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THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CIVIL APPEAL NO 168 OF 2014

WILLIAM SEMWATIKA KIBIRANGO.....APPELLANT

10

VERSUS

MAKERERE UNIVERSITY.....RESPONDENT

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*[Appeal arising from the Ruling of the High Court of Uganda,
Civil Division before Hon. Justice Stephen Musota delivered on
the 10th day of July, 2014 in the Civil Suit No. 198 of 2009]*

CORAM:

HON MR. JUSTICE RICHARD BUTEERA, JA

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HON. MR. JUSTICE KENNETH KAKURU, JA

HON. MR. JUSTICE CHEBORION BARISHAKI, JA

JUDGMENT OF THE COURT

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This appeal arises from the Ruling of the High Court in High Court
Civil Appeal No. 198 of 2009 by His Lordship Justice Stephen
Musota J dated 10th July 2014.

The background to this appeal was set out by the appellant in his
conferencing notes. The respondent appears to agree with facts as
stated therein.

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5 It provided as follows;-

The Appellant filed a suit against the Respondent on the 16/10/2009 *vide* William Ssemwatika Kibirango vs Makerere University; H.C.C.S No. 198 of 2009 praying for judgment against the Respondent. That among other reliefs the Appellant is entitled
10 to pension calculated in accordance with the Respondent's new in House Retirement Scheme.

The Appellant was in service of the Respondent for a period thirty two (32) years from the 01st day of April 1955 to the 30th day of May
15 1987. The Appellant voluntarily retired from the said service on the 30th day of May 1987 and accordingly received an Interim Award and a Meritorious Certificate in recognition of his service to the Respondent.

20 At the time of the Appellant's retirement the Respondent acknowledged that the then existing Retirement Benefits Scheme for staff introduced in 1968 had become worthless over time and the Respondent was in the process of introducing a new and more meaningful scheme that would cover the Appellant and the other
25 members of staff. Hence on retirement the Appellant did not receive his full retirement benefits.

In October, 1995 the Appellant received a Long Service Award of UGSHS. 871,128/= (Uganda Shillings Eight Hundred Seventy One
30 Thousand One Hundred Twenty Eight Shillings Only) being a one, year's payment in recognition of the Appellant's long term service to the Respondent.

In July, 1996 the Respondent introduced the Deposit
35 Administration Plan (DAP) to supplement it's employees improved salaries. However, the only people who were eligible to benefit under the Deposit Administration plan were those employees who were still in the service of the University and had not yet approached the age of sixty (60) years. Therefore, by 30th June,
40 1996 the appellant's claim for his pension was still under consideration.

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Consequently, the Deposit Administration Plan was abandoned in favour of a new contributory in House Retirement Benefits Scheme. But the only individuals who could benefit from the contributory In House Retirement Benefits Scheme were the former employees, who had retired from the Respondent's service between 1996 and September, 1998. At this time the Appellant's claim for his interim Award and full pension was still under consideration.

15 In 2002, after numerous visits to the University in demand for his retirement benefits, the Respondent was paid UGSHS. 8,889,600/= (Uganda Shillings Eight Million Eight Hundred Eighty Nine Thousand Six Hundred Only) as the Interim Award which he had been promised earlier on the 30th day of May 1987 pending a new and meaningful scheme which was being put in place.

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In 2009, the Appellant filed H.C.C.S No. 198 of 2009 seeking for the following reliefs'

- 25 a) Declaration that the Appellant is entitled to pension calculated with the new pension scheme.
- b) An Order that the appellant be paid such pension.
- c) General damages for distress and the inconvenience suffered.
- d) Interest at bank rate from the date the cause of action arose.
- e) Costs of the suit.
- 30 f) Any other fair and just remedy.

35 The respondent defended the suit and at the commencement of the hearing raised a Preliminary Objection to the effect that the Appellant's suit is time barred by the law of limitation because the scheme is based on a scheme under which the appellant alleges that he was entitled to earn pension way back in 1996.

40 The matter was set down for hearing and Counsel for the Respondent raised a Preliminary Objection that the Appellant's suit is barred by the law of limitation because the Appellant's cause of action arose in 1996 when the Appellant set up the Deposit

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5 Administration Plan (DAP) and the new In -House Retirement Benefits Scheme.

