

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL SUIT NO. 815 OF 2004

SSEBILAGALA MOSES PLAINTIFF

VERSUS

ATTORNEY GERNERAL & ANOTHER DEFENDANTS

Hon. Lady Justice Monica K. Mugenyi

JUDGMENT

The plaintiff, Moses Ssebilagala, was allegedly the beneficiary of a gift *inter vivos* from his father, a one Moses Tubirye, to wit a 1.0 acre piece of land described as MRV 847 folio 20 situated at Rubaga, Kyadondo. When he sought to register his interest in the said land he discovered that it had been re-demarcated into Kibuga Block 17 plot 27 and was registered in the names of Christopher Apollo Kalibala and, later, a one A. M. Sejjala. The plaintiff, then, sued the defendants seeking compensation for his land within the ambit of sections 178(a) and 183 of the Registration of Titles Act (RTA), Cap. 230. The defendants refuted the plaintiff's claim to the suit land, contending that the land was duly registered in the names of the rightful claimant thereto and, in any event, the plaintiff had sat on any purported rights that might have accrued to him and thus foregone them.

Pursuant to a scheduling conference dated 20th December 2011 the parties framed four (4) issues for determination as follows:

1. Whether the plaintiff was deprived of the land described as Kibuga Block 17 plot 27 situate at Rubaga, Kyadondo.
2. Whether the defendants' agents negligently and/or fraudulently caused the transfer of the suit property into the names of Apolo Kalibala.

3. Whether the subsequent transferees are bonafide purchasers for value.
4. Whether the plaintiff is entitled to the remedies sought.

Another issue was subsequently added under Order 15 rule 5(1) of the Civil Procedure Rules (CPR) to wit whether or not the suit is barred by limitation.

In his written submissions, learned counsel for the plaintiff would appear to have addressed issues 3 and 4 under a re-phrased issue to wit whether the defendant was liable for the deprivation referred to in the 1st issue herein. Counsel for the defendants, on the other hand, addressed the issue of limitation prior to a consideration of the four substantive issues. This court proposes to consider the issue on limitation prior to a determination of the other agreed issues.

The issue of limitation first arose before my sister, Tuhaise J, on 22nd February 2011 when it was raised by the defence counsel by way of preliminary point of law. It was argued at the time that the plaintiff had pleaded disability as his reason for filing the present suit out of the statutory time limit. In her ruling, the learned judge held that given that the objection raised could not be disposed of on the basis of the pleadings alone, it was a triable issue that would be determined after hearing the evidence. It would appear that on 20th December 2011, when the issues under consideration presently were framed by the parties, they inadvertently omitted to include the issue of limitation as a triable issue. At the present hearing, prior to calling the last defence witness, learned defence counsel brought the omission to the attention of this court. This court did grant leave for the plaintiff to be recalled to prove the disability pleaded as provided under Order 18 rule 13 of the CPR, but counsel for the plaintiff subsequently opted to forgo this option and proceed to submissions.

In his written submissions, counsel for the plaintiff argued that section 187(1) of the RTA required suits against the Government to be instituted within 6 years of the accrual of a cause of action save for instances where the intending plaintiff was under a disability, in which case such suit could be instituted within 6 years of the cessation of such disability. Counsel for the plaintiff contended that in the present case the disability of coverture had been pleaded and proved; had ceased in 2000 or thereafter, and therefore the suit was within time, having been instituted in 2004. Conversely, it was argued for the defendants that the alleged deprivation occurred in

1985; the disability of coverture that was pleaded had not been proved, and therefore the present suit should have been instituted by 1991. Since this was not done, it was the defence submission that the present suit was time-barred.

The issue of limitation largely hinges on when the cause of action in question arose. The cause of action in issue is also pertinent to the applicability of laws on limitation, as is the nature of disability pleaded, if at all. In the present case the facts giving rise to the cause of action are pleaded in paragraph 5 of the plaint and include deprivation of land, fraud and negligence. The particulars of fraud and negligence are outlined in paragraph 10, while paragraph 5(c) specifically states the year 2000 as the time when the plaintiff became aware of the alleged fraud or negligence. For present purposes, the applicable laws would be section 187(1) of the RTA, as well as the relevant provisions of the Civil Procedure and Limitation (Miscellaneous Provisions) Act.

