

THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT KAMPALA  
[LAND DIVISION]  
CIVIL SUIT 51 OF 2021

GERALD SEKAABE NYANZI

.....

PLAINTIFF

V

1. THE REGISTERED TRUSTEES OF KAMPALA ARCHDIOCESE
2. THE COMMISSIONER LAND REGISTRATION .....DEFENDANTS

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

RULING

[ON PRELIMINARY OBJECTIONS]

Representation:

Mr. Muwema Fred and Mr. Tomusange Anthony<sup>1</sup> for the Plaintiff.

Mr. Matsiko Joseph and Ms. Akampurira Patience<sup>2</sup> for the 1<sup>st</sup> Defendant.

Mr. Ssekabira Moses and Ms. Arinaitwe Sharon for the 2<sup>nd</sup> Defendant.

Introduction:

[1] This Ruling is in respect of three (3) preliminary objections, raised by learned Counsel for the 1<sup>st</sup> Defendant, against the tenability of the Plaintiff's suit.

[2] The suit is brought by Mr. Sekaabe against **the Registered Trustees of Kampala Archdiocese ('the RTKA')** and **the Commissioner Land Registration ('the CLR')**, in

*M. Sekaabe* 13/3

<sup>1</sup> Both of M/s Muwema & Co. Advocates

<sup>2</sup> Both of Kampala Associated Advocates.

respect of land described as **Busiro Block 431 Plots 6, 8, 10 and 11 at Kyasira –Bugabo, Garuga**, measuring approximately **222. 53 acres ('the suit land')**.

Background:

- [3] Mr. Sekaabe contends in his plaint that he is a beneficiary and *bona fide*, lawful owner of the suit land. That pursuant to the distribution of the estate of his late father; John Baptist Nyanzi, by the executor of the will of the deceased, the suit land was shared out to him.
- [4] He contends further that when he (Sekaabe) followed up to obtain possession of the suit land, he discovered that the suit land was in the names of His Eminence Archbishop Cardinal Wamala, and that at the time, he was not able to establish under what circumstances the suit land came into the names of the Archbishop.
- [5] He (Sekaabe) asserts that in 2010, he discovered that the suit land was fraudulently and illegally transferred into the names of his sister Betty Nyanzi, who in turn fraudulently and illegally transferred it into the names of His Eminence Cardinal Nsubuga in 1980. That as Administrator of the estate of His Eminence Cardinal Nsubuga, His Eminence Cardinal Emmanuel Wamala subsequently transferred the suit land into the names of the RTKA.
- [6] Mr. Sekaabe further asserts that vide a memorandum of understanding dated January 17, 2011 (**'the MoU'**) between himself and the RTKA, the RTKA unilaterally offered to return, and transfer to him 100 acres of the suit land. That at the time, the RTKA dominated his (Sekaabe's) will, as he was very desperate, and by virtue of

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the RTKA's position as the party who had both the title and possession of the suit land.

- [7] He (Sekaabe) complains also that after signing the MoU, the process of surrender and transfer of the 100 acres was commenced, but was not completed. That out of the 100 acres that the RTKA was supposed to surrender and transfer to him, only 50 acres were surrendered and transferred to him. That the RTKA holds onto, has retained, and is using the suit land to his exclusion, and is committing acts of continued trespass, nuisance and interference. He also contends that save for the acknowledgement of his claim and interest in the suit land, the MoU was actuated by fraud and illegality and did not confer any legal title of the suit land to the RTKA, and is null, void and unenforceable.
- [8] He seeks *inter alia* for a Declaration that he is the lawful beneficiary and owner of all the suit land, for a declaration that the alleged unlawful conversion, transfer, surrender and or distribution of 100 acres of the suit land to the RTKA under the MoU is null and void, and for the cancellation of the name of the RTKA on the suit title, and substitution thereof with his name. He also seeks, against the RTKA; *inter alia* for orders for a permanent injunction and for vacant possession of the suit land.
- [9] In its Defence, the RTKA contends *inter alia* that the suit is incompetent. That the RTKA is the registered proprietor and owner of the suit land, and that the MoU is binding on Mr. Sekaabe.
- [10] On its part, the CLR contends in its defence that no cause of action is disclosed against it.



[11] By way of written submissions, learned Counsel for the RTKA raised three (3) preliminary objections, to which, in like manner, learned Counsel for Mr. Sekaabe answered. Hence this Ruling.

Preliminary objections:

[12] The objections raised are;

- i) That the Plaintiff's suit is barred by the doctrine of limitation.
- ii) That the Plaintiff's suit does not disclose a cause of action against the 1<sup>st</sup> Defendant.
- iii) That the Plaintiff's suit is frivolous and vexatious.

