

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MUBENDE
CIVIL SUIT NO. 18 OF 2013**

STEVEN BAINOMUGISHA

PLAINTIFF

VERSUS

1. YOKANA MUTAMBUZE

2. NATHAN LWAMUBENDE

DEFENDANTS

BEFORE: HON. MOSES KAZIBWE KAWUMI

JUDGMENT

The Plaintiff instituted this suit for recovery of land comprised in Buwekula Block 330 Plot 1 land at Busengere, Ssabagabo Buwekula, Mubende District, vacant possession, mesne profits and costs of the suit.

Background

The suit land was initially registered in the name of Erinesti Kagolo in 1920 however upon his demise, the late Yoweri Kauzi obtained letters of administration, had himself registered on the certificate of title in 1977 as administrator of the estate.

Yoweri Kauzi later transferred the suit land to Samwiiri Diisi in 1977 and upon the demise of Samwiri Diisi, the Defendants obtained letters of administration and were registered as administrators 2005.

The Plaintiff obtained letters of administration in 2004 and filed this suit claiming that late Yoweri Kauzi fraudulently obtained letters of administration in respect to the estate of the late Erinesto Kagolo the particulars of which were specifically pleaded against Yoweri Kawuzi and Samwiiri Diisi.

He also averred that the suit land was unlawfully transferred to Samwiiri Diisi from whom the Defendants claim as administrators. He thus sought an order to reverse the transfers and have the suit land vested in him as administrator of the estate of Yoweri Kauzi.

On the other hand, the Defendants filed a joint written statement of defence contending that the suit is barred in law, that they are administrators of the estate of the late Samwiiri Diisi who purchased the suit land from the late Yoweri Kauzi without any notice of fraud and that the grant they hold was lawfully obtained. They denied the allegations of fraud and prayed for dismissal of the suit with costs.

Representation

The Plaintiff was represented by Kitimbo Associated Advocates jointly with MS. TAK Advocates while the Defendants were represented by MS. Kazungu, Kakooza, Alinaitwe & Co. Advocates.

Issues

1. Whether the suit is barred by the law of limitation
2. Whether the suit land was fraudulently alienated from the estate of the late Kagolo Erinest to Kauzi Yoweri, Samwiiri Diisi and subsequently to the Defendants.
3. What remedies are available to the parties.

Witness statements were filed and admitted by Court as evidence in Chief. The witnesses were cross-examined and Court visited the locus in quo for fact-finding. A number of documents were also admitted as exhibits and after the hearing, both Counsel filed written submissions and furnished court with supporting authorities which have been taken into account.

Statement of law

The burden of proof as to the existence of a particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

Section 103 of the Evidence Act Cap. 6.

The standard of proof is that it must carry a reasonable degree of probability but not too high as is required in a criminal case. If the evidence is such that the tribunal can say, we think it more probable than



not, the burden of proof is discharged but if the probabilities are equal, it is not.

Miller V. Minister of Pensions [1947] All ER 372.

It should be noted that a resolution of the 1st issue in the affirmative will render the 2nd issue purely academic. As such, I will first consider the first issue and the result will determine whether to consider the other issues.

Consideration by Court

Issue 1. Whether the suit is barred by the Law of Limitation.

PW1 testified in cross examination that he left the village in 1970 when he was 4 years and that at that time, he could not understand what was happening. That he went back to check on the suit land in 1989 after the war. That he found sons of Samwiiri Diisi on the suit land and other people who had acquired land from them.

PW1 testifies that Samwiiri Diisi entered the suit land in 1977 and that whereas he was not there, he found the sons of Samwiri Diisi on the suit land. He testified that Yoweri Kauzi obtained letters of administration in 1977 in respect to the estate of Kagolo.

Based on this testimony, Counsel for the Defendants submitted that the suit is time barred since the Plaintiff seeks to recover land after the 12 years period. Counsel cited Section 5 of the limitation Act to support his argument.

Counsel for the Plaintiff on the other hand submitted that the suit was filed in 2013 after discovering fraud in 2003 and therefore, the suit was filed within time. He also submitted that fraud as pleaded exempts the suit period from running until the time when the fraud is discovered. He cited Section 25 (a) to support his argument.

