

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

**CIVIL SUIT NO. 524 OF 2015**

**JOANITA NYANZI (ADMNISTRATRIX OF  
THE ESTATE OF THE LATE SEMEI NYANZI ::::::::::: PLAINTIFF**

***VERSUS***

**1. THE ATTORNEY GENERAL OF UGANDA  
2. HON. SAM KAHAMBA KUTEESA ::::::::::: DEFENDANTS**

**BEFORE HON. JUSTICE NAMANYA BERNARD**

**RULING**

***Introduction:***

1. The plaintiff brought this suit against the defendants seeking *inter alia* recovery of land and/or compensation in respect of land comprised in Leasehold Register Volume 112, Folio 21, Plot 19, Akii-Bua Road, Kampala.
2. On the 21 March 2022 when the matter came up for scheduling, counsel for the plaintiff and the 1<sup>st</sup> defendant informed Court that they had preliminary objections to raise on points of law. Court directed both parties to file written submissions on their respective preliminary objections, which are on court record.

3. The plaintiff is represented by *M/s AF Mpanga Advocates*. The 1<sup>st</sup> defendant is represented by *Mr. George Kalemera, Commissioner, Attorney General's chambers*. The 2<sup>nd</sup> defendant is represented by *M/s Baluti & Co Advocates*.

***Late filing of the plaintiff's written submissions:***

4. The 1<sup>st</sup> defendant contends that the plaintiff's written submissions on the preliminary objections were filed late and did not comply with the timelines set by Court. I have reviewed a letter dated 27 April 2022 written by the plaintiff's counsel in which he gives detailed reasons for the non-compliance with the timelines for filing written submissions. I am satisfied with the explanation provided by counsel for the plaintiff on the late filing of the written submissions, and the said submissions have accordingly been considered by the Court.

***Preliminary objection on the late filing of the 1<sup>st</sup> defendant's Written Statement of Defence (WSD):***

5. The plaintiff's counsel raised a preliminary objection on a point of law on the late filing of the WSD. He argues that the WSD was filed out of time in contravention of **Rule 11 of The Government Proceedings (Civil Procedure) Rules (S.I 77-1)** which requires a WSD to be filed within 30 days after service of summons.

6. According to counsel for the plaintiff, the late filing of the WSD renders it incompetent and a nullity. He relied on the cases of ***Uganda Revenue Authority v. Uganda Consolidated Properties Ltd, Court of Appeal Civil Appeal No. 31 of 2000; Sengendo v. Attorney General [1972] EA 140; and Kulagira Geoffrey v. Links Mineral Resources Ltd, High Court Civil Suit No. 621 of 2014.***
7. Counsel for the 1<sup>st</sup> defendant concedes that the WSD was filed two days out of time but argues that the non-compliance can be cured by Court. He relied on the cases of ***Gold View Inn (U) Ltd v Barclays Bank (U) Ltd, H.C.C.S No. 358 of 2009; Kahwa James & Anor v Kabodi Daniel, H.C.M.A No. 101 of 2019; Dima Dominic Poro v Inyani Godfrey, Civil Appeal No. 17 of 2016; and Fred Kiithusi Kula & Anor v Housing Finance Company Ltd [2021] EKL.R.***
8. Counsel for the 1<sup>st</sup> defendant prays that Court should invoke its inherent powers under **Section 33** of the **Judicature Act (Cap 13)** and **Section 98** of the **Civil Procedure Act (Cap 71)** (“CPA”) to validate the WSD filed out of time.
9. I have considered the cases relied upon by the plaintiff’s counsel and I find that some of them are distinguishable from the facts of the instant case.

10. In the case of ***Uganda Revenue Authority*** (supra) the application was filed 20 days outside the time allowed by the law whereas in the instant case, the WSD was filed 2 days outside the time allowed by the law.
11. In the ***Kulagira case*** (supra), the defendant never filed a WSD at all, and never made attempts to participate in the Court proceedings while in the instant case, the 1<sup>st</sup> defendant has vigorously participated in Court proceedings despite the late filing of the WSD.
12. In the case of ***Sengendo*** (supra), the defendant did not file the WSD at all but wanted to participate in the Court proceedings whereas in the instant case, the 1<sup>st</sup> defendant actually filed the WSD though late.
13. This Court has power under the law to validate a WSD filed outside the time allowed by the law especially when the delay is by a few days (see the case of ***Rajesh Kumar v. Mahmood Somani, High Court (Commercial Division) Misc. Cause No. 62 of 2018***).
14. In order to promote the administration of justice, the Court should be slow to prevent a party from being heard. **Section 33** of the ***Judicature Act (Cap 13)*** provides that:  
*“The High Court shall, in the exercise of the jurisdiction vested in it by the Constitution, this Act or any written law, grant*

*absolutely or on such terms and conditions as it thinks just, all such remedies as any of the parties to a cause or matter is entitled to in respect of any legal or equitable claim properly brought before it, so that as far as possible all matters in controversy between the parties may be completely and finally determined and all multiplicities of legal proceedings concerning any of those matters avoided.”*

15. It is therefore, my finding, that although the 1<sup>st</sup> defendant filed the WSD two days outside the time allowed by the law, he has shown a keen interest in being heard by this Court, including executing a consent judgment with the plaintiff (although it was later set aside).
16. It is my finding that a litigant who has shown interest to be heard, such as the 1<sup>st</sup> defendant, should not be condemned unheard. The plaintiff has not shown that she will suffer any injustice or prejudice or that a miscarriage of justice will occur if the 1<sup>st</sup> defendant's WSD is admitted.
17. To avoid multiplicity of legal proceedings, and for the ends of justice to be met, I dismiss the preliminary objection on a point of law raised by the plaintiff on the late filing of the 1<sup>st</sup> defendant's WSD.
18. Pursuant to the discretionary power vested in this Court to enlarge time under the provisions of **Section 33** of the

**Judicature Act (Cap 13), Section 96** of the **CPA** and **Order 51 rule 6** of the **Civil Procedure Rules (S.I 71-1) (“CPR”)**, I order that the period within which the 1<sup>st</sup> defendant’s WSD was filed is deemed to have been extended, and I admit the WSD on the Court record.

