

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
[LAND DIVISION]
HCCS NO. 876 OF 2020

(Formerly HCCS No. 182 of 2019 in the Civil Division)

TUMWINE WILLIAM

PLAINTIFF

V

1. BALEKE MUSA ALIAS NSEGUMIRE KIBEDI

2. The COMMISSIONER LAND REGISTRATION (CLR)

DEFENDANTS

BEFORE: - HON. LADY JUSTICE P. BASAZA - WASSWA

R U L I N G

[ON TWO (2) PRELIMINARY OBJECTIONS]

Representation:

Mr. Robert Irumba for the Plaintiff

Mr. Ogomba Issa for the 1st Defendant

Mr. Moses Sekabira for the 2nd Defendant.

Introduction:

[1] This Ruling is in respect of two (2) preliminary objections raised by the 1st Defendants' counsel at the commencement of the hearing of this suit.

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[2] The Plaintiff; Mr. Tumwine first filed this suit on May 2, 2019 in the High Court Civil Division against the Defendants; Mr. Baleke and the CLR. At that time the case was numbered **HCCS No. 182 of 2019**, but upon its subsequent transfer to the Land Division, it was renumbered; **CS No. 876 of 2020**.

[3] In his plaint, Mr. Tumwine seeks *inter alia* for an order for specific performance of a purchase agreement dated February 29, 2008 in respect of land **comprised in LRV 3953 Folio 1, Plot 9 Bat Valley Crescent, measuring 0. 255 hectares** ("hereinafter referred to as '*the suit land*'). In the alternative, he seeks for a refund of **UGX 100,000,000 (One Hundred Million only)** that he claims to have paid as the purchase price for the suit land. He also seeks interest thereon at 30% per annum from 2008, until the date payment is made in full.

[4] The action in this case is founded on alleged fraud and alleged breach of contract. Mr. Tumwine alleges in his plaint that Mr. Baleke and the CLR acted fraudulently and denied him the acquisition of the suit land. That despite paying to Mr. Baleke the full consideration for the suit land, Mr. Baleke failed to deliver to him the certificate of title thereto, together with signed transfer forms and vacant possession.

He alleges that Mr. Baleke promised to deliver the said documents and vacant possession within two (2) years ending 2011. That Mr. Baleke continually promised, until he (Tumusiime) gave up. That in late 2008 after searching the suit land title, he discovered that the suit land had been converted from a leasehold to a freehold tenure and had been registered in the name of **Kikonyogo Investments Ltd** and subsequently into the names of **Bwindi Mgahinga Trust**.

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[5] In their respective written statements of defence, Mr. Baleke denies *inter alia*; ever entering into any transaction with Mr. Tumwine in respect of the suit land. While the CLR denies any wrong doing and contends that their office carried out all transactions on the suit land title on the basis of documents presented to it that it presumed to be genuine and authentic.

Submissions of Counsel:

[6] The two (2) objections raised by Mr. Ogomba; learned Counsel for Mr. Baleke, were as follows;

- i) First, that the leasehold interest that was the subject of the alleged agreement between the parties expired on March 1, 2013 and automatically reverted back to the lessor; **Kampala District Land Board**. That as such, the suit land cannot be recoverable and cannot be enforceable. That the lease run for 5 years from March 1, 2008.

Learned Counsel cited: **Dr. Adeodanta Kekitinwa & 3 Ors v Edward Maudo Wakida**¹ for his proposition.

- ii) Second, that an action based on contract cannot be brought after the expiration of 6 years. That if Mr. Tumwine intended to recover **UGX. 100,000,000/=** as the consideration for the purchase of the said lease, he had to bring the same within a period of six (6) years. That the 6 years run from February 29, 2008 and expired on February 29, 2014. Learned Counsel relied

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¹ C.A –C/Appeal No. 3 of 2007 [1999] KALR 632

for his arguments on **section 64 (2) (a) of the Contracts Act², and Section 3 (1) (a) of the Limitation Act³.**

[7] In rebuttal, Mr. Irumba submitted for Mr. Tumwine as follows;

- i) That it is not true that the suit land reverted back to Kampala District Land Board after the expiry of the 5 years. That before the purported expiry of the lease, instead of transferring the suit land into the names of Mr. Tumwine who had purchased it, Mr. Baleke instead allegedly transferred it into the names of the Muhammad Semata Nsubuga who later transferred it into the names of Kikonyogo Investments Ltd, which processed and acquired a **freehold title; FRV 1440 Folio 8 Plot 9 Bat Valley Crescent.**
- ii) That the suit is not time barred. That Mr. Tumwine pleaded fraud against Mr. Baleke, and that under paragraph 5 (e) of the plaint, when he searched the title in 2018, he became aware of the fraud and realized that Mr. Baleke had sold the land to a third party. That as such, the suit is exempt from the bar of limitation. Learned Counsel relied on **section 25 of the Limitation Act and on Hammaann Ltd & Anor v Ssali & Anor⁴**

Decision of Court:

[8] On the first objection, I note that while Mr. Ogomba argues that the alleged lease interest reverted back to Kampala District Land Board, in rebuttal Mr. Irumba refutes



² The Contracts Act, 2010

³ Cap. 80

⁴ HCMA No. 449 of 2013

that position, and argues that the said lease did not revert back to Kampala District Land Board. In my view, the question that arises therefrom is; *'whether the alleged lease interest was extinguished and reverted back to Kampala District Land Board'*, which question is one of fact. A question of fact is one that can only be ascertained upon hearing and determining the suit. It cannot be raised and determined as a preliminary objection.

