

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT MPIGI  
CIVIL SUIT NO. 92 OF 2016**

**SSERUNKUMA JOSEPH..... PLAINTIFF**

**VERSUS**

**1. LUTAAYA JAMES**

**2. COMMISSIONER LAND REGISTRATION } .....DEFENDANTS**

**3. ATTORNEY GENERAL**

**BEFORE: HIS LORDSHIP HON. JUSTICE OYUKO ANTHONY OJOK, JUDGE**

**Ruling**

At the commencement of the hearing, counsel for the 1<sup>st</sup> Defendant raised two preliminary objections to the effect that;

1. The plaintiff's suit was barred by the law of limitation.
2. The plaint did not disclose a cause of action.

**Background:**

The Plaintiff's case was that he obtained Letters of Administration to the estate of the late Alikadi Nsambu who owned the suit land comprised in Mawokota Block 149 Plot 83 land at Kweba and that before the late Alikadi Nsambu died, he was embroiled in a land conflict with the late Kerescentio Sirivawano Kivumbi.

That the late Kerescentio Sirivawano Kivumbi fraudulently transferred the suit land during his lifetime into his name and took possession of the same amidst protest from the family members of the late Alikadi Nsambu.

The Plaintiff filed this suit claiming interest in the suit land as the administrator of the estate of the late Alikadi Nsambu against the 1<sup>st</sup> Defendant for fraudulent transfer by Kerescentio Sirivawano Kivumbi from whom he derives his title. That the Plaintiff discovered this fraud in 2016.

**Representation:**

The Plaintiff was represented by M/s Lugolobi Associated Advocates while the 1<sup>st</sup> Defendant was represented by M/s Byamugisha, Lubega, Ochieng & Co.

Advocates. The 2<sup>nd</sup> and 3<sup>rd</sup> Defendants made no appearance/representation. Both counsel made written submissions.

**Submissions:**

**The plaintiff's suit being barred by the law of limitation:**

- 5 In this regard Counsel for the 1<sup>st</sup> defendant cited **Section 5** of the Limitation Act, which provides for Limitation of actions for the recovery of land and cited the case of **Sebowa Jolly Joe v. Equity Bank Uganda Limited, Civil Suit No. 18 of 2016** which cited the case of **Makula International Ltd v. His Eminence Cardinal Nsubuga, SCCA No. 4 of 1981**, where it was held that;

10 *"Once statute barred always statute barred, and once an action is barred by the law, court has no residential and inherent jurisdiction to entertain such a matter. Court went on to hold that a court of law cannot sanction what is illegal and illegality once brought to the attention of court overrides all question of pleadings, including any admissions made thereon."*

15 Counsel for the 1<sup>st</sup> Defendant went on to submit that in 2016 when the Plaintiff instituted this suit, the period of limitation under **Section 15** of the Limitation Act had since lapsed and that the same cause of action accrued to the late Alikadi Nsambu through whom the plaintiff claims interest as an administrator of the estate.

20 Counsel further submitted that the Plaintiff was clear that the late Alikadi Nsambu through whom he claims interest was aware of the alleged fraudulent transfer to Krescentio Sirivawano Kivumbi way before his demise in 1989 and as such **section 25** of the limitation act does not apply in the circumstance. In support of his submission counsel cited the case of **Nabisere Geradine Mirundi v. Harry Fred Mutebi Sserugga & Another HCCS No. 565 of 2012**.

25 Counsel further submitted that even where the Plaintiff does not claim an interest in the suit land as a beneficiary or administrator, he ought to invoke the provisions of **Order 7 rule 6** of the Civil Procedure Rules in order for this court to grant an exemption from limitation and that where no such grounds of exemption are pleaded they cannot be relied on in the case as they suffice as disability. That the amended plaint under paragraph 6 (x) (ii) (iii) claimed exemption from limitation on the ground that, he discovered the alleged fraudulent transfer and occupation when he made the search and also that the will was misplaced and could not be executed. That the only disabilities  
30 recognized by law under **Section 187 (1)** of the Registration of Titles Act are  
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*[Signature]*

covertures, infancy, lunacy and unsound mind. Counsel also submitted that the Plaintiff does not state when the Plaintiff discovered the alleged fraud.

