

THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT MPIGI  
MISCELLANEOUS APPLICATION NO. 14 OF 2020  
(Arising from Civil Suit No. 16 of 2019)

5    1. GEORGE WILLIAM MUSUBULA }.....APPLICANTS  
     2. ADMINISTRATOR GENERAL    }

VERSUS

     1. MUWONGE PATRICK }.....RESPONDENTS  
     2. LUBEGA ZAKAYO    }

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

Ruling

15    The applicant brought the instant application by way of Notice of Motion under  
     Section 98 of the Civil Procedure Act, Order 6 Rules 28, 29 and 30 of the Civil  
     Procedure Rules, Order 7 Rule 11 (a), (d) and (e) of the Civil Procedure Rules,  
     Order 52 Rules 1, 2 and 3 of the Civil Procedure Rules and Order 44 Rules 2, 3  
     and 4 of the Civil Procedure Rules against the respondents seeking the following  
     orders;

- 20    a. That Civil Suit No. 16 of 2019 does not disclose a cause of action against  
     the 1<sup>st</sup> applicant.  
     b. That Civil Suit No. 16 of 2019 is barred by limitation of time.  
     c. That Civil Suit No. 16 of 2019 is frivolous and vexatious and an abuse of  
     court process.  
     d. That the caveat lodged by the respondents on the land comprised in Block  
25    205 Plot 5 measuring 33.2 acres under instrument No.KLA 110940 be  
     vacated.  
     e. Costs of this application be in the cause.

The application was supported by an affidavit sworn by the applicant and the  
grounds briefly are as follows;

1. That on the 3<sup>rd</sup> day of December 2019, the Respondents filed Civil Suit No. 16 of 2019 against the applicants in this Honourable Court.
2. That the above Civil Suit No. 16 of 2019 does not disclose a cause of action and is also time barred.
- 5 3. That the above suit is frivolous and vexatious which is an abuse of court process and should be struck off the record.
4. That it is in the interest of justice that this application is allowed.

The application was opposed by an affidavit in reply sworn by the 1<sup>st</sup> respondent and the pertinent paragraphs are 9, 10, 11, 12, 14, 15, and 16, which are as follows;  
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9. That on 17<sup>th</sup> October 1978 following the death of the late Yokana Wamala, the 1<sup>st</sup> applicant without the knowledge, consent or consultation of the respondents and other family members secretly applied for and was granted a certificate of succession vide Ref. No. 11726 by the 2<sup>nd</sup> applicant.
- 15 10. That 1 and the 2<sup>nd</sup> respondent were still minors at the time the 1<sup>st</sup> applicant obtained the Certificate of Succession from the 2<sup>nd</sup> Applicant.
11. That as we grew of age, upon not receiving our share from the estate of the late Yokana Wamala, in 2016 we reported to the 2<sup>nd</sup> applicant about the death of the late Wamala who passed on in 1978.
- 20 12. That upon receipt of the report, the 2<sup>nd</sup> applicant advised us and our siblings to open a file and hold family meetings in order to obtain a Certificate of no objection.
14. That we only got to know of the dealings on the estate in September 2017 that the 1<sup>st</sup> respondent had transferred part of the estate land comprised and  
25 located in Gomba Block 205 Plot 5 to himself while basing on the succession certificate issued by the 2<sup>nd</sup> applicant.
15. That I have been advised by my lawyers M/s Sekabanja & Co. Advocates that the suit is not time barred as the discovery of the dealings on the estate was in 2017 as stated in the reply to the Defendants Written Statement of Defence.
- 30 16. That it is just and equitable that this application is dismissed with costs for lack of merit.

The 1<sup>st</sup> applicant filed an affidavit in rejoinder and the pertinent paragraphs are; 4, 5, 6 which are as follows;

4. That in specific response to the contents of paragraph 3 of the affidavit in reply, I state that the 1<sup>st</sup> respondent is not a biological son to the late Yokana Wamala and therefore cannot be a beneficiary to his estate and it is the reason as to why his name was not mentioned among the children of the late Yokana Wamala in a family meeting held on the 15<sup>th</sup> May 1978.

5. That in further response to the contents of paragraph 3 of the affidavit in reply, I state that in the notification of the last funeral rites dated the 15<sup>th</sup> May 1978, the 1<sup>st</sup> respondent was not given any property because he is not a biological child of the late Yokana Wamala but the 2<sup>nd</sup> respondent was given a plot of land, a bicycle and a cow as his share and he was also present in the meeting since he was recognized as a child of the deceased but the 1<sup>st</sup> respondent was not allowed to attend the said family meeting and neither was he given a share in the estate of my father because he was not a beneficiary.

