

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL SUIT NO.120 OF 2016

FRED LUBWAMA:.....PLAINTIFF

VERSUS

ATTORNEY GENERAL:.....DEFENDANT

JUDGMENT

BEFORE: HON. JUSTICE SSEKAANA MUSA

The plaintiff filed this suit seeking recovery of his vehicle that was damaged by the defendant's force during the 1981-1986 liberation war or its current market value, general damages, interest at the rate of 24% and costs of this suit.

The plaintiff's claim is that during the early 1980s the plaintiff joined the Panther battalion which took part in the Liberation struggle that brought the current regime into power in 1986. According to the plaintiff, he surrendered his motor vehicle Reg. No. UVE 957 [a pick up Junior Nissan] to the urban task force for purposes of easing transportation of war equipment, forces and food supplies.

In the year 1996, the government came up with a program to compensate all those who supported the war including the plaintiff. The war debts committee later convened and resolved that the plaintiff and other veterans be compensated for the losses incurred during the liberation war and the plaintiff was to be compensated with a motor vehicle and or the value of the same at the prevailing market rate as at the time of compensation. The plaintiff alleges that he has to date never been compensated despite several reminders to government. The government through the Ministry of

Luwero triangle has on several occasions promised to compensate the plaintiff whenever funds became available but in vain.

The defendant filed a written statement of defence wherein the plaintiff's claims were denied. In the written statement of defence, the defendant stated that without prejudice; the plaintiff was fully compensated by Government on ex gratia basis to a tune of UGX 80,000,000 after writing to the war debts committee for compensation for his vehicles destroyed during by the war. The plaintiff claimed that his bus UWT 917 had been destroyed by the NRA rebels and wanted the compensation.

The defendant further stated that the plaintiff had no cause of action against the defendant and that the defendant would raise a preliminary objection that this suit is time barred and ought to be dismissed with costs.

At trial the plaintiff was represented by *Mr. Dominic Twinamatsiko* and the defendant by *Ms Nabaasa Charity*. The plaintiff brought one witness whereas the defendant had no witnesses since the claim was over 30 years.

The parties were directed to file final written submissions. The plaintiff filed the written submissions which were considered by this court.

This honorable court framed the following issues for determination of this matter;

1. *Whether the plaintiff is entitled to the compensation sought.*
2. *Whether the matter is res judicata.*
3. *Whether the matter is time barred.*

COURT'S ANALYSIS

Issue 1: Whether the plaintiff is entitled to the compensation sought.

The plaintiff testified that in the early 1980s, he joined the liberation struggle that the brought the NRM in 1986 to power and that during the war, he surrendered his motor vehicle [a pick up] to the urban task force

for purposes of easing transportation of war equipment, forces and food supplies to the fighting forces.

The plaintiff told this court that after the war the government came up with a program to compensate all the veterans including the plaintiff. The war debts committee was later formed for purposes of coordinating and verifying all the persons who were to benefit from the said compensation.

It was the evidence of the plaintiff that later the war debts committee recommended that he be compensated with his motor vehicle and or the prevailing market rate at the time of compensation. The plaintiff further testified that various correspondences were written between the Office of the President and Ministry of Luwero Triangle in the respect to the compensation herein on court record all in relation to the payment of the plaintiff's compensation for his motor vehicle but to date the same has not been realized.

Counsel for the plaintiff submitted that by adducing the exhibits on court's record, the plaintiff has demonstrated to this honorable court that the government was fully aware of his compensation and actually had undertaken to compensate him when the funds became available. However to date he has never realized his compensation.

Counsel prayed that this honorable court find that the defendant breached her undertaking and thus should compensate the plaintiff with his vehicle and or the value of the same as at the time of compensation.

I have perused all the documents adduced as exhibits by the plaintiff on the court's record. P1 particularly states that the plaintiff indeed sought compensation for his vehicles that he had given for use by the UFM/A commanders. The subsequent documents which resultantly led to the plaintiff's payment of compensation to a tune of UGX 80,000,000 all clearly stem from that claim made in P1. The compensation in a lump sum covered all the contributions extended to the current government by the plaintiff in

as far as the liberation war was concerned. The plaintiff is not entitled to any compensation from government.

Issue 2: Whether the matter is res judicata.

