

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA SITTING AT ARUA**  
**CIVIL APPEAL No. 0027 OF 2012**

**(Arising from Adjumani Grade One Magistrate’s Court Civil No. 0001 of 2008)**

**1. OYEE LEONARD** }  
**2. LAGU FESTO** } ..... **APPELLANTS**  
**3. DRASI SALVERIO** }

**VERSUS**

**ZUBEIDA ABDULRAHMAN** ..... **RESPONDENT**

**Before: Hon Justice Stephen Mubiru.**

**JUDGMENT**

In the court below, the respondent sued the appellants jointly and severally for recovery of land seeking an order for vacant possession of approximately two acres of land situated at Abiricaku village in Adjumani Town Council. Her claim was that her late father Adrahman Wani acquired the land in dispute in 1930 and had lived there on until his death in 1983. Upon his death, she inherited the land and established a dwelling and grew crops on the land without interruption. In May 2005, her relatives, led by Mr. Feki Abdulrahman, allowed some Sudanese refugees to occupy the land temporarily for two years. In July 2007, immediately after departure of the refugees, the appellants, without any colour of right whatsoever, unlawfully entered onto the land and established homesteads there.

In their joint written statement of defence, the appellants denied the respondent’s claim. They contended instead that they belong to the Lajopi Clan of Biyaya village and that their families had lived on the land from time immemorial. The respondent never lived on the disputed land at all but rather at a neighbouring village. Furthermore, that the respondent is Sudanese by nationality and came to settle in the neighbourhood of the disputed land as a refugee and after some time returned to Sudan where her father died in 1983. During his stay in Uganda, the respondent’s father was a Mwalimu at a mosque constructed on the land in dispute with permission of the defendant’s great grandfather, Vudiga. The first appellant’s father Drasi

Saverio had lived on the disputed land for his entire life. It is him who permitted some Kuku refugees from South Sudan temporary occupation of the land.

In her testimony, the respondent stated that the land in dispute belonged to her late father Wani Abudalahamani who acquired it during the 1930s. He father lived on the land and grew crops on it but died in exile in Sudan in 1983, where he was buried. Her father never constructed any buildings on the land since he used it only for cultivation. When she returned from exile in Sudan in 1986, she found that the third appellant had built a house on the land. Her elder brother negotiated with the third appellant to leave the land and paid him shs. 600,000/= to enable him relocate the graves of his relatives buried on the land. The third appellant did not relocate the graves but instead cemented them and he himself relocated to the Southern portion of the land. The second appellant came onto the land in 2007 two days after the refugees who were occupying it vacated the land and let out one of the houses to tenants. The first appellant too entered onto the land in July 2007. They put up new houses and repaired the ones left by the refugees. She declared she is a citizen of Uganda and Bari by tribe. P.W.2 Romano Abudallah testified that the respondent's father acquired the land in dispute in the 1930s and used to grow crops on it. They fled into exile in 1979 and on their return in 1986 they found the third appellant had constructed three huts on the land, was growing crops on it as well and had allowed some Sudanese refugees to occupy part of the land. Following negotiations, the third appellant received shs. 600,000/= from Moses Ali for relocation of the graves of his relatives buried on the land and he vacated the land, destroyed his houses but never relocated the graves. The other two appellant later in 2008 came and occupied huts vacated by Sudanese refugees.

P.W.3 Abdulahi Muhamad testified that the land belonged to the respondent's father before he fled into exile in 19179 from where he died in 1983. Upon their return in 1986, they found the third appellant in occupation of the land. He had three huts on the land and a grave. After negotiating with Moses Ali, he left the land after demolishing his huts. The respondent's brother negotiated with the Sudanese refugees and an agreement was reached regarding their temporary stay on the land. The Sudanese left the land in 2007. The first appellant then took advantage and occupied the houses left by the refugees. He was later joined by the second appellant who let out one of the houses to tenants. That was the close of the respondent's case.

