

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
LAND DIVISION**

CIVIL SUIT NO. 282 OF 2013

SUNDAY EDWARD MUKOOLI..... PLAINTIFF

VERSUS

**1. NABBALE TEOPISTA
2. JOHN SEWA NYANA
3. WALUSIMBI ELSA ALLEN DEFENDANTS
4. KAWALYA DORAH**

RULING – PRELIMINARY OBJECTION

BEFORE HONOURABLE LADY JUSTICE EVA K. LUSWATA

The plaintiff bought this suit jointly and severally against the defendants seeking for orders that the plaintiff is the rightful and legal owner of a legal interest in part of the land comprised in Kyadondo Block 244 Plot 541 at Kabalagala (hereinafter referred to as the suit land) which was sold to him by the 2nd, 3rd and 4th defendants as the Administrators of the Estate of the Late Kristina Nabaggala. His complaint is that the 1st defendant procured registration of the entire suit land wrongly including, the plaintiff's portion which she knew or ought to have known was unlawful and fraudulent.

In her written statement of defence filed on 26/7/13 the 1st defendant raised a Preliminary Objection that the suit is bad in law and does not disclose a cause of action against her and should be dismissed. Both parties filed written submissions in respect of the preliminary objection.

It was contended for the 1st defendant that the suit is time barred in as far as it seeks to enforce a contract, executed on 2nd July 2000. **Section 3(1) (a) of the Limitation Act Cap 80** provides that actions founded on contract shall not be brought after the expiration of 6 years from the date on which the cause of action arose. Counsel argued that the plaintiff entered into a sale agreement with the Late Christine Nabaggala on 2/7/2000 for the purchase of the interest in the suit land for which she paid a sum of Ushs.7,200,000/=. She was to pay the balance of Ushs. 7,300,000/= when the vendor secured a certificate of title for him. It was then argued that there is no evidence on record that the plaintiff made any effort to demand for the certificate of title or to enforce the contract against the late Christine Nabaggala or her Administrators. That the first attempt to enforce the contract is through the present suit which the plaintiff instituted on 18/6/13 about 13 years since the cause of action arose. Counsel then concluded that this suit is barred by the operation of the Limitation Act. In support of her arguments, counsel cited a

number of authorities which included; **Lwanga Vs. Uganda Electricity Board HCCS No. 124 of 2003, Hammaann Ltd & Anor Vs. Ssali & Anor HCMA No. 449 of 2013, Polyfibre (U) Ltd vs. Matovu Paul & 3 Ors HCCS No. 412 and Henry N.K. Wabui & Anor Vs. Rogers Hanns Kiyonga Ddungu & 2 Ors HCCS No. 102 of 2009.**

In reply, counsel for the plaintiff submitted that the limitation time runs 6 years from the date of breach of the contract and not the date of execution. That in any case, the plaintiffs claim against the defendants severally is for the recovery of land which the Limitation Act limits to 12 years. Counsel for the plaintiff did agree that the sale of the portion of the suit land was made in 2003; it was completed and put in to effect when the Administrators accepted the balance of the consideration agreed upon between the plaintiff and the late Christine Nabaggala in 2012. Further that, the 12 years would thus start running in 2012. It was further argued that the plaintiff's contract with the Late Christine Nabaggala was open ended and only satisfied when the administrators of her estate were appointed and received the balance in 2012 way before the 1st defendant purports to have purchased the entire interest in the suit land.

Counsel further submitted that it is apparent on the plaintiff's pleadings that the claim is also based on fraudulent dealings on the suit land as against the defendants. The pleadings on record spell out fraud on the part of the defendants and that counsel for the plaintiff failed to appreciate the provisions of **Section 25 of the Limitation Act** on that fact. In addition, counsel generally distinguished the authorities presented for the plaintiff in respect of the objection.

In rejoinder counsel for the 1st defendant contended that the plaintiff could not attempt to recover land whose possession he claims to have acquired in 2000 when he executed the alleged contract and which possession the 1st defendant admits she had in 2011 when she bought the suit property. That the clear claim of the suit is the enforcement of a promise made in a contract alleged to have been executed in 2000 to give the plaintiff a certificate of title to the land he claims to have acquired. Further that the 1st defendant did not commit any fraud against the plaintiff and is protected from the plaintiff's claims by virtue of **Section 25(d) of the Limitation Act** as she is a bonafide purchaser for value and did not participate in any fraud. Counsel concluded that the plaint does not disclose grounds pleading exemption from limitation and therefore contravenes **Order 7 Rule 6 and 11(d)** of the CPR.

