

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT JINJA
CIVIL SUIT NO. 085 OF 2018

EDITH NAIGA BULUBA:.....: PLAINTIFF

VERSUS

- 1. INTERNATIONAL INVESTMENTS LIMITED**
- 2. KALANGWA MOSES KALIISA**
- 3. MOSES MITALA BULUBA**
- 4. ELIZABETH MWIGUNDU**
- 5. BARATI MUKUNGU**
- 6. JULIUS BULUBA**
- 7. COMMISSIONER LAND REGISTRATION:.....: DEFENDANTS**

RULING
BEFORE HON. LADY JUSTICE FARIDAH SHAMILAH
BUKIRWA

The Plaintiff initially brought this suit against George William Bwanga and International Investments Limited on 13th August 2018. However, on the 15th day of November 2018, the Plaintiff withdrew her claim against George William Bwanga who was the 1st Defendant and by amendment she introduced the 2nd to the 7th Defendants.

Background

The Plaintiff claims to be one of the three widows and the Administratrix of the estate of the late Zakalia Barrat Lubaale Buluba who was the legal owner of land comprised in FRV 933 Folio 5, land at Busambu, Namasagali in Kamuli District in Jinja “the suit Property”. The Plaintiff further claims that the late Zakalia Barrat assigned the Plaintiff the suit property. Upon the death of Zakalia Barrat, the Plaintiff obtained letters of Administration vide Administration Cause Number 5 of 1984. It should be noted that the Letters of Administration obtained by the Plaintiff were not included anywhere in her pleadings. On 11th May 1984, she transferred Certificate of Title for the suit land into her names as the Administratrix of the estate of the late Zakalia Barrat. The Plaintiff on 16th March 1991 sold 10 acres of the suit property to a one George William Bwanga who unfortunately turned around and took the entire suit property. The said George William Bwanga successfully evicted the Plaintiff from the suit land in 2001. As a result of this forceful eviction, the Plaintiff approached the Administrator



General's office for a remedy and involved the other family members who she claims, instead of helping her, hatched a plan to completely take away the land from her. In 2018, the Plaintiff lodged a caveat on the suit land when she discovered that it had been fraudulently registered into the 1st Defendant's name.

In 2020, the Plaintiff found out that in 1993, the High Court of Jinja under HCCS No. 187 of 1992 had cancelled her Letters of Administration and granted the same to Tolofisa Kyakuwaire and the 3rd Defendant who got registered on the suit land on the 2nd day of August 1994.

That on 11th May 2005, George William Bwanga lodged a caveat on the suit land. However, on 2nd November 2001, the 3rd Defendant applied to the Registrar of Titles to remove the caveat that had been lodged on the suit land by George William Bwanga and the same was vacated.

That after the death of the Tolofisa Kyakuwaire, the 4th, 5th and 6th Defendants as children of the late Tolofisa were granted Letters of Administration to her estate in 2006 and were subsequently fraudulently registered on the Certificate of Title on 1st November 2006 to the suit land in total violation of the Succession and Land Registration Laws and that the same was unlawfully allowed by the 7th Defendant. The Plaintiff contends that she discovered this fraud in 2020.

Orders sought by the Plaintiff

The Plaintiff seeks for a declaration that the Defendants fraudulently dealt with the suit property, an order for cancellation of the 1st Defendant's Certificate of Title, cancellation of the registration of the suit land into the names of the 3rd, 4th, 5th and 6th Defendants as Administrators of the Estate of the late Tolofisa Kyakuwaire, a consequential order that the suit land be transferred into the names of the Plaintiff as the beneficial owner thereof, an eviction order against the 1st Defendant, her agents, assignees, transferees and successors in title from the suit land, a permanent injunction restraining the 1st to 6th Defendants' agents, from evicting and interfering with the Plaintiff's use and quiet enjoyment of the suit land, damages, mesne profits and costs of the suit.