5 It was argued for the 1<sup>st</sup> defendant that the alleged fraudulent acts arose before 1989 and the current suit was filed in 2016. That the plaintiff however, stated that before the late Alikadi Nsambu died in 1989 he had been embroiled in a land conflict with the late Kerescentio Kivumbi accusing him of fraudulently transferring and registering the suit land without his consent. Thus the cause of action arose in 1989 and the suit was brought in 2016 making it barred by the law of limitation.

10 Counsel added that the period between 1988 when the cause of action arose and 2016 when the suit was filed is more than 12 years within which one can bring a suit for recovery of land. Hence the suit should be dismissed with costs since the cause of action arose at the time of the death of the deceased. (See: **Section 6(2) of the Limitation Act and the case of Fred Mutebi Sserugga & Another, Civil Suit No. 565 of 2012**).

15 Counsel for the plaintiff in reply submitted that the plaintiff's suit is premised on fraud among others which was discovered in 2016 as he made a search in an attempt to open the boundaries of the suit land. Counsel added that the Will of the late Nsambu Alikadi by virtue of which he derives his entitlement, had gone missing and therefore its contents could not be implemented. That in the said will, the plaintiff was bequeathed the suit land meaning that the same was never sold or transferred to Kerescentio Sirivawano Kivumbi.

20 In regard to the fraudulent acts it was submitted by the plaintiff that the registration of Kerescentio Sirivawano Kivumbi as a registered proprietor of the suit land was procured without a transfer instrument and this was corroborated by the absence of the transfer form and the memorial in the registry records which confirmed the plaintiff's argument of concealment of fraud and which can only be achieved through collusion and connivance with the land registration officials.

25 The plaintiff also submitted that exemptions were pleaded under paragraph 6(ii) and (iii) of the plaint and as such **Order 7 Rule 6** of the Civil Procedure Rules was quoted out of context.

30 Counsel for the 1<sup>st</sup> defendant in rejoinder reiterated that the plaintiff's claim of exemption from limitation under **Section 25 (i)** of the Limitation Act, ought to have shown that there was concealment of fraud. (See: **Stanbic Bank Uganda v. Uganda Cross Limited, SCCA No. 4 of 2004**). That in the instant case the fraud was discovered before 1984 therefore **Section 25** cannot come to the plaintiff's



aid. (See: **Nabisere Geraldine Mirundi v. Harry Fred Mutebi Sseruga & Another, Civil Suit No. 565 of 2012**). That no concealment of fraud by the defendant is shown by the plaintiff in the present case.

**Non-disclosure of the cause of action:**

- 5 As regards non-disclosure of a cause of action, counsel for the 1<sup>st</sup> defendant contended that **Order 7 Rule 1 (e)** of the Civil Procedure Rules provides in mandatory terms that a plaint should contain particulars constituting a cause of action and when it arose. That in the instant case the plaint does not disclose how the 1<sup>st</sup> defendant's father the late Kerescentio Sirivawano Kivumbi procured the Certificate of Title of the suit land through fraud and how the same is attributed to him or how he participated in the alleged fraud. Therefore, there is no cause of action against the defendants. (See: **Kampala Bottlers Ltd v. Damanica (U) Ltd, SSCA No. 22/1992**).

- 15 Further, that nowhere in the pleadings does the plaintiff particularize fraud to show how and when the late Kerescentio Sirivawano Kivumbi committed the fraud as provided in **Order 6 Rule 3** and **Order 7 Rule 1 (e)** of the Civil Procedure Rules.

- 20 Counsel concluded that the plaint should be rejected under **Order 7 Rule 11** of the Civil Procedure Rules since it offends **Order 6 Rule 3** and **Order 7 Rule 1 (e)** of the Civil Procedure Rules for failure to disclose a cause of action and the same be struck off with costs.

