

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
HOLDEN AT GULU
HCT – 02 – CV – CS – 0016 – 2004**

OKENG WASHINGTON ::::::::::::::::::::PLAINTIFF

VERSUS

- 1. THE ATTORNEY GENERAL)**
- 2. MIKE OKELLO)::::::::::::DEFENDANTS**

BEFORE HON. JUSTICE REMMY K. KASULE

RULING

Two preliminary objections have been raised by defence counsel, Mr. Joseph Nyeko, against the plaintiff's plaint. Both are points of law.

The first is that the plaintiff does not state in what capacity he is bringing the suit. Section 6(1) of the Law Reform(Miscellaneous Provisions) Act, Cap, 79 provides that an action like the one brought by the plaintiff must be for the benefit of the deceased's family members and has to be brought either by and in the name of the executor/administrator or a family member of the deceased.

Admittedly it is not specifically pleaded in the plaint in what capacity the plaintiff is bringing the action. However, taking the whole plaint together it comes out that plaintiff is bringing the action as a family member of the deceased. This is why, for example, he spent so much on the deceased estate by way of special damages claimed in paragraph 7 of the plaint.

At any rate, under section 1(c) (ii) of the Law Reform (Miscellaneous Provisions) Act, Cap. 79, the plaintiff is entitled to sue as, one, under the law or custom, is responsible for administering the estate of the deceased person.

This court, is enjoined to administer substantial justice without undue regard to technicalities. Applying this principle to this case, court rejects the first preliminary objection.

The second objection to the plaint is more substantial. It is that the plaintiff's action is time barred in terms of section 6(3) of the Law Reform (Miscellaneous Provision) Act, Cap. 79. The section provides that every action like the one constituting the claim of the plaintiff shall be commenced within twelve calendar months after the death of the deceased person.

The deceased, Francis Obira, the subject of the claim died on 26.06.2003 and the suit was filed in court on 01.03.2004, more than a month outside the stipulated period of 12 calendar months. There is nothing pleaded in the plaint to bring out any disability; so as to bring the cause of action within time.

Plaintiff's counsel in reply to the point, just requested court to do substantial justice so as to make the ends of justice to be met.

But this is a point of substantial law. A suit that is time bared by statute must be rejected by court because in such a suit the court is barred by law from granting any remedy or relief: see **IGA VS MAKERERE UNIVERSITY 91972) EA 65.**

In considering whether or not a plaint is time barred or discloses no cause of action the court must look only at the plaint and nothing else: See **ONESIFOKO BAMUWAYIRA & 2 ORS VERSUS ATTORNEY GENERAL (1973) HCB 87.**

A plaint that is deficient in that it shows that the action is time barred or discloses no cause of action must be rejected:

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It is a prerequisite of a party who seeks to have substantial justice done to him or her that that party substantially complies with the law, more so where that law is the written law. This is why Article 126(2) of the constitution is worded as it is:-

“ In adjudicating cases of both a civil and criminal nature, the courts shall, subject to the law, apply the following principles- (e) substantive justice shall be administered without undue regard to technicalities”

It is to be noted that section 6 (3) of the Law Reform (Miscellaneous Provisions) Act, Cap.79, operates on its own, unaffected by the provisions of the Limitation Act, Cap.80. This is the case because section 32 of the Limitation Act, cap. 80, provides that the Limitation

Act shall not apply to any action for which a period of Limitation is prescribed by any other enactment.

This court upholds the second preliminary objection as valid.

Accordingly the plaint in this suit is rejected pursuant to Order 7 Rule 11 of the Civil Procedure Rules.

The defendant is awarded the costs of the rejected suit.

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Remmy Kasule
Judge
26th February 2008

26th February 2008
Stephen Ochan – court clerk
Cox Ojuuku- principal state attorney for defendant
Plaintiff and his counsel are absent
Court: Ruling delivered.

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Remmy Kasule
Judge
26th February 2008