# THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT KAMPALA COMMERCIAL DIVISION CIVIL SUIT NO. 157 OF 2017

OKELLO WILBERT ..... PLAINTIFF

**VERSUS** 

OBEL RONALD ...... DEFENDANT

BEFORE: HON. JUSTICE JEANNE RWAKAKOOKO

### RULING ON PRELIMINARY OBJECTION

# Introduction

At the hearing on 10<sup>th</sup> February, 2022, counsel Osongol Samule for the Defendant raised a preliminary objection that the suit is time barred.

## Background

For context, the Plaintiff sued the Defendant for breach of contract, special damages, general damages arising from unlawful sale of land comprised in Kyadondo Blok 237 Plot 92, land at Mutungo (the suit property). The history of the claim is that the Defendant on 4th January, 2001 received an offer from then Uganda Commercial Bank to purchase the suit property at Ugx. 20,000,000/=. The Defendant did not have the money needed and so he approached the Plaintiff, a money lender, for a loan.

The Plaintiff advanced the Defendant a loan of Ugx. 16,850,000/= on 18<sup>th</sup> March, 2001 and an agreement was signed to this effect. Part of the terms of the loan reduced in the agreement, was that upon the Defendant acquiring the certificate of title to the suit land, he would divide it into two plots, one for each of the parties. The Defendant claims that this term was put in because the Plaintiff was not a registered money lender. That it was never the intention of the parties to share the suit property upon the Defendant receiving the certificate of title. The Defendant maintains that he repaid all sums owed to the Plaintiff plus interest.

The Defendant obtained a certificate of title over the suit property on  $15^{th}$  May, 2002. Since then, the Defendant solely enjoyed quiet possession of the suit property, and employed a one Ogola Clement as caretaker of the property. The Defendant later sold the suit property to Arch. Ochola Okot Stephen on  $9^{th}$  June, 2015 for Ugx. 360,000,000/= and a Memorandum of Understanding was

Roceweel by 1000m Meannez 200 1000m Meannez 200 executed to this effect. It is then that the Plaintiff sued the Defendant for breach of the 18<sup>th</sup> 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 <u>after the expiration of six</u> <u>years from the date on which the cause of action arose—</u>
  - (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 1<sup>st</sup> 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 Ath day of

, 2022