Counsel for the plaintiff on the other hand submitted that the plaint discloses a cause of action to wit; fraud and illegal occupation of the suit land by the 1<sup>st</sup> defendant.

- 25 The plaintiff averred that the suit land was bequeathed to him by the late Alikadi Nsambu who previously owned the same. That the plaintiff has never been able to enjoy his entitlement due to the fraudulent acts of the defendants. Thus, the plaint when read as a whole shows that there is a cause of action and the particulars of fraud are pleaded.

- 30 **Analysis of court:**

The 1<sup>st</sup> defendant raised two preliminary objections to the effect that the suit was barred by limitation and that the plaint did not disclose a cause of action, which I will resolve concurrently.

- 35 The plaintiff in the instant case averred that he discovered the fraud in 2016 when he ensued a search in the Lands registry whereof he lodged a caveat on the Certificate of title. The search was made when the plaintiff was attempting to

open the boundaries of the suit property to implement the contents of the will of Alikadi Nsambu. The plaintiff emphasized that he had been unable to enforce the contents of the late Alikadi Nsambu's will since it got misplaced. That upon it being found he embarked on getting what was rightfully his only to find that the  
5 suit land was registered in the name of Kerescentio Sirivawano Kivumbi. The plaintiff contented that the late Kerescentio Sirivawano Kivumbi was fraudulently registered on the Certificate of title from whom the 1<sup>st</sup> defendant derives his interest. The plaintiff did lay out the particulars of fraud in the plaint which I will not reproduce.

10 It was argued by the 1<sup>st</sup> defendant that the time of limitation started running when the cause of action arose before 1989 since the family of the late Alikadi Nsambu was aware of the fraud and had even protested the occupation of the suit land by Kerescentio Sirivawano Kivumbi. Hence this suit being time barred.

**Section 25 (a)** of the Limitation Act provides as follows;

15 *"Where, in the cause of any action for which a period of limitation is prescribed by this Act, either; the action is based upon the fraud of the defendant or his or her agent or of any person through whom he/she claims his/her agent; the period of limitation shall not begin to run until the plaintiff has discovered the fraud or the mistake..."*

20 It is my considered view that much as the plaintiff raises some exemptions under which limitation is excluded, the law is not that open to cover every "disability". Be that as it may, in the instant suit time started to run after the fraud was discovered therefore, it is not barred by the law on limitation since it is based on fraud allegations.

25 In the case of **Patrick Lyamulemye v. Stephen Kwiringira & 3 Others, Civil Suit No. 0118 of 2019**, the plaintiff insisted that he had discovered the fraud in 2015 while mounting a search and found that his legal interest was being fraudulently violated by the collusion of all the defendants. Court held in this case that;

30 *"The law on limitation for cases based on fraud is that time beings to run from the moment the fraud is discovered."*

I have also carefully read the plaint and its attachments and I find that the plaintiff got to know about the fraud in 2016 when he mounted a search at the Ministry of Lands. The cause of action therefore arose in 2016 when the fraud was discovered by the plaintiff and that is when the time began to run according  
35 to the provisions of **Section 25** of the Limitation Act.

*[Signature]*

I therefore find and hold that the suit is not time barred, this preliminary object is here by overruled.

5 In regard to the plaint not disclosing a cause of action, it is my considered view that the plaintiff under Paragraph 6 which is very detailed for that matter, shows that the plaintiff enjoyed a right of ownership of the suit land, which right was being violated by the 1<sup>st</sup> defendant. The plaintiff has been denied occupation of the suit land. The plaintiff clearly indicated his cause of action in an action for fraud, collusion, an illegality against the defendants.

I therefore find and hold that the plaint does disclose a cause of action. This preliminary objection is also overruled.

All the preliminary objections have been overruled, let the suit be heard on its merits. Costs in the cause. I so order.

Right of appeal explained.

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**OYUKO ANTHONY OJOK**

**JUDGE**

**25/02/2022**