Submissions of Counsel on the 1<sup>st</sup> objection:

[13] Learned Counsel for the RTKA submitted that Mr. Sekaabe's suit is barred by statutory time limitation. They prayed that the suit be rejected with costs to their client. They argued;

- i) That Mr. Sekaabe's claim for the recovery of the suit land allegedly converted under the MoU, and founded on contract could not be instituted after the expiry of six (6) years from the date on which the cause of action arose. That Mr. Sekaabe's suit that was **filed on January 27, 2021 run out of time in 2017**.
- ii) That Mr. Sekaabe's cause of action in respect of his claim for the recovery of the suit land under the will of his late father arose in 1988. That the statutory

*Masimba 13/3*

time limitation of twelve (12) years under **section 5 of the Limitation Act** began to run in 1988 and expired in 2000.

- iii) That even if Mr. Sekaabe's cause of action for the recovery of the suit land is premised on alleged fraud as per paragraph 8 (e - f) of the plaint, **the cause of action arose in 2001** when he approached the former Archbishop of the RTKA in 2001. That from 2001 when the transfer of the suit land to the late Cardinal Nsubuga came to his attention, until 2021, Mr. Sekaabe sat on his legal rights and acquiesced in the ownership and possession thereof by the RTKA. **That the twelve years for bringing an action for the recovery of the suit land ended in 2013**, hence Mr. Sekaabe's suit filed eight years later, in 2021 is barred by limitation.

That with the exercise of due diligence, Mr. Sekaabe could have taken steps to inquire about the circumstances under which the suit land had been transferred to his sister in 1980 and subsequently sold to the late Cardinal Nsubuga Wamala. That the information could have been revealed by conducting a search to ascertain the change in proprietorship from his late father to the late Cardinal Nsubuga, or by inquiring from the late Cardinal about how he acquired the suit land, and the capacity in which the Cardinal agreed to give him (Sekaabe) the twenty - two (22) acres.

That Mr. Sekaabe chose to ignore his suspicions aroused in 2001, and as a result, he cannot rely on fraud as a basis for the postponement of the limitation for the recovery of the suit land. That he has also not given

particulars of when he became aware of the alleged fraud said to have been committed by the RTKA in the MoU. That he has also not stated how the RTKA allegedly illegally procured the drafting of, and his subsequent signing of the MoU.

[14] For the above three (3) propositions, Counsel relied, *inter alia* on;

- i) Sections 3 (1) (a), 5 and 25 of the Limitation Act<sup>3</sup>, and Order 7 Rule 11 (d) of the Civil Procedure Rules<sup>4</sup>.
- ii) Mohammed Kasasa v Jasphar Buyonga Sirasi Bwogi<sup>5</sup>
- iii) Madhvani International S.A v the Attorney General<sup>6</sup>
- iv) Hammaann Ltd & Anor v Ssali & Anor<sup>7</sup>

[15] Learned Counsel for the RTKA also argued that Mr. Sekaabe has not shown any grounds of any disability which occurred after 1984, that would have prevented him from filing his suit, so as to entitle him to benefit from the protection under sec. 21 of the Limitation Act. For this argument, Counsel relied *inter alia*, on **the Hammaann Ltd case (supra)**, **Pope Paul IV Social Club v John Semakula<sup>8</sup>**, **Rosemary Bukenya v Bwogi Abdul<sup>9</sup>** and on **Amin Aroga v Haji Muhammad Anule<sup>10</sup>**.

[16] In rebuttal, learned Counsel for Mr. Sekaabe submitted that their client's suit is not barred by limitation. That **the suit is an action for recovery of land, based on a**

*Masamba 13/3*

<sup>3</sup> Cap. 80

<sup>4</sup> S.I. 71-1

<sup>5</sup> CACA No. 42 of 2008

<sup>6</sup> SCCA No. 23 of 2010

<sup>7</sup> HCMA No. 449 of 2013

<sup>8</sup> CACA No. 041 of 2012

<sup>9</sup> CACA No. 290 -2017

<sup>10</sup> HC C/A No. 10 of 2016 (Arua Circuit).



special form of trespass, upon a wrongful dispossession of the suit land by the RTKA.

That it is not an action founded on contract *per se*. That the inclusion of the MoU in the plaint is for purposes of adducing evidence that Mr. Sekaabe was wrongfully dispossessed of the suit land. Counsel cited **Odyek Alex & Anor v Gena Yokonani & 4 Ors<sup>11</sup>**.

