

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(FAMILY DIVISION)

HIGH COURT CIVIL SUIT NO. 42 OF 2008

1. GEORGE LUKANGA } ::
PLAINTIFFS }
2. JOHN KYABBAGU

VERSUS

PATRICK DAVID KANAKULYA :: DEFENDANT

BEFORE HON. JUSTICE B. KAINAMURA

RULING

On 17th March 2008, the Plaintiffs filed a Suit in this Court as principal beneficiaries (being children of the deceased) of the estate of the late Christopher Kateregga (Deceased) against the Defendant as Administrator of the estate of the said Christopher Kateregga by virtue of Letters of Administration granted to him by the Chief Magistrate’s Court Mpigi vide Administration Cause No. 21 of 1994. On 19th May 2008, the Defendant filed his written statement of defence. Both parties have since by consent amended their pleadings.

The case was scheduled on 6th May 2009 and hearing commenced before Lady Justice Margaret. C. Oguli Oumo on 8th June 2009. From the record, the Plaintiffs led evidence of one witnesses and for some inexplicable reason the case was referred to the Deputy Register for ADR. After a few attempts ADR failed and the case was fixed before me for hearing. When Counsel appeared before me, Counsel for the Defendant raised a preliminary objection on a point of law which is the subject of this ruling.

In his submission, Learned Counsel for the Defendant Mr. Kituma Magala contends that the plaintiff's right of action as beneficiaries to the estate of the late Christopher Kateregga accrued on 25th July 1993 when the deceased died and yet they filed the case on 17th March 2008 when their rights under the law of limitation had already been extinguished Counsel contends that the time allowed by the Limitation Act i.e. 12 years was up to the 25th July 2005.

He further contends that for the Plaintiffs to sustain a suit against the Defendant, they should have invoked the provisions of 07 r.6 of CPR for Court to grant them an exemption from the Law of Limitation. Learned Counsel relies on the Supreme Court decision in the case of **Tororo Cement Company Ltd Vs Frokina International Ltd Civil Appeal No. 2 of 2001** for the proposition that a Defendant can raise a preliminary point on whether the Plaintiff does not disclose a cause of action at the commencement of the hearing of the action even if the point had not been pleaded in the WSD. Counsel further relies on the case of **Swaleh Bin Nassari Vs Salim Bin Swaleh Bin Hussein [1960] EA 426** for the proposition that a beneficiary cannot recover any legacy after the expiration of 12 years from the date it accrued i.e the date the deceased died. Counsel further relies on Sections 5 and 6 (2) of the Limitation Act to show that the Plaintiffs have no "**Locus Standi**" to bring this suit.

On her part, Counsel for the Plaintiff, Lydia Nakamalya urges that the Plaintiff's claim is not bound by the provisions or the limitation law cited by Counsel for the Defendant but rather by the provisions of the Succession Act Cap 162 in particular Section 25 thereof read together with S. 19 (1) (a) of the Limitation Act Cap 80.

Counsel further seeks to distinguish the **Swaleh** case relied on by Counsel for the Defendant in stating that the said case was in relation to Section 8 of the Kenya

Real Property Limitation Act 1874 which has no parallel under Uganda statutory law. Based on the above Counsel urges that the Plaintiffs have a sustainable cause of action.

From the onset, I agree with Ms. Nakamalya that Ss.5 and 6(2) of the Limitation Act relied on by Counsel for the Defendant are irrelevant for purposes of this case. The said Sections relate to actions to recover land whereas this case is for revocation of Letters of Administration. That aside it is also not correct as argued by Counsel for the Plaintiffs that Section 8 of the Kenya Real Property Limitation Act the basis of the holding in the *Swaleh* case cited by Counsel for the Defendant has no corresponding Section in Uganda law. As indeed pointed out by Counsel for Defendant, Section 20 of the Limitation Act is in most material aspects the same as Sections 8 of the Kenya Act.

To my mind the first Section that comes into play in this case is Section 25 of the Succession Act which provides:-

“All property in an intestate devolves upon the personal representative of the deceased upon trust for those persons entitled to the property under this Act”.

It is not in dispute that the Defendant applied for and was granted Letters of Administration to the estate of the late Christopher Kateregga by the Chief Magistrates Court of Mpigi on the 1st day of June 1994. Accordingly by operation of Section 25 cited above, all the property of the deceased devolved upon the said Defendant in trust for the beneficiaries and the said Defendant should accordingly be held to account by any beneficiary of the deceased.

The above said, any beneficiary claiming interest in the estate of the deceased should do so within the period prescribed by law ie the Limitation Act Cap 80. Section 20 of the Limitation Act provides:-

“Subject to Section 19(1) no action in respect of any claim to the personal estate of a deceased person or 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 “(emphasis mine)”.

The expression “**subject to...**” highlighted above in Section 20 has the effect of bringing Section 19 (1) into play. The subsection provides:-

(1) No period of limitation prescribed by this Act shall apply to an action by a beneficiary under trust being an action.

(a) In respect of any fraud or fraudulent breach of trust to which the trustee was a party or privy or

(b) To recover from the trustee trust property or the proceeds of the trust property in the possession of the trustee or previously received by the trustee and converted to his or her use “(emphasis mine).

My reading of the above two sections is that whereas generally, no claim to any share or interest in an estate can be brought by a beneficiary after the expiry of 12 years, that legal bar is qualified where the beneficiary claims fraud or fraudulent breach of trust by the trustee provided for in Section 25 of the Succession Act as seen above.

A close look at paragraph 4 of the Amended Plaintiff under the title Particulars of Mismanagement sub paragraph (a) thereof, the Defendant is alleged to have:-

“Fraudulently converting and or selling the estate property”

My reading of this is that the Court is called upon to inquire into and establish the veracity of the allegation.

This in effect removes this case from the application of Section 20 of the Limitation Act and places it under the vagaries of section 19 (1) of the Act.

In the result the preliminary objection fails. Costs will be in the cause.

B. Kainamura

Judge

10.01.2013