

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
[LAND DIVISION]
CIVIL SUIT NO. 508 OF 2014

1. **FREDRICK JAMES JUNJU**
2. **LUWEDDE LUWEDDE VICTORIA ::::::::::: PLAINTIFFS**

VERSUS

1. **MADHIVANI GROUP LIMITED**
2. **COMMISSIONER FOR LAND REGISTRATION ::::::::::: DEFENDANTS**

BEFORE: HON. MR. JUSTICE BASHAIJA K. ANDREW

R U L I N G:

FREDRICK JAMES JUNJU and LUWEDDE VICTORIA (hereinafter referred to as the 1st and 2nd “plaintiffs” respectively) instituted this suit against MADHIVANI GROUP LIMITED and THE COMMISSIONER FOR LAND REGISTRATION (hereinafter referred to as the 1st and 2nd “defendants” respectively) jointly and/or severally for the alleged fraudulent acquisition of land comprised in FRV 45 Folio 2 at Nakigalala (hereinafter referred to as the “suit land”) by the 1st defendant. The plaintiffs contend that the suit land belongs to the estate of the late Yusuf Ssuna Kiwewa and seek, inter alia, a declaration that they are the beneficial owners of the suit land, an order cancelling the certificate of title in the names of the 1st defendant, an injunction against the 1st defendant, general damages and costs of the suit.

When the suit came up for hearing on 30/04/2015, Mr. Paul Kuteesa, Counsel representing the 1st defendant raised four preliminary points of law. Court considered them pursuant to **Order 15 r.2 CPR** which provides that;

“Where issues both of law and fact arise in the same suit, and the court is of the opinion that the case or any part of it may be disposed of on the issues of law only, it

shall try those issues first, and for that purpose may, if it thinks fit, postpone the settlement of the issues of fact until after the issues of law have been determined.”

The first preliminary point is that the suit and the claims therein are barred by the law of limitation. The second is that the claims in the suit and the subject matter have been wholly considered and determined by the court and thus the suit is *res judicata*. The third is that the plaintiffs do not have the necessary *locus standi* to institute this suit and hence have no cause of action. The fourth is that the court ought to follow its earlier decision in **HCCS No. 615 of 2012** and dismiss the suit.

Concerning the first point, Mr. Kuteesa submitted that the plaintiffs brought the suit based on the alleged tort of fraud, and that the substance of the plaintiffs' suit and claim at paragraph 3 and 4 of the plaint is based on that cause of action. Their allegations against the 1st defendant are that it fraudulently obtained a freehold certificate of title over the suit land and occupied it, and has continued to do so to the detriment of the estate of the late Yusuf Ssuna Kiwewa.

Mr. Kuteesa cited **Section 3** of the **Limitation Act (Cap 80)** which provides that actions founded on tort must be brought within six years from the date on which the cause of action arose. He also submitted that actions for recovery of land must be brought before the expiration of twelve years from the date on which the right of action accrued. He pointed out that the plaintiffs in paragraph 4(k) bullet 3,6 and 7 of the plaint allege that the 1st defendant, with help of the 2nd defendant, fraudulently acquired and superimposed on the *mailo* land to create FRV 45 Folio 2 for the suit land in the names of the 1st defendant. Counsel argued that the plaintiffs' averments mean that the 1st defendant fraudulently created and got registered on the title on 08/06/1960, which is the date on the 1st defendant's certificate of title for the suit land as per the copy of the title which is attached to the plaint. Mr. Kuteesa argued that given this position of the facts in the

plaint the cause of action in the suit generally, and the specific claims are barred by the **Limitation Act (supra)** and as such should be dismissed pursuant to **Order 7 r. 11(d) CPR**.

Mr. Kuteesa further contended that the plaintiffs' claim in this case should have been instituted in the court within six years from 08/06/1960, when the certificate of title for FRV 45 Folio 2 was issued. That since this was never done the plaintiffs' claim is barred by the provisions of **Section 3 of the Limitation Act (supra)**. Further citing **Order 7 r.11(d) CPR** and the case of **Iga vs. Makerere University [1967] EA 65, at p 66; Vincent Opio vs. A.G [1990 -1991] KALR 68; and Onisefero Bamuwayira & Or's vs. Attorney General [1973] HCB 87**, Mr. Kuteesa submitted that that a suit which is barred by statute must be rejected, and that the **Limitation Act (supra)** operates to bar any claim or remedy sought for, and that when a suit is statute barred, the court cannot grant the remedy or relief.

Mr. Kuteesa argued that even though the claims in the plaint are premised on the alleged fraud of the defendants, the plaintiffs cannot benefit from the postponement of limitation period under **Section 25 of the Limitation Act (supra)** since they did not state in their plaint when the alleged fraud came to their attention. Counsel submitted that in absence of this averment, the presumption is that they were aware of it at all times, and that it renders the plaintiffs' suit barred by the law of limitation, and that it should be dismissed.

