

IN THE HIGH COURT OF SWAZILAND

Civ. Case No. 3004/1996

In the matter between:

Mbongwa Zablon Ziyane                      Plaintiff

vs

Umbutfo Swaziland Defence Force      Defendant

Attorney General                          Defendant

Judgment

(24/1/97)

This is an application in which applicant claims "condonation of the late filing of proceedings against the respondents and granting applicant leave to institute his claim for damages."

It is clear that the application is really one made in terms of section 4.(1) of the Limitation of Legal Proceedings against the Government Act, No. 21 of 1972.

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The Applicant was a soldier in the Defence Force and in the course of his duty on the 12th August, 1985 he was injured fairly severely as a result, he says, of the negligence on the part of his colleagues. In support of this allegation the applicant attaches a report which deals only with the medical aspect of the matter and in no way indicates who the colleagues were whose actions gave rise to the injury and no facts or particulars of the negligence have been stated.

The mere statement that the injury was occasioned by the negligence on the part of the applicant's colleague does not give any indication to the Court of how the accident occurred.

The applicant did not make any formal claim for compensation but says that he spoke to two superior officers who informed him that he would be paid in due course. Believing in these assurances and not wanting to press the matter which he considered might have been a breach of some sort of army code of discipline, nothing was done for almost 10 years. Now the applicant has consulted attorneys who have advised him of the difficulties he faces but none the less he wishes to make this application to lift the bar to the institution by him of proceedings for recovery of the amount claimed from the Government. The applicant is clearly out of time in terms of Section 2 of the Act. This Court may on application by a person be barred under Section 2(1A) from instituting proceedings against the Government grant special leave to him to institute the proceedings if it is satisfied on three matters.

(A) That the applicant has a reasonable prospect of succeeding ;

(B) That the Government who in no way be prejudiced by reasons of failure to receive the demand in the stipulated period;

(C) Having regard to any special circumstances he could not reasonably have been expected to have served the demand within such prescribed period.

The Court cannot be satisfied in any of these respects having regard to the contents of the founding affidavit. There is no evidence from which the court can gauge whether or not the applicant has a reasonable prospect of succeeding in the proceedings.

Nothing is said in the filing papers regarding the availability of witnesses to testify on the respondent's behalf 10 years after the event. There are no special circumstances which precluded the applicant from having served his demand within the period prescribed. In view of the foregoing the application must be dismissed with costs.

S. W. SAPIRE

ACTING CHIEF JUSTICE