

IN THE HIGH COURT FOR ZAMBIA 2014/HP/1319
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA
(Civil Jurisdiction)



B E T W E E N :

CHARLES KABWE

PLAINTIFF

AND

THE ATTORNEY GENERAL

DEFENDANT

**Before Honorable Mrs. Justice M. Mapani-Kawimbe in Chambers
on 21st February, 2017**

For the Plaintiff : *Ms. N. Mbuyi, Messrs Ituna Partners*
For the Defendant : *Ms. M. Kampamba, Senior State
Advocate*

R U L I N G

Legislation Referred To:

1. *Limitation Act, 1939 of the United Kingdom*
2. *Law Reforms (Limitation of Actions) Act, Chapter 73*

Case Authorities Referred To:

1. *Zambia Consolidated Copper Mines v John David Chileshe SCZ Judgment No. 21 of 2002*
2. *Zambia Consolidated Copper Mines v Elvis Katyamba and Others (2006) Z.R. 1*
3. *William David Carlisle Wise v E F Hervey Limited (1985) ZR 17*

4. *Daniel Mwale v Njolomole Mtonga (sued as Administrator of the estate of the late Gabriel Siwonamutenje Kapuma Mtonga) and The Attorney General SCZ Judgment No. 25 of 2015*

This is an appeal against the Ruling of the Learned Deputy Registrar delivered on 12th June, 2015, in which the Defendant's application to dismiss the Plaintiff's action for being statute barred was thrown out of Court.

The facts leading to the appeal are that the Plaintiff commenced this action in 2014. According to the Statement of Claim, the Plaintiff averred that he is a former police officer and in 2002 was employed by the United Nations in Kigali, Rwanda. After his departure, his family was evicted from a Government house on 12th February, 2002. Further, he was equally charged for desertion by the Zambia Police Service command and his employment was consequently terminated, in disregard of his full employment benefits.

The Defendant entered conditional appearance on 1st December, 2014 and issued summons on the same date to dismiss the matter for being statute barred. On 12th June, 2015, the Learned Deputy Registrar dismissed the Defendant's application, holding that since the Plaintiff and the Defendant were engaged in negotiations, time for the Plaintiff's cause of action only started running after the failed negotiations.

Dissatisfied with the Learned Deputy Registrar's ruling, the Defendant brings this appeal advancing a sole ground of appeal as follows:

1. ***That the Learned Deputy Registrar erred in law and fact when he held that this matter was not statute barred because time only started running in 2010 as there were some negotiations between the parties between 2002 and 2010.***

Both Learned Counsels filed written submissions in respect of their positions for which I am indebted. Learned Counsel for the Defendant submitted that it is an established principle of law that in civil litigation, cases commenced outside the statutory limitation periods are statute barred. Counsel relied on the English Limitation

Act of 1939, as amended by the Law Reform (Limitation of Actions) Act, as authority for her proposition.

Counsel argued that the Plaintiff's claim is statute barred because his cause of action arose in 2002. Further, that the Plaintiff's negotiations with the Defendant through the Police and Prisons Service Commission did not prevent him from launching an action in Court. Thus, Counsel argued that this is a proper case where the Court could dismiss the Plaintiff's action for being statute barred as it has been caught up by section 2 of the Statute of Limitation Act 1939.

Learned Counsel further submitted that the Plaintiff had no proof to show that he executed an agreement with the Police and Prisons Service Commission, which delayed his cause of action. Counsel called in aid the case of **Zambia Consolidated Copper Mines v John David Chileshe**¹ where the Supreme Court held that negotiations between parties do not arrest time from running in a cause of action. In that case, the Supreme Court cited *Halsbury's*

November, 2007, Ministry of Justice letter referenced MOJ/102/38/53/08 dated 12th May, 2009, and staff early retirement letter dated 18th February, 2010, written by the Zambia Police Inspector General.

Learned Counsel contended that in view of the correspondence, the Plaintiff's cause of action only arose after he was granted early retirement, and when his terminal benefits and retirement package were not paid in accordance with the settled terms of agreement.

