**Kihumika v Kaggwa and another**

**Division:** High Court of Uganda at Kampala

**Date of judgment:** 13 March 1974

**Case Number:** 872/1973 (99/74)

**Before:** Allen J

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*[1] Constitutional Law – Government – Proceedings against – Civil Servant may be joined in action*

*against Attorney-General.*

*[2] Limitation of actions – Proceedings against Government – Public duty – Doctor at government*

*hospital – Duties are public duty.*

**JUDGMENT**

**Allen J:** This is an application by the second defendant, the Attorney-General, to have the name of the first defendant, Dr. J. A. Kaggwa struck out from the plaint thus leaving the Attorney-General as sole defendant. The infant plaintiff sued the two defendants for damages in negligence arising from alleged faulty or neglectful treatment of the plaintiff at the time of his birth at a government hospital. Dr. Kaggwa has sworn an affidavit to the effect that she was off duty and not present in the hospital at the time. Since she has since left the Government service and is now in private practice, Mr. Matovu, for both defendants, submitted that it would be wrong to allow the proceedings to continue against her and tarnish her name. His first ground is that Dr. Kaggwa was never in charge of the plaintiff at any material time but Mr. Mulenga for the plaintiff does not accept this and it would, therefore, seem to be a triable issue. Mr. Matovu’s second and main point is that where a civil servant is being sued it is proper to sue only the Attorney-General as the civil servant doctor in this case is not being sued in her private capacity but purely as a government servant. His contention is that therefore, such a suit can only be maintained against the Attorney-General alone. In support of this he has relied upon the decision of Sir Udo Udoma, C.J. in *Bishop v. Attorney-General*, [1967] E.A. 293, in which a Government Minister was sued as a second defendant with the Attorney-General. In that action it was held that both the Government and the Minister in his capacity as Minister could not be made liable for the same tort at the same time and that there was consequently a misjoinder of parties. The second defendant was struck out from the suit. S. 3 of the Civil Procedure and Limitation (Miscellaneous Provisions) Act 1969 clearly makes provision for suing public officers, so it cannot be right to say that there can be no action against civil servants. In the *Bishop* case, the second defendant was a Minister who, at that time, was a politician and not a civil servant and so perhaps the position may have been somewhat different. In any event I am not prepared to follow the decision in the *Bishop* case as far as the present application is concerned. This court has dealt with numerous cases already in which chiefs, drivers, police officers and other civil servants have been sued together with the Attorney-General and I am not aware of any decision holding that such joinder is in any way improper. The rule concerning vicarious liability of a master for certain acts of his servant applies to the Government as much as to any other employer and it always has done. It is an entirely novel idea to me and I cannot accept the view that a civil servant ought to be able to escape scot-free and avoid any personal liability whatsoever for his negligent acts merely by hiding behind the Government’s skirts just because he is a public servant. He certainly can be sued but, in order to catch him, it is necessary, according to s. 3 of the Act, to institute the action within six months after the cause of action arose. O. 1, r. 10 (2) permits the court to strike out the name of a party who has been improperly joined but, in the present case, I am satisfied that there has been no misjoinder since paras. 3 and 4 of the plaint allege that Dr. Kaggwa was acting as the servant or agent of the second defendant. The next question is whether or not this present action against the first defendant, Dr. Kaggwa, is in fact caught by the limitation period of six months. S. 3 of the Civil Procedure and Limitation (Miscellaneous Provisions) Act, 1969 provides that: “3. Where, after the commencement of this Act, any action, prosecution or other proceeding is commenced against any person for any act done in pursuance or execution or intended execution of any Act or other written law, or of any public duty or authority, or in respect of any alleged neglect or default in the execution of any such Act or other written law, duty or authority, the action, prosecution or proceeding shall not lie or be instituted unless it is instituted within six months next after the act, neglect or default complained of; or in the case of a continuance of injury or damage, within three months next after the ceasing thereof.” Mr. Mulenga has argued that it does not protect all civil servants but only those who fail to do acts in pursuance or execution of any Act or written law and that the words “public duty or authority” ought to be read only in relation to the words “Act or written law”. It is not clear to me how this can be done though. The word “authority”, whatever it is supposed to mean, does not seem to be relevant in this case but the expression “public duty” certainly is, in my opinion. A doctor employed by the Government in a Government Hospital is a public servant and when he is carrying out his normal medical or administrative duties in that hospital then I would hold that he is clearly acting in the execution of a public duty and so liable for any neglect, default, etc. resulting from such execution. This would apply to the first defendant, Dr. Kaggwa, in the present case. Since I have already held that this section applies in this case and that Dr. Kaggwa was properly joined as a co-defendant, it follows that the suit against her must be instituted within the statutory six months after the alleged act of negligence. According to the plaint the alleged act of negligence occurred between 17 and 21 August 1971 and it was discovered in September 1972 that the infant plaintiff was mentally retarded and in December 1972 that he was suffering from severe cerebral palsy. If the latest date is taken as that upon which the cause of action was first discovered, and this does not seem to have been specifically provided for in s. 3 of the Act, then this plaint, as far as Dr. Kaggwa is concerned, would still be out of time since it was not filed until 2 August 1973 according to the Civil Registry date stamp i.e., at least seven months after the second physical defect was found in the infant plaintiff. It was, in fact, filed almost two years after the alleged act of neglect occurred. Consequently, I hold that although Dr. Kaggwa was properly joined as a co-defendant in this suit, the action, as far as she was concerned, was instituted too late, i.e., not within the statutory six months. To that extent, therefore, this application is allowed and the claim against the first defendant, Dr. Kaggwa, is dismissed with costs. *Order accordingly.*

For the plaintiff:

*Mulenga* (instructed by *Ibingira & Mulenga*, Kampala)

For the defendant:

*Adrobonyibia Masaara*