THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT MPIGI

LAND CIVIL SUIT NO.31 OF 2020

1. **MUNYAGA DEOGRACIOUS**
2. **BAKKABULINDI JOHN**
3. **MUKALULA JAMES**

(*Administrators of the Estate Of The Late Sserwambala Eneliko*) :: **PLAINTIFFS**

VERSUS

1. **NAJJEMBA EVA**
2. **SINABULYA VALERIAN** :: **DEFENDANTS**

BEFORE: HIS LORDSHIP HONOURABLE JUSTICE OYUKO ANTHONY OJOK.

RULING ON PRELIMINARY OBJECTION

The Plaintiffs brought this suit against the defendants for fraud and trespass in Bulunda Buwama, Mawokota. The defendants denied being trespassers but rather lawful occupants on the above suit land.

BRIEF FACTS:

The facts constituting the cause of action as discovered from the pleadings of the plaintiff briefly are that the plaintiffs are administrators of the Estate of the Late Sserwambala Eneliko who owned the kibanja situated at Bulunda Buwama, Mpigi District measuring approximately 13 acres that he bought from the late Benedictor Kirunda. The late Sserwambala Eneliko died without transferring the said kibanja into his names despite getting signed transfer forms from Erimizidadi Kagombe, the heir to the Late Benedictor Kirunda. The 2nd defendant in 2010 without any claim of right trespassed onto the suit land by cutting down trees and cultivating on approximately 2 acres of the suit land.

The defendants denied the claims. The 1st defendant claimed that her late Mother Manjeri purchased a kibanja of 3 acres in the 1950's from the late Benedictor Kirunda and that her mother lived with her children on the said kibanja till the late 1970's when she fell sick and by gift intervivos gave the kibanja to the 1st defendant who enjoyed quiet possession even after her mother's death. The 1st defendant always licensed her suit land to people on the village including a one Tebyasa Joseph. Upon Tebyasa utilizing the kibanja for growing tomatoes, the 1st Plaintiff sued him but lost after the LC1 Courts established that the right owner was Najjemba, the 1st defendant. The 2nd Defendant bought the suit land from the 1st defendant on 20th June 2008 which was witnessed by the area local leaders and neighbors. The 2nd defendant occupied and utilized the kibanja until 2011 when the 1st Plaintiff brought a suit against him challenging his possession in the Chief Magistrates Court of Mpigi and judgment in the same matter was given against the 1st plaintiff in favor of the 2nd Defendant. The 1st plaintiff has neither appealed the said judgment nor challenged the 2nd defendant's possession successfully for 12 years.

REPRESENTATION;

The plaintiffs were represented by **M/s Kibirige & Kibirige Advocates** and the Defendants were represented by **M/S Kabuusu, Muhumuza & Co. Advocates.**

SUBMISSIONS:

Both parties filed written submissions in regard to the preliminary objections.

The defendants raised two preliminary objections, to the effect that the suit was barred by limitation and it was *Res Judicata.*

On the 1st preliminary objection that the suit was barred by limitation, the defendants counsel submitted that the plaintiffs brought this suit in their capacity as Administrators of the estate of the Late Sserwambala Eneliko who died in 2000 and was the registered proprietor of land comprised in Block 320,

plot 10. That the late Manjeri, the mother to the 1st defendant purchased a kibanja comprised in plot 33 from the late Benedicto Kilwana, which plot is adjacent to plot 10 sharing a common boundary. The late Manjeri whose possession was never challenged by the late Sserwambala Eneliko gave the kibanja as a gift intervivos to her daughter who is the 1st defendant and the same possession went unchallenged for over 51 years. That if the late Sserwambala intended to challenge their possession, he would have done so during his lifetime within the first 12 years but he never did so and the administrators of his estate are also barred by limitation and cannot challenge the defendants' possession. That the plaintiffs didn't even plead any exceptions under section 25 of the Limitation Act that they can rely on to bring this case.

Counsel for the defendants also submitted that the plaintiffs got letters of administration in 2018 which formed the basis of which this suit was filed, however acquiring letters of administration doesn't extend the limitation period hence the suit is barred by limitation. The mere fact that the plaintiffs are just administrators, they are estopped from finding a new cause of action which never arose during the lifetime of the owner of the estate. The plaintiffs upon the death of the late Sserwambala would have challenged the possession of the 1st defendant, even before acquiring letters of administration but they didn't yet they had the capacity to do so. Counsel relied on the case of **Israel Kabwa V Martin Banobwa SCCA No. 52 of 1997** where court held that a beneficiary of an intestate doesn't need letters of administration to sue on an estate.

On the 2nd preliminary objection, that the suit is *Res Judicata*, Counsel for the defendants submitted that the case before this court was founded on trespass which was the similar issue in another matter adjudicated on by the Chief Magistrates Court in Land Civil Suit No. 03 of 2011 that was filed by the 1st plaintiff against the 2nd defendant for recovery of the same suit land. That learned trial magistrate in that matter gave judgment in favor of the 2nd defendant as the rightful owner of the Suitland and found that he was not a trespasser to the same which decision was never appealed against by the 1st

plaintiff who instead ran to this court and filed a fresh similar suit but in a different capacity as administrator of the estate.