Mr. Kuteesa also pointed out that under paragraph 4(k) bullet 4 and 6, of the plaint the plaintiffs' suit contains yet another aspect of the alleged fraud committed by the 1st defendant in respect of wrongfully repossessing the suit land. Counsel submitted that this claim too is barred by the law of limitation. He relied for this proposition on **Section 15 of the Expropriated Properties Act, 1982**, which provides that any person aggrieved by the Minister's decision made under the Act, such as the grant of a repossession certificate, had a right to appeal, but the appeal had to be

lodged within thirty days from the date of the decision. Mr. Kuteesa argued that the claim for wrongful repossession of the suit land by M/s. Muljibhai Madhivani & Co. Ltd. is time barred for failure of the plaintiffs to file the claim by way of an appeal within thirty days of the grant of repossession which according to the plaintiffs' pleadings was on 07/10/1993. Mr. Kuteesa further contended that the consequence of the suit being time barred is that the plaint must be struck out and the suit dismissed irrespective of the merits.

In reply, Mr. S. Ahanya, Counsel representing the plaintiffs, restated provisions of **Section 3 of the Limitation Act (supra)** and submitted that the period of limitation begins to run from the date of notice of when a party becomes aware of the breach of his or her right. That the plaintiffs' claim in this case is in respect of the suit land which was held by the late Yusuf Suuna Kiweewa under Certificate of Title Mailo Register Volume 92 Folio 2522 Final Certificate No. 15196 for 669.50 and 278.60 acres respectively, whose titles were issued on 27/11/1913. Further, that the said land was by grant given to H. Dewhurst vide grant No. 9100 for 99 years from 1911 and would expire in 2010. Counsel argued that given this status, the time would have arisen for the plaintiffs to try and re-enter the suit land after the expiry of the grant, and that it is then that they found the defendants and began to ascertain the nature and claim of the defendants hence the plaintiffs' claim filed in 2014 is within time.

Mr. Ahanya further submitted that the grant for 99 years entitled the then holder H. Dewhurst to quiet use and enjoyment of the land and that the plaintiffs being beneficiaries of the estate of the late Yusuf Suuna Kiweewa, who gave the grant, would only intervene to claim any interest of right at the expiry or termination of the said grant. That this in effect raises the question as to how the 1st defendant could have obtained a freehold title over an existing mailo interest and grant.

Mr. Ahamyia also submitted that during the subsistence of the said grant, no action could have been brought by the plaintiffs as the same would have amounted to a breach of the grant. That the instant suit was filed on 11/09/2014 within the six years from the expiry of the grant, and that as such, even if the defendants were to allege that the limitation period would have begun to run from the expiration of the grant, the plaintiffs filed the current suit before six years had lapsed.

Mr. Ahamyia contended that even though the plaintiffs do not specifically state in their plaint the time they became aware of the 1st defendant's claim and occupation of the suit land for time to begin to run, the issues in regard to the suit land came to their attention following the media news concerning a case between Madhivani Group and Alex Ssimbwa over the same land leading to judgment in ***HCCS No. 615 of 2012***. That prior to that, the plaintiffs were trying to ascertain the size and nature of the entire estate of the late Yusuf Ssuna Kiweewa. That any computation of time should therefore start from 2010 when the grant of H. Dewhurst lapsed, or 2011 when the plaintiffs were informed that the said land was registered in the name of the 1st defendant as per the communication referred to in *Annexure C* to the plaint. Mr. Ahamyia maintained that this puts the suit and claims therein within time to which limitation does not apply.

With regard to the issue of limitation in respect of repossession, Mr. Ahamyia restated provisions ***Section 15 of the Expropriation Act (supra)*** and submitted that the said repossession on 07/10/1993 should have been appealed against by the 07/11/1993; which is 30 days thereafter. He contended that the person in possession of the land by then H. Dewhurst having a subsisting grant would have clearly been the party affected by the action of the Minister and ought to have appealed and not the plaintiffs. That this would have meant that the grant of 99 years which was

still subsisting would be cancelled and not the plaintiffs' interest that is vested in a mailo. Mr. Ahanya maintained that the plaintiffs' suit is not barred by limitation even in that aspect.

Resolution:

The first preliminary objection is that the plaintiffs' suit and the claims therein are statute barred. It is noted that the plaintiffs' claim is wholly premised on the alleged tort of fraud. This is the correct identification and classification of the nature of plaintiffs' claim as is quite apparent from the averments in paragraph 3 and 4 of the plaint. The identification and classification of the nature cause of action is vital because they have a direct bearing on the law of limitation which both Counsel have addressed this court about. As held in *F.X Miramago vs. Attorney General [1979] HCB 24*, the period of limitation begins to run as against a plaintiff from the time the cause of action accrued until when the suit is actually filed.