On his part, the third appellant testified that the first appellant is his biological son and the second appellant his son in law. He settled on the land in dispute during the 1950s after inheriting it from his late father Olikare Palekwasi who died in the 1930s. and had never left it to-date. The first appellant was born on that land, grew up there and married there. He allowed refugees to reside on the land provided they paid him rent. The respondent has never used the land in dispute. He has from time to time buried his deceased relatives on the land. He did not leave the land but only shifted away from the roadside leaving that area for his sons. He denied ever having received money from Moses Ali. The first appellant testified as D.W.2 and he stated that his father the third appellant gave him the land which he occupies. The land does not belong to the respondent but rather to the third appellant. They have several graves of relatives who died between 1992 and 2008 on the land. He constructed a house on the land in the 1990s. Some of the huts he has on the land are rented out to Sudanese refugees. The land in dispute is located in Biyaya and not Abiricaku and thus the purported agreement with the Sudanese refugees made by the respondent's brother does not concern the land in dispute. The second appellant testified as D.W.3 and he stated that he came to the home of the third appellant in 1971 after marrying his daughter. In 1980, his father in law gave him a portion of the land now in dispute where he constructed huts for rent. He has lived on the land peacefully until 2008 when the respondent filed the suit. D.W.4 Odendi Maricilo testified that he is the L.C1 Chairman of Biyaya village and his tenure had lasted the previous ten years. He had never received any complaint from the respondent about the land and was surprised when she filed the suit in 2008. All his life, he had seen the third appellant in occupation of the land. It is the third appellant who during 1980 allowed the second appellant to construct huts for rent on the land. The respondent has never lived or cultivated on the land. That was the close of the appellants' case. The Court then visited the *locus in quo* on 22<sup>nd</sup> August 2011. On its own motion, the court then summoned Moses Ali as a witness. He testified that he came to know the third respondent when he returned from exile in 1986 and found him settled on the disputed land. He negotiated with him and paid him shs. 600,000/= to relocate whereupon he left the land and settled elsewhere.

In his judgment trial magistrate found that the appellants had failed to rebut the respondent's evidence. HE thus found that the land had originally belonged to the late Abdulrahman Wani who acquired it in the 1930s. The third appellant was paid to vacate the land when in 1986 he

was found occupying it and he accordingly vacated. He found in favour of the respondent and granted the prayer of vacant possession, an order of eviction and costs.

Being dissatisfied with the decision the appellants challenge the decision on the following grounds, namely;-

1. The learned trial magistrate erred both in law and fact when he failed to find that the suit land is time barred (sic).
2. The learned trial magistrate erred both in law and fact when he allowed a witness to testify in the case after the parties closed their case and made their closing written submissions.
3. The learned trial magistrate erred in law and fact when he failed to properly evaluate the evidence on record and thus reached a wrong conclusion that the respondent / plaintiff is the owner of the suit land.

In his submissions, counsel for the appellant Mr. Samuel Ondoma argued that the respondent did not adduce evidence regarding the circumstances in which she received the land in dispute as a gift and therefore the trial court came to the wrong conclusion that she had proved her ownership of the land. Furthermore, the respondent's citizenship was refuted yet she failed to prove to the contrary. The evidence showed that the first appellant never left the land at any time but only moved to the Southern section of it, not because he had been compensated, but for his personal comfort. Whereas the respondent became aware of the appellants' presence on the land in 1986, she did not contest their presence until 2008 when she filed the suit. The appellants buried their deceased relatives on the land without any challenge from the respondent, yet she attended some of the funerals. The trial magistrate erred when he decided the suit based on minor inconsistencies in the appellants' evidence and ended up shifting the burden of proof to the appellants. He prayed that the appeal be allowed with costs.

