

CIVIL SUIT NO. 292 OF 2018

VERSUS

2. LUBEGA MUWONGE DIPHATH :::::::::::::::::::: DEFENDANTS

JUDGMENT

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5. That a consensus was then reached whereby the 1st Defendant was to mutate off the 3 acres of land, process a special certificate of title to the land and thereafter hand over the remaining part of the land to the Plaintiff.
6. That on the 12th day of June, 2014, the Plaintiff discovered that the defendants had fraudulently transferred an extra 1 acre and 45 decimals i.e. 1.80 hectares as opposed to the 3 acres they were entitled to i.e. 1.21 hectares.
7. That the Defendants have since established a school on the suit land and made it hard for the Plaintiff who is the surviving Administrator to administer the part of the estate that was taken fraudulently by the defendants.
8. Wherefore, the plaintiff prayed for a declaration that the defendants entitlement was only for 1.21 hectares and not 1.80 hectares of the suit land that was obtained fraudulently by the Defendants, an order for vacant possession of the extra 1 acre and 45 decimals obtained fraudulently by the Defendants, permanent injunction against the defendants from continuing to illegally have possession of the 1 acre and 45 decimals, mesne profits, general damages, costs of the suit and any other relief that this Honourable Court deems fit.
9. The Defendants filed their written statement of Defence denying the allegations levelled against them by the Plaintiff.
10. The Defendants raised a preliminary point of law to the effect that the suit was time barred since the cause of action had arisen in 1997.
11. The Defendants further stated that it was indeed true that they desired to buy part of the estate of the Late Ephraim Ssambwa, which transaction was allowed by the administrator General and indeed they purchased 03 (three) acres at a cost of Ug Shs 1,000,000/= (Uganda Shillings one million only) per acre.
12. The Defendants contend that they were allowed to process a special certificate of title for the Plaintiff, who had lost their duplicate certificate of title so as to facilitate the transfer process.

13. The Defendants further contend that it was verbally agreed between the parties that the cost that would be incurred by the Defendants in processing the special certificate of title would be considered and an additional piece of land would be added to the Defendants for the same and it was agreed that the Defendants get an extra 1 acre and 45 Decimals as consideration for the costs incurred in processing the special certificate of title.
14. The Defendants further state that it was agreed between the parties that since the portion of land sold to the Defendants (3 acres) was at the time of sale occupied by 4 (four) bibanja holders, the defendants would compensate the squatters and an additional piece of land would be added to the Defendants.
15. That further, the Plaintiff consciously and knowingly signed the mutation forms specifying the land to be transferred to the Defendants as 1.80 hectares and even further instructed their surveyor to effect the process of mutation and transfer and that the Defendants only met the cost thereof.
16. The Defendants further aver that after the completion of the transfer of the said land into the names of the Defendants', the Plaintiffs personally delivered the Certificate of title to the Defendants home and therefore the Defendants did not obtain the said land fraudulently.
17. Whereof the Defendants prayed for the dismissal of the suit with costs.

Submissions

18. The Plaintiff filed a witness statement, which was admitted as her evidence in chief. Counsel for the Plaintiff also filed written submissions.
19. The Plaintiff framed two issues for determination in her submissions and these are; -
20. Whether the Defendants fraudulently transferred an extra 1(one) acre and 45(forty-five) decimals to themselves?
21. However, upon perusal of the court record it is important to first resolve the preliminary point of law as raised by the Defendants in their Written statement of Defence to the effect that the suit is time barred as the cause of action arose in 1997.

Consideration/ Decision of Court

Whether the suit is time barred?

22. Section 5 of the Limitation Act provides for limitation of actions to recover land and states 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”.**
23. Section 11(1) further 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”.**
24. In the case of **Ababiri Muhamood & Four Ors V Mukomba Anastansia & Another (Civil Suit No. 22 of 2015) [2019] UGHC 16 (15 May 2019)** court referred to the case of **Hajati Ziribagwa and Anor Vrs. Yakobo Ntate HCCS 102/09** where Justice Byamugisha (as she then was) held that *“...since this was an action for recovery of land, the cause of action must have arisen at the date the defendant acquired the land...”* By inference, a cause of action relating to land should accrue on the date that the plaintiff claims it was wrongly appropriated.
25. In the instant case, it is not in dispute that the said land was acquired by the Defendants in 1997. This is the evidence of the Plaintiff (PW1) in paragraph 4 and also according to the Memorandum of understanding which was admitted as PEx4.
26. The Defendant was then allowed to mutate off the agreed piece of land and return the residue certificate of title to the Plaintiff.

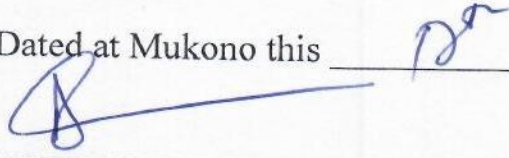
27. The Defendants were subsequently registered as Proprietors of the suit land in 2001 vide instrument number MK064472.
28. This is evidenced from the Search certificate which was tendered and admitted in this Honourable Court as PEx5.
29. However, the Plaintiff filed this suit in 2015, 19 (Nineteen) years after the Defendants had bought the land and 15 (Fifteen) years after the Defendants had been registered on the title as proprietors.
30. The Plaintiff stated at paragraph 9 of her evidence that she only discovered on the 12th day of June, 2014 that the Defendants had taken land over and above what they were entitled to.
31. This Court finds this to be untrue and an excuse for the Plaintiff to fit within the limitation period. In the alternative, the Plaintiff acted negligently and/ or sat on her rights if she did not bother to check the remaining parcel of the land on the residue certificate of title.
32. This is so because if she had bothered to know how much land the Defendant had subdivided off and what was left, the instant suit would have been brought in time.
33. Be that as it may, it should be noted that a litigant puts himself or herself within the limitation period by showing the grounds upon which he or she could claim exemption, failure of which the suit is time-barred.
34. The Court cannot grant the remedy or relief sought and must reject the claim. This disability must be pleaded as required by law, which was not done in the instant case.
35. It is trite law that a plaintiff that does not plead such disability where the cause of action is barred by limitation, is bad in law.
36. In the instant case therefore, the Defendants purchased the said land in 1997 and took possession thereof. They further got registered onto the certificate of title in 2001.
37. Therefore, this suit brought in 2015 by the Plaintiff is clearly time barred.

38. There is no necessity for me to consider the other issues as raised. Once court determines that a claim is time barred, the weight of evidence adduced by the parties or its evaluation would be of no consequence.

39. In the result this suit is dismissed, with no orders as to costs since the Defendants only filed a written statement of Defence and never appeared for the hearing.

I so order.

Dated at Mukono this 10th day of October, 2022.



David Matovu
Judge