

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT MASAKA**  
**MISCELLANEOUS APPLICATION NO. 220 OF 2022**  
**(ARISING FROM CIVIL SUIT NO. 100 OF 2022)**

**KULSUM PATEL ..... APPLICANT**

**VERSUS**

- 1. ABUDU BUKENYA**
- 2. YASSIN SSEGUYA**
- 3. REHEMA NABUKENYA**
- 4. MOSES KAMOGA ..... RESPONDENTS**

**RULING**

*Hon. Lady Justice Victoria N. N. Katamba*

**BACKGROUND**

The Applicant/Defendant was sued by the Respondents/Plaintiffs who sought among others declarations that land comprised in Buddu FRV 67 Folio 21 at Kasambya Estate, Lwengo District measuring 257 acres belongs to the Respondents/Plaintiffs who are the beneficiaries of the estate of the Late Sabiti Lubega.

The Respondents claimed that the Applicant/defendant was not a Ugandan citizen thus not entitled to hold the suit land in her names and that the land was repossessed without the requisite documents. The Respondents sought from this court, cancellation of the Applicant/ 1<sup>st</sup> Defendant's registration on the title and among other reliefs.

The Respondents/plaintiffs claimed their father, the Late Sabiti Lubega was the owner of the suit land having purchased and taken possession of it, set up a factory and a plantation on it. That unfortunately he died before he could transfer title in his names but they claim to have transferred the said land in the 1<sup>st</sup> Plaintiffs names in 1983. They claim that the 1<sup>st</sup> defendant's husband harassed the family and forced them out after torturing the 1<sup>st</sup> Plaintiff.

On the other hand, the Applicant denied their claims in her written statement of defence, has annexed a copy of her Ugandan passport to prove that she is a Ugandan citizen. The Respondent has also annexed to her affidavit in support a certificate of repossession for the land. She also claims to have inherited the land from her husband who was the Administrator of the former registered proprietor upon her benefactor's subsequent demise.

The Applicant denies the Respondent's claims of intimidation, and asserts that together with her now late husband they have occupied the said land for the last 27 years uninterrupted.

### **Representation**

The Applicant was represented by **M/s CCAKS Advocates**.

The Respondent was on the other hand represented by **M/s BluePrint Advocates**.

### **Applicant's Submissions**

### **ISSUES**

1. Whether Civil Suit No. 100 of 2022 discloses a cause of action against the Applicant/ 1st defendant?
2. Whether Civil Suit No. 100 of 2022 is time barred?
3. Whether Civil Suit No. 100 of 2022 is frivolous or vexatious?
4. Remedies

### ***Whether Civil Suit No. 100 of 2022 is time barred?***

The Applicant cited Section 5 of the Limitation Act Cap 80 which 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, it first accrued to some person through whom he or she claims to that person.

The Applicant further submitted that 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. Furthermore, ***Section 11 (1) of the same Act provides that;***

*No right of action to recover land shall be deemed to accrue unless the land is in the possession of some person in whose favour the period of limitation can run (hereafter in this section referred to as “adverse possession”), and where under sections 6 to 10, any such right of action is deemed to accrue on a certain date and no person is in adverse possession on that date, the right of action shall not be deemed to accrue until adverse possession is taken of the land. (Emphasis added).*

The Applicant also cited *Section 6 of the Limitation Act (supra)* provides; “*The right of action shall be deemed to have accrued on the date of the dispossession.*”

The Applicant stated that she had enjoyed possession of the suit land together with her now deceased husband for over 27 years uninterrupted.

The Applicant argued that the direct import of *section 5 and 6* is, first, that a person dispossessed of land cannot bring an action to recover land after the expiration of twelve years from the date on which the right of action accrued; which is the date of dispossession.

In conclusion, the Applicant prayed that the Plaint be rejected and the suit be dismissed with costs to her.

### ***Respondents’ Submissions***

The Respondents submitted that they were not aware of the Applicant’s registration on the suit land and only got to know recently in 2020.

The Respondents buttressed their submissions with the case of **Ababiri Muhamood & Four Ors V Mukomba Anastansia & Another (Civil Suit No. 22 of 2015) [2019] UGHC 16 (15 May 2019)** court referred to the case of **Hajati Ziribagwa and Anor Vrs. Yakobo Ntate HCCS 102/09** where Justice Byamugisha (as she then was) held that “...since this was an action for recovery of land, the cause of action must have arisen at the date the defendant acquired the land...” By inference, a cause of action relating to land should accrue on the date that the plaintiff claims it was wrongly appropriated. This seems to be supported by Section 11 of the Limitation Act which states that, the right of action in land will not accrue unless there is adverse possession.

The Respondents prayed that the Application be dismissed with costs and the suit be disposed of in a full trial.

***Determination by Court.***

I have read and critically analysed the pleadings and submissions of the parties in this matter whose details are on the record of this court and below is my decision.

***Whether the Respondent's HCCS No. 100 of 2022 is time barred?***

***Section 5 of the Limitation Act Cap 80 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 first accrued to some person through whom he or she claims to that person.***

***Order 7 r 11 (d) of the Civil Procedure rules provides that the Plaintiff will be rejected where it appears in it a statement that shows that it is barred by any law.***

***Section 6 of the Limitation Act (supra) provides; "The right of action shall be deemed to have accrued on the date of the dispossession."***

It is pleaded in paragraph 5(g) of the Plaintiff that between the year 1994 and 1995 the 1<sup>st</sup> Defendant's husband Chandrakant Patel harassed the family of the Late Hajji Sabiti Lubega and eventually forcefully evicted them from the suit land.

The above statement qualifies the Respondent's claim that she has lived on the suit land uninterrupted for now 27 years from 1995.

I am disinclined to agree with the Respondents claims that the 1<sup>st</sup> Respondent was always kept in prison by the 1<sup>st</sup> Respondent's husband because the allegations are unsubstantiated.

It is clear that the Respondents have not had possession of the suit land for over 27 years, a fact that they have admitted by stating that they were evicted.

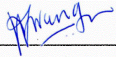
In the premises, I find that the main suit is statute barred by the Limitation Act Cap 80 and is hereby rejected with costs to the Applicant/Defendant.

I so order.

Orders;

1. HCCS No. 100 of 2022 is hereby rejected with costs to the Applicant/Plaintiff
2. The Application is also allowed with costs.

Dated this 18<sup>th</sup> day of April, 2023

DocuSigned by:  


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**HON. LADY JUSTICE VICTORIA NAKINTU NKWANGA KATAMBA**