

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT FORT PORTAL

HCT – 01 – CV – CA – NO. 002 OF 2017

(ARISING FROM KAS – 00 – CV – AC – 108 OF 2016)

5 **MULEWA ISEBAHASA ::: APPELLANT**

VERSUS

KAIJA BUSINGE NGIMA ::: RESPONDENT

BEFORE: HON. JUSTICE VINCENT WAGONA

10 **JUDGMENT**

Introduction:

The appellant brought this appeal against the ruling of His Worship Matenga Dawa Francis, Chief Magistrate of Kasese at Kasese (as he then was) delivered on the 8th day of February 2017 at Kasese asking court to have the same set aside and the
15 appeal to be allowed with costs.

Background:

The appellant filed Civil Suit No 108 of 2016 against the Respondent for a declaration that the defendant illegally obtained letters of administration to the estate of the late Muhindo Zowa, a declaration that the defendant mismanaged the
20 estate of the late, a declaration that the defendant fraudulently applied for and obtained letters of administration, an order that the defendant surrender the same to court, an order of revocation, an order that the letters of administration to the estate

be granted to the plaintiff, an order of account in respect of the estate of the deceased, a permanent injunction, a declaration that any transactions by the defendant over the estate are illegal and was done fraudulently, an order of eviction of the defendant from the estate and costs of the suit.

5 The defendant filed a defense in which he denied the appellant's allegations and indicated that a point of law shall be raised at hearing as to the competence of the appellant's suit. The parties filed a joint scheduling memorandum and their respective witness statements. When the suit was scheduled for hearing, Counsel for the Respondent raised a point of law contending that the appellant's suit was
10 barred by limitation and asked court to have the case dismissed. The appellant's Counsel made a response in writing and a rejoinder was made to that effect in writing.

The trial Chief Magistrate made a ruling thus:

*“This Court has looked at the objection raised. This is a point of law as
15 prescribed in the Limitation Act. It's clear as submitted the suit was filed outside the limitation period.*

Secondly letters of Administration are not granted for eternity these letters are for 6 months within which an inventory ought to have been filed showing administration of the estate.

20 *As it stands there out to be nothing to Administer because the 6 months lapsed long ago.*

The letters that were granted lapsed six months from the grant there will be effect nothing to revoke”

The preliminary objection is upheld the suit is dismissed with costs.”

The appellant being aggrieved with the above ruling filed an appeal and framed the following grounds for determination:

- 5 **(a) The trial Magistrate erred in law when he held the suit was filed outside the limitation period whereas not thereby dismissing the suit causing miscarriage of justice.**
- (b) The trial Magistrate erred in law and facts when he held that the letters of administration granted lapsed six months from the grant in effect there is nothing to revoke thereby summarily dismissing the suit leading to a miscarriage of justice.**
- 10 **(c) The trial Magistrate erred in law when he failed to uphold the plea of illegality raised by the Appellant thereby leading to a miscarriage of Justice.**
- (d) The trial Magistrate erred in law and fact when he failed to properly evaluate evidence on record thereby upholding the preliminary**
- 15 **objection raised by the Respondent leading to a miscarriage of justice.**

Hearing:

This appeal was filed in 2017 and since then, both parties did not file any submissions. This court thus proceeded to determine the appeal on the basis of the memorandum of appeal and the record of the lower court.

20 **Duty of the First Appellate Court:**

As a first appellate court, my duty is to subject the evidence of the lower court to a fresh and exhaustive scrutiny and draw fresh and independent inferences and conclusions. I will bear in mind the fact that I did not have the opportunity to see the witnesses testify. *(See Panday Vs R (1967) E.A 336 and*

25 *Narsensio Begumisa & 3 others Vs. Eric Kibebaga, SCCA NO. 17 of 2002.*

I will resolve the grounds as framed for determination by the appellant.

Ground One: The trial Magistrate erred in law when he held that the suit was filed outside the limitation period whereas not thereby dismissing the suit causing miscarriage of justice.

