

- 30
4. That the suit land was purchased for Uganda Small Scale Industries Association Iganga as part of the APT project where all the zonal offices including Luweero benefited.
 5. That there has been no claim by the Respondent/ Plaintiff on the suit land until a recent change in the secretariat.
 6. That it is in the interest of justice that Civil Suit No. 14 of 2022 is dismissed.

Mr. Kasirye Peter, the National Treasurer of the Respondent deponed an affidavit in reply to the application on behalf of the Respondent. He deponed that the 1st Applicant and deponent was no longer chairman of Uganda Small Scale Industries Association, Iganga Zone since his term had expired in 2021. He further deponed that
40 the Respondent/ Plaintiff rightly sued the Applicants since they were the persons that fraudulently processed a certificate of title for a non-existent entity (Uganda Small Scale Industries Association Iganga) for property purchased and owned by the Respondent. That the Respondent has been in possession of the said property since its purchase and only used by the zonal office for the activities of the Respondent. Finally, that all properties acquired by the Respondent are vested in and managed by the Apex body of the Respondent.

It is imperative to note that Uganda Small Scale Industries Association, Iganga Zone is an affiliate organization and/ or zonal branch of Uganda Small Scale Industries Association Limited. It is also important to highlight that the suit land described as
50 FRV JJA265 Folio 17 Plot 65 in Nabidogha Main Iganga Municipality, Main Street road was purchased on 25th October 1995 by Uganda Small Scale Industries Association as represented by then Chairman of Uganda Small Scale Industries Association, Iganga Branch, Mr. Bisobye Fred. It follows that the 1st - 4th Applicants obtained registration on 21st July 2016 using the name of Uganda Small Scale Industries Association Iganga under Instrument no. JJA-00009715.



Issues

The issues for this court to determine are;

- a) Whether Civil Suit No. 14 of 2022 is time barred?
- b) Whether the suit should be dismissed for non-disclosure of a cause of action against the Defendants?

60

Issue 1: Whether Civil Suit No. 14 of 2022 is time barred.

The Applicants submitted that the suit is time barred on account of the fact that the cause of action arose in 1995 when the suit land was purchased and not in 2016 when the same was registered and transferred in the name of Uganda Small Scale Industries Association, Iganga as claimed by the Respondent. The Applicants argued that the suit land has always been in the possession of the members of Uganda Small Scale Industries Association, Iganga zone since the purchase in 1995 and therefore the cause of action accrued in 1995 and yet the action was filed in 2022 thus offending **Section 5 of the Limitation Act Cap 80**. The Applicants' counsel relied on the case of Ababiri Muhamood & Four Ors Vs Mukomba Anastansia & Anor (C. S No. 22 of 2015) [2019] as cited in Gawubira Mankupias Vs Katwiita Stephen (H.C.C.A No. 130 of 2008).

70

In rebuttal, the Respondent submitted that Civil Suit No. 14 of 2022 is hinged on fraud and pursuant to Section 25 (a) of the Limitation Act, the cause of action does not begin to run until the Plaintiff has discovered the fraud. The Respondent argued that the fraud was discovered in 2016 when the 1st- 4th Defendants processed the certificate of title in the name of a non-existent entity, Uganda Small Scale Industries Association, Iganga as confirmed by the URSB letter and as such, it is barely 8 years since the title was acquired and are therefore still within the confines of the 12-year rule.

80 In rejoinder, the Applicants' counsel argued that by virtue of the Applicants having been on the suit for over 21 years, they had in effect acquired the land through



adverse possession. Counsel for the Applicants further submitted that it was not true that the suit land had been registered in the name of a non-existent entity but rather it was an error on the part of the Registrar for land registration who inadvertently missed out the word "Iganga zone" on the name since Uganda Small Scale Industries Association Iganga zone is a branch of Uganda Small Scale Industries Association.

90 In my view, the crux of this issue is premised on when the Respondent became aware that their proprietary interest and possessory rights if any had become threatened by the Applicants and thereby necessitating a court action. This is a question of fact and the law.

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 12 years from the date on which the right of action accrued to him or her..."

Section 25 of the Limitation Act cap 80 provides that;

100 "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 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 shall not begin to run until the Plaintiff has discovered the fraud or the mistake or could with reasonable diligence have discovered it....."

In the case of **Gawubira Mankupias Vs Katwiita Stephen (H.C.C.A No. 130 of 2008)** Lady Justice Eva K. Luswata cited with approval the case of **Hajati Ziribagwa & Anor Vs Yakobo Ntate (H.C.C.S No. 102 of 2009)** where Justice Byamugisha observed 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..."



In the case of **Mukooza Micheal Semazzi & Anor Vs Ibulaimu Kironde Kabanda & Anor**, H.C.C.S No. 889 of 2017, Court held that, in determining the period of limitation, court looks at pleadings only and as such no evidence may be required.