Representation

The Plaintiff was represented by Mr. David Ssempala. The 1st and 2nd Defendants were represented by Mr. Martin Asingwire and the 3rd to 6th Defendants were represented by Muzuusa and Company Advocates. The 7th Defendant was not represented.



At the trial the Defendants raised a preliminary objection to the effect that the suit is time barred. Court allowed parties to file their written submissions on the preliminary objection which are relied on in this ruling.

Issue

Whether the suit is time barred?

Submissions

In support of the preliminary objection, Counsel for the Defendants submitted that in the instant case, the Plaintiff seeks for a declaration that she is the legitimate owner of the suit land, an eviction order and a permanent injunction be issued against the 1st Defendant. Counsel for the Defendants contends that the Plaintiff's suit amounts to an action for recovery of land and or ejection. He further submits that the Plaintiff lost the Certificate of Title to the suit land in 1991 and was dispossessed of the same in 2001 by George William Bwanga. Counsel for the Defendants further submitted that notwithstanding her loss of the Certificate of Title in 1991 and the subsequent dispossession in 2001, the Plaintiff filed this suit on 13th August 2018. Counsel referred to Section 5 of the Limitation Act which bars any person from bringing an action to recover any land after the expiration of twelve years from the date on which the action accrued to him or her or, if it first accrued to some person through whom he or she claims to that person.

In reply, Counsel for the Plaintiff submitted that Section 5 of the Limitation Act did not bar the Plaintiff from instituting this case against the Defendants. He submitted that the twelve years as envisaged under Section 5 of the Limitation Act had not lapsed since the cause of action arose on 15th December 2006 when the 2nd Defendant was registered as the proprietor of the suit land. That the Plaintiff filed the main suit in August 2018 and as such the computation of time between the cause of action arising and the filing of the main suit would fall within the twelve-year period and as such, the Plaintiff's suit is not time barred.

Plaintiff's Counsel further submitted that the cause of action is partly based on fraud to which section 25 of the Limitation Act applies. Counsel for the Plaintiff also sought relief under Section 21 (1) (c) of the Limitation Act which confers an extension of six years to persons who suffers a legal disability. Lastly, Counsel for the Plaintiff submitted that the 4th, 5th and 6th Defendants are administrators of the estate of the late Zakaliya Barrat Buluba and therefore the bar of limitation could not apply. Counsel relied on Section 20 and 19(1) of the Limitation Act.



Counsel further relied on Section 25 which provides for an exception to the bar of limitation in cases where by reason of fraud or mistake the operative facts were not discovered immediately.

Decision.

The Law.

Section 5 of the Limitation Act states that “no action shall be brought by any person to recover any land after the expiration of twelve years from the date on which the right of action accrued to him or her

Section 6(1) of the Limitation Act provides that, “where a person bringing an action to recover land through which he or she claims, has been in possession of the land, and has while entitled to it been disposed or discontinued his or her possession, the right of action shall be deemed to have accrued on the date of the dispossession.

Section 11, “No right of action to recover land shall be deemed to accrue unless the land is in possession of some person in whose favour the period of limitation can run (herein after referred to as “adverse possession”

Section 25, “Where, in the case of any action for which a period of limitation is prescribed by this Act, either,

(a) The action is based upon the fraud of the defendant

(b) The right of action is concealed by the fraud of any such person

The period of limitation shall not begin to run until the plaintiff has discovered the fraud or the mistake or could with reasonable diligence have discovered it, but nothing in this section shall enable any action to be brought to recover, or enforce any charge against, or set aside any transaction affecting, any property which –

d) in the case of fraud, has been purchased for valuable consideration by a person who was not a party to the fraud and did not at the time of the purchase know or have reason to believe that any fraud had been committed.

