limited.

AGREED FACTS

According to the record of proceedings, the following are the agreed facts;

- The plaintiffs were all formerly employed by the East African Steel Corporation Ltd (EASCO).

- In 1994, the defendant was repossessed by its former owners.

ISSUES:

The following issues were agreed to:

(1) Whether the suit is barred by statute of limitation.

(2) Whether the Plaintiffs have a cause of action against the Defendants jointly or severally.

(3) Whether the Defendants are jointly and/or severally liable to the Plaintiffs for terminal benefits as claimed.

At the trial plaintiff led evidence of two witnesses and the defendant also lead evidence through two witnesses in proof of their respective case and other evidence was by way of documentary evidence that were exhibited at trial.

The case proceeded by way of witness statements which were admitted on record and the witnesses were cross-examined on their witness statements admitted as evidence in chief.

Issue 1

Whether the suit is barred by statute of limitation?

The defendant's counsel submitted that this suit seeking the recovery of terminal benefits brought against the Defendant is barred by the statute of limitation and should thus be dismissed in accordance with the provisions of Order 7 Rule 11 of the Civil Procedure Rules.

It is not in dispute that the Defendant's shareholders were expelled from Uganda in 1972 and its Steel Mill at Jinja was expropriated by the Government of Uganda, which also took over the operations of the said Steel Mill. Consequently, the employment Contracts of any of the employees that were working with the Defendant were terminated and/or frustrated by the actions of the government of Uganda in 1972.

According to the defendant if any of the Plaintiffs was ever employed by the Defendant then they ought to have instituted a suit for breach of contract and recovery of terminal benefits against the Defendant within 6 years from 1972, that is by the end of 1978. In accordance with the provisions of Section 3(1)(a) Of the Limitation Act Cap. 80.

As stated earlier, none of the Plaintiffs proved that it was ever employed by the Defendant prior to 1972, but if the Court was to find to the contrary then we invite the Court to find that any claim for recovery of terminal benefits by such Plaintiff is barred by the statute of Limitation and should fail.

Secondly, the Plaintiffs' have pleaded in Paragraph 4 of the Plaint that they were all terminated in February 1994 and their terminal benefits calculated at that time. Consequently, as required by Section 3(1)(a) of the Limitation Act, they should have brought the suit for recovery of terminal benefits on or before the end of February 2000. Instead the suit was instituted in the Court on 27th July 2000, five months later.

The Plaintiffs' counsel submitted that the claim is for balance of terminal benefits and related general damages and interest following their termination on 31st July of 1994. The letters of termination and the related partial payment of terminal benefits appear as part of **exhibit D.5.** The letters of termination were written on 28.7.1994, were served on the Plaintiffs several days later and the payment vouchers and other correspondences regarding this termination are dated August, 1994 and September, 1994. The suit was filed on 27.7.2000.

A claim for unpaid terminal benefits is a claim for breach of the terms of an employment contract. Under S.3 (1) (a) of the Limitation Act, Cap. 80, such an action must be filed within 6 years from the date when the cause of action arose.

In the matter before you, the cause of action arose when the Defendant failed to pay the balance of the terminal benefits after various demands including exhibit P.7 (dated 2.8.1994) and P.8 (dated 13.9.1994). However, even if the date of the termination letter (28.7.1994) and not its subsequent delivery to the Plaintiffs and failure to pay full terminal benefits is taken as the date when the cause of action

arose, still the suit which was filed on 27.7.2000 two days before 6 years expired was still not time barred.

The two witnesses of the plaintiff who testified in this matter indicated that they were employed in 1976 for Ngobi Joseph and 1963 for Godfrey Owori who was employed in 1963.

The two witnesses testified that their contract of employment was terminated on 31st July 1994.

