THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

(Coram: Egonda-Ntende, Musoke & Obura, JJA)

Civil Appeal No. 26 of 2011

(Arising from High Court Civil Suit No. 33 of 2017 at Gulu High Court District Registry)

BETWEEN

TABITHA LALANGO LUTARA ..... APPELLANT

(Administrator of the estate of the late Wilson O. Lutara)

AND

ATTORNEY GENERAL ..... RESPONDENT

(An Appeal from the Judgment and Decree of the High Court of Uganda, [Kasule, J. (as he then was), dated 30th July 2010)

JUDGEMENT OF FREDRICK EGONDA-NTENDE, JA

Introduction

1. This is an appeal from a judgment of the High Court in H.C.C.S. No. 33 of 2007. The suit was filed on 7th September 2006, initially in Kampala, but was later transferred to Gulu High Court District Registry. The appellant was seeking a declaration that the she is entitled to compensation for the late Wilson O. Lutara's ranch in Gulu that was forcefully taken over by the government at the time, interest and costs.

2. The matter was tried in the High Court of Uganda at Gulu, (Kasule, J., (as he then was). The learned trial judge dismissed the suit on finding that the suit was filed out of time and therefore barred by law.

3. Being dissatisfied with the decision of the trial court the appellant appeals to this court on the sole ground that:

> 'The learned trial judge erred in law and fact when he held that the plaintiff's suit was time barred.'

4. The brief facts of this case which are not in dispute are that in 1977 the Government of Uganda under the regime of Idi Amin forcefully seized and took over the late Wilson O. Lutara's dairy farm on land comprised in leasehold register Volume 703 Folio 2 at Lolim, Kilak in Acholi district measuring approximately 2425 hectares. The farm was popularly known as the 'Anaka Ranch'. The farm was handed over to the agriculture development project under the Ministry of Agriculture, Animal Husbandry and Fisheries. In 1983, Government handed back the said farm to the deceased in a state of plunder. Most of the cattle were lost and basic infrastructure on the farm was destroyed. The alleged loss according to the appellant was valued at UGX 4,249,598,000. The late Wilson O. Lutara demanded compensation for the loss incurred following seizure of the farm but all was in vain. Eventually the deceased filed a suit against the respondent seeking to recover the losses.

5. The respondent opposes the appeal.

Submissions of Counsel

6. At the hearing the appellant was represented by Mr. Ndawula Sylvester and the respondent was absent.

7. Mr. Ndawula submitted that this being a first appellate court it is its' duty to subject the evidence on record to a fresh scrutiny and come to its own conclusion bearing in mind that it did not have the opportunity to observe the witnesses give evidence.

8. Mr Ndawula further submitted that the suit, though time barred, was revived by the respondent's acknowledgement of the appellant's claim through the negotiations / meetings it had with the appellant on several occasions. That this led to an evaluation

of the loss as shown by exhibits P2 and P4 that were admitted into evidence. Furthermore that exhibit P4 indicates that there was consensus between the Ministry of Agriculture and the appellant for an amicable settlement of the matter thus reviving the cause of action.

9. He further submitted that the negotiations and discussions between the appellant and the ministry were combined with promises and actions that induced the appellant not to file the suit in time on a reasonable belief that the matter would be settled out of court. That this amounts to equitable estoppel.

10. Mr. Ndawula also submitted that Order 7 rule 6 of the Civil Procedure Rules is not applicable to this case because no preliminary objection was raised that the suit was time barred by the law of limitation. He further contended that it was the negligence of counsel who handled the matter in the trial court for failing to specifically plead acknowledgement in the plaint and therefore this negligence should not be visited on the litigant.

11. In conclusion he prayed that this court allows the appeal.

Analysis

12. As a first appellate court it is our duty to review and re-evaluate the evidence adduced at the trial and reach our own conclusion, bearing in mind that this court did not have the same opportunity, as the trial court had, to hear and see the witnesses testify and observe their demeanor. See Rule 30(1) (a) of the Rules of this Court.

13. It is not in contention that H.C.C.S No. 33 of 2007 is barred by the provisions of the Civil Procedure and Limitation (Miscellaneous Provisions) Act. Section 3 (1) of the Act limits the period within which to bring an action founded on tort against the government to two years from the time the cause of action arose. It provides:

> 'No action founded on tort shall be brought against—the Government; a local authority; or a scheduled corporation, after the expiration of two years from the date on which the cause of action arose.'