Counsel for the plaintiffs in reply to the 1st preliminary objection stated that the plaint had 3 causes of action to wit trespass that happened in 2010, trespass that happened in 2020 and fraud and that the defendants cannot sustain the issue of limitation since the cause of action arose in 2010 and 2020 during lockdown and prayed that the same be overruled with costs.

In reply to the 2nd preliminary objection, Counsel for the plaintiffs stated that trespass by the 2nd defendant occurred in 2020 around February and no court has ever determined this trespass on the estate of the Late Sserwambala on his 13 acres, therefore the issue of res judicata is misconceived by counsel for the defendants. That counsel for the defendants relied on land comprised at Mawokota Block 320, plot 10 which isn't the Suitland before this honorable court but was in the Chief Magistrates Court vide land civil suit No. 03 of 2011. That the parties in the present case are different from the ones in the Chief Magistrates Court as in this case the parties are the administrators of the estate of the Late Sserwambala Eneliko V Najjemba Eva & Sinabulya Valerian, while in the Chief Magistrates Court the parties were Munyaga Deogracious V Sinabulya Valerian, therefore the issue of res judicata cannot be sustained.

RESOLUTION BY COURT:

I have carefully read and considered the submissions by both counsel, the details of which are on court record and contents of which I have taken into account in addressing the two preliminary objections raised by the Counsel for the defendants as follows;

1. **The suit being barred by limitation;**

The law on limitation of actions to recover land is provided for in **Section 5** of the Limitation Act which 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."

Counsel for the defendants submitted that the 1st plaintiff's father lived in harmony with the 1st defendant's mother and during his lifetime he did not challenge her possession and her daughter's after the land was given to her. That since the principal the late Eneliko Sserwambala lived in harmony with the 1st defendant and her mother before passing away and he did not challenge their possession for over 51 years, then the plaintiffs have no locus to bring this suit as they derive their ownership from the deceased. I agree with this submission.

Furthermore, the plaintiff's father died in 2000 and I wonder why the 1st plaintiff did not bring a suit yet he was of majority age, and he decided to wait all this time till 2020 when he instituted this suit which makes it a total of 20 years since his father's death. In the case of **Israel Kabwa V Martin Banobwa SCCA No. 52 Of 1997** as stated by Counsel for the defendants, court held that a beneficiary of an Intestate does not need Letters of Administration to sue on an estate.

Therefore, the plaintiff, despite not having Letters of Administration, had all the right then after his father's death to challenge the possession of the 1st defendant and her mother which he did not do and coming as an administrator cannot save him from the provision on the Limitation Act. The mere fact that the plaintiff got Letters of Administration in 2018 does not extend the limitation period.

Counsel for the plaintiffs in his submission argued that this is a different cause of action which is on a different piece of land and that the plaint mentions a different suit land not plot 10 as stated by the defendants. However, counsel did not support his argument with any proof and neither did he also specify the

suit land he was claiming to be different. This court cannot act on mere speculations and counsel just stated this to cause more confusion.

In the case of **Iga V Makerere University (1997)1 EA 65, the Court of Appeal** held that a plaint which is barred by limitation must be rejected.

This preliminary objection is hereby upheld.

2. The suit being barred by *Res Judicata*;

Section 7 of the Civil Procedure Act is very clear on res judicata and it provides that;

"No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a competent court to try the subsequent suit or the suit in which the issue has been subsequently raised, and has been heard and finally decided by that court."

The Supreme Court in the case of **Karia & Another V Attorney General and Others [2005] 1 EA 83,** court stated that; the minimum requirements under section 7 of the CPA to include; (a) there has to be a former suit or issue decided by a competent court, (b) the matter in dispute in the former suit between the parties must also be directly or substantially in dispute between the parties in the suit where the doctrine is pleaded as a bar and (c) the parties in the former suit should be the same parties under whom they or any of them claim litigating under the same title.

The present suit is founded on Trespass, a similar cause of action that was already determined in a matter before the Chief Magistrates Court which then was between the 1st plaintiff and the 2nd defendant in which judgment was given in favor of the 2nd defendant. It is also very clear that the 1st plaintiff didnot appeal the judgment in that matter but instead ran to this court and

obtained Letters of Administration and instituted the same suit in a different court under a different capacity as an administrator of his father's estate.

I agree with Counsel for the defendants' submission when he stated that the only remedy the 1st plaintiff had was to appeal the judgment in the Chief Magistrates Court and not to introduce a similar suit in this court that had already been determined.

This preliminary objection is also accordingly upheld. The suit is hereby dismissed with costs to the defendants. I so order.

Right of Appeal explained.

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OYUKO ANTHONY OJOK

JUDGE

10/3/2022