It appears from the letters of termination which are written in a general and standard format all the plaintiffs contracts of employment were collectively terminated on the 31st July 1994.The letter is worded as follows;

> ***"This is to inform you that your services with the company are terminated with effect from 31st July, 1994.***
>
> ***Your terminal benefits have been worked out in accordance with the Collective Agreement.***
>
> ***If you occupy the company owned or rented property , you should vacate the same at the earliest or in any case by 31st August, 1994……."***

The letter dated 4th February 1994 as attached to the plaint was not a termination letter as counsel for the defendant has submitted but rather a communication between the East African Steel Corporation Limited and the Deputy Secretary to the Treasury. It does not state anywhere that it is a termination letter although they were discussing about the possibility of terminating the services of the plaintiffs.

A contractual cause of action accrues on the date of the alleged breach of contract. Time begins to run from against a party as from the time when the right to bring action first accrued.

In this case the cause of action arose on the date of termination which was 31st July 1994.

This issue is resolved in the negative.

ISSUE TWO

Whether the Plaintiffs have a cause of action against the Defendants jointly or severally?

The plaintiffs' counsel submitted that the suit was originally filed against two Defendants; Muljbhai Madhvani & Co. Ltd as the 1st Defendant and Steel Corporation of East Africa as the Second Defendant. However, following the commencement of the winding up of the 1st Defendant, Counsel for the Defendants then moved Court to strike off the 1st Defendant from the record and that prayer was granted. Accordingly, this issue should be rephrased by Court to refer to the present Defendant only.

In its defence and evidence, the main thrust of the Defendants' contention is that the Defendant Company is separate from the East African Steel Corporation which the argument goes, employed and terminated the Plaintiffs.

According to the plaintiffs' counsel, several of the Plaintiffs were employed by the Defendant itself before its business was expropriated in 1972. All staff engaged by the Defendant before 1972 had served more than 22 years when their services were terminated in 1994. The part payment vouchers which are exhibited together with the letters of termination show the number of years of service. A perusal of exhibit D.5 shows that from these bank payment vouchers several Plaintiffs had served more than 22 years and were accordingly directly employed by the Defendant.

The Supreme Court in Civil Appeal No. 13 of 2006 **(exhibit P.12)** settled the issue of who should pay the terminal benefits of those staff who were employed before 1972. John W.N. Tsekooko, JSC held that:

"……Someone must be responsible for the employment contracts of these employees. There can be no doubt that the Appellants are responsible for the terminal benefits of all those employees who were employed before the 1972 expulsion" (Page 7 of judgment).

The Appellants whom the Supreme Court found liable to pay the terminal benefits are Muljbhai Madhvani Co. Ltd (who was stuck off the present suit as the 1st Defendant upon winding up) and the Steel Corporation of East Africa Ltd (the remaining Plaintiff to the present suit). Since the present suit was stayed by Tinyinondi J. to await the decision of HCCS. 640 of 1994, the Supreme Court's decision on the Defendants' liability is unassailable and binding.

Regarding the Plaintiffs who were employed after 1972, again the Supreme Court upon reviewing exhibit P.1, P.7, P.8, P.9 and P.10 (which are **exhibits P.2, P.4 and P.8** in the present suit and discussed in paragraph 17 above) held that:

"In addition, exhibits P.1, P.7, P.8, P.9 and P.10 prove that the Appellants intended to maintain responsibility for the disputed employment contracts. There is no evidence showing that the Uganda Government was the responsible party. Indeed the Appellants must also compensate those workers employed after the 1972 expulsion to avoid an unfair result (See Page 7 of Judgment).

It was their submission that this holding is applicable to the Plaintiffs who were also employed under similar circumstances and whose terminal benefits as covered in the then exhibits P.1, P.7, P.8, P.9 and P.10 were reviewed and confirmed by the High Court, Court of Appeal and Supreme Court.

