

- ii) The costs of this application be provided for.

Background;

2. The Applicant is a beneficiary to the estate of the late Zakaliya Sekandi while the Respondents are administrators and beneficiaries to the estate of the late Chrizestome Nganda. The late Chrizestome Nganda purchased land comprised in Kyadondo Block 82 Plot 506 from the late Zakaliya Sekandi in 1971.
3. The Respondents instituted HCCS No. 1524 of 2023 seeking orders inter alia;
- a) A delivery up order for the certificate of title of the land comprised in Kyadondo Block 82 Plot 506 out of Kyadondo Block 82 Plot 45.
 - b) An order directing the 1st defendant to transfer the suit land into the estate of the late Chrizestome Nganda.
 - c) A declaration that the 1st Defendant's conduct amounts to trespass.
 - d) A declaration that the 1st defendant is barred by proprietary estoppel and or estoppel by conduct from claiming any interest in the suit land.



- e) A declaration that the estate of the late Chrizestomu Nganda is the equitable owner and entitled to perfection of the certificate of title to the suit land.
- f) A declaration that the estate of the Chrizestomu Nganda is a bonafide occupant in the suit land.
- g) An order directing the 2nd defendant to issue a certificate of title to land comprised in Kyadondo Block 82 Plot 506 in the names of the late Chrizestome Nganda.
- h) A permanent injunction to restrain the defendant, their agents, those claiming under them from trespassing, interfering with the plaintiff's possession, occupation and quite enjoyment of the suit land.
- i) General damages
- j) Costs of the suit
- k) Interest on (i) & (j) at 25% p.a from the date of filing this suit till payment in full.

4. The Applicant contends that he was sued in the capacity of an administrator to the estate of the late Zakaliya Ssekandi where as he is not and hence against a wrong party, the Respondents' suit is time barred, frivolous and vexatious and discloses no



cause of action against the Applicant hence the same should be dismissed hence this Application.

Applicant's evidence;

5. The application is supported by an affidavit in support deposed by Mr. Temba Kalisiti the applicant which briefly states as follows;

- i) That I am a beneficiary to the estate of the late Zakaliya Ssekandi who died in 1975, owner of the land comprised in Kyadondo Block 82 Plot 506.
- ii) That the Estate of the late Zakaliya Ssekandi has no administrators hence I was sued in the wrong capacity.
- iii) That the suit is barred by limitation since it's based on an alleged purchase agreement of 1971.
- iv) That the suit land is occupied by the family of the late Kasozi since time immemorial and that the late Chrizestomu Nganda has never occupied the suit land.
- v) The Respondents have no cause of action against me because am not the administrator to the estate of the late zakaliya ssekandi hence they sued the wrong party, they have never presented a claim of purchase to our family during the life time of Zakaliya Ssekandi and his children.

Respondent's evidence;

6. The application is responded to by an affidavit in reply deposed by Mr. Kawere Gerald Salongo the 1st Respondent which briefly states as follows;

- i) That the applicant is the administrator to the estate of the late Zakaliya ssekandi and Plot 507 was registered in his names as the administrator.
- ii) That the respondents claim is not barred by limitation since it's a vesting order supported by a purchase agreement, mutation form and area schedule and in the absence of Zakaliya Ssekandi the respondents were justified to apply for the same,
- iii) That the late Nganda Chrizestomu was in possession and utilization of the suit property until his death and the applicant aided the late John Kasozi's family to claim a kibanja interest on part of the suit land.
- iv) The respondents are in possession of part of the suit land and the late Zakaliya Ssekandi was aware of the late Nganda Chrizestom's ownership of the suit land.



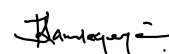
- v) That the respondents sued the applicant as the administrator of his late father's estate and would not have sued him if it was not in that capacity.
- vi) That in the event that the estate of the late Zakaliya Ssekandi has no legal representative, then the Applicant held out and illegally purported to be the administrator of the same vide High Court administration cause No. 2151 of 2016.

Representation;

7. The applicant was represented Kikomeko Swaibu of M/S Kivumbi Madina Kikomeko (KMK) Advocates & Solicitors whereas the Respondents were represented by Muhammad Ali Kajubi of M/S M.A. Kajubi & Co. Advocates. Both parties filed their affidavits and submissions which I have considered in the determination of this application.

Issues for determination;

- i) **Whether CS NO.1524 of 2023 can be dismissed for being time barred, being against a wrong party, frivolous or vexatious and having no cause of action against the applicant?**



ii) What are the remedies available to the parties?