Limitation means the extinction of stale claims and obsolete titles based on the principle that rights are limited in point of time and are lost if not pursued within due time.

Megarry and Wade, The Law of Real Property, 8th Edn at pp 1456

The law on limitation is 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 5 of the Limitation Act (CAP 80)

As to the time when the period starts running, it is an established principle that in matters to do with the Law of Limitation, 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.

F.X. Miramago V Attorney General [1979] HCB 24

The law on suits instituted by personal representatives of the deceased, is 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 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.

Section 20 of the Limitation Act

Where a period of limitation is imposed, it begins to run from the date on which the cause of action accrued.

Eridad Otabong V. Attorney General SCCA No. 6 of 1990.

It is trite that letters of administration entitle the administrator to all rights belonging to the intestate as effectually as if the administration has been granted at the moment after the death of the deceased **Section 180 of The Succession Act**

The Plaintiff testified that Samwiri Diisi took possession of the suit land in 1977. This is in tandem exhibit PEX3 which shows that the late Samwiri Diisi was registered in 1977. That he was only 4 years when he left the suit land and returned in 1989 after the liberation war and found the Defendants on the suitland.

He testified in cross examination that he never saw Kawuzi Yoweri. That he was informed by his father that Kawuzi Yoweri was a worker of a one Kamagala.



The Plaintiff filed Civil Suit No.18 of 2013 in his personal capacity although he claims as an administrator of the estate of the late Eriness Kagolo.

The Plaintiff filed this suit for recovery of the land in 2013 however, the cause of action had started running from 1977. Neither the Plaintiff nor any other adult claiming interest in the suit land challenged the proprietary interest of the Defendant's father until 2013.

The statute of limitation is not concerned with the merits, once the axe falls, it falls, and a defendant who is fortunate enough to have acquired the benefit of the statute of limitation is entitled, of course, to insist on his strict rights.

Madhvani International SA V. AG. SCCA NO. 23 of 2010

The certificate of title and the search letter both admitted as the Plaintiff's exhibits **Exh P3 and Exh P6** respectively show that the Defendants acquired benefit from the limitation period if Court found that the suit is statute barred.

This suit was filed after 36 years from when the Yoweri Kauzi and Samwiiri Diisi got registered in 1977 which makes it statute barred.

Aside from that, the law regarding suits filed outside the limitation period is that a plaint filed after the expiration of the period prescribed by law of limitation shall show grounds of exemption from the limitation provisions.

Order 7 rule 6 Civil procedure rules

Save for the general plea of fraud and its discovery, the plaint does not plead exemption from the limitation as required by law. The exemption should not just be left to Court to infer from the facts constituting the cause of action as submitted by the Plaintiff's Counsel when in his submissions, he referred Court to paragraph 4 (d), (e) (f) and (j) of the Plaint.

From the Plaint, it is clear that the Plaintiff did not seek exemption from the Law of Limitation on account of their late discovery of the alleged fraud as he ought to have done for the court to consider its veracity.



It was held that unless the Appellant in this case put himself within the limitation period showing the grounds upon which he could claim exemption, the Court shall reject his claim.

Iga V. Makerere University (1972) E.A 65

The Plaintiff surprisingly testified that Samwiiri Diisi entered the suit land in 1977. That he came back to the suit land in 1989 and found when Samwiri Diisi had sold part of the suit land to different people. The Plaintiff did not justify as to why he did not institute proceedings when he returned to the land in 1989 since he was then an adult capable of instituting a claim for the land.

It is trite that once a suit is barred by law, the court has no residual or inherent jurisdiction to entertain such a mater.

Makula International V. His Eminence Cardinal Nsubuga & Another. [1982] HCB 13.

On that premise, the Plaint is barred by law under Order 7 rule 6 CPR and it is accordingly rejected under Order 7 rule 11 (d) CPR. The suit is also barred by law under section 5 of the limitation Act. It is accordingly, dismissed with costs for being barred by law on account of statutory limitation



Moses Kazibwe Kawumi

Judge

12th January 2024