Both Counsel also cited *Section 3 of the Limitation Act (supra)*. For ease of reference, I quote the relevant part below;

***“(1) The following actions shall not be brought after the expiration of six years from the date on which the cause of action arose —
(a) actions founded on contract or on tort; ……”***

I need also to point out that *Section 5 (supra)* provides that actions for recovery of land must be brought before the expiration of twelve years from the date on which the right of action accrued. For ease of reference I quote it fully below;

“No action shall be brought by any person to recover any land after the expiration of twelve years from the date on which the right of action accrued to him or her or, if it first accrued to some person through whom he or she claims, to that person.”

There are however exceptions to the general rule encapsulated in the above quoted provisions. The relevant one to the instant suit which is premised on fraud is under **Section 25(supra)**. It provides that where the cause of action is founded on fraud in the acquisition of land sought to be recovered, time does not commence to run as against the plaintiff until he or she becomes aware or could have with reasonable care known about the fraud. This is the position in the cases of **Mukasa Sendaula vs. Christine Mukalazi [1992 – 1993] HCB 179; Semakula vs. Serunjogi HCCS No. 187 of 2012.**

In addition, it is a mandatory requirement under **Order 7 r.6 CPR** that where the suit is instituted after the expiration of the period prescribed by the law of limitation, the plaintiff shall show the grounds upon which exemption from that law is claimed. The mandatory nature of the provisions was affirmed in **Hammann Ltd. vs. Ssali & A' nor, HCMA No.449 of 2013** where court held that the plaintiff must show when he or she became aware of the alleged fraud; and that the failure to comply with the mandatory provisions renders the suit time barred.

In the instant case, the plaintiffs allege fraud against the defendants jointly and severally. In paragraph 3 and 4 of the plaint the plaintiffs aver that the 1st defendant fraudulently obtained a freehold certificate of title over the suit land. Also in paragraph 4(k) bullet 3,6 and 7, of the plaint, the plaintiffs aver that the 1st defendant with help of the 2nd defendant fraudulently acquired and superimposed on the *mailo* land to create FRV 45 Folio 2 for the suit land in the names of the 1st defendant. That the 1st defendant occupied the suit land and has continued to do so to the detriment of the estate of the late Yusuf Ssuna Kiwewa. The defendants for their part totally denied the plaintiffs' allegations in the particular averments.

Within the context of the law of limitation, what the express averments of the plaintiffs mean is that the plaintiffs had six years within which to file their claim for the recovery of the suit land

from 08/06/1960; the date when the certificate of title for land comprised in FRV 45 Folio 2 was issued. This was never done, and the legal effect on the general principle of limitation of actions for recovery of land under **Section 3(supra)** would apply with full force.

However, **Section 25 of the Limitation Act (supra)** provides for postponement of the limitation period for actions founded on fraud or mistake as one of the exceptions in respect to claims for the recovery land. It is to the effect that 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.

It follows that in the instant case, for the plaintiffs to benefit from the postponement of the limitation period, they had show by their pleadings when they became aware of the alleged fraud or could have with reasonable diligence become aware of the alleged fraud of the defendants. That would constitute the exception or plea showing grounds upon which exemption from the law of limitation is claimed

The plaintiffs did not anywhere in their pleadings show when they became aware of the alleged fraud of the defendants. Mr. Ahmya Counsel for the plaintiffs conceded that much in his submissions. He stated that the plaintiffs did not plead in their plaint the time they got to know or become aware of the alleged fraud of the defendants. Counsel then strenuously attempted to dress up the failure claiming that the plaintiffs became aware in 2012 following media news concerning **HCCS NO 615 of 2012** between the present 1st defendant and Prince Alexander Simbwa.

With due respect to Counsel Mr. Ahmya, his submissions in that regard were quite unfounded. At most they amounted to adducing evidence from the Bar by an Advocate. Even then no evidence would be required in determining whether pleadings are time barred or not. What is

required are the particular facts pleaded by the plaintiffs showing when they became aware of the alleged fraud. Computation of time then starts from that point. If indeed the plaintiffs learnt from the media news, they would have pleaded that fact in their plaint showing the dates they became aware. To that end, I fully agree with Mr. Kuteesa's submissions that the plaintiffs cannot benefit from the postponement of limitation period under **Section 25(supra)**. Provisions of **Order 7 r.6 CPR** are mandatory. As was held in **Hammann Ltd. vs. Ssali & A' nor (supra)** in absence of the averments showing grounds of exemption from limitation, the presumption is that the plaintiffs were aware of the alleged fraud at all times; which renders their suit and claims therein statute barred.

Mr. Ahanya tried to argue that the suit land was given by grant to H. Dewhurst for 99 years from 1911 expiring in 2010. That time would have arisen in 2010 for the plaintiffs to re – enter the suit land, and that it is then that they found the defendants and begun to ascertain the nature of their claim, and that it is when time began to run as against the plaintiffs.

