

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MASINDI
CIVIL SUIT NO. 001 OF 2021

(Arising from Administration Cause No. MH5. Of 1982 Masindi Chief
Magistrate's Court)

1. KATURAMU EMMANUEL
2. KATURAMU EVA
3. ALINDA JULIET
4. MBABAZI SIMON
5. ASIIMWE GILDER
6. MUHUMUZA KENNETH
7. PATRICK TUMUSIIME

..... PLAINTIFFS

VERSUS

1. GEORGE ISAAC KYANYAAMU
2. MUHANGUZI ROBERT
3. NYAMUNUNU STEPHEN
4. BYAMUKAMA PATRICK
5. MUHENDA SIMON
6. KATHUNGU MAATE ELIZABETH
7. BAGAMBE GEOFFREY
8. NTABARA FRED
9. KAKOORA EDWARD
10. ISHANGA EDWARD
11. BWAROOKA EDWARD
12. MWINE FRED

..... DEFENDANTS

RULING

BEFORE: HON. JUSTICE BYARUHANGA JESSE RUGYEMA

- [1] The plaintiffs in this suit sued the defendants for inter alia, an order revoking the letters of Administration granted to the 1st defendant in 1986, alternatively that the grant of letters of Administration for the estate of the deceased is a forgery.

- [2] The defendants in their pleadings/WSD denied the plaintiffs' allegations and contended that they were to raise a preliminary point of law that the plaint is incurably defective and does not disclose a cause of action, that the suit is prolix, misconceived, frivolous, vexatious, an abuse of court process, time barred and should be struck out with costs.
- [3] The preliminary objection is on the basis of the fact that the suit is time barred. The 1st defendant is the administrator or legal representative of the estate of the late **George William Kiiza** vide **Administration Cause No. MH5 of 1982** from the Chief Magistrate's court Masindi. All the plaintiffs are beneficiaries to the estate of the late **George William Kiiza** while the 2nd - 12th defendants claim to have lawfully purchased their parcels of land from the 1st defendant and the other beneficiaries of the estate.

Issue: Whether this suit is time barred.

- [4] Counsel for the defendants **Mr. Kasangaki** submitted that this suit is time barred and an abuse of court process and it should be struck out with costs because the plaintiffs herein claim to be beneficiaries to the suit estate who by law could only claim their shares if any, within 12 years from the date that the grant of letters of Administration was made; **Royal Norwegian Government Vs Constant (1960) 2 Lloyds Rep 431 at 443** and **Section 20 of the Limitation Act Cap 80**.
- [5] Counsel argued that any claims made under a **WILL** or intestacy is allowed 12 years only to present their claim. That going by the facts as narrated in the plaint herein, any claim by the plaintiffs would

accrue from the date the grant of Letters of Administration was made to the 1st defendant Vide **A.C No. MH5 /1982**. That this suit having been filed on 11/1/2021, it is 27 years outside the statutory prescribed time as the plaintiffs' cause of action if any, only existed between 1982 - 1994.

[6] Counsel for the Plaintiffs **Mr. Mungoma Justin** submitted that the 1st defendant without any knowledge of the plaintiffs or input or consent of the children of the deceased applied for Letters of Administration to administer the late **George William's estate**. The plaintiffs got to learn about the 1st defendant's action when he started disposing of the land to the 2nd - 12th defendants by way of sale and squandering the proceeds in 2017. The plaintiffs immediately responded by caveating the land and placing announcements on the local radios in the area warning people not to purchase that land. That the first defendant also concealed the fact of transferring the land into his name as an administration of their father's estate. That under **Section 25 (b) of the Limitation Act**, the time that has so far lapsed after receiving notice is only 5 years and therefore, the suit is not time barred.

[7] I have perused the pleadings of both parties, it is clear from the plaint that the plaintiffs pleaded that their consent was not obtained before the 1st defendant's application for the Letters of Administration and as such, the plaintiffs had to go to the extent of carrying out a search for the grant from court and the results of the search render the grant suspect. Secondly, the **WSD** does not have any annexure of the impugned grant application advert in a widely circulating newspaper as proof of notice to the plaintiffs. When the 1st defendant started transacting on the estate, the plaintiff lodged

caveats on the suit land. The first caveat appear to had been filed in 2017 (**Annexture “AB3” to the plaint**).

- [8] Counsel for the plaintiffs submitted that the plaintiffs got notice of the 1st defendant’s transactions on the suit land in 2016.

Under **Section 25 (b) of the Limitation Act**,

“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 is mentioned in paragraph (a) of this section; or

(c) ...

the period of limitation shall not begin to run until the plaintiff has discovered the fraud or the mistake or could with reasonable diligence have discovered it.”

- [9] In the instant case, from the pleadings, I am satisfied that it was around 2016 - 2017 that the plaintiffs learnt about the existence of the grant when the 1st defendant started transacting in the estate suit land and as a result, the plaintiffs having filed this suit on **11/1/2021**, it is not time barred by virtue of **Section 20 of the Limitation Act**. This position is further amplified by the pleadings to the effect that the 1st defendant filed an inventory on the **4th day of January, 2017** (Annexture “B” to the WSD) 30 years from the date of acquisition of the grant. In any case, it would appear to me that the facts that would prove the limitation require evidence and therefore, this suit warrants a trial.

- [10] The preliminary objection is in the premises accordingly overruled and the matter is to proceed on its merits.

Dated at Masindi this 15th day of December, 2021.

Byaruhanga Jesse Rugyema

JUDGE