6. That in further response to the contents of paragraph 3 of the affidavit in reply, I state that when the 1<sup>st</sup> respondent lodged an application for a certificate of no objection at the Administrator General's office, the alleged beneficiaries were subjected to DNA testing as the shortest way to resolve the dispute of paternity and a letter addressed to the Director Government Analytical Laboratories Wandegaya was issued on the 15<sup>th</sup> July 2019 and this information is also supported by paragraph 6 of the 2<sup>nd</sup> defendant's written statement of defence which is on court file but the 1<sup>st</sup> respondent declined to go for DNA.

#### **Representation:**

Mr. Sebowa Solomon appeared for the applicant while Mr. Jesse Kilende appeared for the respondent. Both parties made oral submissions.

#### **Submissions:**

It was submitted for the applicant that he was appointed as the heir of his late father Yokana on 15<sup>th</sup> May 1979 by the clan and family members. The properties of the deceased as distributed were 32.2 acres of land at Kiryabiroka given to the applicant who has lived on the same for over 40 years unchallenged until recently. That the issue of paternity tests was never concluded as some of the children refused to cooperate. That the 1<sup>st</sup> respondent was never given any share and his name did not appear among the children of the late. That on the 3<sup>rd</sup>

December 2019, the respondents filed a suit before paternity could be determined and the plaint did not disclose when the fraud was discovered therefore, they cannot benefit from the exceptions of the law on limitation. Thus, the filing of the suit was an abuse of process since the suit is intended to determine matters of beneficiaries. Thus, it was brought prematurely since when the matter was before Attorney General the alleged beneficiaries were told to undergo DNA tests because some of them were being said not to be children of the late Yokana. That the plaintiffs claim not to have had funds to undergo DNA testing yet they hired a lawyer.

Counsel added that the respondents do not have a cause of action against the applicants and the 2<sup>nd</sup> respondent was given his share and the suit should be rejected under **Order 7 Rule 11 (a)** of the Civil Procedure Rules.

In regard to limitation counsel for the 1<sup>st</sup> applicant submitted that the late Yokana Wamala passed on on the 21<sup>st</sup> day of April 1978. That the 1<sup>st</sup> applicant has been in possession of the same property for a period of over 40 years uncontested. That the issue of claiming interest came in 2017 before the Administrator General, however, the plaint does not disclose when the alleged fraud was discovered.

Counsel concluded that this court should remove the caveat lodged by the respondents under **Section 139** of the Registration of Titles Act as they do not have a caveatable interest.

In reply counsel for the respondent submitted that the plaint discloses a cause of action under paragraph 4 of the plaint. That the respondents as beneficiaries claim that there was mismanagement of the estate of the deceased as the 1<sup>st</sup> respondent did not get a share. That in regard to the DNA tests the 1<sup>st</sup> respondent had no idea besides he had no funds.

Counsel noted that the fraud was discovered in 2017 and the suit was filed in 2019. That the respondents have caveatable interests and the suit is not frivolous and vexatious. This application should therefore, be dismissed with costs.

In rejoinder counsel for the 1<sup>st</sup> applicant submitted that the estate of the deceased was not mismanaged and reiterated his earlier submissions.

### Analysis of court:

I have carefully perused the pleadings, affidavits for and against this application and the oral submissions of both parties which I have considered when resolving this application.

- 5 The 1<sup>st</sup> applicant contended that the suit filed by the respondents is barred by limitation, does not disclose a cause of action, is frivolous, vexatious and an abuse of process and the caveat lodged by the respondents should therefore, be removed as they have no caveatable interest.

### Cause of action:

- 10 A cause of action has been defined as every fact which is material to be proved to enable the plaintiff succeed or every fact which if denied, the plaintiff must prove in order to obtain a judgment. (**Cooke v. Gull LR 8E.P 116, Read v Brown 22 QBD P.31**).

- 15 A cause of action is said to be disclosed when it is shown that the plaintiff had a right, and that right was violated, resulting in damage and the defendant is liable. If the three elements are present, a cause of action is disclosed and any defect or omission can be put right by amendment. (**See Tororo Cement Co Ltd V Frokina International Ltd SCCA No. 2/2001**).

- 20 Under **Order 7 Rule 11(a)** of the Civil Procedure Rules provides that; a plaint may be rejected by the court if it does not disclose a cause of action. The Court of Appeal in the case of **Kapeka Coffee Works Ltd v. NPART CACA No.3/ 2000** held that in determining whether a plaint discloses a cause of action, the court must look only at the plaint and its annexures if any and nowhere else.

