

IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF JUSTICE
ACCRA (HUMAN RIGHTS DIVISION ONE) HELD ON 27th JULY, 2023 BEFORE HER
LADYSHIP JUSTICE BARBARA TETTEH-CHARWAY (MRS)

SUIT NO. GJ/0423/2020

JOSEPH AWUYE

PLAINTIFF

VRS

1. ATTORNEY GENERAL

DEFENDANTS

2. DIRECTOR GHANA IMMIGRATION SERVICE

3. ASONGIBA SEIDU SADAT

4. GHANA ARMED FORCES

5. MINISTRY OF DEFENCE

JUDGMENT

1.0 By his amended writ of summons and statement of claim, the plaintiff claims the following reliefs;

- a) Demand for compensation payment of Nine Hundred Thousand Ghana cedis (GHS900,000,00) for injuries sustained from the unlawful shooting of the plaintiff at Aflao by BDR/CPL Ebenezer Sackey with number 190794 of 66 Artillery

Regiment, Ho of the Ghana Armed Forces under the Ministry of Defence on the 22nd October 2010 in the company of Asongiba Sadat of Ghana Immigration Service, Aflao and;

b) 10% of solicitors fees and costs.

2.0 According to the plaintiff, on 22nd October 2010, he drove an Opel taxi cab from Aflao to Denu. In the process, he was stopped by one Cpl Ebenezer Sackey of the 66 Artillery Regiment, Ho, who was in the company of the 3rd Defendant, an immigration officer. Plaintiff claims that he went down on both knees and raised his hands in a position of surrender; and yet, he was shot at close range by Cpl Ebenezer Sackey without any provocation.

3.0 It is the further case of plaintiff that he was hospitalised at the Ketu South Government Hospital where he received treatment for several days and thereafter continued to receive treatment at the Volta Regional Hospital. Plaintiff claims he also suffered severe physical and mental trauma as a result of the shooting which led to his being taken to a prayer camp. Plaintiff further claims he was treated by the Psychiatric Unit of the Ketu District Hospital for mental disorders suffered as a result of the shooting incident which made it impossible for him to commence this action within the statutory period of three years.

4.0 The defendants filed a further amended statement of defence in which they stated that on 22nd October 2010, a joint team of military and immigration officers were on duty at the Aflao Border to curb the activities of criminals when the plaintiff was spotted driving a taxi with registration number AS 9287X. Based on their suspicion that plaintiff was carrying illegal immigrants across the Lome-Togo border to Ghana through an unapproved route, the plaintiff was stopped but he refused to stop. According to defendants, plaintiff was pursued to the Aflao Lorry park where he refused to comply with the lawful commands issued by the officers.

When a mob began to gather at the spot, plaintiff recklessly tried to disarm one of the officers which led to an accidental discharge of the officers weapon resulting in injury to plaintiff. It is the defendants' case that the plaintiff's injury was caused by his own negligence. Defendants further assert that plaintiff's action is statute barred since same was commenced six years after the incident contrary to the Limitations Act which requires that actions for damages arising out of negligence must be commenced within three years of accrual of the cause of action.

5.0 At the close of pleadings, a number of issues were set down for trial, the most significant of which, is whether or not the plaintiff's action is statute barred. The court notes that the issue whether or not the action was statute barred was set down for preliminary determination by legal arguments; however, in her Ruling, Agyei-Addo J *as she then was*, deferred the issue for determination at the end of trial on the ground it was a question of mixed law and fact. The wisdom of her judgment is discernible from the nature of the pleadings filed by the defendants and plaintiff on the issue of limitation.

6.0 The court notes that per paragraphs 10 and 11 of the defendants' further amended statement of defence, the defendants pleaded as follows;

10) *The defendants say also that the plaintiff's action praying the court for payment of compensation of Nine Hundred Thousand Ghana Cedis is statute barred under section 3(1) of the Limitation Act 1972 NRCD 34 as actions founded on tort should not be brought after the expiration of three years from the date on which the cause of action accrued.*

11) *The plaintiff was allegedly shot on 22nd October 2010 and he brought his action before this Honourable Court on 15th March 2016. The plaintiff's action should have been brought between October 2010 and October 2013 within which his cause of action accrued. The plaintiff rather brought the action two and a half years after the expiration of the*

limitation period of three years and therefore should not be entertained by this Honourable court.

7.0 In response to defendant's pleadings, plaintiff filed a further amended reply on 17th May 2021 in which the plaintiff's response to defendant's plea of limitation was contained in paragraphs 11, 12, 13, 14 and 15 which are reproduced below;

"11. Plaintiff in further answer says that apart from being camped at the prayer camp he was put on amitriptyline 25mg by the Psychiatric Unit of the Ketu District Hospital which is sold under the brand name Elavil primarily used to treat a number of mental illness including major depression disorders and anxiety disorders and less common attention deficit hyperactivity disorders and bipolar disorder. He still takes same today.

12. Plaintiff avers that after diagnosis by the Psychiatric Unit of the Hospital, he was definitely suffering from the disorders hence the prescription of the said drug and all these physical and mental disorders, disabled the plaintiff to institute any action within the three (3) years especially when the Representative of the Attorney General, Komla Agbeko-Kra Esq promised to ensure that justice was done but failed to do so.