- [9] It is trite law that where alleged facts have yet to be ascertained and proved, a preliminary objection cannot be raised in respect of them. Preliminary objections must raise only pure questions of law which are argued on the face of pleadings on the assumption that all the facts pleaded are correct. For this principle See Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd⁵.

- [10] In these premises, I will not entertain the first objection at this stage. I will now turn to the second objection.

- [11] On the second objection, the position of the law is set out in sections 3 (1) and 25 of the Limitation Act⁶. Those sections provide as follows;

Section 3 (1):

'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;
- (b) actions to ...

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⁵ [1969] EA at 696

⁶ Cap 80

(c) actions to...

(d) actions to ...'

(Underlining added)

Section 25:

'Where, in the case of any action for which a period of limitation is prescribed by this Act, either-

- (a) the action is based upon fraud of the defendant or his agent or of any person through whom he or she claims or his or her agent;
- (b) the right of action is concealed by the fraud of any person as is mentioned in paragraph (a) of this section; or
- (c) ...

The period of limitation shall not begin to run until the plaintiff has discovered the fraud or the mistake, or could with reasonable diligence have discovered it; but nothing in this section shall enable any action to be brought to recover, or enforce any charge against, or set aside any transaction affecting any property which –

- (d) in the case of fraud, has been purchased for valuable consideration by a person who was not a party to the fraud and did not at the time of the purchase know or have reason to believe that any fraud had been committed; or ...'.

[12] In the present suit, when did the alleged cause of action arise?

The complaint by Mr. Tumwine is *'an alleged failure by Mr. Baleke to deliver to him the certificate of title to the suit land, signed transfer forms and vacant possession, and alleged fraudulent actions, in concert with the CLR, to deny him the acquisition of the suit land'*. A look at clauses 6 & 10 of the said sale / purchase agreement (Annexure 'A' to the plaint), are to the effect that these documents and vacant possession were to be handed over at the execution of that agreement. The alleged cause of action thus arose on 29/02/2008 when the said agreement was executed.

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[13] I note that a period of eleven (11) years elapsed between 29/02/2008 when the alleged cause of action arose, and May 2, 2019 the date that this suit was filed. That lapse was clearly five (5) years outside the six - year limitation period set out in section 3 (1) of the Limitation Act.

[14] While I am alive to the exemptions to the six - year bar of limitation that are laid out in both section 3 (6) and section 25 of the Limitation Act, the circumstances of this case put the present action outside the realm of those exemptions.

For clarity, section 3 (6) is to the effect that section 3 shall not apply to any claim for specific performance of a contract or for an injunction or other equitable relief, except insofar as any provision of this section may be applied by the court by analogy. See the exception laid out in section 25 captured in para. [11] above.

[15] Much as it is true that Mr. Tumwine pleaded that he discovered the alleged fraud in 2018, and therefore showed grounds, in his pleadings, for an exemption from the bar of limitation as required under Order 7 Rule 6 of the CPR, I find that having also pleaded that the suit land is now registered in the names of third parties, under a different tenure, yet he neither sued the said 3rd parties, nor did he plead any fraud against them, puts the relief he seeks; of specific performance, out of his reach. See section 25 of the Limitation Act.

[16] Sec. 25 (d) is to the effect that section 25 shall not enable any action to be brought to set aside a transaction affecting property that has been purchased by a person who is not a party to the alleged fraud or did not at the time of the purchase know

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or have reason to believe that any fraud had been committed. The same principle is laid out under section 176 (c) of the Registration of Titles Act⁷.

[17] It is well settled, that where a party is guilty of laches, he will not take advantage of the exemption under section 3 (6) of the Limitation Act that exempts equitable claims; like a claim for specific performance, from the application of the six – year limitation period. See Francis Nansio Micah v Nuwa Walakira⁸

[18] In this case, I find that Mr. Tumwine is guilty of laches. From 2008 to 2014, he sat on his laurels and did not bother to check the suit title at the land Office, until the tenth year in 2018. Nor did he bother to pursue his claim in the courts of law in reasonable time. He was slack and did not exercise reasonable diligence. Had he done so, he would have found the equitable relief prayed for still available upon proof of his allegations. Now that relief is no-longer available.

[19] In the result, it is my Ruling that on the basis of sections 3(1) & (6) and 25 (a) –(d) of the Limitation Act, the plaintiff's suit is barred by time limitation and cannot stand.

It is trite that a suit barred by statutory limitation cannot stand nor be rescued. Court has no inherent jurisdiction to enlarge time laid down by statute. See Makula International v His Eminence Cardinal Nsubuga⁹.

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⁷ Cap. 230

⁸ SCCA No. 11 of 1990

⁹ [1982] HCB 24

Orders of this Court:

[20] By reason of the above, this suit is struck out with costs to the Defendants pursuant to the provisions of the law cited, and to Order 7 Rule 11 (d) of the Civil Procedure Rules.

I so order,

P. Basaza Wasswa 9/3

P. BASAZA - WASSWA

JUDGE

March 09, 2023

Ruling delivered via email to the parties and uploaded on the Judiciary ECCMIS Portal.