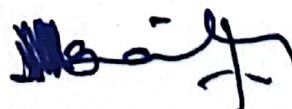
110 In the instant case, while the Respondent claims to have purchased the suit land in 1995, there is no convincing evidence in their pleadings to demonstrate that they had in fact acquired this land as the head office and/ or main branch but rather am inclined to believe that it was purely purchased for the benefit of the zonal office of Iganga whose leadership exercised full control and management of the same.

I find justification of the aforementioned in **Paragraph 8** of the Plaint, where interestingly the Respondent admits that the Defendants subsequent rent/ lease of the land/ property to FINCA Bank were all fraudulent and unlawful for all intents and purposes.

I have had the benefit of looking at the correspondence dated **12/ February/ 2002**,
120 authored by Mr. Bisobya Fred, wherein he rented out office space of the suit property to FINCA Bank in his capacity as the chairman of Uganda Small Scale Industries Association, Iganga Branch and copied in the Executive Secretary, USSIA Secretariat. I wish to note that it was the same Mr. Bisobye Fred, that signed the purchase agreement dated 25/ October/ 1995.

The issue here is not so much to determine ownership of the suit land since that would require a full trial and hearing which cannot be dealt with at this stage but rather to understand and appreciate when the Respondent became aware of the threat posed to its apparent ownership of the suit land or when it should have had reason to believe that any fraud had been supposedly committed if any.

130 In my view, the admission of purported fraud true or false on the part of the Respondent on a correspondence of 2002 speaks volumes as to when the Respondent's cause of action should have arisen. In any case, the Respondent



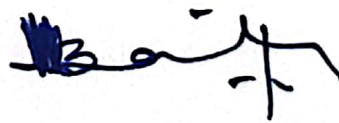
throughout this whole period neither contested, challenged and/ or disputed the possessory rights of the Defendants nor at the very least clarify the parameters and scope within which Uganda Small Scale Industries Association, Iganga branch would exercise its authority in respect of the control and management of the suit land.

140 I therefore reject the view that the Respondent only became aware of the supposed fraud after the processing of the land title and registration of Uganda Small Scale Industries Association, Iganga in 2016 and even then it still took it another 6 years to institute this suit. As a serious NGO worth its name, the Respondent ought to have been vigilant and exercised prudent control and management in all its dealings and transactions, a responsibility and duty which unfortunately it reneged on

To even have waited for the Defendants/ Applicants, who are members of the Respondent's Iganga branch to apply and process a Freehold title for this suit land after all those years while the Respondent sat on its rights if any, smirks off sheer complacency, laxity and incompetence in matters of corporate governance. It cannot now be court to sort out the Respondent's internal management crisis.

150 **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 that person to the land is extinguished. In the case of Masailabu Vs Simon Mwanga SCCA No. 4 of 1993, Court held that a Defendant who settled on the land in 1964 acquired it by adverse possession and a Plaintiff filed in 1986 to contest that possession could not succeed.

As a result, I find that the cause of action for the Respondent emerged in 1995 or soon thereafter and therefore I uphold the Applicants' preliminary objection to the extent that civil suit No. 14 of 2022 offends the 12-year rule and thus time barred and accordingly strike it out pursuant to **Order 6 Rule 30 (1) of the Civil Procedure Rules S1-71.**



160 It would be superfluous and purely academic to delve into the second issue raised in this application. Therefore, the instant application succeeds and Civil Suit No. 14 of 2022 is struck out with costs to the Applicants.

I further order the Commissioner Land Registration to rectify the land title comprised in FRV JJA265 Folio 17 Plot 65 in Nabidogha Main Iganga Municipality, Main Street road previously issued in the wrong name into the proper name of an existing legal entity **Uganda Small Scale Industries Association Iganga Zone** as the Registered Proprietor/ lawful owner.

Before I take leave of this matter, I wish to note that the pleadings do not bring out a clear legal framework of Uganda Small Scale Industries Association Limited and its affiliate members called zones and therefore had this matter gone to its full trial, the following issues would have arisen;

1. What form of legal relationship exists between the Uganda Small Scale Industries Association Limited head office and the different zonal entities?
2. What is the legal regime currently obtaining that regulates the organization at the Apex and the Zonal offices in the different regions of Uganda as affiliate members?
3. Is there a definite legal position on what makes the zonal organizations members by subscription?
4. Does providing oversight leadership by the Secretariat include control, management and ownership of the properties owned by the zonal members?

180 Unfortunately, Civil Suit No. 14 of 2020 was filed out of time. It is hereby struck out with costs.

I SO ORDER.


BATEMA N.D.A
JUDGE

19/02/2024