Resolution and determination of the issues;

i) Whether CS NO.1524 of 2023 can be dismissed for being time barred, being against a wrong party, frivolous or vexatious and having no cause of action against the applicant?

i) Civil suit No. 1524 of 2023 being time barred

8. Counsel for the Applicant submitted that the Respondents' suit is barred by time. The late Nganda Chrizestomu purports to have purchased the suit land in 1971 from the late Zakaliya Ssekandi. That the late Nganda took possession of the same but did not follow up for the transfer due to the liberation war and he lost contact with Zakaliya Ssekandi who he believed to be dead.

9. That since 1971, no action was taken by Nganda until his death on 24th March 2023 when the Respondents made an application to the Commissioner to have the land vested and the same has never been considered to date. That the respondents' action of recovery of land is barred by Section 5 of the Limitation Act.

10. Section 5 of The Limitation Act Cap 80 provides that no action for recovery of land shall be brought after the expiry of 12 years.

11. It is not in dispute that the late Nganda Chrizestomu purchased the suit land in 1971 but was not able to transfer the same into his names which the respondents seek today. The Respondents submitted that the late Nganda lost contact of the late Zakaliya Ssekandi following the liberation wars.
12. That since 1971 until the death of the late Nganda Chrizestomu, the estate of the late Zakaliya Ssekandi was and supposedly is not under administration hence there was no legal representatives to deal with.
13. The Respondents in their affidavit in reply attached a copy of the certificate of title duly registered into the names of the applicant vide Instrument No. WAK00123305 on the 20th day of April 2017 at 3:45pm, an application to be registered as an administrator to the estate of the late Zakaliya Sekandi which is signed by the Applicant dated 16th March 2017 having obtained a grant of letters of administration vide HCT-00-FD-AC-2151 of 2016. The Applicant in his pleading does not deny having conducted the alleged transaction or explain them instead he denies being an administrator.
14. It is my considered view that this Honourable Court needs to establish whether or not the estate of the late Zakaliya Ssekandi

has ever come under administration which call for evidence and therefore on such disputed facts Court cannot effectively determine the issue of limitation without a full trial.

ii) Civil suit No. 1524 of 2023 was brought against the wrong party

15. The Respondents instituted Civil suit No.1524 of 2023 against the Applicant as the Administrator to the estate of the late Zakaliya Ssekandi but did not attach the grant of letter of administration.
16. The Applicant in his Affidavit in support and the affidavit in rejoinder alludes to the fact that the estate of the late Zakaliya Ssekandi is not administered and that the Applicant and a one Mayanja Andrew are in the process of obtaining letters of administration to which he attached a certificate of no objection.
17. The suit property claimed by the Respondents is registered in the names of the Applicant Temba Kalisiti as an administrator to the estate of the late Zakaliya Ssekandi vide Instrument No. WAK00123305 dated the 20th day of April 2017 at 3:45pm.
18. The Respondents claim the same property and the Applicant was sued as he was registered in the certificate of title to the suit land.



19. The allegation that the estate of the late Zakaliya Ssekandi is not administered and yet the Applicant is registered onto the Certificate of title as an administrator to the same estate raises more questions which cannot be answered in this application and the more reason to go into the merits of the case.

iii) **Civil suit No. 1524 of 2023 being frivolous, vexatious and having no cause of action against the applicant.**

20. It's a principle of law that for there to exist a cause of action, one must have enjoyed a right which right was infringed upon by the defendant. (***See; Auto Garage and ors vs Motokov 1971 EA***)

21. It is not in dispute that the late Nganda Chrizestomu purchased the suit land and the Applicant's only claim is that the suit is time barred, and that he was sued as the administrator to the estate of the late Zakaliya Ssekandi whereas he is not.

22. The above reasoning takes me to a conclusion that the Respondents have a cause of action against the Applicant.

23. A suit is deemed to be frivolous and vexatious where the pleadings do not disclose any reasonable cause of action, and where the alleged cause of action, which, in light of the



pleadings has no chance of success **(See; Drummon-Jackson versus British Medical Association cited in Ismail Serugo versus KCCA and AG SCCA No, 2/1998)**

24. Having found the Respondents to have a cause of action against the Applicant, the suit cannot then be frivolous and vexatious.

In the result therefore, this issue is resolved and determined in the negative.

25. In the circumstances, it is the finding of this Honorable Court that Civil Suit No.1524 of 2023 proceeds on its own merit and the instant application to have the said suit dismissed fails and is hereby dismissed.

26. Costs of the application to be in the main cause.

I SO ORDER.



NALUZZE AISHA BATALA

JUDGE

27/03/2024