14. In the instant case the cause of action arose in 1977 when the farm was forcefully seized and taken over by the Government of Uganda. No suit was filed in respect of the present claim until 2006 which was about 29 years since the cause of action arose. This action was therefore barred by limitation under section 3 (1) of the Civil Procedure and Limitation (Miscellaneous Provision) Act. In Madhvani International V Attorney General, (Supreme Court Civil Appeal No.23 of 2010), [2012 UGSC 14, Kitumba, JSC, was of the view that a statute of limitation is strict in nature, inflexible and not concerned with the merits of the case. She cited the case of Hilton vs Sulton Steam Laundry [1946] 1 KB at page 81 where Lord Greene stated:

> "But the statute of limitations is not concerned with merits. Once the axe falls and a defendant who is fortunate enough to have acquired the benefit of the statute of limitation is entitled, of course to insist on his strict rights."

15. It is clear that the appellant is attempting to avoid the law of limitation by claiming acknowledgement of the claim. However, this is not pleaded in the plaint. It should be noted that the appellant had an opportunity to amend the plaint but did not include acknowledgement of liability by the respondent in the pleadings. Therefore, having been barred by statute, an extension of time within which to file the suit in this case could only have been secured on the appellant's pleading showing that the respondent acknowledged liability of the debt therefore reviving the cause of action under section 22 (4) of the Limitation Act cap 80.

16. Order 7 rule 6 of the Civil Procedure Rules provides as follows:

> 'Where a suit is instituted after the expiration of the period prescribed by the law of limitation, the plaint shall show grounds upon which exemption from such law is claimed.'

17. Order 7 rule 11 states:

> 'The plaint shall be rejected in the following cases:
> (a)
> (b)
> (c)

(d) where the suit appears from the statement in the plaint to be barred by law.'

18. Where a party wishes to rely on an exemption to the limitation period it must be specifically stated in the plaint. If this is not done the plaint should be rejected. See Iga vs Makerere University (1972) EA 65. The learned trial judge should not have dismissed the suit but rejected the plaint.

19. Section 22 (4) of the Limitation Act provides:

'Where any right of action has accrued to recover any debt or other liquidated pecuniary claim, or any claim to the personal estate of a deceased person or to any share or interest in it, and the person liable or accountable therefor acknowledges the claim or makes any payment in respect of the claim, the right shall be deemed to have accrued on and not before the date of the acknowledgment or the last payment; but a payment of a part of the rent or interest due at any time shall not extend the period for claiming the remainder then due, but any payment of interest shall be treated as a payment in respect of the principal debt..'

20. Where there has been an acknowledgment of a claim the limitation period is deemed to have started running from the date such acknowledgment is made. However, under section 23 (1) of the Act, such acknowledgement must be in writing and signed by the person making the acknowledgement. In Madhvani International V Attorney General, (supra), Kitumba, JSC., approved the definition of an acknowledgement advanced by Byamugisha, JA., in her decision in the lower court. She stated:

"An acknowledgement is an admission which must be clear, distinct unequivocal and intentional. There must be no doubt that the debt is being admitted although the amount does not have to be stated."

21. There is no evidence on the record indicating that the respondent acknowledged liability for the appellant's claim. PW1, who carried out the valuation of the ranch testified that he was requested by the late Wilson O. Lutara to do so. It was indicated on exhibit P2 (the valuation report) that the valuation was carried out upon the request of the appellant by a letter dated 12th November 2005. The respondent did

not initiate the valuation process and in any case, carrying out a valuation of the ranch cannot amount to an acknowledgement of liability by the respondent.

22. Exhibit P4 is a letter from the Ministry of Agriculture, Animal Industry and Fisheries to the Solicitor General. It reads:

> **'INTENDED SUIT BETWEEN WILSON O. LUTARA AND THE ATTORNEY GENERAL**
>
> The Ministry of Agriculture, Animal Husbandry and Fisheries has been served with a notice of an intended suit against her seeking compensation for a ranch located in Gulu which had been taken over by government in 1977.
>
> The intending plaintiff, Mr. Wilson O. Lutara states that though the farm was returned to him in 1983 it had been mismanaged to an extent that it was no longer productive to sustain him.
> A valuation of the ranch as at 6th January 2006 using the available ranch files, projections and visual impressions by a technical officer in the Ministry put the amount due in compensation at U. Shs. 4, 249, 598,000= (Shillings Four billion, two hundred forty nine million five hundred ninety eight thousand only)
>
> The intending plaintiff has approached the Ministry to confirm that he is interested in settling the matter out of court.
>
> The Purpose of this letter is to request for your advice on how this matter should be handled between the Ministry and Mr. Wilson O. Lutara amicably.
>
> Please find attached all relevant correspondences on the same.
>
> I thank you for your co-operation.'

