

IN THE HIGH COURT FOR ZAMBIA

2019/HP/1834

AT THE PRINCIPAL REGISTRY

HOLDEN AT LUSAKA

(CIVIL JURISDICTION)



BETWEEN:

SHADRECK LUNGU

PLAINTIFF

AND

MTN ZAMBIA LIMITED

1ST DEFENDANT

ZAMBIA DAILY MAIL

2ND DEFENDANT

BEFORE HON. JUSTICE E. P. MWIKISA

FOR THE PLAINTIFF: MR. A. MUSADABWE OF M. WAMUNYIMA LEGAL PRACTITIONERS

FOR THE 1ST DEFENDANT: MR. M. MANDO OF MESSRS MANDO AND PASI ADVOCATES

FOR THE 2ND DEFENDANT: MS. T. PHIRI - IN HOUSE COUNSEL

RULING

CASES REFERRED TO:

1. *Nyambe v. Bank of Zambia (Appeal 207 of 2012)*

LEGISLATION REFERRED TO:

1. The Limitation Act 1939, under section 2 (1)

1. INTRODUCTION

1.1 This is an application to raise a preliminary issue for disposal of matter on a point of law made pursuant to order 14A rule 1, order 18 rule 19 and order 33 rule 3 of the Rules of the Supreme Court of England. The questions for the determination of the court are:

- i) Whether the plaintiff's claim for damages for unlawful termination of employment is not statute barred;**
- ii) Whether the claim for special damages as indorsed on the writ of summons and particular in paragraph 28 of the statement of claim is not spurious scandalous, frivolous or vexatious, or otherwise an abuse of court process;**
- iii) Whether the claim for adverse publicity and defamation of character without any particulars for the same is not irregular; and**
- iv) Whether upon the determination of the foregoing questions of law, the particular claims and or matter should not be wholly dismissed.**

1.2 The application is accompanied by an affidavit dated 13th December, 2019, sworn by one Mando Mwitumwa, who inter alia deposed therein that the plaintiff commenced this action against the defendant by way of writ of summons and statement of claim.

- 1.3 That in paragraph 6 and 14 of the statement of claim, the plaintiff alleges that the contract of employment with the defendant was terminated on 6th February, 2013.
- 1.4 That it is therefore clear from the plaintiff's own pleadings that the plaintiffs claim for unlawful termination of employment was brought before this court more than 6 years from the date of termination.
- 1.5 That the plaintiff has also made spontaneous claims as special damages under paragraph 28 of the statement of claim which claims include wages for the period 2013 up to the year 2025 and legal costs for a criminal case and for this suite.
- 1.6 That the quantifying of claims that should not have been quantified under paragraph 28 of the statement of claim by the plaintiff offends the rules of pleadings, is likely to embarrass the defendant and delay the trial of the action and is tantamount to an abuse of court process.
- 1.7 That in paragraph 21 of the statement of claim, the plaintiff claims that he suffered adverse publicity and claims damages for the same and for defamation under

paragraph 28 but does not give any particulars of the alleged adverse publicity or defamation.

1.8 The defendant on the other hand filed an affidavit in opposition dated 25th February, 2020, and sworn by one Nathaniel Nawa Inambao. He deposed therein, inter alia that there is no issue with deposition in paragraph 3 and 4 of the plaintiff's affidavit in support, to the effect that the matter was commenced against the defendant by way of writ of summons accompanied by statement of claim and that the plaintiff's contract of employment with the defendant was terminated on 6th February, 2013.

1.9 That the defendant accused the plaintiff of committing a criminal offence of which the plaintiff underwent trial from 2014 to 2018, and therefore could not file until the court cleared him of the allegations.

2.0 That the plaintiff was as a consequence tried on trumped up charges from 2014 to 7th September, 2018, where in the plaintiff was found innocent and subsequently

acquitted on all charges under Cause No. 25PF/214/2014.

- 2.1 That the claim by the plaintiff is based on 3 limbs, that is malicious prosecution, defamation and unlawful termination of contract of employment. That the statement of claim raises triable issues.

CONSIDERATION OF EVIDENCE AND DECISION

- 2.2 For reasons best known to the plaintiff's Counsel, this application was taken to the Deputy Registrar for hearing and the matter was first heard on 15th February, 2020, and later adjourned to 4th March 2020, then 15th April, 2020, then 7th November, 2022, then eventually back to this court on 5th October, 2023.
- 2.3 At the hearing of 5th October, 2023, this court addressed the parties on the application to dispose matter on point of law dated 19th December, 2019, and specifically on the fact that the issue pertaining to the question of whether the matter was statute barred or not, had not been addressed by the Deputy Registrar. Both parties agreed that the question on whether the matter is

statute barred or not, had not been determined by the court below.

2.4 This court ordered that the parties should agree by way of consent, for this court to determine the matter by way of written submissions to be filed into court on or before the 12th October, 2023, and for the parties to augment if they so wished, by 19th October, 2023, after which this court would render its ruling on 24th November 2023. To date none of the parties have complied with that order, hence this ruling based on the affidavit evidence filed into court together with skeleton arguments.

2.5 This matter was commenced on 18th November, 2019, and the plaintiff's contract of employment with the defendant was terminated on 6th February, 2013. The Limitation Act 1939, under section 2 (1) states:

“2 (1) The following actions shall not be brought after the expiration of six years from the date on which the cause of action accrued, that is to say.....

(a) Actions founded on simple contract or on tort, ...”

2.6 At the time the plaintiff filed his writ of summons into court on 6th November, 2019, the claim was statute barred. (See the case of **Nyambe v. Bank of Zambia (Appeal 207 of 2012)**¹).

2.7 In view of the above, I do not see the need to delve into the other issues raised under questions 2 to 4 of the application.

2.8 I accordingly find that this matter is statute barred as indicated above in that the matter was commenced after the 6 year limitation period had expired from the date when the plaintiff's contract of employment with the defendant was terminated on 6th February, 2019. The plaintiff's case is accordingly dismissed.

2.9 I award no costs.

3.0 Leave to appeal is granted.

Dated at Lusaka this.....18th.....day of.....March.....,....2025



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ELITA PHIRI MWIKISA
HIGH COURT JUDGE