

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

**HCT-04-CV-CA-0064-2012
(FROM BUDUDA CIVIL SUIT NO. 55-2011)**

HADIJJA KHAYIYI.....APPELLANT

VERSUS

WANAMBWA S/O SHINYALE.....RESPONDENT

BEFORE: THE HON. MR. JUSTICE HENRY I. KAWESA

JUDGMENT

The appellant raised three grounds of appeal as follows;

1. That the learned trial Magistrate did not properly evaluate the evidence on court record.
2. That the learned Magistrate did not address the exceptions to the provisions of the Limitation Act hence reaching a wrong decision.
3. The decision of the learned Magistrate occasioned grave miscarriage of justice on the appellant.

The duty of a first appellate court is to re-evaluate the evidence, give it a fresh scrutiny and make its own conclusions (*Pandya v. R (1957) EA 336*).

The brief facts of the case was that the plaintiff sued the defendant for declaration of ownership of land and vacant possession of land.

Plaintiff in paragraph 4 of the plaint alleged that:

- a) In 1981 the plaintiff's father **Mangula Shibale** died leaving behind numerous property including the disputed land.
- b) Plaintiff is the only child of the deceased.
- c) The defendant took care of the deceased's property while the plaintiff was in Busoga.
- d) That in June 2011 when the plaintiff claimed for the said 3 pieces of land located at Matsekelemu village defendant refused to pass over the same claiming to be the rightful owner.

In paragraph 5 (a) of the plaint, she prayed that court declares her the rightful owner of the property.

In reply the defendant in his written statement of defence denied the above facts and in paragraph 4 (d) of the written statement of defence stated that defendant is not liable to plaintiff since the land used to belong to her late father in 1971 before his death.

The matter proceeded interparties and after the hearing the Magistrate considered plaintiff's claim and concluded that it was caught up by section 5 of the Limitation Act. He dismissed the claim with costs.

On appeal the appellant argued grounds 1 and 2 together and ground 3 alone. Grounds 1 and 2 covered the issue of Limitation; and evaluation of evidence.

According to counsel for the appellant, defendant/Respondent was left in possession of the land in dispute as a caretaker and the appellant only demanded for it in 2011; when defendant refused to vacate; and so became a trespasser. He referred court to evidence on record which to him favoured plaintiff's case as against that of the defendant. He cited contradictions in defence case and invited court to find that;

For the Respondent it was argued that the Respondent was not a caretaker but purchaser of the suit land by virtue of evidence on record. It was further argued that the suit was caught by the Law of Limitation under Sections 5 and 6(2) respectively. Counsel argued that in limitation court, only examines the pleadings and no evidence is necessary. He cited Madhivani International SA vs Attorney General CA.48/2014.

He also argued that no exemptions were pleaded as stated in O.6 r. 6 of the Civil Procedure Rules and Vincent Opio v. A.G. (1990-92) KALR 68. He concluded that the findings of the learned trial Magistrate were right and ought to be upheld.

The arguments above answer all ground 1 and ground 2. Ground 3 was argued separately by the appellant in that if ground 1 and ground 2 are upheld then court would find that appellant suffered injustice and a miscarriage of justice.

I will answer all the grounds together since they all depend on the main question whether the learned trial Magistrate was right to find that the matter was caught up by the Law of Limitation.

The position of the law as per Section 5 and 6 of the Limitation Act is that:

Section (5),

“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.”

Also section 6 (2) provides:

“Where any person brings an action to recover any land of deceased person, whether under a Will or intestate, the right of action shall be deemed to have accrued on the date of his or her death.”

The above being the law, a reading of the plaint in paragraph 4 shows that the action is said to originate from the fact of death of the plaintiff's father who she states died in 1981, and defendant left in possession of the property to take care. Plaintiff came back in 2011 to demand the property and defendant refused to hand over, laying claim to the same by virtue of purchase in 1971.

With the above set of facts when does time begin to run? The plaintiff's counsel said on appeal that time should be counted from 2011 when she exercised her right to repossess the property. However Respondent's counsel argues that the court, should look at the pleadings not evidence to determine this question. If it does so he argues that the plaint is clear that the cause of action was in 1981 when plaintiff's father died. He further points out that the plaint does not offer any exceptional explanations against the limitation.

I observe from decided cases that courts have guided that in determining whether a matter is caught up by limitation, Court should look at the pleadings not evidence.

See: James Semusambwa v. Rebecca Mulira (1992-93) HCB 177 where it was held that:

“In determining this point court would only look at the plaint and decide in light of the facts alleged and the prayer in the plaint, the allegations of fact being for the purpose assumed to be true....”

To bolster up this requirement, it is incumbent upon the plaintiff who files a matter likely to create issues of limitation under the Limitation Act to specifically plead and show in the plaint circumstances of exemption or defence. This is the spirit of O.6 r.6 of the Civil Procedure Rules stating thus:

“The defendant or plaintiff, as the case may be shall raise by his pleadings all matters which show the action or counter claim.....or would raise issues of fact not arising out of the proceeding pleadings as for instance fraud, limitation act, release,.....illegality....”

In IGA V. Makerere University (1972) EA 66 it was held that:

“A plaint which is barred by limitation is a plaint barred by law..... unless the appellant had put himself within the limitation period showing the grounds upon which he could claim exemption the court shall reject the claim.....”

Applying all the above to the facts to this appeal, it is the finding of this court that the issue of limitation is glaringly clear on the face of the record of the appellant’s pleadings. Paragraph 4 of the plaint which shows that the disputed land was left to the care of defendant in 1981, is silent on how plaintiff was connected to this land between then and 2011 when she rose up to lay claim. The plaint only claims that

she was the only child of the deceased by 1981. The plaint does not explain anywhere how she becomes a claimant of her father's estate, and what proprietary interest she had in the property. It clearly then shows from a reading of the pleadings that this being a matter of a land belonging to a deceased, time began to run from 1981 when deceased died. This means that by virtue of sections 5 and 6 (2) of the Limitation Act, the suit was time barred. The plaint is unredeemable since it contains no special pleadings placing the appellant within the exceptional provisions of Limitation.

Secondly court could not have considered the evidence as suggested by appellant in order to reach a just decision. The effect of limitation by statutory provision is that no matter how weighty the merits of the case, it is expressly shut out by the operation of the law and the plaintiff's action cannot be maintained. Many courts have found as such. (See the cases of in the case of Hon. J.R. Okumu Wengi v. A.G. H/C Misc. App. 233/2006, per **Kibuuka J**, and Lwanga v. Uganda Electricity Board C/S 124/20003 High Court Jinja).

It is therefore my finding that judging from the pleadings, (on face of the plaint) the suit filed in 2012, was time barred having been filed outside the limitation period stipulated under section 5 of the Limitation Act, and section 6 (2) of the same Act. The findings and orders of the lower court were therefore not wrong, improper or unjust as pleaded under grounds 1, 2, and 3 of the appeal.

For the above reasons this appeal fails on all grounds. It is dismissed with costs to the defendant/Respondent.

Henry I. Kawesa

JUDGE

05.06.2015