23. It is indicated that the purpose of the letter was to seek advice on how to settle the matter amicably following the deceased's notice of intention to sue the respondent. Being a ministry of government, the Ministry of Agriculture, Animal Husbandry and Fisheries is entitled to seek advice on legal matters from the Solicitor General which was the case. Furthermore there is no acknowledgment of the claim in the letter

contrary to Counsel for the appellant's allegation that this letter was an admission by the Ministry of the appellant's claim against the Government.

24. Exhibit P6 is a letter from the late Wilson O. Lutara to the then Principal Private Secretary of the President, Ms. Amelia Kyambadde through Ms. Margaret Lalam. The letter states:

> 'Dear Ms. Amelia Kyambadde
> **REF: ANAKA RANCH**
>
> Following H.E, the Presidents request to meet me, the meeting finally took place at State House Kampala on 30th April 2007.
>
> Present at the meeting was my wife Mrs. Tabitha Lutara and Ms. Margaret Lalam a state house secretary.
>
> After discussing various matters, the President requested for information related to my farm which I availed including a file containing information on a pending court case against the attorney general regarding compensation of my farm that was taken over by government.
>
> The valuation carried out by the Ministry of Agriculture, Animal Industries and Fisheries put the compensation value at Ug.Shs 4, 249, 598,000/= ((Shillings Four billion, two hundred forty nine million five hundred ninety eight thousand only). On viewing of the file, the President stated that he would consult and instruct the Attorney General to settle the matter out of court.
>
> The case has been set for hearing on the 11th March 2008 and any assistance in ensuring its favorable conclusion would be greatly appreciated.'

25. As the learned trial judge stated there is no evidence that this letter was received by the intended addressee and neither were the other people who attended the said meeting summoned in court to testify. The appellant did not adduce official minutes

of the meeting to show what transpired. Further, the letter in itself contradicts the evidence of PW2 who stated that the president promised to contact the Attorney General so that they were compensated. There is no written acknowledgement on record from the President or any government official after the meeting acknowledging liability for the appellant's claim.

26. The appellant's averment that the negotiations and discussions between the appellant and the ministry were combined with promises and actions that induced the appellant not to file the suit in time on a reasonable belief that the matter would be settled out of court hence amounting to equitable estoppel is untenable. It is trite law that negotiations between parties to a dispute have no effect on the limitation period. A party with a claim should file a suit while negotiations are ongoing to avoid the claim being caught up by the law of limitation. See Peter Mangeni t/a Makerere Institute of Commerce v Departed Asian Property Custodian Board, (Supreme Court Civil Appeal No. 13 of 1995), [1998] UGSC 26.

27. In conclusion I am unable to fault the learned trial judge. This appeal lacks merit and I would dismiss it with no order for costs given the absence of the respondent at the hearing of the appeal.

Decision

28. As Musoke, JA and Obura, JA agree this appeal is dismissed with no order as to costs.

Signed, dated and delivered at Kampala this 26th day April, 2019

Fredrick Egonda-Ntende
Justice of Appeal

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

(Coram: Egonda-Ntende, Musoke & Obura, JJA)

CIVIL APPEAL N0. 26 OF 2011

BETWEEN

TABITHA LALONGO LUTARA::APPELLANT

(Administrator of the estate of the late Wilson O. Lutara)

AND

ATTORNEY GENERAL:::RESPONDENT

(An appeal from the judgment and decree of the High Court of Uganda (Kasule, J (as he then was), dated 30th July 2010)

JUDGMENT OF HELLEN OBURA, JA

I have had the benefit of reading in draft the judgment of my brother Egonda-Ntende, JA and I agree with his findings and conclusion that this appeal be dismissed with no order as to costs since it lacks merit.

Dated at Kampala this...26th...day of......April.......2019.

....

Hellen Obura

JUSTICE OF APPEAL

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

(Coram: Egonda-Ntende, Musoke and Obura, JJA)

CIVIL APPEAL NO. 26 OF 2011

(Arising from High Court Civil Suit No. 33 of 2017 at Gulu High Court District Registry)

BETWEEN

TABITHA LALANGO LUTARA :: APPELLANT

(Administrator of the estate of the late Wilson O. Lutara)

AND

ATTORNEY GENERAL :: RESPONDENT

(An Appeal from the Judgment and Decree of the High Court of Uganda, [Kasule, J., (as he then was), dated 30th July 2010)

JUDGMENT OF ELIZABETH MUSOKE, JA

I have had the benefit of reading in draft the judgment of my brother, Fredrick Egonda- Ntende, JA with which I agree. I have nothing useful to add.

Dated at Kampala this 26th day of April 2019

Elizabeth Musoke

JUSTICE OF APPEAL