

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MBARARA

HCT-05-CV-CS-0083-2002

DOMINIC MUNUNURA..... PLAINTIFF

VS

CISSY BAMUHIGIRE
ADMINISTRATOR OF BRUNO BAMUHIGIRE ESTATEDEFENDANT

BEFORE: THE HON. MR. JUSTICE P. K. MUGAMBA

RULING

Mr. Zeija counsel for the defendant sought to have this action struck out by raising two preliminary objections. The first point of objection was that this suit was bad in law considering that it was filed in the High Court Registry at Mbarara on 25th March 2002 when a similar suit had already been filed in the high Court registry in Kampala on 5th June 1985. The other point of objection was that the suit is time barred under the Limitation Act, Cap 80. Mr. Katembeko counsel for the plaintiff opposed the objections and urged that they be dismissed with costs.

The genesis to this matter is not complicated. On 5th June 1985 Dominic Mununura instituted a suit against Bruno Bamuhigire in the High Court Registry at Kampala. It was Civil Suit number 878/85 and sought inter alia the transfer of the suit property from the names of the defendant into the names of the plaintiff therein. Unfortunately Bruno Bamuhigire died in the course of time and administration of his estate was granted to his spouse Cissy Bamuhigire. On 25th March 2002 another suit was instituted by Mununura against Cissy Bamuhigire, the administratrix aforesaid. This later suit was registered in the High Court Registry at Mbarara and, notably, while Civil Suit 878/85 was still on the Court register. Significantly the subsequent suit also sought transfer of the suit property into the names of the plaintiff from those of the aforesaid administratrix, inter alia. The subsequent amendment to the plaint affirms this. Nevertheless on

1st October 2003 Civil Suit 878/85 was dismissed under Order 15 rule 6 of the Civil Procedure Rules, leaving the present suit on the register.

I shall deal first with the initial point of objection to wit, whether this suit should fail for being in existence at the same time as the dismissed suit given the provisions of S.6 of the Civil Procedure Act which provides as under:

‘No court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties, or between parties under whom they or any of them claim, litigating under the same title, where that suit or proceeding is pending in the same or any other court having jurisdiction in Uganda to grant the relief claimed.’

The emphasis above is added but underscores the existence or pendency of the other suit at the time of trial. This court in Amos Mugisa & Sons Chemico industry and Soap Works Ltd vs Departed Asians Property Custodian Board & Another Civil Suit 853/90 (unreported) per Mukasa Kikonyongo J, as she then was, held that since there was another similar case pending before a Magistrate’s Court the suit filed later in the High Court would be stayed. In my view this eventuality does not arise so far as concerns the instant suit as there is no other similar suit pending since dismissal of Civil Suit No. 878/85. The objection fails in the circumstances. However, I agree with learned counsel for the defendant that the proper course open to the plaintiff would have been to proceed under Order 21 rule 4 (1) of the Civil Procedure Rules instead of filing a fresh suit.

The other objection is that this suit is barred by time under the Limitation Act, Cap. 80 of the Laws of Uganda. It was argued by counsel for the defendant that whether this action is under contract or is for recovery of land, which have a lifespan of six and twelve years respectively, this suit is time barred given that the cause of action is said to have arisen in 1982 and this suit was instituted in the year 2002. On the other hand it is contended by counsel for the plaintiff who stated that this action is not for recovery of land but rather for specific performance of the contract of sale of the suit land. He added that the plaintiff is in possession of the suit land and

does not seek to recover it. He stated that in the circumstances the law applicable is section 3 (6) of the Limitation Act which provides:

‘This section shall not apply to any claim for specific performance of a contract or for an injunction or for other equitable relief except insofar as any provision of this section may be applied by the court by analogy in like manner as the periods of limitation in force before the commencement of this Act have heretofore been applied.’

Paragraph 8 of the amended plaint clearly states:

‘The plaintiff seeks specific performance of the contract of sale of the suit ‘and to the plaintiff by the late Bruno Bamuhigire by ordering the defendant to effect a formal transfer of the suit land into the plaintiff’s names.’

I am satisfied the suit is not subject of the vagaries under the Limitation Act suggested in the objection, which also fails.

Hearing of the suit will commence.

Costs in the cause.

P. K. Mugamba

Judge

25th August 2005