10 A Ruling was delivered on 10th July, 2014 in favour of the Respondent and the learned trial Judge held that the scheme upon which the appellant bases to make his instant claim was an In-House Scheme put in place by the Respondent independent of the scheme which affects public service employees that is provided for under the Pensions Act. That under the Respondent's scheme the Appellant was entitled to be paid way back in 1996 and that it was
15 a contract between the Appellant and the Respondent not established under the Pensions Act.

20 The learned trial Judge consequently found that the appellant's suit was time barred and dismissed it accordingly."

The appellant being dissatisfied with the said decision filed this appeal on the following grounds;-

- 25 **1. The learned trial Judge erred in law and fact when he held that the In-House Scheme was not subject to the Pensions Act.**
- 30 **2. The learned trial Judge erred in law and fact when he held that the law of limitation applies to the In-House Scheme and that the Appellant's action was therefore time barred.**
- 35 **3. The learned trial Judge erred in law and fact when he held that the action arose in 1996 instead of the year 2009 when Court pronounced itself on the appellant's eligibility under the In-House Scheme.**

When this appeal came up for hearing learned counsel **Mr. Francis Buwule** and **Mr. Benon Makumbi** appeared for the appellant who

5 was in Court. The respondent was represented by learned counsel **Mr. Andrew Kabombo**. Mr. Buwule abandoned ground one of appeal and choose to argue grounds 2 and 3 together.

The Appellant's Case

10 It was submitted for the appellant that the learned trial Judge erred when he held that the appellant's action was barred by limitation, as that was not apparent on face of the pleadings.

15 Counsel submitted further that from the pleadings there was nothing to indicate that the action was time barred. He faults the learned trial Judge for having found that the appellant's claim was based on a contract between the parties executed in 1996 and therefore the action having been brought in November 2009 way time barred.

20 Counsel argued that the there was nothing in the facts set out in the plaint that would have persuaded the learned trial Judge to conclude that the appellant's suit arose in 1996 and was therefore time barred.

25 Counsel cited as his authority ***Iga vs Makerere University [1972] 1 EA P.65*** where the Court of Appeal of East Africa held that limitation must be apparent on the face of the plaint. Counsel submitted further that the respondent paid to the appellant a sum of money as an interim award in 2002 as a stop measure gap pending the review of his retirement benefits.

30 Further, that payment of the above mentioned did not point to the fact that the appellant's claim arose in 1996. It was counsel's submission that the appellant was, just like others entitled to benefit from a new retirement scheme that had been set up later by the respondent, upon which the High Court had pronounced itself in ***David Sentongo vs Makerere University, High Court Civil***

5 **Suit No. 132 of 2002.** He asked Court to set aside the High Court decision and to order the matter to proceed with full hearing.

The Respondent's Case

Mr. Kabambo opposed the appeal.

10 He submitted that the entire suit at the High Court was based on the decision of the High Court in **Sentongo vs Makerere University (Supra)**. He argued that the suit from which this appeal arises was filed after the decision in **Sentongo (Supra)** had been made.

15 He contended that since the *Sentongo case* was filed in 2002, the appellant's cause of action arose at the time and was time barred in 2009, since the same was based on a contract the limitation period of which is six years.

He contended the decision in **Sentongo (supra)** was annexed to the Appellant's plaint and therefore it formed part of the pleadings.

20 Further, that the learned trial Judge correctly found that the plaint was barred by limitation having looked at the plaint together with its annexures. He asked Court to dismiss the appeal and to uphold the decision of the trial Judge.

Resolution of the grounds

25 We have carefully listened to both parties. We have also perused the pleadings and the authorities cited to us.

We are alive to the law that requires us, as a first appellate Court to re-appraise the evidence and to make our own inferences on all issues of law and fact. See: **Fr. Narcensio Begumisa & others vs Eric Tibebaaga (Supreme Court Civil Appeal No. 17 of 2002)**
30 and the **Rule 30(1)** of the Rules of this Court.

5 The law as we understand it, relating to rejection of a plaint on ground of limitation is that, the limitation must be apparent on the face of the plaint.