In his response, counsel for the respondent Mr. Ezadri Michael argued that at the trial, the respondent testified that she is a citizen of Uganda. She only went to South Sudan as a refugee and lived there in exile until 1986 when she returned to Uganda. The appellants took advantage of her absence to occupy her land. The refugees were compensated and left the land and the first appellant was compensated too and he shifted to the Southern part of the land. The trial

magistrate evaluated the evidence properly and did not shift the burden of proof to the appellants. The appeal should therefore be dismissed with costs.

This being a first appeal, this court is under an obligation to re-hear the case by subjecting the evidence presented to the District Land Tribunal to a fresh and exhaustive scrutiny and re-appraisal before coming to its own conclusion. This duty is well explained in *Father Nanensio Begumisa and three Others v. Eric Tiberaga SCCA 17 of 2000*; [2004] KALR 236 thus;

It is a well-settled principle that on a first appeal, the parties are entitled to obtain from the appeal court its own decision on issues of fact as well as of law. Although in a case of conflicting evidence the appeal court has to make due allowance for the fact that it has neither seen nor heard the witnesses, it must weigh the conflicting evidence and draw its own inference and conclusions.

This court therefore is enjoined to weigh the conflicting evidence and draw its own inferences and conclusions in order to come to its own decision on issues of fact as well as of law and remembering to make due allowance for the fact that it has neither seen nor heard the witnesses. The appellate Court is confined to the evidence on record. Accordingly the view of the trial court as to where credibility lies is entitled to great weight. However, the appellate court may interfere with a finding of fact if the trial court is shown to have overlooked any material feature in the evidence of a witness or if the balance of probabilities as to the credibility of the witness is inclined against the opinion of the trial court. In particular this court is not bound necessarily to follow the trial magistrate's findings of fact if it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on demeanour of a witness is inconsistent with the evidence in the case generally.

Firstly, the appellants contended in paragraph 2 of their joint written statement of defence filed on 4<sup>th</sup> February 2008 and paragraph 6 of the one filed on 20<sup>th</sup> October 2008 that the respondent is a Sudanese who only settled in the neighbourhood of the suit land as a refugee. In paragraph 8 of her reply to the written statement of defence which she filed on 25<sup>th</sup> February 2008, the respondent did not specifically refute the claim that she is a non-citizen but contended only that her father acquired the land in dispute in 1930 as a lawful customary owner. The respondent therefore did not answer this material averment in specific terms. This offended the requirement

that each party must traverse specifically each fact that he or she does not intend to admit. The party pleading must make it quite clear how much of his opponent's case he or she disputes and merely denying will often be ambiguous (see *Odgers' Principles and Practice in Civil Actions in the High Court of Justice*, 22<sup>nd</sup> Edition, pages 132 - 137). It also opened up the respondent to the possibility of being found to have constructively admitted the averment since it is trite law that an allegation of fact not specifically traversed will be taken to be admitted, whether this was intended or not and once treated as admitted, the party who makes it need not prove it. A party who makes an allegation of fact admitted expressly or constructively need not prove the fact admitted by his or her opponent (see *Pioneer Plastic Containers Ltd v. Commissioner of Customs and Excise* [1967] 1 All E R 1053).

The main object of this requirement is to bring the parties by their pleadings to narrow down their controversy to definite issues, and so diminish expense and delay, especially as regards the amount of testimony required on either side at the hearing (see Jessel MR, in *Thorp v. Holdsworth* [1876] 3 Ch D 637). This object is secured by requiring that each party in turn should fully admit or clearly deny every material allegation made against him or her. Each allegation of fact material should be dealt with specifically in one's subsequent pleading (see Thesiger, LJ, in *Byrd v. Nunn* [1877] 7 Ch D 284, at p 287). Although in civil litigation, issues ordinarily arise when a material proposition of law or fact is affirmed by one party and denied by the other, according to Order 15 rule 3 of *The Civil Procedure Rules*, the court may frame issues from all or any of the following materials;-

- (a) allegations made on oath by the parties, or by any persons present on their behalf, or made by the advocates of the parties;
- (b) allegations made in the pleadings or in answers to interrogatories delivered in the suit; and
- (c) the contents of documents produced by either party.

