

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL SUIT NO 417 OF 1992

JAMES SEMUSAUMBWA:.....:PLAINTIFF

VERSUS

REBECCA MULIRA:.....:DEFENDANT

BEFORE HONOURABLE JUSTICE I. MUKANZA

RULING

The plaintiff instituted this action against the defendant as the Administrator to the Estate of the late Erisa Mujoobe and by virtue of the letters of administration granted to him by the High Court of Uganda at Jinja the plaintiff's claim against the defendant is for specific performance of the lease agreement dated 24th August 1977 and general damages.

Before the commencement of the said suit Mr. Mukasa the learned counsel who appeared for the defendant raised a preliminary objection to the whole plaint based on the limitation Act. He submitted that since the subject matter of the instant case being land and based on contract whereof the plaintiff was seeking specific performance of an agreement made on 24th August 1977 under section 4 of the limitation Act Cap 70 the action can not be brought after the expiration of six years. The action was time barred. The fact that the prayer is for specific performance plus general damages based on this contract the action should not be entertained. Secondly the plaintiffs claim is time barred in so far as the subject matter is land based on the agreement made in 1977 which was never complied with by the plaintiff. To this he referred me to section 6 of the limitation Act which specifically states " No action shall be brought to recover land after the expiration of 12 years The plaintiff had brought the suit in 1992 after 15 years had expired from the date upon which the agreement to enter the land was made. The legal principles of the limitation Act are binding and mandatory and prayed that the suit be dismissed with costs.

On the other hand Mr. Zaabwe the learned counsel representing the plaintiff clarified that plot No.13 was not mentioned in the plaint but the same was referred to in Annexure D and G. The plaintiff did not comply with what he was required to do. In annexure B the defendant invited the late Mujooba to pay money for this plot and the late Mujoobe Complied with that when he paid money under Annexure G and that was acknowledged by the defendant in annexure "G". He therefore submitted that the suit was not time burred, before 1977 the late Mujoobe was in possession of the land in dispute by customary tenures. On 17th June 1977 the defendant invited the late Mujoobe to convert his customary tenure to leasehold that was clearly stated in his letter Annexure G. There the defendant was asking the late Mujoobe to pay money for the purchase of the land and covert it to lease hold. The late Mujoobe paid for the plot and a receipt Annexure D was issued to him by one Waswa stating that the money he paid was a premium of plot 13 and that a formal receipt would be prepared by the defendant. The defendant acknowledged the receipt of shs.6000/= paid by Mujoobe for plot 13 and went a head to stipulate the terms of the lease. The defendant there after informed the late Mujoobe that they would later go to a lawyer and execute a lease. He submitted that the late Mujoobe complied with the conditions the defendant set and it remained for the defendant to execute the lease. The plaintiff was seeking for specific performance of the document, the agreement entered into with the late Mujoobe on the 24th August 1977. The late Mujoobe had interest in the land in the customary tenure. He was in possession of the land and still his successor is in possession of that land the present plaintiff could only lose right if the defendant took back the land from him or from the late Mujoobe. The defendant had never done so a part from his failure to execute the lease. If any right of execution accrued that would be in 1990 when the defendant refused to execute the lease in favour of the plaintiff. Under S.4 (6) of the Limitation Act the suit is not time burred. In case it is found that section 6 of the Limitation Act applied to this case then the period of 12 years started running from 24/8/1977. The period was affected by the death of the late Mujoobe who died on 5th Feb 1987 and by that time the period of 12 years had not yet expired. That in the interest of justice the suit be determined on its merits.

If however the court found that the suit was time burred still the plaintiff would be entitled to occupation of the suit land under customary tenure.

In reply Mr. Mukama submitted that it was clear from his learned friends submission that the plaintiffs claim is based on what transpired in 1977 and it was the basis upon which the plaintiff brought the present claim seeking various and numerous relief jointly and or severally. That under paragraph 4 of the plaint the plaintiff seeks for General damages that perse does not allow him to call this an equitable relief. It is a special relief which exonerates it from falling in the ambit of Section 4 and 5 of the Limitation Act. His learned friend's departure from the pleadings supported his claim that the suit was time barred. The revelation that the late Mujoobe died in 1987 ten years after the contractual arrangements was binding on the Plaintiff as the administrator since even the deceased had not taken the required legal action within the six years limit to conclude and comply to complete the conditions upon which the lease was to be executed. And the fact that the deceased was time barred the plaintiff was more time barred. To date the plaintiff has not complied with what was agreed upon in 1977 by the deceased to the defendant among which would have included paying the agreed amount upon annual normal rent.

