

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
LAND DIVISION
CIVIL SUIT NO. 635 OF 2020

5 **LAMECK NKANGA NSERIBETYA.....PLAINTIFFS.**

VERSUS

NABIMANYA NATHANDEFENDANT

Before: Lady Justice Alexandra Nkonge Rugadya

JUDGMENT

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Introduction:

The plaintiffs filed this suit as sons/beneficiaries of the late Yonasani Nseribetya. They contended that the defendant's occupation of the suit land comprised in ***Mitala Kyakamuli Bulemeezi Block 598, plot 1 measuring 374 acres or***
15 ***151.0 hectares (suit land)*** is unlawful and prayed for a declaration that they are the rightful owners of the suit land; a permanent injunction; vacant possession, mesne profits; general damages and costs of the suit.

The defendant's case is that the 2nd plaintiff is not a beneficiary of the estate of the late Yonasani Nseribetya since he was not listed as one of the children of the
20 late in his will provided in the pleadings.

That he was entitled to the use and occupation of the suit land as adverse possessor, having come onto the land in 1996 as a purchaser; and the plaintiffs have since 1996 had knowledge of his occupation of the suit land.



That he lodged a caveat to protect his interest, has greatly developed the suit land by establishing thereon a permanent house, banana plantation and a livestock farm.

That he purchased the suit land *bonafide* from the registered proprietor known as Yokana Nsubuga without knowledge of fraud (if at all any) by him.

That the cause of action arose in 1996 when he took possession of the suit land and not in 2019 as alleged by the plaintiffs who in any case were not in physical possession at the time of the defendant's occupation.

Representation:

The plaintiffs were represented by ***M/s Kajeke, Maguru & Co. Advocates*** while the defendant was represented by ***M/s Bashasha & Co. Advocates***.

Issues:

- 1) ***Whether the suit discloses a cause of action.***
- 2) ***Whether the suit is barred by law of limitation.***
- 3) ***Whether the plaintiffs have interest in the suit land.***
- 4) ***Whether the defendant's occupation of the suit land is lawful***

Issue No. 1: Whether the suit discloses a cause of action.

And

Issue No. 2: Whether the suit is barred by law of limitation;

The defendant's contention was that not only was the suit time barred but also that the plaintiffs had no cause of action against him, claims which the plaintiffs however denied.

In both instances, ***Order 7 rule 11(a) and (d) of the Civil Procedure Rules*** would apply as it grants power to court respectively, to reject a plaint which fails to disclose a cause of action or one which appears to be barred by any law.

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In his evidence at trial, the defendant in turn also refuted the plaintiffs' claim that they got to know about his occupation of the land in 2019 and maintained that the suit was time barred.

5 That the plaintiffs no longer had any valid interest in the suit land, if at all any did exist. That the current suit was only intended to resurrect a claim that was extinguished.

The law:

Limitation:

10 **Section 5 of Limitation Act (supra)** which governs the limitation period for recovery of land provides as follows;

15 ***“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.”***

It is the established law that a suit which is barred by statute where the plaintiff has not pleaded grounds of exemption from limitation in accordance with **Order 7 r.6 Civil Procedure Rules S.I 71-1** must be rejected because in such a suit the court is barred from granting a relief or remedy. (**See: Vincent Rule Opio v. Attorney General [1990 – 1992] KALR 68; Onesiforo Bamuwayira & 2 Others v. Attorney General (1973) HCB 87; John Oitamong v. Mohammed Olinga [1985] HCB 86).**

Section 6 of the Limitation Act (supra) of the same Act further provides;

25 ***“The right of action shall be deemed to have accrued on the date of the dispossession.”***