- [17] Counsel also argued that Mr. Sekaabe's right of action **accrued afresh when the MoU was signed by both parties on January 17, 2011 through the acknowledgement** by the RTKA of Mr. Sekaabe's interest in the suit land, as expressed sufficiently in the recitals to the MoU. That the RTKA admitted Mr. Sekaabe's interest in the suit land, by virtue of which, the suit is not time barred as the suit was filed in 2021, ten (10) years after 2011, and is within the 12 years allowed by **sec. 5 of the Limitation Act**.

For that proposition, learned Counsel cited *inter alia* **Order 8 Rule 3 of the CPR, Sections 22 (1) (a), 23 and 24 of the Limitation Act, and Jamada K. Luzinda v A.G<sup>12</sup>**

- [18] In rejoinder, learned Counsel for the RTKA argued that in the plaint there is no cause of action against the RTKA as there is no fraud attributable to it, and that the plaint should be rejected with costs.

Decision of Court on the 1<sup>st</sup> objection:

- [19] This 1<sup>st</sup> objection raises the question; '*whether this suit is barred by the statute of limitation?*'

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<sup>11</sup> HCCA No. 9 of 2017 (Gulu Circuit)

<sup>12</sup> CACA No. 90 of 2012

Learned Counsel for the RTKA submitted that the suit is barred, while learned Counsel for Mr. Sekaabe submitted that the suit is not barred.

[20] In his action, Mr. Sekaabe seeks *inter alia* for the recovery of all the suit land. The grounds upon which he bases his claim are founded on alleged fraud and illegality, on alleged trespass, nuisance and interference, as asserted in his plaint.

[21] For actions, such as the present action, to be instituted within the precincts of the time limitation (s) set out under Sections 3 & 5 of the Limitation Act, they should not be filed after the expiration of six (6) years (sec. 3 of the Act), and or after the expiration of twelve (12) years (sec. 5 of the Act) respectively, from the date on which the right of action accrued.

[22] For clarity, both sections are captured, *verbatim*, here below;

**Section 3 (1) (a):**

'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 ...
- (c) actions to...
- (d) actions to ...'

(Underlining added)

**Section 5:**

'No action shall be brought by any person to recover land after the expiration of twelve years from the date on which the right of action accrued to him or her, or if it accrued to some other person through whom he or she claims, to that person'

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- [23] To determine the 1<sup>st</sup> question before me, the starting point therefore is to establish, from the plaintiff: *'when the alleged right of action accrued to Mr. Sekaabe?'*
- [24] Learned Counsel representing the RTKA argued that the alleged cause of action **accrued in 1988** and expired in 2000, and or that it **accrued in 2001**, the year in which Mr. Sekaabe approached the former Archbishop of the RTKA, and or that it was founded on a contract (the MoU) dated **January 2011** and therefore expired in 2017.
- [25] On the other hand, learned Counsel representing Mr. Sekaabe argued that Mr. Sekaabe's right of action accrued afresh when the impugned MoU was signed by both parties on January 17, **2011** and not before.
- [26] **It is my view, that by virtue of section 25 of the Limitation Act, the alleged right of action did not accrue until 2010, the year that Mr. Sekaabe claims that he discovered the alleged fraud and or illegality.**

**Section 25 of the Act** provides that:

'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 –

*Masamba 13/3*

- (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 ...'.

(Underlining added)

[27] I do not agree with the argument by learned Counsel for the RTKA that:

'with the exercise of due diligence, Mr. Sekaabe could have taken steps to inquire about the circumstances under which the suit land had been transferred to his sister in 1980, and subsequently sold to the late Cardinal Nsubuga Wamala. That Mr. Sekaabe chose to ignore his suspicions that were aroused in him in 2001, and that as a result, he cannot rely on fraud as a basis for the postponement of the limitation for the recovery of the suit land'.

[28] I carefully considered that argument by Counsel for the RTKA, but rejected it. I rejected it for the reason that; **'the notion that Mr. Sekaabe's suspicions were aroused in 2001, but chose to ignore them'**, is a notion without basis.

**Mr. Sekaabe pleads that in 1976 when his father died, he was 4 years old. That would imply that in 2001, he was 25 years old. I think that at the age of 25 years, one's ability to suspect fraud and or illegality, in a matter of proprietorship of land, with no obvious leads, may not be as forthcoming. I opine that it is unreasonable to expect a person of that age to make such an assessment, let alone have the insight to initiate any appropriate remedial steps.**

[29] To this end, am inclined to take Mr. Sekaabe's pleadings at face value, subject to investigation and test at the trial, that he was only able, in the year 2010, to make the alleged discoveries he pleads he did.