Rule 5 (1) empowers the court at any time before passing a decree, to amend the issues or frame additional issues on such terms as it thinks fit, and all such amendments or additional issues as may be necessary for determining the matters in controversy between the parties (see also *Kahwa Z. and Bikorwenda v. Uganda Transport Company Ltd* [1978] HCB 318). In the instant case, although the respondent by her pleadings did not specifically traverse the averment that she is

Sudanese, in her testimony at page 34 of the record of appeal, line 10 she testified during her examination in chief that, “I am Bari by tribe and a Uganda citizen.” The question of her citizenship therefore came into issue by virtue of the appellants’ defence and her testimony.

This being the case, the trial court ought to have framed this as one of the issues to be determined considering the centrality of citizenship to the entire framework of Uganda’s Land Tenure System as outlined by Article 237 (2) (c) of *The Constitution of the Republic of Uganda, 1995* and section 40 of *The Land Act*, which restrict ownership of land in Uganda, in the case of non citizens, to leasehold tenure only. Restrictions of this nature with regard to access to resources based on one’s citizenship are internationally accepted.

For example in *Lavoie v. Canada, [2002] 1 S.C.R. 769, 2002 SCC 23*, it was argued that a law which bars an entire class of persons from certain forms of employment, solely on the grounds of a lack of citizenship status and without consideration of the qualifications or merits of individuals in the group, violates human dignity. The Supreme Court of Canada held that;

Virtually all liberal democracies impose citizenship-based restrictions on access to their public services. These restrictions indicate widespread international agreement that such restrictions do not implicate the essential human dignity of non-citizens and that the partial and temporary difference of treatment imposed by these restrictions is not discriminatory.....Citizenship is relevant to the public distribution of benefits to the extent that it tracks the class of people who have taken on correlative or reciprocal duties in exchange for the receipt of the benefits in question, such that the withholding of those benefits from non-citizens cannot constitute an affront to human dignity..... citizenship preference does not affect the essential dignity of non-citizens.

That being the case, in the instant case where the disputed land is held under customary tenure, with the respondent’s Uganda citizenship being refuted by the appellants, the burden was on the respondent to adduce evidence of her claimed Uganda citizenship, otherwise her claim would be restricted to land held under leasehold, which the one in dispute is not. In *Jovelyn Bamgahare v. Attorney General S.C. C.A. No 28 of 1993*, it was decided that he who asserts must affirm. The onus is on a party to prove a positive assertion and not a negative assertion. It therefore means that, the burden of proof lies upon him or her who asserts the affirmative of an issue, and not

upon him or her who denies, since from the nature of things he who denies a fact can hardly produce any proof. To succeed in her claim of being the owner of the disputed land under customary tenure, the burden lay on the respondent to adduce such evidence as would satisfy court that she is indeed a citizen of Uganda entitled to hold land under customary tenure.

She had to do this by adducing evidence that she is either a citizen by birth, by descent, by registration or by naturalisation as provided for by Chapter three of *The Constitution of the Republic of Uganda*, 1995 and Part three of *The Uganda Citizenship and Immigration Control Act, Cap. 66*, as emended in 2006. Under section 32 (2) of that Act, a citizen applying for a National Identity Card must fill in a form D to the third schedule. The information required to be furnished in that form includes; place and date of birth of the applicant, the village, sub-county, county and district of birth, indigenous community to which the applicant belongs, the father's names and place of birth (particulars of clan are required), mother's names and place of birth (particulars of clan are required), two contemporary descendants, etc. It becomes clear from those requirements that whenever court is called upon to decide, even for the limited purpose of rights of ownership of land, whether a person is or is not a citizen of Uganda, the court must carefully examine the question in the context of the constitutional provisions and the provisions of *The Uganda Citizenship and Immigration Control Act*.