- 25 I have carefully gone through the plaint as filed by the respondents; their cause of action is covered under paragraph 4 of the plaint which I quote;

- 30 *“The Plaintiffs’ claims against the defendants is for orders for revocation of the Certificate of Successions granted to the Defendant in respect of the Estate of the late Yokana Wamala Ref 11726, declaration that the Plaintiffs’ are entitled to the estate of the late Yokana Wamala, the Plaintiffs be granted Letters of Administration, a permanent injunction stopping the defendant from disposing of the distributing the property of the estate, general damages and costs of the suit.”*

The cause of action as quoted above indeed shows that the respondents have a right, which right was violated and the applicants are liable. The respondents claim to have interest in the estate of the deceased, alleging that their shares were never allocated to them when the estate was distributed amongst the beneficiaries.

**Limitation:**

**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 12 years from the date on which the right of action accrued to him or her...”*

**Section 20** of the same Act provides that;

*“Subject to **Section 19(1)** (on trusts), no action in respect of any claim to the personal estate of a deceased person or to any share or interest in such estate, whether under a will or on intestacy, shall be brought after the expiration of twelve years from the date when the right to receive the share or interest accrued ... “*

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 against the plaintiff. One of the important principles of the law of limitation is that once time has begun to run, no subsequent disability or inability to sue stops it. I would emphasize that the claimant may only obtain protection, if they specifically plead disability.

Having found that indeed there was a cause of action disclosed in the plaint, what is to be determined is whether this cause of action can stand since the 1<sup>st</sup> applicant claims that the suit is barred by limitation. The law as quoted above is clear that an action for recovery of land should be brought within twelve years from the time the interest accrued. In this case the respondents do not disclose when their cause of action arose. The facts of the case are silent. The respondents only brought out the fact that the cause of action arose in 2017 in their reply to the Written Statements of Defence of the Applicants which is not correct, these facts are supposed to be captured in the plaint as provided under **Order 7 Rule 1** of the Civil Procedure Rules.

The respondents in their plaint do not disclose when the alleged fraud was discovered even though the fraud is particularized; it was never pleaded as an exception to the law of limitation nor did they plead any inability.

I accordingly find that the suit though disclosing a cause of action does not disclose when the alleged fraud was discovered and this means that going by the pleadings the suit is barred by limitation and the same is hereby dismissed.

**Frivolous and vexatious; an abuse of court process:**

The 1<sup>st</sup> applicant argued that the suit was filed prematurely as the matter was still being handled by the office of the Administrator General and the only reason it was not yet concluded was because some of the alleged beneficiaries have not cooperated to conduct a DNA. Thus, the suit was an abuse of court process.

It is my considered view that once the office of the Administrator General has already dealt with an estate of the deceased as is in this case a certificate of Succession was issued; another Certificate of Objection cannot be issued by the same office. The 2<sup>nd</sup> applicant therefore already discharged their duty in this case as far as granting a certificate of objection is concerned. The correct procedure upon dissatisfaction by the respondents was to file a suit in court and challenge the Certificate of Succession and not report to the 2<sup>nd</sup> applicant. The respondents did eventually file a suit in this court which was the correct way to go about their claims and I therefore, do not find that it was brought as an abuse of court or frivolous and vexatious in any way.

**Caveat:**

Section 139 of the Registration of Titles Act provides that;

*“Any beneficiary or other person claiming any estate or interest in land under the operation of this Act or in any lease or mortgage under any unregistered instrument or by devolution in law or otherwise may lodge a caveat with the registrar in the form in the Fifteenth Schedule to this Act or as near to that as circumstances permit, forbidding the registration of any person as transferee or proprietor of and of any instrument affecting that estate or interest until after notice of the intended registration or dealing is given to the caveator, or unless the instrument is expressed to be subject to the claim of the caveator as is required in the caveat, or unless the caveator consents in writing to the registration.”*

In the instant case the respondents lodged a caveat to protect their interests claiming to be beneficiaries of the estate of the deceased. Since, there is a dispute at hand; I find no justification to remove the caveat.

The caveat remains in place but for only a period four months from today.

- 5    **Order 44 Rules 2, 3 and 4** of the Civil Procedure Rules as one of the laws under which the applicant brought this applicable is in applicable in this case and the said law is accordingly disregarded.

- 10   However, if the respondents have a genuine claim in regard to their interests in the estate of the deceased, let them cooperate with the other beneficiaries and undertake the DNA tests depending on the outcome, they may go ahead and file a proper plaint if they so wish.

I accordingly, allow this application in part. Each party bears its own costs.

Right of appeal explained.

- 15   .....

**OYUKO ANTHONY OJOK**

**JUDGE**

**22/08/2022**

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