

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KABALE

CIVIL SUIT NO. 0015 OF 2022

1. ATWONGYERE ENID

2. EKinAMUSHABIRE HILDA

3. TIBARIKUBUHA MAUDA

4. CHRISTINE BURYAHABURA:::::::::::::::::::::::::::::::::PLAINTIFFS

VERSUS

1. FRED MWERINDE

2. SAM NDABA:::DEFENDANTS

BEFORE: HON. JUSTICE SAMUEL EMOKOR

RULING

The Plaintiffs brought this action against the Defendants seeking the following orders:

- i) A declaration that the Plaintiffs are beneficiaries of the estate of the late Aroni Magaba as per the Letters of Administration Vide Administration Cause No. MKA 7 of 1992.
- ii) An order that the estate of the late Aroni Magaba be distributed amongst all the beneficiaries including the Plaintiffs.
- iii) An order that the Defendants file a true account of the Estate of late Aroni Mugaba to this honourable Court to account for the Letters of Administration vide Administration Cause No. MKA 7 of 1992.

- 5 iv) A permanent injunction issues against the Defendants restraining them
 from intermeddling with the estate of the late Aroni Magaba or any
 further dealings in the same until all the beneficiaries get their own
 shares.
- v) General damages
- 10 vi) Costs of the Suit.

The Defendants filed a Written Statement of Defence to the claim.

When this matter came up for scheduling Mr. Muhangi Justus who appeared for
the Defendants intimated to this Court that he had Preliminary Points of law to
raise and he requested that he be allowed to file Written Submissions in this
15 regard. Mr. Maseraka Godwin who appeared for the Plaintiffs had no objections
to this prayer.

Accordingly this Court provided Counsel with a schedule which both Counsel
complied with.

A summary of the Submissions of Counsel:

20 It is the submission of Counsel for the Defendants that the parties in this matter
are biological brothers and sisters and children of the late Aroni Magaba who died
in 1992 and that the Defendants in the same year applied for and obtained Letters
of Administration to his Estate.

It is the contention of the Defendants' Counsel that the Plaintiffs' suit is time
25 barred under the provisions of **Section 5** of the **Limitation Act** that provides 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
or if it first accrued to some person through whom he or she claims to that person.

5 According to the Defendants' Counsel the instant suit is being filed in 2022 after a period of 30 years and seeks distribution and account of the Estate.

Counsel also to buttress his point relies on the provisions of **Section 19(1)** of the **Limitation Act** that provides that no action in respect of any claim to the personal estate of a deceased person or to any share or interest in such estate whether
10 under a will or intestacy shall be brought after the expiration of twelve years from the date when the right to receive the share or interest accrued and no action to recover arrears of interest in respect of those arrears shall be brought after the expiration of six years from the date on which the interest became due.

It is therefore the submission and prayer of the Defendants' Counsel that the
15 instant suit be dismissed with costs for being time barred.

The Plaintiffs' Counsel in his Written Submissions contends that Section 5 of the Limitation Act is not applicable to the Plaintiffs' case as it does not refer to matters of personal estates hence the same ought to be ignored.

In regard to the provisions of Section 20 of the Limitation Act it is Counsel's
20 submission that on the face of the Complaint the Plaintiffs claim is for, among others, revocation of the grant of Letters of Administration to the Defendants and distribution of the estate to which the Plaintiffs and Defendants are beneficiaries. It is the contention of the Plaintiffs' Counsel that the Defendants applied for and obtained Letters of Administration of the Estate of the said Late Aroni Magaba in
25 1993 and have never distributed the same to the beneficiaries nor filed an inventory.

It is the argument of the Plaintiffs' Counsel therefore that the administration of the estate has not been completed and any aggrieved party can challenge the administration of the same.

5 To buttress his case Counsel relied on the decision in **Hadadi Mohamed Rajab & 5 others versus Muzamil Mohamed Rajab & 02 others HCCS No. 188** of 2015 in which the Court held that:

“... for as long as there is no completion of administration of the estate, any aggrieved party may challenge the administration of such an estate by seeking a
10 revocation of the grant of Probate or Letters of Administration of that estate...for as long as administration of the estate is still open, the authority of the administrators is open to challenge in which case limitation under Section 20 does not apply”

Counsel submits that the grant dated 23/02/1993 shows that the Administrators
15 undertook to administer the estate of the late Aroni Magaba and to make a full and true inventory of the said property and credits to Court within 6 months from the date of the grant or within such further time as Court may from time to time appoint which the Defendants have never done indicating that they come before this honourable Court with un clean hands.