These submissions again lack the basis. Still the law requires that the fact of when the plaintiffs became aware of the alleged fraud or exemption from limitation be pleaded. Court cannot be left on its own whims to guess as to when that could have been. It must be clear from the pleadings. In **James Semusambwa vs. Rebecca Mulira, HCCS No.417 of 1992**, and in **Polyfibre (U) Ltd. vs. Matovu Paul & Or's HCCS No. 412**, it was held that in considering whether a suit is barred by law, court looks at the pleadings only and no evidence is required.

Similarly in this case, pleadings in reference to the grant to H. Dewhurst in paragraph (h) of the plaint only serve to show that it was a condition of the grant not to lease the suit land. It is not a plea of when the plaintiffs became aware of the alleged fraud in order for them to benefit from the postponement of the limitation period.

The other aspect of limitation which came up in the pleadings of the parties concerns repossession of the suit land by the 1st defendant. In the particulars of fraud bullet (4), and in paragraph 6, 7, and 8 of the plaint the plaintiffs aver on the issue of the repossession certificate which they allege the 1st defendant illegally used to get registered on the suit land. The 1st defendant, in paragraph 12.5 of the written statement of defence, responded that the grant of repossession of the suit land to the M/s. Muljibhai Madhvan & Co Ltd. was made and granted by the Minister responsible in accordance with the law after due consideration of the facts of the matter. That the plaintiffs' action is therefore time barred and they cannot challenge the repossession at all.

Section 15 of the *Expropriated Properties Act (supra)* gives a right to any person aggrieved by the Minister's decision made under the Act, which includes the grant of repossession certificate, to appeal the decision, but such an appeal had to be lodged within 30 thirty days of the date of the decision.

From the pleadings of the parties, it is clear enough that the claim for wrongful/illegal repossession of the suit land by M/s. Muljibhai Madhivani & Co. Ltd is time barred. Besides it is not an issue that could be raised and determined by court in this suit. This court is not sitting in this suit in its appellate jurisdiction in respect of the appeal against the Minister's decision. The plaintiffs failed to file their claim by way of an appeal within the 30 days of the grant of repossession which according to paragraph 8 of their plaint was from 07/10/1993. This also renders the claim in that particular respect time barred.

There is a wealth of authorities that a suit which is time barred by statute must be rejected because in such a suit the court is barred from granting a relief or remedy. See: ***Mathias Lwanga Kaganda vs. Uganda Electricity Board HCCS No. 124 of 2003; Sayikwo Murome vs. Kuko &***

A' nor [1985] HCB 68 at p.69; Vincent Rule Opio vs. Attorney General, [1990-1991] KALR 68; Banco Arabe Espanol vs. Attorney General, Bank of Uganda H.C.C.S No. 527 of 1997; , Onesiforo Bamuwayira & 2 Or's vs. Attorney General (1973) HCB 87. Even in circumstances in which a party's claim is absolutely premised on substantive rights, if the suit is barred by statute the party cannot enforce the rights through a court action. As was held by the Court of Appeal in the case of *Mohammad B. Kasasa vs. Jasper Buyonga Sirasi Bwogi, CACA No. 42 of 2008*; quoting *Lord Green M.R. Hilton vs. Satton Steam Laundry [1946] IKB 61 at page 81,*

“....statutes of limitations are by their nature strict and inflexible enactments. Their overriding purpose is interest republicae ut finds litum, which means that litigation shall automatically be stifled after a fixed length of time irrespective of the merits of the particular case. Statutes of limitation are not concerned with merits. Once the axe falls, it falls, and a defendant who is fortunate enough to have acquired the benefit of the statute of limitation is entitled, of course, to insist on his strict rights.”

For the foregone reasons, the instant suit is statute barred and the plaintiffs cannot obtain a relief as against both defendants. Provisions of **Order 7 r. 11(d) CPR** operate and the plaint is rejected and suit be dismissed.

As earlier noted, four preliminarily objections were raised by Counsel for the 1st defendant. Having found that the suit is statute barred, that disposes of the entire suit, and it would be purely academic to try and resolve the other remaining preliminary points. Accordingly the plaintiffs' suit is dismissed with costs.

BASHAIJA K. ANDREW
JUDGE
09/07/2015

Mr. Paul Kuteesa – Counsel for the 1st Defendant present.

Mr. K.P. Eswar - Director for the 1st Defendant in Court.

The 2nd Defendant not present

Mr. Sam Ahanya Counsel for Plaintiffs is present

Plaintiffs absent.

Mr. Godfrey Tumwikirize – Court Clerk present

Ruling read in open court and signed.

BASHAIJA K. ANDREW
JUDGE
09/07/2015