In determining citizenship status, section 22 of *The Uganda Citizenship and Immigration Control Act, Cap. 66* permits receipt as proof thereof, every document purporting to be a notice, certificate, order or declaration, or any entry in a register, or a subscription of an oath of allegiance or declaration of renunciation, given, granted or made under the provisions of Part III of the Act. Documents in support of proof of citizenship will not be confined to those mentioned in that provision though. Court may admit other documents having a bearing on the question of citizenship in the sense of having some persuasive value on the mind according to ordinary process of reasoning. These may include birth certificates, a passport issued by the Government of Uganda, etc. For example In *Lal Babu Hussein and Others v. Electoral Registration Officer and others*, 1995 AIR 1189, 1995 SCC (3) 100, inhabitants of certain constituencies in Bombay and Delhi were treated as suspect foreigners and enumerators were appointed to verify if persons residing in certain polling stations were not citizens. The police was employed for this purpose



and as observed earlier in Bombay they issued notices calling upon the addressees to produce (i) birth certificates (ii) Indian passports, if any, (iii) citizenship certificates and / or (iv) extracts of entry made in the register of citizenship, excluding any other form of proof. In deciding whether these were the only means by which citizenship could be proved, the Supreme Court of India held that the fact that these persons were voters in previous elections and hence it would ordinarily appear that their cases were verified before their names were entered in the electoral rolls should have been accepted as proof. Noting that the police went about its task with a mind-set which gave practically no opportunity to the addressees to place the relevant material for whatever it was worth because no other documentary evidence, save and except that mentioned in the show cause notices. The court therefore directed that;

If any person whose citizenship is suspected is shown to have been included in the immediately preceding electoral roll, the Electoral Registration Officer or any other officer inquiring into the matter shall bear in mind that the entire gamut for inclusion of the name in the electoral roll must have been undertaken and hence adequate probative value be attached to that factum before issuance of notice and in subsequent proceedings.....The Officer holding the enquiry.....must entertain all such evidence, documentary or otherwise, the concerned affected person may like to tender in evidence and disclose all such material on which he proposes to place reliance, so that the concerned person has had a reasonable opportunity of rebutting such evidence.....the Officer inquiring into the matter must apply his mind independently to the material placed before him and without being influenced by extraneous considerations. Before taking a final decision in the matter, the officer concerned will bear in mind the provisions of the Constitution and the Citizenship Act extracted hereinbefore and all related provisions bearing on the question of citizenship and then pass an appropriate order.

Presentation of documents such as a passport, voter's card or National Identity Card will only be *prima facie* evidence of citizenship which may be rebutted in some cases by proof of fraudulent acquisition. For example in *Regina v. Secretary of State for the Home Department ex parte Sultan Mahmood [1981] QB 59*, the applicant appealed refusal of his writ of habeas corpus. He had been arrested pending removal to Pakistan. He said that he had been registered a British Citizen under the 1948 Act. While in Pakistan he had substituted his own photograph for that of his deceased relative, and entered the UK under the assumed name, and later obtained registration as a UK citizen. He argued that he remained a UK citizen until his citizenship was revoked. It was held by Geoffrey Lane LJ that:

It seems to me that the only question to be decided is whether the appellant ever was a citizen of the United Kingdom by registration. I find it difficult to see how he could be. He chose to assume the identity of a dead man, he took the oath of allegiance and filled in the necessary forms in the dead man's name. I find it impossible to say that in those circumstances Sultan Mahmood became a citizen of the United Kingdom any more than did Javed Iqbal. The proceedings were ineffective.