The plaintiffs contend that there is clear evidence that the Defendant who made a partial payment of the assessed terminal benefits should pay the balance. There is a cause of action against the Defendant for these terminal benefits. A cause of action arises on the authority of Auto Garage & Others Vs. Motocov (No. 3) [1971] EA 514 when:

a) **The Plaintiff enjoyed a right.**
b) **The right has been violated.**
c) **The Defendant is liable.**

The Plaintiffs as employees of the Steel Mill which was repossessed by the Defendant were entitled to terminal benefits upon termination of their contracts. Indeed, a partial payment of their benefits was made. They had a

right to payment of full benefits as set out in the letter of 4th February, 1994 **(exhibit P.2 and the Schedule thereto).** The Plaintiffs' particularised benefits extracted from this schedule are in **exhibit P.3**. These payments are also referred to in the Schedule to **exhibit P.4 (originally P.10 in HCCS. 640/1994)**. They also referred to **exhibits P.7 and 8** in proof of the existence of a right to terminal benefits. This right was recognised by the High Court, Court of Appeal and Supreme Court when analysing the same exhibits in HCCS. 640 of 1994. These same exhibits have been used in the present suit.

The full terminal benefits were supposed, as found by the Supreme Court, to be paid by the Defendant. The Defendants' failure to pay the full terminal benefits constitutes a violation of the Plaintiffs' right to be paid for their labour.

The defendants counsel submitted that the suit does not disclose a cause of action against the Defendant and it should be dismissed with costs in accordance with the provisions of Order 7 Rule 11 (a) of the civil procedure Rules.

O.7 r. 11 (a) of the Civil Procedure Rules requires that a Plaint ought to disclose cause of action. A cause of action was defined in the case of ***AUTO GARAGE & ORS LTD – V- MOTOKOV (No.3) [1971] E.A 514*** where it was held that for the Plaint to disclose a cause of action it must demonstrate that: the Plaintiff enjoyed a right, the right was violated and it is the Defendant liable.

In ***JERAJ SHARIFF –V- CHOTAI FANCY STORES*** **[1960] E.A 374 at 375 Windham J.A,** held that:
"***The question whether a Plaint discloses a cause of action must be determined upon perusal of the Plaint alone together with anything attached so as to form part of it, and upon the assumption that any express or implied allegations of fact in it are true***".

The defendants contend that the Plaint in this suit and its Annextures clearly shows and demonstrates that the Plaint does not disclose a cause of action against the Defendant.

The Plaintiffs' purported cause of action against the Defendant is contained in Paragraph 4 of the Plaint wherein they state that they brought the suit seeking a declaration that they are entitled to recover terminal benefits equivalent to the sum of UGX 328,841,896 from the Defendants in their capacity as bodies who took over/shared assets and liabilities of East African Steel Corporation Limited.

The purported cause of action against the Defendant is on the basis that the Defendant took over or shared the assets and liabilities of the East African Steel Corporation Limited the employer of the Plaintiffs.

According to the Plaint and its annextures the Plaintiffs were all employed by a company called East African Steel Corporation Limited who terminated their employment. The question therefore is whether the Plaintiffs who were employed by East African Steel Corporation Limited a different corporate entity have a cause of action against the Defendant for payment of their terminal benefits on the basis that the Defendant took over the assets of their employer?

The answer is simply no, even if in fact the assets of the East African Steel Corporation Limited were transferred to the Defendant that does not ipso facto transfer the liability to pay terminal benefits to the employees of East African Steel Corporation Limited, unless there was a formal agreement to that effect. In absence of a formal agreement transferring the liability to pay terminal benefits the Plaintiffs do not have a cause of action against the Defendant.

The plaintiffs could only have a cause of action against the defendants by pleading assignments or Novation of the contract of employment or the liability to pay terminal benefits to them.

The defendant's counsel further submitted that to found a cause of action based on transfer of liability from one corporate entity to another there must be, an agreement to assign the obligations or liabilities. In absence of a pleading of the existence of such agreement the suit cannot and does not disclose a cause of action.

In this matter East African Steel Corporation Limited and the Defendant are separate and distinct entities. One entity cannot be sued for the obligations of another entity in absence of a formal agreement to novate or transfer liability. The Plaintiffs Plaint does not therefore disclose a cause of action and must be dismissed in accordance with the provisions of O. 7 R. 11(a) of the Civil procedure Rules.

