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

**HCT – 04 - CV- CA-0162-2015**
**(ARISING FROM KAPCHORWA CIVIL SUIT NO. 99 OF 2011)**

1. **RASHID MARIO**
2. **CHEPTOYEK HAMIDU** **::::::::::::** **APPELLANTS**

**VERSUS**

**KAMAKOIN FRED** **::::::::::::** **RESPONDENT**

**BEFORE: THE HON. MR. JUSTICE HERY I. KAWESA**

**JUDGMENT**

The appellant being dissatisfied with and aggrieved by the judgment and decree of his Worship **Matovu Hood**, the Magistrate Grade I Kapchorwa on 22nd October 2015, on three grounds.

1. The learned trial Magistrate erred in law and fact when he failed his duty to properly evaluate the evidence on record relating to ownership of the suit land thereby arriving at a wrong erroneous decision.
2. The learned trial Magistrate erred in law and fact when he held that Civil Suit Kap-CV-CS-099 of 2011 was time barred thus occasioning a miscarriage of justice.
3. The decision of the learned trial magistrate is tainted with fundamental misdirection and non direction in law and fact and led to miscarriage of justice.

This being a first appellate court, it must re-evaluate the evidence and make fresh conclusions thereon aware though, that it did not have chance to listen to and observe the witnesses.
The matter progressed by written submissions under directions issued by this court. though the appellants filed their submissions the Respondent did not.

In their submissions the appellants argued all grounds separately. They chose to begin with ground 2, 1 and 3 in that order.

**Preliminary:**

Counsel informed court that 1st appellant had died and therefore moved court under O.24 r. 1 of the Civil Procedure Rules, O.24 r. 5 of the Civil Procedure Rules and Section 98 of the Civil Procedure Act, to hold that a one **Roza Chelangat** be confirmed as the legal representative of the first appellant, and hence allow the appeal to stand.

With due respect to counsel for appellants, this approach to procedure is flawed. Once a party is deceased, for another party to sustain a cause of action in their names needs letters of Probate or Administration to legally get locus before court.

In this appeal the parties are still titled as **Rashid Mario** and **Cheptoyek Hamidu**. The alleged **Roza Chelangat** is unknown to court, is not party to the proceedings and is only appearing in submissions.

This makes the proceedings incurably defective. The appeal cannot be sustained in the premises in view of appellant 1's death. The court had earlier on granted leave to the appellants to amend and proceed only by the surviving appellant.

This was not done. However since court had already ruled as such it is taken that this appeal is only in respect of **A.2- Cheptoyek Hamidu**. The prayer to replace A.1 (Deceased) with **Roza Chelangat** is rejected. The appeal will only proceed as against 2nd Appellant (who is alive).

**Ground 2: Whether learned trial Magistrate erred to hold that Civil Suit KAP-CV-CS-099 of 2011 was time barred**.

I have gone through appellant's arguments on appeal. Counsel reviewed court's judgment and faulted the learned trial Magistrate's finding that when appellant's father used the suit land and left for Buganda in 1968, came back in 1986 and found defendant's father **Mayamba** on the land, went back and returned in 2000 then claimed for the land- was not time barred since there were justifiable reasons like insurgencies and insecurity which disabled him to complain.

Counsel argues that learned trial Magistrate ought to have taken judicial notice of the aforesaid limitations under Section 55 and 56 of Evidence Act.

I do not agree with that postulation. The record of pleadings and evidence before the lower court shows that this disability was neither pleaded, nor adduced in evidence. Instead all the defence witnesses kept on stating that by 2010, the defendant's father enjoyed quiet possession of that land and there was no insurgency at all. The evidence by plaintiff is silent as to why though he claims he came back in 1986 and found defendant on the land he did nothing, went back and returned in 2000. (See PW.1, PW.2, PW.3, PW.4 and PW.5) and (DW.1- DW.7) for details.

The learned trial Magistrate in his judgment considered the above evidence, as I have and conclude that the case was time barred by virtue of S.5 of the Limitation Act.
I have found that plaintiff claims that he was in possession of the land from 1965. He left, but in 1986 when he returned his land was occupied by defendant. He did nothing, left and returned in 2000 when he sued in the land tribunal.
It has been held and is trite law that statutes of Limitation are statutes of strict interpretation and application (see cases of ***Re Mustapha Ramathan Civil Appeal 25 of 1996, CA***, and ***Hilton Sutton Steam Laundry (1946) KB 61***.

Precisely section 5 of the Limitation Act states:

> "*No action shall be brought by any person to recover any land after the expiration of twelve years from date on which right of action accrued to him or to same person through whom he/she claims to that person*."

Section 6 (10 of the same Act provides that the right of action should be deemed to accrue on the date of the dispossession or discontinuance.
Therefore in this case since plaintiff discovered the alleged trespass on his land by defendant first in 1986, that is when dispossession occurred and time began running from that time. The case having been filed in 2004 in the District Land Tribunal, time had already expired in 1998.

Similarly, the subsequent suits brought after plaintiff's father's death- were all out of time. Therefore since the District Land Tribunal case was out of time and was also dismissed it was

procedurally incorrect for plaintiff to bring a fresh suit after 6 years of the dismissal in the tribunal.

They were resurrecting a dead horse.

The suit is time barred. And the learned trial Magistrate was right to find so. This ground fails.

**Ground 1 and ground 3(Evaluation of evidence and miscarriage of Justice)**

Basing on the findings under ground 2 above, there was no failure to assess evidence or miscarriage of justice by the learned trial Magistrate's decision. This is because the learned trial Magistrate carefully analysed the evidence and found that the plaintiff's case was barred by limitation and no amount of assessing of evidence would save it.

Counsel's argument amount to an attempt to invoke sympathy so that court disregards the law and decide the matter on emotions. The fact is that all evidence of the plaintiff as adduced is evidence which cannot help him in view of section 5 and 6 of the Limitation Act. Even if the appellant was not represented it added or subtracted nothing from the above legal reality.

For the above reasons grounds 1 and 3 are not proved.

There was no illegality committed by the learned trial Magistrate as argued. This appeal fails on all grounds. It is dismissed since Respondents did not defend the appeal, nor order as to costs. Appellant will bear his own costs of the appeaL; and no costs granted to the Respondent.

**Henry I. Kawesa**

**JUDGE**

**11.5.2017**