It has also been categorically held in other cases that citizenship obtained by fraud is a nullity (see *R v. SSHD ex p. Sultan Mahmood*, [1981] QB 59; *R v. SSHD ex p. Parvaz Akhtar* [1981] QB 46 and *R v. SSHD ex p. Naheed Ejaz* [1994] QB 496). Therefore citizenship can be annulled even where the claimant is the holder of valid documents if such documents were obtained by fraud. This is further illustrated in the case of *Tohura Bibi (also known as Nuria Begum), Shabana Begum, Shajna Begum, Akik Miah and Masuk Miah v. Entry Clearance Officer, Dhaka*, [2007] EWCA Civ 740, where the question to be decided was whether the widow and children of a citizen, then deceased, of an independent Commonwealth country who gained admission to the U.K. by assuming another person's identity and later, by reference to his own ensuing residence in UK, obtained registration in that other person's name as a citizen of the U.K. and Colonies (being a status which later became that of a British citizen), would have a right of abode in the U.K. Sometime during 1962, the deceased Mr Hussain Jabbar, had entered the U.K. on basis of a passport in the name of Mr. Sattar, which had a photograph of himself and an employment voucher issued in the name of Mr. Sattar. Upon Mr Jabbar's arrival in the U.K., the immigration officer wrongly believed that the man asking him for admission was Mr Sattar, to whom the employment voucher related, he wrongly concluded that he had no power to refuse admission to Mr Jabbar and so granted it to him. Following his admission to the U.K. Mr Jabbar resided in the U.K. for five years in the name of Mr Sattar. Thereupon Mr Jabbar caused an application to be made for registration as a U.K. citizen. He applied in the name of Mr Sattar; in support of his application he swore an affidavit in that name; and he lodged, as being referable to him, the passport in the name of Mr Sattar. In the affidavit he claimed that he had been ordinarily resident in the U.K. throughout the five years immediately prior to the date of his application. The application for registration was granted and on 8<sup>th</sup> November 1967, Mr Sattar was registered as a U.K. citizen. Upon his death in March 1983, his widow and children claimed rights of abode in the U.K. Distinguishing the decision in *R v. SSHD ex p. Naheed Ejaz* [1994] QB 496, it was held that;

Without having made any misrepresentation about her own identity the applicant in that case had successfully applied for a certificate of naturalisation. In her application, whether knowingly or otherwise, she had made a false representation, namely that her husband was a British citizen, which exposed her to the risk of being deprived of her citizenship. Until deprived of it, however, she was a British citizen because the certificate had been granted to her in the name of herself rather than in that of another. If, in the present case, the appellants had already obtained registration in their own names as British citizens or had already secured a grant of certificates of naturalisation in their own names as such citizens, even if only by virtue of their having falsely claimed that Mr Jabbar, their late husband and father, was a British citizen, they would have been British citizens albeit at risk of deprivation. But no such registration has been obtained; nor certificate of naturalisation granted. So the focus remains directly on the citizenship or otherwise of Mr Jabbar..... because he applied for registration in a false identity, there was never a grant to Mr Jabbar of U.K. (or thus, later, British) citizenship.

The respondent in this case adduced evidence proving only that she was born and ordinarily resident in Uganda. However, where citizenship is in issue, ordinary residence will mean “lawfully ordinarily resident” (see *R v. SSHD ex p. Margueritte* [1983] QB 180 and *In re Abdul Manan* [1971] 1 WLR 859). It was therefore incumbent upon the respondent in this case to adduce all such evidence, documentary or otherwise, concerning such facts as her place and date of birth, the village, sub-county, county and district of birth, the indigenous community to which she belongs, her father’s names and place of birth and clan, her mother’s names, place of birth and clan, names of two contemporary descendants, her inclusion in the immediately preceding electoral roll, etc.

According to Article 10 (a) of *The Constitution of the Republic of Uganda, 1995*. In order for one to acquire citizenship by birth, a person should have been “born in Uganda one of whose parents or grandparents is or was a member of any of the indigenous communities existing and residing within the borders of Uganda as at the first day of February, 1926, and set out in the Third Schedule to this Constitution.” Matters were not helped therefore when she stated that she is Bari, which is not one of the indigenous tribes of Uganda as enumerated in the Third Schedule of *The Constitution of the Republic of Uganda, 1995*. She did not adduce any direct evidence to prove that her late father, Adrahman Wani belonged to any of the indigenous tribes of Uganda as

enumerated in the Third Schedule of *The Constitution of the Republic of Uganda*, 1995 or any other information concerning the rest of the determinants save her assertion that she is Ugandan. She therefore failed to discharge the burden of proof and the trial court failed to direct itself properly when it overlooked this aspect of the pleadings and the evidence before it. Without such proof, her claim of being customary owner of the land in dispute became unsustainable.

