

Amata

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA

HOLDEN AT MBALE.

HIGH COURT CIVIL SUIT NO. 51/90.

YOSIA WAGISHA PLAINTIFF

VERSUS

CONSTANT KISESI DEFENDANT

BEFORE: THE HON. MR. JUSTICE S. G. ENGWAU.

R U L I N G:

In the substantive suit, both Counsel framed issues and one such framed issue is whether the suit is time barred.

The defence Counsel raised a preliminary point of objection in law that the suit is time barred and as such the Plaintiff should be rejected with costs to the defendant. 5

It is his contention that on the face of pleadings, the defendant purchased the suit land on 4.9.77. The Plaintiff was filed on 3.4.80. Under section 6 of the Limitation Act, no suit can be brought to recover land after expiration of 12 years from the date when the cause of action accrued. 10

In the instant case, the cause of action arose on 17.9.77 when the plaintiff's son sold the land and the 12 years expired on 4.9.89. By filing the suit in 1980 was out of time. In support this argument the learned Counsel referred to paragraph 4 of the Plaintiff which reads:- 15

"On 28th September, 1980, the plaintiff who had been remanded on a Criminal charge since 1977 for alleged murder returned home only to find the defendant in forceful occupation of his piece of land aforesaid. The plaintiff protested and demanded for vacant possession but the defendant a very influential personality in the area violently drove away the plaintiff threatening to harm him. The plaintiff has since 1980 tried through the local chiefs to resettle on his land but in vain." 20 25

The learned Counsel argues that from the above paragraph, it is not clear whether by 1977 when the sale took place, the plaintiff had not been released on a charge of murder. 30

In Charles Mpiima Vs. Attorney General (1990 - 91) 11 KAL R.58,
it was held inter alia that a Plaintiff is severable when the causes
of action are different in duration and nature thus prayer (b)
and (c) of the Plaintiff in the instant case is time barred by
virtue of section 4 (1) (a) of the Limitation Act. In light of 5
that the Plaintiff be struck out with costs as time barred.

In his reply, the Counsel for the plaintiff submitted that
according to the pleading in paragraph 4 of the Plaintiff, the
plaintiff came to know of the adverse claim over his land in
1980. He is ready to adduce evidence to that effect. By 10
28.9.77 the plaintiff was in remand custody in alleged murder
charge. Time therefore started to run against his claim in
1980 and that was when he was saved of the disability and in any
case pleadings need not disclose all the disabilities in the Plaintiff.

Having heard both Counsel in their submissions and having 15
paid more attention to paragraph 4 of the Plaintiff, this is a
border line case based on the question of interpretation of the
draft Plaintiff. It can be interpreted that when the defendant
purchased the suit land on 4.9.77 the plaintiff came to know
about it though still in remand for murder case. If that is the 20
case, was he under disability while on remand pending a criminal
charge? In my view the answer is on the affirmative. It would
be a different story if he was released on bail even for a very
short time.

At this stage, it suffices on the face of pleadings, to 25
rule that evidence at the trial shall put us to the right track,
whether the suit is time barred or not. For now I decline to
rule that this suit is time barred. In the end result the
substantive suit may proceed on merit. I so order.

S.G. ENGWAU
JUDGE

10.6.93.

10.6.93: Both parties present.

Mr. Owori for plaintiff absent.

Mr. Wandera for defendant present.

Ruling delivered in open court.

S.G. ENGWU

JUDGE

10.6.93.

SGE/eg