

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
HOLDEN AT KAMPALA**

CIVIL SUIT NO. 102 OF 2009

1. HENRY N. K. WABUI 2. CHARLES NALWANYI	}	: : : : : : : : : : :	PLAINTIFFS
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VERSUS

1. ROGERS HANNS KIYONGA DDUNGU 2. SHAMIRA MUHAMMED ASIM 3. PERCY JUBA	}	: : : : : : : : : :	DEFENDANTS
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RULING BY HON. MR. JUSTICE JOSEPH MURANGIRA

When this suit came up for final scheduling, Counsel for the 1st defendant, Musa Nsimbe from Kavuma Kabenge & Co. Advocates raised a preliminary objection, to wit:-

“The current suit is caught by limitation”.

He submitted that the plaintiffs are suing as administrators of the estate of the late Hon. N.K. Wakoli by virtue of the letters of administration procured in 1984 vide administration cause No. 175 of 1984.

That it is at that point in time (1984) that the suit land and plot 1664 were sold to the 1st defendant for valuable consideration. That it is the contention by the 1st defendant that the plaintiff’s claim brought to Court after 25 years is time barred under the Limitation Act Cap. 80 laws of Uganda. He prayed that the plaint be rejected and the suit be dismissed with costs. I agree with this submissions. In the case of **Remigius Kironde**

vs Margaret Nabatindira Sebowa & Others HCCS No.333/92, Ntabgoba PJ held: “ the right of the action over the land accrued with the purchase thereof by the plaintiff. Even if the war against Amin was raging and even if the period between 1980-1986 was turbulent, the Courts were operating. The plaintiff should have brought the suit then. By the 11th May, 1992 when the plaintiff brought this suit he was time barred by Section 6 of the Limitation Act.”

In reply, Counsel for the plaintiffs, Mr. Felix Kintu from Kintu, Nteza & Co. Advocates argued that the plaintiffs’ suit is not time barred. That their claim falls under Section 25 of the Limitation Act (supra). He prayed that the said preliminary objection be dismissed with costs to the plaintiffs. And that the suit be fixed for hearing interparties.

Paragraph 3 of the plaint states that the plaintiffs’ claim against the defendants jointly and severally is for recovery of land comprised in Kyadondo Block 244 plots 3593 and 3594 at Muyenga, among others. Thus, among the issues to sort out includes the recovery of land.

The Limitation Act, Section 5 thereof is to the effect that no action shall be brought to recover any land after the expiration of 12 years from the date on which the cause of action arose/accrued. That Section 5 of the Limitation Act is mandatory to the extent that all actions relating to recovery of land must be brought within the prescribed period of twelve (12) years.

The facts of the instant case are that the plaintiffs became administrators of the estate that included the suit land in 1984. The recovery of the suit land if there was any cause of action at all to the plaintiffs must have instituted this suit in Court before the period of 1997. That is within the twelve (12) years period as from 1984. In the case of **Badiru Mbazira vs Abasagi Nansubuga [1992-1993] HCB 241, Rajansingham J** held; **“The limitation Act applied to all matters unless the Act itself made an exception; it made no exception of customary land holding. The appellant inherited the land in 1974, moved to Mbarara and did nothing about his claim if any until 1988. He therefore forfeited his right if he had one.”**

I also take notice of the fact that the suit land is situated in Muyenga, Kampala, and if it was to be true that the suit land belonged to the plaintiffs by 1984 and even before they would have been using it. But from the facts on record, the suit land is fully developed, occupied by the 1st defendant and that they have never utilized the suit land since 1984 upto the time of filing this suit in this Court. Their arguments to that effect do not hold water at all. One cannot sit on his/her rights for over twenty-five years and just come up to recover land from persons termed as bonafide purchasers for value of the suit land. The plaintiffs’ arguments of ownership of the suit land are hard to believe by this Court.

Consequent to the above, under Order 7 rule 11 of the Civil Procedure Rules provides that suits brought out of time and barred by Limitation the plaint must be rejected and suit dismissed. See also the case of **Iga vs Makerere University Civil Appeal NO. 51 of 1971, reported in [1972]**

EA 65. Pleading fraud by the plaintiffs over the period of twenty five years against the defendants cannot be used to defeat the interests of a person who is a bonafide purchaser of the suit land for value and who has been in occupation of the suit land for over the period of twelve years.

In the case of **John Oitamong vs Mohammed Olinga [1985] HCB 86, Odoki J.** held:

- (i) **Limitation is basically a defence. It is a shield but not a sword. It simply means that the extinction of stated claims, and rights of action are limited in point of time and are lost if not pursued within due time. The doctrine of limitation differs from the doctrine of acquiescence although both have more or less similar effects. Acquiescence seems to be an equitable doctrine developed by the Courts to temper the rigidity of the law and is depended on the rule of estoppel. The doctrine of estoppel prohibits a party from proving anything which contradicts his previous acts as a declaration to the prejudice of a party who relying upon them has altered his position. Both acquiescence and limitation destroy the former owners right remedy. It is now well established that the limitation Act applies to actions for recovery of land under customary tenure.**
- (ii) **Laches is an equitable doctrine. It is a defence to enforce equitable rights. It means unreasonable delay in asserting or enforcing a right, for equity aids the vigilant and not the indolent.**

Counsel for the plaintiffs cited the case of **Sendaula vs Nakalanzi [1993] HCB 191** where it was held that it is premature to ascertain at the stage of preliminary objections whether the suit is barred by limitation. And

whether the plaintiffs had knowledge of the fraud before instituting the suit. This case is distinguishable from the present case. The law is settled. Whether a suit is barred by limitation or not is determined by the nature of the pleadings in the plaint and the defence. In the instant case, the plaintiffs instituted this suit after a period of twenty five years. Wherefore, the provisions of Section 5 read together with the provisions of Section 20 both of the limitation Act, Cap. 80, this instant suit is barred by limitation. In the case of **Hajati ziribagwa and another vs Yakobo Ntate, CS No.117 of 1991, Byamugisha J**, held: **“the defendant became registered proprietor of the suit premises in September 1978. The action was brought after the expiry of 12 years since the defendant acquired the land. Since this was an action for recovery of land, the cause of action must have arisen at the date the defendant acquired the land. The plaint was therefore time barred and must be rejected.”**

Further, under the Land Act 1998 as amended, if one has been on the land for over 12 (twenty) years uninterrupted, that person automatically gets legal possession under the principle of adverse possession. The pleadings on record show that the 1st defendant had been in possession uninterrupted for a period of more than 12 (twelve) years. The plaintiffs just surfaced from nowhere to lay their claims on the suit land in 2010. Just imagine that! In the case of **Nambalu Kintu vs Kamira [1975] HCB 221, Ssekandi Ag. J.** held:

“Limitation and prescription do not mean the same thing as limitation does not confer title while prescription confers title to the land. Limitation is wholly statutory and simply extinguishes a former

owners right to recover possession of the land leaving some other person with a title based on the adverse possession. Prescription is primarily a common law doctrine extended by statute and fundamentally a rule of evidence leading to the presumption of a grant from the owner of land and therefore of a title derived through him”

In the premises, therefore I answer the 1st defendant’s preliminary objection in the affirmative.

In the result and for the reasons given hereinabove in this ruling, and the case law cited, the plaintiffs’ suit is barred by limitation. The plaint is accordingly rejected and the suit is dismissed with costs to the 1st defendant.

Dated at Kampala this 20th day of June, 2013.

sgd
Murangira Joseph
Judge