Be that as it may, it is contended further by counsel for the appellants that the trial court failed to properly direct itself regarding the law of limitation applicable to the case. Limitation periods have a number of different policy justifications; public interest has always been concerned that litigation should be brought within a reasonable time. This enables cases to be dealt with properly and justly. Moreover the public interest requires the principle of legal certainty, defendants may have changed their position or conducted their businesses in the belief that a claim would not be made. Furthermore, evidence may largely depend on the recollection of witnesses, which deteriorates over time. It may depend on the preservation of written records which may be lost or destroyed. It is for these and other reasons that limitation statutes have been described as “acts of peace” or “statutes of repose”. People should be free to get on with their lives or businesses without the threat of stale claims being made. The Limitation Act also encourages claimants to bring their claims promptly and not, in the old phrase, “to sleep on their rights”.

With those policy considerations, section 5 of *The Limitation Act*, which provides for limitation of actions for the recovery of land, states as follows;

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.

This limitation is applicable to all suits for possession of land based on title or ownership i.e., proprietary title as distinct from possessory rights. Furthermore, Section 11 (1) of the same Act provides that;

No right of action to recover land shall be deemed to accrue unless the land is in the possession of some person in whose favour the period of limitation can run (hereafter in this section referred to as “adverse possession”), and where under sections 6 to 10, any such right of action is deemed to accrue on a certain date and no person is in

adverse possession on that date, the right of action shall not be deemed to accrue until adverse possession is taken of the land. (Emphasis added).

These provisions have been applied in cases such as *Semusambwa James v. Mulira Rebecca* [1992-93] HCB 177 and *Kintu Nambalu v. Efulaimu Kamira* [1975] HCB 222, where it was held that a suit for a claim of right to land cannot be instituted after the expiration of twelve years from the date the right of action accrued.

According to section 6 of the same Act, “the right of action shall be deemed to have accrued on the date of the dispossession.” A cause of action therefore accrues when the act of adverse possession occurs. In *F. X Miramago v. Attorney General* [1979] HCB 24, it was held that 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. Once a cause of action has accrued, for as long as there is capacity to sue, time begins to run as against the plaintiff. If by reason of disability, fraud or mistake the operative facts were not discovered immediately, then section 21 (1) (c) of *The Limitation Act* confers an extension of six years from the date the facts are discovered. An owner of land is deemed to be in possession of the land so long as there is no intrusion. Non-use of the land by the owner, even for a long time, will not affect his or her ownership. But the position will be altered when another person takes possession of the land and asserts rights over it and the original owner omits or neglects to take legal action against such person for years.

In the instant case, it was the testimony of the respondent at pages 31 -32 of the record of appeal, that of P.W.2 at page 36, and P.W.3 at page 39, that the respondent and her father were in Sudan between 1979 and 1986. They only learnt of the third appellant’s occupation of the land upon their return in 1986. Taking their evidence in the light most favourable to the respondent (that is assuming the land belonged to her father sometime before 1979), although land is not permanently deserted if the occupier is forced to vacate by outbreaks such as of war (see for example *Kintu Nambalu v. Efulaimu Kamira* [1975] HCB 222, where it was as a result of sleeping sickness and plague), the implication is that the adverse possession of the third appellant commenced sometime after 1979 but before 1986. Nevertheless, since she only became aware of the adverse possession in 1986, from that moment forward, the process of the third appellant’s acquisition of title by adverse possession sprung into action essentially by default or inaction of

the respondent. It is then that time began to run against her and by virtue of section 21 (1) (c) of *The Limitation Act* which confers an extension of six years from the date the facts are discovered, her time ran out in 1992.