It is a settled principle of law that in determining matters of time and rights to sue, the Court is bound to consider the pleadings of the Plaintiffs alone to which I have no intention to depart. This principle was upheld in **Ababiri Muhamood & 4 Ors Vs Mukomba Ananstansia and Anor.**



HCCS NO. 22 OF 2015 and the principle is further expounded to emphasize that Court should only consider the Plaintiff and its attachments and nothing more.

This being an action for recovery of land, the limitation period stipulated by section 5 of the Limitation Act applies. In **Gawubira Mankupias Vs Kakwiita Stephen HCCA No. 130 of 2008**, Court referred to the case of **Odyeki & Anor vs Gena Yokonani & 4 Ors CA No. 0009 of 2017** in which case it was held that;

“With regard to actions for recovery of land, there is a fixed limitation period stipulated by Section 5 of the Limitation Act. This limitation is applicable to all suits in which the claim is for possession of land, based on title or ownership i.e., proprietary title, as distinct from possessory rights.

As per Section 6 (1) and 11(1) of the Limitation Act, the right of action is deemed to have accrued on the date of the dispossession that is when adverse possession occurs.

In **Odyek Alex Ocen Constatino Vs Gena Yokonani & 4 Others (Supra)**, where Court relied on **F. X. Miramago Vs Attorney General [1979] HCB 24**, it was held that the period of limitation begins to run as against a Plaintiff from the time the cause of action accrued until when the suit is actually filed.

Basing on the above, I agree with Counsel for the Defendant’ submission that the Plaintiff’s cause of action arose in 2001 when she was evicted/dispossessed from the land by George William Bwanga who she surprisingly chose not to sue. (Refer to paragraph 6 (o) of the Amended Plaintiff).

According to paragraph 6 (p) and (q) of the amended Plaintiff, the Plaintiff realised that she had a cause of action after her eviction and as such sought a remedy however, instead of going to Court she chose to go to the Administrator General’s Office.

Specifically, under paragraph 6(p) of the Amended Plaintiff, the Plaintiff asserts that she involved her other family members who instead of helping her hatched a plan to completely take away the land from her. Although the Plaintiff did not expressly mention the family members who hatched

the plan to take away her land, owing to the fact that she was dealing with the estate of the late Zakaliya Balati Buluba, and considering that Tolofisa Kyakuwaire was also a wife of the late Zakaliya Buluba mentioned under Paragraph 6 (u) (i) of the Amended Plaintiff and that the 3rd Defendant is the son of the late Zakaliya (See paragraph 6(e) of the Amended Plaintiff)

The Plaintiff further contends that the 4th, 5th and 6th Defendants are the children of the late Zakaliya Buluba as they are children of Tolofisa (Paragraph 6 (u), (xiii) of the Amended Plaintiff). I am convinced that they were among the family members talked about under paragraph 6 (p) who hatched a plan to take away the suit land from the Plaintiff. This goes without saying that since 2001, the Plaintiff was aware of the issues on the suit land but was addressing them in a wrong forum or completely neglected them until the 13th day of August 2018 when she instituted the suit, a period of 28 years after the cause of action arose.

In **Odyek case (supra)** it was observed that; ‘As a rule, limitation cuts off the owner’s right to bring an action for recovery of the suit land that has been in adverse possession for twelve years. **Section 16 of the Limitation Act** provides that at the expiration of the period prescribed by the Act for any person to bring an action to recover land, the title of the person to the land shall be extinguished. The provision is couched in mandatory terms and clearly declares the title non-existent and therefore unredeemable on expiration of the limitation period.

Counsel for the Plaintiff submitted that the cause of action arose on the 15th day of December 2006 which is the date the 3rd Defendant got registered on the Certificate of Title for the suit land yet the suit was filed on the 13th day of August 2018 and that since the twelve years had not lapsed by 13th August 2018, the Plaintiff is not barred from instituting this suit.