Section 3 (1) (a) of the Limitation Act stipulates that *no action founded in contract shall be brought after the expiration of 6 years from the date on which the cause of action arose.* Similarly Section 5 of the Limitation Act limits actions for recovery of land to 12 years.

In the case of **Madvani International S.A Vs. Attorney General CACA No. 48 of 2004 and Polyfibre (U) Ltd Vs. Matovu Paul & 3 Ors (supra)** that was cited by counsel for the 1st defendant, it was held that *in considering whether a suit is barred by any law court looks at the pleadings only, and no evidence is required.*

According to paragraph 5 of the plaint, the plaintiff and the Late Christine Nabaggala entered into a contract for the sale of land on 2/7/2000 where it was agreed that the plaintiff would pay the balance after acquiring a title from the vendor. However the late Christine Nabaggala died before the plaintiff obtained the title from her. That the 2nd, 3rd and 4th defendants were then granted Letters of Administration to the deceased's estate and agreed to conclude the sale in the terms previously agreed upon. That after obtaining the balance of the purchase price from the plaintiff on 29/2/2012, the 2nd, 3rd and 4th defendants surrendered duly signed transfer and mutation forms and pledged to surrender the original Certificate of Title to the plaintiff not later than 30/5/2012. In my view, the facts reveal that the contract was one for the sale of land and not a mere chattel. Even if I were to believe that it was an ordinary contract (and thus falling under the ambit of S.3 of the Limitation Act) time would begin to run against the plaintiff after the breach by the administrators i.e. after 30/5/12. However in my view, the transaction was completed by the administrators of the estate when the administrators allegedly handed over to the plaintiff the instruments of transfer. The plaintiff is deemed (and this will need to be proved by evidence) that he acquired an unregistered interest in part of the suit land and it is proved that it was wrongly sold to another party, for its recovery. Indeed the claims in the plaint seek inter-alia for recovery of that portion of the suit land that the plaintiff feels belongs to him by virtue of a contract for sale of land when the plaintiff's interest is alleged to have been sold to another and he then sought for its recovery. Therefore, I find that this claim falls under the ambit of Section 5 of the Limitation Act and the plaintiff would thus have 12 years within which to lodge his claim.

In answer to the question of when the time begins to run against the plaintiff, I must again restrict myself to the pleadings. It is alleged in the plaint that the late Christine Nabaggala died before completing the contract for part of the suit land. Legally, the plaintiff had to wait, until administrators were appointed in respect of her estate for the purchase to be concluded. Indeed, the plaintiff did pay the balance of the consideration to the 2nd, 3rd and 4th defendants, who then allegedly handed over to him the instruments of transfer. However instead of fulfilling the contract, the 2nd, 3rd and 4th defendants allegedly went ahead and sold the suit land to the 1st defendant. The cause of action in this respect arose when the 2nd, 3rd and 4th defendant went ahead and sold the suit land including the plaintiff's portion to the 1st defendant who then procured registration on 3/8/2012. Therefore the 12 years in **Section 5** would begin to run from the time when the administrators failed to hand over the certificate of title to the plaintiff or when the suit land was sold to the 1st defendant in 2012.

Even if the above arguments are doubtful, the plaintiff pleaded fraud in paragraph 8 of the plaint. According to Section 25 of the Limitation Act, fraud presents a legal exemption to limitation. The court in **Hammaann Ltd & Anor Vs. Ssali & Anor (supra)**, when interpreting that section was of the view that:-

“...the main thrust of the provision is essentially that in actions founded on fraud, the limitation period does not begin to run until such a time when the plaintiff is invariably

aware, or could have with reasonable diligence been aware of the fraud. This must be pleaded, and it is premised on such a plea that court may exercise its power under Section 2 not to reckon with the period the plaintiff was unaware of the fraud in computation of the limitation period...”

The plaintiff did plead and give particulars of fraud in his plaint but did not state when he became aware of it. A reasonable interpretation of the pleadings would be that the alleged fraud was committed after the administrators came into the picture and sold the suit land to the 1st defendant. Regardless of the above, having found that the plaintiff's claim is founded on recovery of land is not barred by limitation since it was brought before the expiration of 12 years.

The preliminary objection is thereby dismissed with costs. I direct that the plaintiff collects his costs at the determination of the suit.

EVA K. LUSWATA
JUDGE
25/02/2014