5 The Respondent contended in the lower court that the appellant's suit was barred by limitation. He contended that the plaintiff suit was for recovery of land that formerly belonged to the late Zowa Muhindo and revocation of the letters of administration granted to the Respondent over the estate of the late Zowa Muhindo. Counsel for the Respondent contended that the claims were barred under
10 Sections 5, 6 (2) and 20 of the Limitation Act since the same was brought after the expiration of 12 years. The point of law was upheld by the trial Chief Magistrate who dismissed the suit with costs.

Consideration of the ground by Court:

Section 5 of the Limitation Act provides that:

15 ***Limitation of actions to recover land***

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.

Section 20 of the Act provides that:

20 ***Limitation of actions claiming personal estate of a deceased person***

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 arrears shall be brought after the expiration of six years from the date on which the interest became due.

The time starts to run from the time the cause of action arises. Court should read the plaintiff and made an independent determination as to when a cause of action arose and consider any exceptions to the limitation period pleaded. (See *Yaya Farajallah Vs, Obur Ronald & 3 others, Civil Appeal No.81 of 2018*).

In this case the plaintiff/appellant's claim against the Respondent/defendant was for revocation of the letters of administration granted to the Respondent over the estate of the late Muhindo Zowa. The Appellant contended inter-alia, that the Respondent obtained the letters of administration over the estate fraudulently and with material illegality. He stated the particulars of fraud under paragraph 8 of the plaintiff.

In his ruling, the trial magistrate appears not to have the exception that was pleaded by the appellant. Section 25 of the limitation Act provides thus:

“ Postponement of limitation period in case of fraud or mistake

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 or his or her agent or of any person through whom he or she claims or his or her agent; (b) the right of action is concealed by the fraud of any such person as is mentioned in paragraph (a) of this section; or (c) the action is for relief from the consequences of a mistake, 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.”

From my reading of the above Section, where fraud is pleaded, the limitation time only starts to run from the time the plaintiff discovered the fraud or with reasonable diligence could have discovered the same.

In the pleadings the plaintiff did not specifically state when he became aware of the alleged fraud by the defendant/respondent but sufficiently demonstrates that he became aware of the Respondent's fraud after the hearing by the Obusinga Bwa Rwenzururu in 2016 and he immediately filed Civil Suit No. 108 of 2016 on 18th August 2018. Therefore, the suit was filed within the time specified under the Limitation Act.

It is therefore my view and finding that the exception pleaded by the appellant brought his claim outside the period provided under Sections 5 and 20 of the Limitation Act that the trial magistrate relied upon to dismiss the appellant's case. This ground therefore succeeds.

Ground Two: The trial Magistrate erred in law and facts when he held that the letters of administration granted lapsed six months from the grant in effect there is nothing to revoke thereby summarily dismissing the suit leading to a miscarriage of justice.

It was the finding of the Chief Magistrate that the letters of administration granted to the Respondent expired after 6 months from the time of the grant and thus the plaintiff could not challenge the same.

Under the old Succession Act, the letters of administration granted to the administrator had no lifespan save those granted with limitation under Section 222 of the Succession Act or those granted under given condition that expire by virtue of Section 231 of the Succession Act. There is no provision under the Succession Act which is to the effect that letters of administration when granted expire after 6

months. This was only captured in the Succession Amendment Act of 2022 which gave the letters of administration a lifespan. It is my understanding that the law only required that within six months from the grant, the administrator must prepare and file an inventory. This ground therefore succeeds.

5 I find no relevance in considering the 3rd and 4th ground since the first and 2nd grounds dispose of the entire appeal.

I accordingly allow this appeal with the following orders:

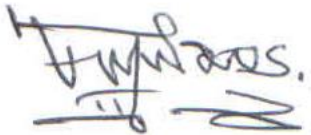
(a) **The order of the learned Chief Magistrate dismissing the suit with costs is hereby set aside.**

10 (b) **The trial of Civil Suit No. 002 of 2016 shall proceed on the merits before the Chief Magistrate of Kasese.**

(c) **The lower court file should immediately be forwarded to the Chief Magistrate's Court of Kasese for the expeditious trial of the suit.**

(d) **Each party shall bear their own costs.**

15 I so order.



Vincent Wagona
High Court Judge
FORT-PORTAL

20 **10.01.2023**