19. Following the admission of the 1<sup>st</sup> defendant’s WSD, he has *locus standi* to be heard, and to participate in the proceedings of Civil Suit No. 524 of 2015, and to raise any preliminary objection.

***1<sup>st</sup> defendant’s preliminary objection that the suit is time barred:***

20. **Order 7 rule 11(a)** of the **CPR**, provides that:  
*“The plaint shall be rejected in the following cases—... (d) where the suit appears from the statement in the plaint to be barred by any law; [...]”*
21. **Section 3(1)(d)** of the **Limitation Act (Cap 80)** provides that:  
*“The following actions shall not be brought after the expiration of six years from the date on which the cause of action arose—  
...(d) actions to recover any sum recoverable by virtue of any enactment, ...”* (underlining is mine for emphasis).
22. **Section 5** of the **Limitation Act (Cap 80)** provides that:

*“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.”*  
(underlining is mine for emphasis)

23. The law on this matter is well settled. A claim that is barred by the Statute of limitation must be rejected irrespective of the merits of the case. In determining whether or not the suit is time barred, the Court must look only at the claim and its annexures (if any), and nowhere else. A defendant who has acquired the benefit of the Statute of limitation is entitled to strictly insist on his/her rights (***see the cases of Nyeko Smith & Others v. Attorney General, Supreme Court Civil Appeal No. 1 of 2016; and Bernard Tumuhimbise & 3 Others v. Attorney General & Anor, H.C.C.S No. 778 of 2013***).

24. It is necessary for me to set out the rationale for Statutes of limitation, and for this, I adopt the words of **Lord Edmund-Davies** in the case of ***Birkett v James [1977] 2 All ER 801*** (at pp 815-816):

*“Statutory provisions imposing periods of limitation within which actions must be instituted seek to serve several aims. In the first place, they protect defendants from being vexed by stale claims relating to long-past incidents about which their records may no longer be in existence and as to which their witnesses, even if they are still available, may well have no*

*accurate recollection. Secondly, the law of limitation is designed to encourage plaintiffs to institute proceedings as soon as it is reasonably possible for them to do so [...]. Thirdly, the law is intended to ensure that a person may with confidence feel that after a given time he may regard as finally closed an incident which might have led to a claim against him [...].*” (underlining is mine for emphasis).

25. In the case of **Nyeko Smith** (supra), the Supreme Court of Uganda held that a suit was time barred where the plaintiff sued, **20 years** after the cause of action arose.
26. According to the 1<sup>st</sup> defendant, this is a suit for compensation and/or recovery of land whose cause of action arose in the year 1984, and yet the suit was filed in the year 2015, **thirty-one (31) years** after the cause of action arose.
27. The 1<sup>st</sup> defendant argues that the time for filing the suit started running in the year 1984 when the Government issued a Statutory Instrument for the compulsory acquisition of the suit land, and that therefore, the suit is time barred.
28. **Paragraphs 6 (a), (b) & (c)** of the plaint, state that:  
*“(a) the land allegedly / purportedly became the subject of a forced / compulsory Government Acquisition in / or about or during the year 1984 during which time the Late Semei was living in exile in the United Kingdom where he died;*



*(b) according to the Uganda Gazette Notice of 11<sup>th</sup> July 1984 the Land was compulsorily acquired by the then Government of Uganda “for government use or state use.”*

*(c) the Uganda Gazette Notice herein abovementioned was issued under the hand and/or at the instance of (the Late) Hon Max Choudry, the then Minister of Lands, Minerals and Water Resources. A copy of the Uganda Gazette Notice is enclosed and marked **C**”.*

29. **Annexure “C”** to the plaint is **Statutory Instrument No. 22 of 1984** for the compulsory acquisition of the suit land by the Government and it provides that:

*“...The Land Acquisition (Plot No.19, Akii-Bua Road) Order, 1984*

*1. The area of land situated in the County of Kyadondo in Kampala District comprised in Plot No. 19, Akii-Bua Road, formerly known as Plot No. 19 Stanley Road, registered in Leasehold Register Volume 112, Folio 21, is hereby declared to be land required by the Government for a public purpose.”*

30. It is my finding that the plaintiff’s cause of action for either compensation and/or recovery of land arose in 1984 when the Government compulsorily acquired the suit land. The plaintiff brought H.C.C.S No. 524 on the 19 October 2015. The plaintiff waited for **31 years** to bring the instant suit, rendering the suit time barred under the **Limitation Act (Cap 80) (see Sections 3(1)(d) and 5)**.

31. Accordingly, the preliminary objection on a point of law raised by the 1<sup>st</sup> defendant that the suit is time barred succeeds.

***Conclusion:***

32. In the result, as the preliminary objection raised by the 1<sup>st</sup> defendant has succeeded, **I ORDER** as follows:

a) This suit is dismissed under Order 7 rule 11 of the CPR for being time barred.

b) Each party shall bear its own costs of the suit.

**I SO ORDER.**

***NAMANYA BERNARD***  
***Ag. JUDGE***  
***2<sup>nd</sup> September 2022***