Learned Counsel submitted that since negotiations had been ongoing for a while between the parties, the Plaintiff could only institute action from 18th February, 2010 and not as contended by the Defendant. In support of her submission, Counsel cited the case of **Zambia Consolidated Copper Mines v Elvis Katyamba and Others**² which in my considered is distinguishable from the circumstances of this case, and is therefore of very little value.

Learned Counsel further submitted that even though the law prescribed a time frame within which to commence actions in Court, there are circumstances which do not permit a strict application of the law, such as where parties are engaged in negotiations. Counsel prayed to the Court to dismiss the Defendant's application.

I have seriously considered the ground of appeal and the submissions advanced by the respective parties. In my considered view, the sole issue to be determined is whether the Plaintiff's action is statute barred?

The Limitation Act, 1939 of the United Kingdom applies in Zambia subject to the amendments set out in the Law Reform (Limitation of Actions) Act. Section 2 (1) (a) of the Limitation Act 1939 provides that:

"the following action should not be brought after the expiration of six years from the date on which the cause of action arose, that is to say:

a) actions founded on simple contract.."

In the case of **William David Carlistle Wise v E.T. Hervey Limited**³, the Supreme Court stated thus:

***“[a] a cause of action is disclosed only when a factual situation is alleged which contains facts upon which a party can attach liability to the other upon which he can establish a right or entitlement to a judgment in his favour against another.*”**

In the present case, the Defendant's contention is that the Plaintiff should have commenced his action in Court within six (6) years from the date that his factual situation arose. The Defendant contends that since the Plaintiff's claim is a dispute between an employer and employee purely residing in a contractual relationship, then he should have commenced litigation in 2002.

The Plaintiff argued and maintained that his cause of action only arose in 2010, after his failed negotiations with the Defendant. As a result his claim is not statute barred.

In the case of **Daniel Mwale v Njolomole Mtonga (sued as Administrator of the Estate of the late Gabriel Siwanamutenje Kapuma Mtonga) v The Attorney General**⁴, the Supreme Court held *inter alia* that:

“...The Statute of Limitation when raised, brings forth a serious legal question as to whether the court has jurisdiction to entertain the action before it, given that it was brought outside the limit period. It hardly bears repeating that the issue of jurisdiction is a threshold question and a lifeline for continuing any proceedings. Where a court holds the opinion that it has no jurisdiction, the very basis for continuation of the proceedings before it - it must forthwith cease to deal with that matter. In our view, the issue of statutory bar when raised is as much about the jurisdiction of the court as it is a statutory defence for a party. It is a legal point touching on both the court’s jurisdiction and a provision of a statute”

Further, in the **Daniel Mwale** case, the Supreme Court went on to state that:

"....time begins to run when there is a person who can sue and another to be sued, when all facts have happened which are material to be proved to entitle the Plaintiff succeed...."

The Plaintiff’s Statement of Claim discloses the following:

- (i) On 12th February, 2002 his family was evicted from a Government house at Sikanze Police Camp;
- (ii) A docket was opened against him for desertion which culminated into a letter of dismissal on 19th November, 2007;
- (iii) He was dismissed from the Zambia Police Service on 19th November, 2007, a decision which was later rescinded, and he was thereafter placed on early normal retirement on 18th February, 2010.

After carefully analyzing the sequence of events as disclosed in the Plaintiff's claim, I have come to the inescapable conclusion that his cause of action arose in 2002 when his family was evicted from a Government house, following his employment with the United Nations in Kigali, Rwanda. The Plaintiff's suffering was aggravated when the Zambia Police Service Command charged him with desertion, which culminated into his dismissal in 2009.

As rightfully contended by Learned Counsel for the Defendant, I am inclined to the view that the Plaintiff should not have awaited the staff early retirement letter of 18th February, 2012 to commence litigation. His cause of action arose on 12th February, 2002 when his family was evicted and he should have commenced litigation.

I therefore hold that the Plaintiff's cause of action is statute barred and I have no jurisdiction to continue the proceedings in this matter. Accordingly, this appeal succeeds.

I award costs to the Defendant to be taxed in default of agreement.

Leave to appeal is granted.

Dated this 21st day of February, 2017.

M. Mapani
M. Mapani-Kawimbe
HIGH COURT JUDGE