20 It is therefore the submission of the Plaintiffs’ Counsel that the instant suit is not barred by the provisions of Section 20 of the Limitation Act.

Determination:

Section 5 of the **Limitation Act** provides as follows:

25 “No action shall brought by any person to recover any land after the expiry of twelve years from the date on which the right of action accrued to him or her or, if it first accrued to some person through whom he or she claims to that person.”

While Section 20 provides that:

5 *“Subject to Section 19(1), no action in respect of any claim to the personal estate of a deceased person or to any share or interest in such estate, whether under a will or on intestacy shall be brought after the expiration of twelve years from the date when the right to receive the share or interest accrued, and no action to recover arrears of interest in respect of any legacy or damages in respect of those*
10 *arrears shall be brought after the expiration of six years from the date on which the interest became due.”*

A strict interpretation and application of **Section 5** and **20** of the **Limitation Act** would mean that no action in respect of any claim to the personal estate of a deceased person is sustainable when brought after the expiration of twelve years
15 from the date when the right to receive the share or interest accrued. This in effect would mean that the instant suit is time barred the Defendants having obtained their Letters of Administration in 1993 and ought to be struck out.

I do not subscribe to this line of thinking.

Lord Griffiths in the case of **Pepper V Hart [1993] 1 ALLER 42** held inter alia
20 that:

“The days have long passed when the Courts adopted a strict constructionist view of interpretation which required them to adopt a literal meaning of the language...”

I am of the firm opinion that every case is unique and ought to be regarded on its
25 own set of peculiar facts. The Plaintiffs’ case is premised on the fact that the Defendants obtained Letters of Administration in 1993 to an estate to which they are co-beneficiaries with the Defendants as children of the late Aroni Magaba and that the said estate has never been distributed nor any inventory filed in its regard by the Defendants.

5 It is my considered opinion that the Defendants' lawful responsibility as Administrators cannot be extinguished by the twelve year rule **under Section 5 and 20 of the Limitation Act**. The Defendants have not performed their duty as Administrators of the Estate as per the pleadings on the Court record and must be held to account. It would be scandalous if this Court were not allowed to
10 inquire into the Defendants' management of the Estate.

This Court is alive to the recent legislation to the Succession Act that places a cap of two years for the Administration of an Estate unless extended by the Court.

This legislation unfortunately is not retrospective and such Defendants who are holders of validly issued Letters of Administration are in position to continue with
15 the management of the deceased's estate, in view of this position the Defendants cannot be allowed to have and eat their cake. The Defendants cannot be allowed to continue to be holders of valid Letters of administration to an Estate that they cannot be called upon to account.

I would agree entirely with the holding of my sister Lady Justice Ketrah
20 Kitariisibwa Katunguka in **Habai Mohamed Rajab & 05 others versus Muzamil Mohamed Rajab (Supra)** that as long as administration of the estate is still open, the authority of the administrators is open to challenge; in which case limitation under Section 20 does not apply.

The learned Judge further in reference to Section 20 of the Limitation Act
25 expressed the following sentiments:

"It should always be applied hand in hand with Article 126 and Article 26 of the Constitution so that especially where people are related, wherein this case, reconciliation and the ensuring of substantive Justice should always, as much as legally possible, be promoted, because sticking to limitation while the disputes

5 *head roams in the family is a dangerous trend. Equity would demand the two
Constitutional principles to always balance.”*

For the foregoing reasons the Preliminary Objection is rejected and the suit is
hereby set down for hearing.

10 Before me,

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Samuel Emokor
Judge
14/02/2023.

14/02/2023

Mr. Masereka for Plaintiff

20 Plaintiffs present.

Defendants present

Clerk Vianney

Mr. Masereka: This matter is for Ruling. We are ready to receive the same.

Court: Ruling delivered in Chambers.

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Samuel Emokor
Judge
14/02/2023.