13. Save that plaintiff instituted the instant action in the year 2016, paragraph 11 is vehemently denied

14. Plaintiff in further answer to paragraph 11 of the Statement of Defence states that his physical and mental disabilities as a result of severe injuries suffered from fatal shooting by officer Ebenezer Sackey with lethal weapon when he was on his knees with raised hands and could not allow him to institute any action unless he recovers

15. Plaintiff avers his severe physical and mental disabilities suffered fall under Section 16(3) and 6 of the Limitation Act 1972 NRC 54 hence his action cannot be caught by the Statute of Limitations especially when he suffered trauma."

8.0 Thus the summation of plaintiff's response to the plea of limitation raised by the defendants was that he did file the instant action out of time, however, the severe physical and mental disabilities that he suffered as a result of the shooting brought him under the ambit of section 16(3) and 6 of the Limitation Act for the purpose of computation of time.

Now, section 16 of the Limitation Act provides as follows;

16. Extension in case of disability

(1) Where, on the date when a right of action accrued for which a period of limitation is fixed by this Act, the person to whom it accrued was under a disability, the period of the disability shall not, subject to this section, be taken into account in computing the relevant period of limitation.

(2) For the purposes of subsection (1) the period of limitation shall be computed from the date when the person ceased to be under a disability or died whichever event first occurred, although the period of limitation might otherwise have expired

(3) Subsection (1) shall not affect a case where the right of action first accrued to a person not under a disability through whom the person under a disability claims

(4) Where the right of action which has accrued to a person under a disability accrues on the death of that person while still under a disability to another person under a disability a further extension of time shall not be allowed by reason of the disability of the second person

(5) This section does not apply to an action to recover a penalty or forfeiture or a sum of money or by way of penalty or forfeiture recoverable by virtue of an enactment except where the action is brought by an aggrieved party

(6) For the purpose of this Act, a person is under a disability while that person is an infant or of unsound mind

(7) Without prejudice to subsection (5) a person is for the purposes of this section conclusively presumed to be of unsound mind while that person is detained in pursuance of an enactment authorising the detention of persons of unsound mind.

- 9.0** From the above, the law specifically states that a person is under a disability while that person *is an infant or of unsound mind*. Thus in order to bring himself under section 6 of the Limitation Act, the plaintiff must demonstrate or adduce evidence from which it can be inferred that on the date on which his cause of action accrued against defendants, he was either an infant or was of unsound mind for which reason the period of his disability should not be taken into account in computing the relevant period of limitation.
- 10.0** The court has scrutinized Exhibits A, A1, A2, and A3 which are the medical reports attached to the plaintiff's witness statement. None of them show that the plaintiff was diagnosed of any mental ailment, let alone found to be of unsound mind at the time he suffered the gun shot wounds. All the medical reports focus on the physical injury suffered by the plaintiff and the procedure that he went through. Exhibit D which is a prescription form for a amitriptyline 25mg is not supported by any diagnosis. The said prescription form is also dated 16th December 2020 and therefore has no direct connection to the gun shot wound suffered by the plaintiff on 22nd October 2022. Having regard to the totality of evidence adduced by plaintiff, this court is of the view that the plaintiff has failed to adduce relevant evidence from which it can be inferred that he was under a disability within the meaning and scope of section 6 of the Limitation Act.
- 11.0** The court further observes that on 13th November 2013 while plaintiff was presumably still of unsound mind, he wrote a petition to the Attorney General. If he could write a petition to the Attorney General in 2013, then nothing stopped him from issuing a writ of summons also. This court is of the view that the plaintiff

has offered no scientific or objective proof that he suffered from disability within the scope of section 6 of the Limitation Act and therefore his action falls under section 3(1) of the Limitation Act which provides that;

“ An action claiming damages or negligence, nuisance or breach of duty howsoever the duty exists where the damages claimed by the plaintiff for the negligence, nuisance or breach of duty consist of or include damages in respect of personal injuries to any person shall not be brought after the expiration of three years from the date on which the cause of action accrued.”

12.0 From the evidence before the court, the incident occurred on 22nd October 2010 and plaintiff commenced the instant action on 10th May 2016, six years after his cause of action accrued. Plaintiff’s action is clearly caught by the statute of limitation.

13.0 This court recalls that in the case of **EBUSUAPANYIN YAW STEPHENS VRS KWESI APOH [2010] 2 MLRG** the Supreme Court, speaking through Anin Yeboah JSC (*as he then was*), reiterated the legal position that if an action succeeds on a *plea of limitation*, lack of *jurisdiction*, or lack of *locus standi*, the Trial Court and for that matter the Appellate Court *should not proceed* to determine the merits of the case irrespective of the evidence. See also the case of **AKRONG & ANOR V BULLEY 1965 GLR 469** where Apaloo JSC, (*as he then was*), stated that;

“the question of capacity, like the plea of limitation, is not concerned with merits and as Lord Greene M.R. said in Hilton v. Sutton Steam Laundry,¹⁰ “Once the axe falls it falls, and a defendant who is fortunate enough to have acquired the benefit of the statute of limitations [and I would myself add, or an unanswerable defence of want of capacity to sue] is entitled, of course, to insist upon his strict right.”

14.0 In the circumstances, the plaintiff's action is caught by the statute of limitation and same is dismissed.

BARBARA TETTEH-CHARWAY(MRS)
JUSTICE OF THE HIGH COURT