

Received by
ICORON MEMBER too

A Gervault ~~General~~ Responder

executed to this effect. It is then that the Plaintiff sued the Defendant for breach of the 18th March, 2001 agreement for failure to divide the suit property into two, or to inform the Defendant of the sale to Arch. Ochola Okot Stephen.

Representation

At the hearing, the Plaintiff was represented by Onder Oscar Stephen & Kafeero Alexander, while Osongol Samuel appeared for the Defendant. This court at the hearing directed that the submissions filed in Misc. Application No. 1533 of 2021, which raised the same point of law that the suit is time barred, be transferred to this Civil Suit file. Only the Defendant (Applicant in Misc. Application No. 1533 of 2021) had filed submissions. The Plaintiff was directed to file his reply to the said submissions by 24th February, 2022 but he did not.

Resolution

Issue: Whether Civil Suit No. 157 of 2017 is time barred and should therefore be struck out

It is trite law that an action must be brought within the prescribed period under the law on limitation. Order 7 Rule 11(d) of the Civil Procedure Rules, SI 71-1 provides for rejection of a plaint where it is barred by any law, including the law on limitation of actions. If an action is brought out of the period prescribed in law, then before entering judgment on the claim so made the court must be satisfied that the case comes within one of the exceptions provided by the Limitation Act, Cap 80 extending the period of limitation. See **Iga -v- Makerere University [1972] 1 EA 65**, Court of Appeal at Kampala.

Section 3(1) of the Limitation Act states:

3. Limitation of actions of contract and tort and certain other actions.

(1) The following actions shall not be brought after the expiration of six years from the date on which the cause of action arose—

(a) actions founded on contract or on tort;

(b) actions to enforce a recognisance;

(c) actions to enforce an award;

(d) actions to recover any sum recoverable by virtue of any enactment, other than a penalty or forfeiture or sum by way of penalty or forfeiture,




except that in the case of actions for damages for negligence, nuisance or breach of duty (whether the duty exists by virtue of a contract or of provision made by or under an enactment or independently of any such contract or any such provision) where the damages claimed by the plaintiff for the negligence, nuisance or breach of duty consist of or include damages in respect of personal injuries to any person, this subsection shall have effect as if for the reference to six years there were substituted a reference to three years. (Underlined for Emphasis.)

The statutory limitation for actions founded in contract is six years from when the cause of action arose.


Determination of when a cause of action arose is a question of fact. It is to be deduced by court after reading the plaint in its entirety. In this case, the cause of action as spelt out in the amended plaint filed on 9th April, 2021 is for breach of contract and damages arising from the unlawful sale of the suit property to Arch. Ochola Okot Stephen. The facts giving rise to the cause of action spelt out in paragraph 4 of the amended plaint show that the dispute arose only after the Defendant sold the land to Arch. Ochola Okot Stephen. The alleged unlawful sale by admission of both parties and evidenced by the Memorandum of Understanding marked Annexure G to the amended written Statement of Defence, took place on 9th June, 2015. It is therefore on that date that the cause of action arose.

Six years from 2015 comes down to 2021. This suit was originally filed on 1st March, 2017, well within the six-year limitation period. As such, I find that the suit was filed in time. It is not barred by the Limitation Act.

The preliminary objection is dismissed. The suit shall be set down for hearing.
I so order.



Jeanne Rwakakooko
JUDGE
29/07/2022



This Ruling was delivered on the 29th day of July, 2022