[30] Similarly, I do not agree with the argument by learned Counsel for Mr. Sekaabe that Mr. Sekaabe's alleged right of action accrued afresh when the impugned MoU was signed by both parties on January 17, 2011. That argument not only contradicts

*masubulu 13/3*

their earlier argument *'that the suit is not founded on contract per se'*, but it is also an argument that excludes Mr. Sekaabe's allegations of fraud, illegality, trespass and nuisance, all of which allegations point to periods prior to 2011, the year that the alleged MoU is said to have been signed.

[31] By reason of the above, it is my finding that between 2010, the year of the alleged discovery, and 2021 when the suit was filed, is an interval of eleven (11) years, which falls within the precincts of the twelve (12) year ceiling provided for under sec. 5 of the Act.

[32] For limitation of actions of barred under sec. 3 of the Limitation Act, I find that; since the main reliefs sought for by Mr. Sekaabe in his plaint, are reliefs of an equitable nature, this suit is one such suit that falls within the exemptions to section 3 of the Limitation Act, provided for under Section 3 (6) of the Limitation Act.

Under section 3 (6) of the Limitation Act, equitable claims; like a claim for specific performance of a contract, or for an injunction or other equitable relief<sup>13</sup>, are exempted from the application of the six – year limitation period, where a plaintiff is not guilty of laches. This principle was echoed in the decision in Francis Nansio Micah v Nuwa Walakira<sup>14</sup>.

*Micah v Nuwa Walakira* 13/3

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<sup>13</sup> In Megarry & Wade 'The Law of Real Property' 8<sup>th</sup> ed. at page 108, para. 5-015, remedies given by equity include specific performance, an injunction: both to refrain from doing something, and an injunction to put right something already done, orders for money payments, and on occasions, even the award of damages with well-defined limits, and not in all cases.

<sup>14</sup> SCCA No. 11 of 1990



[33] Since I have already opined that Mr. Sekaabe's conduct, prior to his alleged discovery, did not amount to unreasonable delay, I find that he is not guilty of laches.

[34] **In the result, the 1<sup>st</sup> Objection is overruled. This suit is not barred by the statute of limitation.**

Submissions of Counsel on the 2<sup>nd</sup> objection:

[35] Learned Counsel for the RTKA submitted that the Complaint discloses no cause of action and that the same should be rejected by this Court. That the right enjoyed by Mr. Sekaabe in the suit land as beneficiary of his late father's estate was duly dealt with under clauses 1 & 2 of the MoU of January 17, 2011 where it was agreed that the RTKA surrenders to Mr. Sekaabe 100 acres of the suit land.

[36] Citing several authorities, learned Counsel argued that the MoU amounted to a legally binding contract that is enforceable at law, as the same was voluntarily entered into by the parties, and was neither the occasion by duress, nor coercion as Mr. Sekaabe would like this Court to believe. Counsel referred Court to clause 6 of the MoU, and argued that by the MoU, Mr. Sekaabe agreed to the transfer to him of 100 acres by the RTKA, in exchange for which, he relinquished all his claims to the suit land.

[37] Learned Counsel for the RTKA further submitted that there was no right enjoyed by Mr. Sekaabe that has been violated by the RTKA. That the 100 acres of the suit land were transferred to Mr. Sekaabe in accordance with the MoU and he has benefited

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therefrom and the same are in his possession. That Mr. Sekaabe cannot approbate and reprobate all at the same time. That he is estopped from instituting a suit to challenge a contract from which he derived a benefit and continues to do so.

[38] They also argued that there is no fraud attributable to the RTKA in acquiring the suit land. That Mr. Sekaabe has not pleaded particulars of fraud attributable to the RTKA in respect of her acquisition of the suit land.

[39] In rebuttal, learned Counsel for Mr. Sekaabe argued that the plaint discloses a cause of action for recovery of land, and that Mr. Sekaabe pleaded every fact to support his contention, and is seeking an opportunity to be heard.

[40] Counsel criticized the arguments for the RTKA on the MoU, and suggested that the latter's claim that Mr. Sekaabe willingly and voluntarily signed the MoU, is a question of fact which requires to be proved at the trial, and not a question of law.

In the alternative, they argued that the preliminary objections raise both questions of fact and law. That at this stage, this court cannot determine the existence or absence of fraud, which can only be investigated at the trial.

[41] In rejoinder, learned Counsel for the RTKA reiterated their submission that since the right enjoyed by Mr. Sekaabe as a beneficiary to his late father's estate was duly dealt with in the MoU executed on January 17, 2011 there is no right of his that was being violated by the RTKA. They argued that at the time of signing the MoU the RTKA was the registered proprietor of the suit land, and therefore as a *bona fide* purchaser without notice, its legal interest in the suit land supersedes any purported

equitable interest in the suit land. That the RTKA did not dispossess Mr. Sekaabe by signing the MoU.