Rule 11 of Order 7 of the Civil Procedure Rules stipulates as follows;-

10 ***“Rejection of plaint***

The plaint shall be rejected in the following cases:-

a).

b).

c).

15 ***d)where the suit appears from the statement in the plaint to be barred by any law (Emphasis added).***

The Court of Appeal of East Africa in ***Iga vs Makerere University [1972] 1 EA 65*** appears in our view to confirm the above proposition of the law that the plaint should be rejected if a suit is brought after the expiration of the period of limitation. This it adds, must be apparent from the plaint.

We have carefully read the plaint and the annexures thereto. We have also read the written statement of defence. It is not at all apparent from the plaint and its annexures that the suit is time barred. The cause of action could certainly not have arisen in 1996, because at the time negotiations between the parties were on going. In fact, the negotiations culminated in the appellant being paid shs. 8,889,600/= sometime in May 2002, as an interim award. An interim award, in our view by it's very nature could not have been a final award, but was an acknowledgement by the respondents that, they still owed the respondent money to be paid to him as a final

5 award or settlement at a future date. The final payment had not been made when in 2009 the appellant filed a suit from which this appeal arose.

The learned Judge at page 6 of his Ruling found as follows:-

10 ***“Since the plaintiff was supposed to have been paid in 1996 and not paid, then the cause of action arose that year. Since the action accrued in 1996, he ought to have sued (Sic) by 2003. This suit however was filed in 2009 which was out of time and contrary to Section 3 of the Limitation Act. (Sic).*”**

15 With all due respect to the learned trial Judge, we found no basis in the above holding. We find so because a letter to the appellant from the respondent dated 26th September 1995, reads as follows;-

“26 September, 1995

20 ***The Bursar
Makerere University***

Dear Sir,

25 ***INTERIM AWARD FOR MR. W. KIBIRANGO***

This is to inform you that the Vice-Chancellor has agreed that although Mr. Kibirango had given notice of taking leave pending retirement with effect from 1st April, 1987, he was technically in the University service in May 1987. Hence he should be entitled to the Interim Award as follows:

AS X T X F₁ X F₂

= Annual Salary pre 1976

27,780=

Time served, pre retirement age

30 years

35 ***Factor 1***

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Factor 2

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Amount due to him is therefore Shs. 8, 334,000/=.

By copy of this letter I wish to inform Mr. Kibirango the money is likely to be paid by irregular instalments over a period of several years as the University does not have enough funds to pay everyone at once. (Emphasis added).

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Yours faithfully,

Signed

J.C. Katuramu

15 **AG. University Secretary**

C.C Mr. W. Kib.irango

P.O. Box 6168

20 **KAMPALA**

Clearly from this letter it was understood by both parties that the payment would be made “over a period of several years” This money was finally paid on 27th May 2002, as already stated as an interim award. The cause of action for the remaining payment could therefore not have arisen in 1996. The cause of action arose in 2009 when the High Court pronounced itself on this matter in the **Sentongo case** (*Supra*).

25

We find merit in this appeal and we hereby allow it. We set aside the decision of the High Court, and we substitute it with this decision. We direct the High Court to proceed and hear the suit on its merits without any further delay.

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Before we take leave of this matter we must apologize to the parties for the delay in delivering this Judgment. The High Court should take into account the fact that this is a long outstanding matter, which has delayed in our Court system for no good reason. The appellant is of very advanced age and has been pursuing his claim

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5 for over 20 (twenty years). It is fair and just that the hearing and determination of this matter is expedited.

In conclusion, this appeal is hereby allowed with costs to the appellant.

10 **Dated at Kampala** this 29th day of March, 2017.

Richard Buteera
.....
HON. JUSTICE RICHARD BUTEERA
JUSTICE OF APPEAL

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Kenneth Kakuru
.....
HON. JUSTICE KENNETH KAKURU
JUSTICE OF APPEAL

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Chebion Barishaki
.....
HON. JUSTICE CHEBORION BARISHAKI
JUSTICE OF APPEAL

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29/3/2017
Ida Wadda for Respondent
Appellant present
Nanyang Susan c/c
Francis Kalanda for Appellant
ce'. Judgment read in court.
Justice DR