With regard to the Plaintiff’s action against the 1st Defendant, Paragraphs 6 (z) and 13 (i) of the Amended Plaintiff state that the 1st Defendant bought the suit land after paying UGX 20,000,000/= (Twenty million shillings) from the 3rd, 4th, 5th and 6th Defendants who connived with the 2nd Defendant. I am convinced that this transaction positions the 1st Defendant as a bonafide purchaser for value without notice whose Certificate of Title to the suit land is protected under **Section 25 (d) of the Limitation Act**.



Counsel also sought to rely on the fact that the Plaintiff discovered the Defendants' fraudulent actions in 2018 hence he sought to rely on Section 25(1) of the Limitation Act which would imply that the limitation period would begin to run in 2018 at the time of the discovery of the fraud by the Plaintiff. I am not persuaded by Counsel for the Plaintiff's submissions. According to the Amended Plaintiff, the Plaintiff ought to have been on guard over her property in 1991 when she claims to have sold ten acres of her land and was subsequently evicted from the entire land in 2001 and the subsequent plans by the family members to take the land.

According to Paragraph 17(i) and (ii) of the Amended Plaintiff, the Plaintiff blames the 1st Defendant for having failed to exercise due diligence with the area local authorities and Land Office to verify and confirm the true ownership of the land that the 1st Defendant intended to buy. This only implies that the particulars of the suit land have always been available to whoever wished to access them including the Plaintiff herself. The Plaintiff claims that George William Bwanga transferred her entire land in 1991 yet she failed to conduct a search at the Land Office to ascertain whether George William Bwanga had indeed transferred all her land. The Plaintiff cannot feign ignorance about the specific office she had to approach in order to ascertain whether her land had been unlawfully taken away from her since she had registered the suit land in her name on 11th May 1984 at the Land Office which was therefore well known to her. It is therefore surprising that instead of verifying the true ownership of the suit land at the Land Office in 2001, the Plaintiff sought for a remedy at the Office of the Administrator General.

Under Paragraph 19 of the Amended Plaintiff, the Plaintiff states that all along she has been fighting George William Bwanga and I believe if she had conducted a search at the Land Office, at the latest in 2001, when she was evicted from the suit land, she would have discovered all the fraud she alleges against the Defendants which started way back in 1994. I am not convinced that the Plaintiff had the earliest opportunity in 2018 to verify the fraudulent dealings by the 2nd to 6th Defendants and subsequent ownership of the suit land by the 1st Defendant. I therefore find that the Plaintiff's claims are misplaced and are aimed at defeating the limitation period.



For those reasons, the disability as pleaded under paragraph 19 of the Amended Plaintiff and stated in Counsel for the Plaintiff's submission does not stand.

In his submissions, Counsel for the Plaintiff contends that the 4th, 5th and 6th Defendants are the Administrators of the estate of the late Zakaliya Barrat Buluba and as such the said Administrators held the suit property in trust for the beneficiaries of the estate who included the Plaintiff. However, under Paragraph 6 (u) (xiii), (xiv), and (v) of the Amended Plaintiff, it is clear that the 4th, 5th and 6th Defendants are Administrators of the estate of the late Tolofisa Kyakuwaire and not Administrators of the estate of the late Zakaliya Barrat Lubaale.

The Plaintiff further confirms under Paragraph 6 (v) of the Amended Plaintiff that the estate of the late Zakaliya Barrat Buluba is not the same as the estate of the late Tolofisa Kyakuwaire. Therefore, there was no trust created by virtue of the Letters of Administration that were granted to the 4th, 5th and 6th Defendants.

With this analogy, the Plaintiff cannot rely on the provisions of Section 19(1) and 20 of the Limitation Act, which provisions insulate beneficiaries of an estate from the limitation period.

From the foregoing, I am persuaded by the Defendants that the suit is time barred and I thus reject the Amended Plaintiff under Order 7 Rule 11(d) of the Civil Procedure Rules. The suit is subsequently dismissed with costs to the Defendants.

I so order.



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Faridah Shamilah Bukirwa

Judge.

14th October 2022.