Decision of Court on the 2<sup>nd</sup> objection:

[42] In determining whether or not a plaintiff discloses a cause of action, a court is required to look at the plaintiff only.

Order 6 Rule 1 and Order 7 Rule 1 (e) and 11 (a) of the Civil Procedure Rules provide that (paraphrased);

A plaintiff shall contain a brief statement of the material facts constituting a cause of action and when it arose. Where it does not contain a cause of action, it shall be rejected.

[43] A cause of action is defined in Black's Law Dictionary<sup>15</sup> as;

'A group of operative facts giving rise to one or more bases for suing...'

[44] Also in Ismail Serugo vs. Kampala City Council<sup>16</sup>, the Justices of the Supreme Court stated that;

'...a cause of action in a plaintiff, is said to be disclosed if three elements are pleaded namely;

- a) Of the existence of the Plaintiff's right
- b) Violation of that right and
- c) Of the Defendant's liability for that violation'

[45] I perused the plaintiff only, and carefully considered the law, and the submissions by learned Counsel; both for the RTKA, and for Mr. Sekaabe, and found;

- i) That Mr. Sekaabe pleads the 1<sup>st</sup> element of a cause of action, in his plaintiff. He pleads material facts that support his alleged claim that he is a beneficiary and *bona fide*, lawful owner of the suit land.

*Masaka Munn* 13/3

<sup>15</sup> 9<sup>th</sup> ed. at page 251

<sup>16</sup> S/C Constitutional Appeal No. 2 of 1998.



- ii) That Mr. Sekaabe also pleads the 2<sup>nd</sup> and 3<sup>rd</sup> elements of a cause of action, in his plaint. He pleads that the RTKA allegedly violated his claim to the suit land, and that it is liable. The pleading of these elements are disclosed in paragraphs 8 (g – q) and 9 - 12 of the plaint.
- iii) That as correctly pointed out by learned Counsel for Mr. Sekaabe, the arguments raised by learned Counsel for the RTKA in respect of this 2<sup>nd</sup> objection, are not arguments on whether or not the plaint discloses a cause of action. Rather; they are arguments that contest the questions of alleged facts pleaded. They are a premature rebuttal to the assertions made in the plaint by Mr. Sekaabe. For illustration, below are two examples of the said arguments by Counsel; I quote;

'the right enjoyed by Mr. Sekaabe in the suit land as beneficiary of his late father's estate was duly dealt with under clauses 1 & 2 of the MoU of January 17, 2011 where it was agreed that the RTKA surrenders to Mr. Sekaabe 100 acres of the suit land';

'The 1<sup>st</sup> Defendant did not dispossess the Plaintiff by signing the MoU as the Plaintiff would like this Court to believe'

- [46] Clearly, the content, context, effect and or legal implications of the MoU on the claims of Mr. Sekaabe, are yet to be the subject of this court's investigation and determination. These are not questions to be delved into at this stage, as to delve into them now, is premature and inexpedient.

- [47] **By reason of the foregoing, it is my Ruling that the plaint discloses all the three (3) elements of a cause of action against the RTKA. This 2<sup>nd</sup> objection is also overruled.**

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Submissions of Counsel on the 3<sup>rd</sup> objection:

[48] It is the submission by learned Counsel for the RTKA that the suit is frivolous and vexatious as it is barred by limitation and discloses no cause of action. Counsel went on to reiterate their earlier submissions under the 1<sup>st</sup> and 2<sup>nd</sup> objections.

[49] Learned Counsel for Mr. Sekaabe also reiterated their arguments under the 1<sup>st</sup> objection. They stated that the prior detailed discussion on the bar of limitation, was by extension, also a discussion on this objection.

Decision of Court on the 3<sup>rd</sup> objection:

[50] Having found as I did under the 1<sup>st</sup> and 2<sup>nd</sup> objections, and indeed overruled them, it follows that this 3<sup>rd</sup> objection is also overruled. The plaint in this case is neither frivolous, nor vexatious.

[51] **In the final result, I overrule all three (3) preliminary objections, with costs to the Plaintiff against the 1<sup>st</sup> Defendant. (Section 27 of the Civil Procure Act, applied).**

I so Order,

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**P. BASAZA - WASSWA**

**JUDGE**

March 13, 2023

Ruling delivered electronically on the Judiciary ECCMIS system and via email to the parties.