**Kampala City Council v Nuliyati**

**Division:** Court of Appeal at Kampala

**Date of judgment:** 27 September 1974

**Case Number:** 44/1974 (112/74)

**Before:** Spry V-P, Mustafa and Musoke JJA

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**Appeal from:** High Court of Uganda – Nyamuchoncho, J

*[1] Limitation of actions – Notice before action – To local authority – Not proved to have been given in*

*time – Action fails – Civil Procedure and Limitation (Miscellaneous Provisions) Act* 1969 *s*. 1 (*U*.).

*[2] Limitation of actions – Local authority – Suit by person under disability – May be brought outside*

*one year limit – Civil Procedure and Limitation* (*Miscellaneous Provisions*) *Act* 1969 *s*. 4 (*U*.).

*[3] Limitation of actions – Fatal accident – Suit by person under disability – May not be brought*

*outside three year limit – Civil Procedure and Limitation* (*Miscellaneous Provisions*) *Act* 1969 *s*. 8 (*U*.).

**Judgment**

The following considered judgments were read. **Spry V-P:** The respondent sued the Kampala City

Council as a minor by her next friend and grandparent, claiming in respect of the death of her father damages under the Law Reform (Miscellaneous Provisions) Act (Cap. 74) for the benefit of the members of his family. She claimed that the death of her father was caused by the negligent driving of a motor vehicle in which he was a passenger. The driver of the vehicle was alleged to be a servant or agent of the Council action in the course of his employment. The accident in which the plaintiff’s father died occurred on 7 April 1969. The plaint was filed on 18 September 1973. The Council filed a defence in which it alleged that the suit was time-barred as it was filed more than twelve months from the time when the cause of action arose. Alternatively, it was claimed that the suit was incompetent as no statutory notice had been delivered prior to the filing of the suit, as required by s. 1 of the Civil Procedure and Limitation (Miscellaneous Provisions) Act 1969. No reply was filed. At the hearing of the suit, the first two defences were taken as preliminary objections. Both were rejected by the trial judge and it is from his order that this appeal is brought by leave. On the question of limitation, the judge said: “By section 8 (2) (*b*) of the Law Reform (Miscellaneous Provisions) Act, (Cap. 74) an action brought under section 7 must be commenced within three years after the death of the deceased person. Section 8 (2) (*b*) must be read together with section 22 of the Limitation Act (which extends the limitation period in case of disability). Under section 22 of the [sic] a minor can bring an action out of time if he complies with para. (*b*) of subsection (2) that is if he proves that he was not at the time when the right of action accrued to him in the custody of a member of his family. . . . However, section 4 of the Civil Procedure and Limitation (Miscellaneous Provisions) Act 1969 is a reproduction of section 22 (1) of the Limitation Act but omits the whole of subsection (2) of that section. This subsection (2) must have been left out on purpose, it was certainly not by oversight, it was repealed by implication by section 4. . . .” Accordingly, the judge held that where s. 4 applies, a minor does not have to prove that he was not in the custody of a member of his family. He held that the suit was not statute-barred. The right of action on which this suit is founded was created by s. 7 of the Law Reform (Miscellaneous Provisions) Act and s. 8 (2) (*b*) of that Act provides that every such action shall be commenced within three years after the death of such deceased person. The Act contains no provision extending that period for the benefit of a person who was under disability when the cause of action arose. The Limitation Act (Cap. 70), which contains the general law of limitation in Uganda, contains a provision in s. 33 that: “This Act shall not apply to any action. . . for which a period of limitation is prescribed by any other enactment. . . .” I think, therefore, with respect, that the judge was wrong when he said that s. 8 (2) (*b*) of the Law Reform (Miscellaneous Provisions) Act had to be read with s. 22 of the Limitation Act. I do not think we are concerned with the latter Act. S. 2 of the Civil Procedure and Limitation (Miscellaneous Provisions) Act 1969, provides that no action founded on tort shall be brought against a local authority after the expiration of twelve months from the date on which the cause of action arose. It is not disputed that the Council is a local authority. S. 4 of the Act provides that if, when a right of action accrues for which a period of limitation is prescribed by the Act, the person to whom it accrues is under disability, the action may be brought at any time before the expiration of twelve months from the date when the person ceases to be under disability. Quite clearly, s. 2 of the Civil Procedure and Limitation (Miscellaneous Provisions) Act 1969, reduces the period of limitation in fatal accident cases, where a local authority is concerned, from three years to one year. The question is whether s. 4 of that Act can operate to extend the period, where the suit is by a minor, beyond three years. I do not think so. I think the two Acts can and should be read together, when the result is that in the case of a minor plaintiff the period of limitation may be extended beyond the one year prescribed by s. 2 but not beyond the three years prescribed by s. 8 (2) (*b*) of the Law Reform (Miscellaneous Provisions) Act, the Act which creates the right of action. I think, with respect, that the judge was wrong and that this suit was barred by limitation. As regards the question of notice, the judge said that he had seen a copy of a notice dated 15 May 1973, stamped with the seal of the Council. He said that he was satisfied that the statutory notice was given and acknowledged. With respect, what was in issue was whether the statutory notice was given at least sixty days before the filing of the suit. This was put in issue in the defence and the onus of proving due delivery was clearly on the respondent. That onus was not discharged. I would allow the appeal, set aside the order of the judge and substitute an order that the suit be dismissed with costs. I would award the Council the costs of the appeal. As the other members of the court agree, it is so ordered. **Mustafa JA:** I have read and agree with the judgment of Spry, V.-P. and I concur in the order proposed

by him.

**Musoke JA:** I agree.

*Appeal allowed.*

For the appellant:

*FR Gaffa* (instructed by *Kirenga & Gaffa*, Kampala)

For the respondent: