

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF JINJA AT JINJA
CIVIL SUIT NO. 14 OF 2019

**AMINA ALIBHAI KARA (ADMINISTRATOR OF THE ESTATE OF
THE LATE ALIBHI KARA):.....PLAINTIFF**

VERSUS

KANABAR KUMAN VITHALDAS:..... DEFENDANT

BEFORE: HON. LADY JUSTICE FARIDAH SHAMILAH BUKIRWA

RULING

Background

This suit was brought by way of a specially endorsed Plaint under order 36 rules 2, 3, and 4 of Civil Procedure Rules for recovery of UGSHS. 85,000,000/= (Eight Five Million Shillings).

Brief facts.

The Plaintiff is the Administrator of the estate of the late Alibhai Kara. The late Alibhai Kara, Hasina Kara and Yasin Kara sold land to the Defendant in 2010 at a consideration of UGX 230,000,000/= (Two Hundred and Thirty Million Shillings). The said amount was paid in instalments to wit UGSHS 70,000,000/= (Seventy Million Shillings) that was paid on the 19/02/2010, UGX. 75,000,000/= (Seventy-Five Million Shillings) paid on the 10/03/2010. This made a total of UGX 145,000,000/= (One Hundred and Fourty-Five Million Shillings) leaving a balance of UGX 85,000,000/= (Eighty-Five Million Shillings). The said balance was to be paid upon the vendors surrendering vacant possession of the premises to the purchaser which under Clause 5 of the sale agreement was to be done within 1(one) month from the date of execution of the agreement. For the avoidance of doubt, the said agreement was signed on the 13th day of March 2010. Therefore, the balance of UGX 85,000,000 ought to have been paid on 13th April 2010.

Orders sought.

Recovery of UGX. 85,000,000/= (Eighty-Five Million Shillings), Interest and Costs.

Representation

Counsel Gabriel Acaye of M/S Ardent Advocates represented the Plaintiff and Counsel Byamukama Gregory of Okalang Law Chambers represented the Defendant.



In the Written Statement of Defence, the Defendant indicated that he would raise a preliminary point of law that the suit is time barred and when the matter came up for hearing on 25th October 2022, Counsel Byamukama Gregory for the Defendant raised the same. Both Counsel gave sketchy oral submissions whereafter Court gave Counsel schedules to file written submissions.

Submissions.

Counsel for the Defendant submitted that the Defendant purchased the suit land from Alibhai Kara who has since died and two others. A sale agreement was executed in which a balance of UGX 85,000,000/= was to be paid before transfer of the ownership to the Defendant. Counsel for the Defendant further contended that the Defendant paid the balance on 11/05/2010 and thereafter effected transfer into his names on the 21/7/2010. The alleged suit for the balance was brought on 4/3/2019 so it is time barred.

Counsel based his submission on Section 3 of the Limitation Act which provides that no action shall be brought after the expiration of six years from the date on which the cause of action arose if it is founded on contract. Counsel further submitted that the Plaintiff did not show grounds upon which the exemption from the limitation period would be claimed as required under Order 7 rule 6 of the Civil Procedure Rules.

In reply, Counsel for the Plaintiff submitted that the last instalment of UGX 85,000,000/= (Eighty-five million shillings) was never paid and the purported transfer which was effected on the 21/7/2010 as alleged by Counsel for the Defendant was a forgery. Counsel further submitted that the taking of vacant possession in 2014 before finishing the remaining balance amounted to a breach of contract and thus giving rise to our cause of action from which the time started to run. Counsel for the Plaintiff contended that the Plaintiff was never aware of the sale of the family home. Counsel further contended that the Plaintiff's Counsel made a mistake in not pleading exemption as required under the law but that such omission should not be visited on the Plaintiff.

In rejoinder Counsel for the Defendant submitted that Counsel for the Plaintiff conceded that the contract which is the subject of dispute happened in 2010. However, Counsel for the Plaintiff belatedly attacks the transfer of title into the Defendant's name yet it was never an issue in the Plaint. On mistake of counsel, counsel for the Defendant submitted that a client chooses his Advocate and is thus liable for the consequences and he can seek remedy against that Advocate in another for a for his negligence. He referred to the case of **Jesse Gulyetonda vs**

Issues

1. Whether the suit is time barred.

Decision

The Law.

Section 3(1) (a) of the Limitation Act Cap 18 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.

- (a) Actions founded on contract or on tort.

Order 7 rule 6 of the Civil Procedure Rules S. I 71-1 provides 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.**" (Emphasis is mine)

Order 7 rule 11(d) of the Civil Procedure Rules S.I 71-1 provides that, "The Plaintiff shall be rejected in the following cases;

- (d) where the suit appears from the statement in the Plaintiff to be barred by any law."

Decision.

Before I turn to the resolution of the issue, I have noted that counsel for the Plaintiff based his submissions mainly on forgeries by the Defendant which were not pleaded in the Plaintiff. The Plaintiff chose to institute this suit by way of a Specially Endorsed Plaintiff which by its nature cannot tackle such issues as it is only limited to liquidated demands. Basing on that Court will limit itself on the liquidated demand of the UGX. 85,000,000/=

Section 3 (1) (a) of the Limitation Act Cap 80 provides for actions based on contracts to be instituted within 6 years from the date the cause of action arose.

In **Madhvani International S. A Vs. Attorney General CACA No. 48 of 2004** and **Polyfibre (U) Ltd Vs. Matovu Paul & 3 Ors HCCS NO. 412** cited with approval in **Mukooli Vs Nabbale and 3 Ors HCCS No. 282 of 2013**, it was held that in considering whether a suit is barred by law Court looks at the pleadings only, and no evidence is required.



From the Complaint, the cause of action arose in 2010 when the Defendant had to pay the balance upon the vendor handing over vacant possession which had to be done within one month from the date of execution of the agreement. Since the agreement was executed on the 13th day of March 2010, the cause of action arose on 13th April 2010 hence the suit having been filed in 2019, is undoubtedly time barred.

On the failure of Counsel for the Plaintiff to plead the exemption/disability, Order 7 rule 6 of the Civil Procedure Rules is clear in as far as it makes it mandatory to show in the Complaint the grounds upon which exemption from the law is claimed. Order 7 Rule 6 provides that;

“Where the suit is instituted after the expiration of the period prescribed by the law of limitation, the Complaint shall show the grounds upon which exemption from that law is claimed.”

In **Sebowa Jolly Joe Vs Equity Bank Uganda Limited HCCS No. 18 of 2016**, **Justice B. Kainamura** stated that, “In my view an attempt to explain the disability at the point of trial as the Plaintiff attempted to and his Counsel’s submission to that effect is not legally tenable and accordingly shelter in Section 21 of the Limitation Act is not available to the Plaintiff.

From the facts, the exemptions/ disability were explained in the Plaintiff’s submissions as opposed to the Complaint and in the circumstances, I find that they are not tenable.

Before I take leave of this matter, Counsel for the Plaintiff submitted that he took on instructions in 2021 and so the mistake of previous Counsel who filed the matter should not be visited on the client. It is quite mind boggling why the current Counsel for the Plaintiff who took on the matter in 2021 failed to correct his predecessor’s mistake and only blames the predecessor after a preliminary point of law is raised. Counsel had ample time to correct this mistake between 2021 when he took on instructions to handle the matter and 25th October 2022 when the matter came up for hearing.

I am also alive to the principle that a client is bound by the actions of his Counsel. Negligently drafting the complaint or incompetence in doing the same on the part of Counsel is not an excuse for a client to escape being bound by his Counsel’s action. See **Mohammad B. Kasasa Vs Jasphar Buyonga Sirasi Bwogi CACA No. 42 of 2008**, **Capt. Philip Ongom Vs Catherine Nyero SCCA NO. 14 of 2001**, **Handon Daniel Vs Yolamu Egondi CACA NO. 67 OF 2003**.

I am therefore not persuaded by the Plaintiff's Counsel's submission in this regard.

The Complaint filed in Civil Suit No. 014 of 2019 is hereby rejected under Order 7 rule 11 (d) of the Civil Procedure Rules and therefore Civil Suit No.014 is dismissed accordingly.

Each party to bear its own costs.

I so order.



Hon. Lady Justice Faridah Shamilah Bukirwa

JUDGE

4th November 2022