Uninterrupted and uncontested possession of land for over twelve years, hostile to the rights and interests of the true owner, is considered to be one of the legally recognized modes of acquisition of ownership of land (see *Perry v. Clissold [1907] AC 73, at 79*). In respect of unregistered land, the adverse possessor acquires ownership when the right of action to terminate the adverse possession expires, under the concept of “extinctive prescription” reflected in sections 5 and 16 of *The Limitation Act*. In such cases, adverse possession has the effect of terminating the title of the original owner of the land (see for example *Rwajuma v. Jingo Mukasa, H.C. Civil Suit No. 508 of 2012*). As a rule, limitation not only cuts off the owner’s right to bring an action for the recovery of the suit land that has been in adverse possession for over twelve years, but also the adverse possessor is vested with title thereto.

It is clear from the testimony of the respondent at pages 31 -32 of the record of appeal, that of P.W.2 at page 36, and that of P.W.3 at page 39 of the record of appeal, that the respondent became aware of the third appellant’s adverse possession in 1986. There is nothing to suggest that from that year, the respondent had not been in open, continuous, uninterrupted and uncontested possession of the disputed land. By 2008 when the suit was filed, the third appellant had occupied the disputed land with the respondent’s knowledge, for twenty two years. Unless the respondent pleaded and proved disability for her failure to commence the action within the limitation period, she had by 2008 not only lost the right to bring an action for the recovery of the land, but also the third appellant was already by operation of the law, vested with title thereto.

Order 7 rule 6 of *The Civil Procedure Rules* requires that where a suit is instituted after the expiration of the period prescribed by the law of limitation, the plaintiff should show the grounds upon which the exemption from that law is claimed. This requirement was considered by the Court of Appeal in *Uganda Railways Corporation v. Ekwaru D.O and 5104 others, C.A. Civil Appeal No.185 of 2007 [2008] HCB 61*, where it was held that if a suit is brought after the

expiration of the period of limitation, and no grounds of exemption are shown in the plaint, the plaint must be rejected. None was pleaded or proved in the instant case. The only evidence adduced was of the attempt in 2007 by the respondent's relatives to negotiate with the refugees who were said to be on the land to leave and of facilitating the third appellant to vacate the land (a fact that the appellants refuted). The trial court ought to have rejected the plaint on that account.

Section 16 of *The Limitation Act* provides that at the expiration of the period prescribed by the Act for any person to bring an action to recover land, the title of that person to the land is extinguished. It lays down a rule of substantive law by declaring that after the lapse of the period, the title ceases to exist and not merely the remedy. This means that since the respondent, if she had any right to possession in the first place, by allowing her right to be extinguished by her inaction, she could not recover the land from the third appellant as a person in adverse possession and as a necessary corollary thereto, the other two appellants claiming under the third appellant were enabled to hold on to their possession as against the respondent then not in possession. When her title to the land was extinguished, if it existed at all in the first place, her ownership of the land passed on to the third appellant and his adverse possessory right got transformed into ownership by operation of the law. The attempts in 2007 by her relatives to negotiate with the refugees who were said to be on the land to leave and of facilitating the third appellant to vacate the land, if at all they took place, were therefore exercises in futility.

In the circumstances, I do not consider it necessary to address the rest of the grounds and arguments advanced by counsel for the appellants. I am satisfied that had the trial magistrate considered the above two aspects of this case in their proper perspective, he would have come to a different conclusion. In the final result, I find the appeal has merit it is accordingly allowed. The Judgment, the decree and all orders made by the trial court are hereby set aside. In their place is entered an order dismissing the suit. The costs of this appeal and those of the trial are awarded to the appellants.

Dated at Arua this 29<sup>th</sup> day of March 2017.

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Stephen Mubiru  
Judge  
29.03.2017