According to the plaint, it is clear that the plaintiffs brought this action against defendants as bodies who took over and shared the assets and liabilities of the East African Steel Corporation Limited.

In paragraph 4 of the plaint they also state that;

"The plaintiffs under their Union entered into a collective agreement with East African Steel Corporation Limited which provided for the terminal benefits of all the employees."

The plaintiffs claim for terminal benefits appears to be rooted in this collective Agreement dated 1st December, 1987 between the East African Steel Corporation Limited as the Employer and Uganda Mines, Metal and Allied Workers Union.

The said collective agreement also provided that The Company shall pay its employees terminal benefits when the employee ceases to serve the company e.g on voluntary retirement, or being retired or having his/her services terminated by the company.

The employment contracts of the plaintiffs were also terminated by the East African Steel Corporation Limited. It appears that the plaintiffs' claim or cause of action is clearly against the company which employed them unless the obligations where taken over by the defendant company by any agreement or assignment.

The plaintiffs brought this case on an assumption that the defendant took over the liabilities of the East African Steal Corporation Limited and they never led any evidence to prove this either by way of agreement.

This court agrees with the submissions and decisions cited by counsel for the defendant in respect of assignment or transfer of liability by the Supreme Court

in *SCCA No.15 of 2009: National Social Security Fund & Another –v- Alcon International Limited as per odoki C.J* at P.15 while quoting Halsbury's laws of England 4th education vol.9, stated

"As a rule, a party to a contract cannot transfer his liability under that contract without the consent of the other party …. There is however, no objection to the substituted performance by a third person of the duties of a party to the contract where those duties are not connected with still, character, or other personal qualifications of that party…… by the consent of all parties, liability under a contract may be transferred so as to discharge the original contract. Such a transfer is not an assignment of a liability but a novation of the contract."

He continued:-

"***What is clear from the quotation is that while assignment or deed novation is permitted by law, there still has to be a fulfillment of the element necessary for a valid contract. There must be offer and acceptance between the parties, and there must be an intention to create legal relations. All these require both parties to be aware of whom they are contracting with. The principle upholds the doctrine of the privity of contract, which states that 'a contract cannot confer rights, or impose obligations on strangers to it'. It is also clear that there has to be consent from both parties, which makes the arrangement within the haspal family, without the knowledge of NSSF an invalid assignment"***

The plaintiffs' counsel had submitted that the repossession of the assets of the defendant's company including the steel mill amounted to assignment by way of transmission and there was no requirement for an agreement to be entered between the defendant and the East African Corporation Limited to hold the defendants liable for the plaintiffs' termination.

It is not clear to this court whether there was any assignment of liabilities in this arrangement between the defendant and the East African Steel Mills Ltd and this could only have been resolved if the two parties had been joined to this suit. This court could have determined the extent of liability between the two companies.

The ***Employment Act cap 219*** as cited by the plaintiff's counsel catered for such a situation and provided as follows;

Section 18(3): *Upon a change of employer, the original employer and the new employer shall be jointly liable for all contractual or other obligations originating before the date on which the change took effect; except that the new employer shall not be liable where, in the opinion of the Commissioner, adequate provision has been made by which the original employer undertakes to continue to discharge the outstanding obligations notwithstanding the change of employer.*

The above provision equally provides for joint liability and this court cannot impute certain facts which have not been pleaded or brought to court by way of any evidence. The liability of the defendant cannot be determined in absence of any evidence to prove assignment.

The plaint does not disclose a cause of action against the defendant to the extent that there is no disclosed liability accruing to the defendant.

This issue is resolved in the negative.

Whether the Defendants are jointly and/or severally liable to the Plaintiffs for terminal benefits as claimed.

The sum effect of resolving the issue before in the negative is that the court cannot proceed to determine this issue since it was closely interlinked.

This suit is dismissed with no order as to costs.

SSEKAANA MUSA
JUDGE
30th/11/2018