According to *section 7 of The Civil Procedure Act*, no court may try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try the subsequent suit or the suit in which the issue has been subsequently raised, and has been heard and finally decided by that court.

In short, once a dispute has been finally adjudicated by a court of competent jurisdiction, the same dispute cannot be agitated again in another suit afresh (see; *In the Matter of Mwariki Farmers Company Limited v. Companies Act Section 339 and others* [2007] 2 EA 185). By *res judicata*, the subsequent court does not have jurisdiction.

For the doctrine to apply, it must be shown that; a) there was a former suit between the same parties or their privies, b) a final decision on the merits was made in that suit, c) by a court of competent jurisdiction and, d) the fresh suit concerns the same subject matter and parties or their privies (see *Ganatra v. Ganatra* [2007] 1 EA 76 and *Karia and another v. Attorney-General and others* [2005] 1 EA 83 at 93 -94).

Hon Justice Stephen Mubiru in *Dubo & Anor v Minduni & Ors (CIVIL REVISION No. 0001 OF 2017)* stated that; “*The matter directly and substantially in issue in the subsequent suit or issue must be the same matter which was directly and substantially in issue either actually or constructively in the former suit; the former suit must have been a suit between the same parties or between parties under whom they or any of them claim; the parties must have been litigating under the same title in the former suit; the court which decided the former suit must be a court that was competent to try the former suit or the suit in which such issue is subsequently raised; and the matter directly and substantially in issue in the subsequent suit must have been heard and finally decided by the*

court in the former suit. A suit therefore will not be res judicata where it is determined that the subject matter is different from that which was considered in the former suit, or the judgment in the former suit was not pronounced by a court of competent jurisdiction, or where it was not a decision given on the merits of the case, or where the parties are different and not privy to those in the earlier suit or if they are not litigating under the same title."

The plaintiff in this case filed a suit Civil Suit No. 11 of 2013 in the Commercial Court that was determined by *Lady Justice Anna B Mugenyi*.

The case was still against the defendant however in that case, the plaintiff sought the court to determine whether the payment made by the defendant was an ex gratia payment and final for his claim as well as whether he was entitled to the payment of UGX 131,320,000.

Bearing in mind the authorities above, the subject matter in this suit is different from that of Civil Suit No. 11 of 2013 therefore this matter does not fall under the ambit of *res judicata*.

Issue 3: Whether the suit is time barred.

Counsel for the plaintiff submitted that from the facts on record and the exhibits, it is clear that the government was at all material time aware of her indebtedness to the plaintiff and always committed to clear the same as and when funds became available, refer to exhibit P.E 8[a letter dated 24th April 2012 from the Ministry of Luwero Triangle], in that letter the minister undertook to clear the plaintiff's claim in the next financial year [2013-2014] when funds would be availed, and the same was not clear even to date.

The plaintiff proceeded to file his suit in 2016 which was still within the time provided by law to bring a suit against the defendant. Counsel prayed that court finds that this suit is not time barred and that the same was brought within the prescribed period of time.

We have to note that the events leading up to this claim arose in 1990 and the plaintiff sought compensation from the War Claims Committee thereafter until 2012 when it was concluded that the plaintiff would be paid the following financial year when funds were available.

According to **Section 3(2) of the Civil Procedure and Limitation (Miscellaneous Provisions) Act Cap 72**, *“No action founded on contract shall be brought against the Government or against a local authority after expiration of three years from the date on which the cause of action arose.”*

I am inclined to agree with Hon Lady Justice Anna B Mugenyi in Civil Suit No. 11 of 2013 where she held; *“...the suit to begin with is time barred as the events that led to the claim took place in 1990 and the plaintiff only came to court in 2013. The plaintiff cannot distance himself from the events of 1990 because they are the ones that led to this claim...”*

“...further whereas it is true that there were several correspondences from various offices regarding compensation, it is not true to conclusively say they amounted to a contract or agreement between the plaintiff and the defendant to compensate the plaintiff. If the ambush had not occurred then there would be no claim in the first place.

The plaintiff ought to have instituted this suit soon after his demands for compensation were made to the war committee and not heeded to immediately had he wanted to pursue this course of action. Instituting this suit nearly 26 years after the events that resulted in to the claim arose unfortunately make the suit time barred.

With the foregoing, this suit fails and is therefore dismissed with costs. It is so ordered.

SSEKAANA MUSA

JUDGE

14th April 2020