Section 187(1) of the RTA provides as follows:

“No action for recovery of damages sustained through deprivation of land or of any estate or interest in land shall lie or be sustained against the Government or against the person upon whose application that land was brought under the operation of this Act or against the person who applied to be registered as proprietor in respect to the land, unless the action is commenced within six years from the date of the deprivation; except that any person being under the disability of coverture (except in the case of a married woman entitled to bring the action), infancy, lunacy or unsoundness of mind, may bring the action within six years from the date on which the disability has ceased, so, however, that the action is brought within thirty years next after the date of the deprivation.”

In his submissions, learned counsel for the plaintiff purported to rely on section 187(1) of the RTA in support of the alleged disability pleaded in paragraph 5(c) of the amended plaint. With due respect to counsel, the contents of that paragraph do not correspond to a disability as envisaged under section 187(1) of the RTA. The only disabilities provided for under section 187(1) are coverture, infancy, lunacy or unsound mind. None of these was pleaded in the plaint neither would they be applicable. The disability of coverture that learned counsel sought to rely

upon arises from the common law doctrine, which posits that upon marriage a woman's legal rights were subsumed by those of her husband. Clearly such disability was inapplicable to the plaintiff therefore his purported reliance on the relief of disability as stipulated under section 187(1) of the RTA is misconceived.

Be that as it may, section 3(1)(a) of the Civil Procedure and Limitation (Miscellaneous Provisions) Act, Cap. 72 states that 'no action founded on tort shall be brought against the Government after the expiration of 2 years from the date when the cause of action arose.' Section 6(1)(a) of the same Act provides:

“Where, in the case of any action for which a period of limitation is prescribed by this Act, either the action is based upon the fraud of the defendant or his or her agent ... the period of limitation shall not begin to run until the plaintiff has discovered the fraud or mistake or could with reasonable diligence have discovered it.”

Simply stated, tort may be defined as a wrongful act or omission, not being a breach of contract, which would entitle the wronged person to seek damages through civil proceedings. Clearly negligence, upon which the present suit is partly premised, amounts to a tort therefore the present case does fall within the ambit of sections 3 and 6 of the Civil Procedure and Limitation (Miscellaneous Provisions) Act. However, the relief offered by section 6(1)(a) of that Act is not available to the present plaintiff as, by his own pleadings, he did aver that he first discovered the fraud complained of in 2000. Therefore, this suit should have been filed within 2 years of discovery – by 2002, but was instituted in 2004. This was clearly beyond the stipulated time as fixed by statute.

In her written submissions, Ms. Nabakooza referred this court to the case of **Mohammed B. Kasasa vs. Jasper Buyonga Sirasi Civil Appeal No. 42 of 2008** in support of her argument that the purpose of the law of limitation was to put an end to litigation and that law was to be applied strictly by the courts. In that case the following decision in **Re: Application of Mustapha Ramathan Civil Appeal No. 25 of 1996** was cited with approval:

“Statutes of limitation are in their nature strict and inflexible enactments. Their over-riding purpose is *interest reipublicae ut sit finis*, meaning that litigation shall be

automatically stilled after fixed length of time, irrespective of the merits of the particular case. A good illustration can be found in the following statement of Lord Greene M R in Hilton vs. Sutton Steam Laundry (1946) 1 KB 61 at 81 – ‘But the statute of limitations is not concerned with merits. Once the axe falls, it falls, and a defendant who is fortunate enough to have acquired the benefit of the statute of limitation is entitled, of course, to insist on his strict rights.’”

I do respectfully subscribe to the *ratio decidendi* in that case. Further, in the case of **Uganda Revenue Authority Vs Uganda (1997 – 2001) UCL 149** their lordships of the Court of Appeal held that time limits set by statutes were matters of substantive law and not mere technicalities and should be strictly complied with.

I find that the present suit was filed out of time and is therefore improperly before this court. Having so found, I see no reason to delve into the merits of the suit and duly dismiss it with costs to the defendants.

Monica K. Mugenyi

JUDGE

7th December, 2012