I was opported to peruse the pleadings and at the same time I listened carefully to the able submissions by the learned counsels appearing for the parties. The law as I understand it is that under the Limitation Act Cap 70, Section 4 (1) a as already pointed out by the learned counsels above is that "An action founded on a contract or tort shall not be brought after the expiration of six years and under subsection (6) there is however an exception to section 4 (1) (a) in that the action shall not apply to any claim of contract for specific performance of a contract or for an injunction or for other equitable relief in so far as any provision thereof may be applied by the court by an analogy in like manner as the period of limitation in force before the commencement of the act have here to been applied. .

Where as under section 6 of the referred to Act no action shall be brought for recovery of land after the expiration of 12 years from the date on which the right of action accrued to him or if it first accrued to person through whom he claims to that person.

In the instant case the plaintiff as administrator to the estate of the late Mujoobe is seeking for specific performance of the contract of the lease agreement entered into between the said Mujoobe and the defendant on 24/8/1977. He is therefore not time barred this being an exception

to the provision of section 4(1) (a) of the Act. I do not therefore subscribe to the submission by Mr. Mukasa that since the plaintiff was seeking general damages as agreement based on land relief for specific performance of the sale the action could not be brought after the expiration of six years. The learned counsel never backed up his assertions with some authorities. Besides that though the defendant in this case took objection to the pleadings, in his written statement of defence it is the duty of the court to consider the point and in doing so the court will only look at the plaint and will decide the preliminary objection in the light of the facts alleged and the prayer in the plaint whether the claim is time barred the allegations of fact being assumed for that purpose to be true. See **Sachamia And Another .Vs. Hirji Pitamber 1958 EA p 503.** I was opportuned to look at the plaint and formed the opinion that the claim was not time barred having found that the allegation in the plaint appeared to be the truth. I am of the view that sachamias case is supra is relevant to the instant case. With regard to the limitation period of 12 years as provided for under section 6 of the Act in connection with the recovery of land. The crucial issue is when did the right to sue accrue? According to the pleadings which included the annexures, the defendant offered to sell the suit property to the late Mujoobe on 17/6/1977. The latter is stated to have been the customary owner of the suit property and was in possession of the same. He accepted the offer and, on 24/8/1977 paid 6000/= shillings for the plot. According to Annexure he was to pay 80/= shillings every month with effect from 1st September 1977 for a period of 49 years. The rents were to be reviewed every fifteen years. There was a provision in the sale agreement that;

“We shall go to the lawyer and execute a formal lease”

Neither the late Mujoobe nor the defendant took steps with a view to have the formal lease executed. Meanwhile the said Mujoobe passed a way in 1987 as per information from the bar without the defendant executing the lease. For the plaintiff, he contacted the defendant on 6/12/1990 urging him to carry out his obligation to execute such lease in favour of the late Mujoobe but the defendant refused and or neglected to do so. On 29/7/92 the plaintiff proceeded and filed the present case against the defendant. It of this court is the firm view that the right to sue accrued from the moment the defendant was invited by the plaintiff on 6/12/90 to execute a formal lease and the defendant refused to do so consequently the suit was filed within the limitation period of 12 years. I was not agreeable with the submissions of Mr. Mukasa that the

right to sue accrued on 24/8/77 when the sale agreement was made. Moreover there was no agreed date between the defendant and Mr. Mujoobe for the execution of the formal lease. I am further strengthened in my finding in that when Mujoobe died in 1987 the twelve year period was still running.

However where a suit is instituted after the expiration of the period prescribed by the law of limitation the plaintiff shall show the grounds upon which exemption from such law is claimed See; **order 7 rule 6 of the CPR**. This section is not applicable to the instant case since according to the plaint the suit was not time barred. Nonetheless I am of the opinion that the defendant complied with order 6 rule 9 when in his written statement of defence raised this issue of the limitation Act.

On the whole from what has transpired above the preliminary objection to the suit that the same is time barred because of the limitation Act is overruled with costs to the plaintiff.

I. Mukanza

JUDGE

29/06/1993