THE REPUBLIC OF UGANDA

IN THE HIGH OF UGANDA
AT KAMPALA (LAND DIVISION)

CIVIL SUIT NO. 778 OF 2003

BERNARD TUMUHIMBISE & 3 OTHERS:::::::::::::::::::::::: PLAINTIFFS

VERSUS

1. **ATTORNEY GENERAL**
2. **UGANDA WILD LIFE AUTHORITY :::::::::::::::::::::: DEFENDANTS**

BEFORE: HON. MR.JUSTICE BASHAIJA K. ANDREW

R U L I N G.

The four plaintiffs on their own behalf and of 198 others filed this suit against the Attorney General and the Uganda Wild Life Authority for the recovery of the value of their lost properties, general damages and costs of the suit. The cause of action, according to the plaint, is founded on an eviction that was carried out on 01/12/2001, when the plaintiffs were partially evicted from their land by the Chief Game Warden of Kibaale Zone on the orders of the Minister of State for Tourism without any compensation on the grounds that they were occupying a Game Reserve.

At the hearing of this case, Ms Maureen Ijang, Counsel for the 1st defendant, raised a preliminary point of law that the suit was time barred and that it ought to be dismissed with costs. That being a claim founded on tort, under ***Section 31*** of the ***Civil Procedure and Limitation (Miscellaneous Provisions) Act, Cap 72*** an action which is grounded on tort or contract against Government is supposed to be filed within two years from the date the cause of action arose. That the plaintiffs' cause of action arose on 1/12/2001 but that they filed their suit on 11/12/2003 after the

statutory period within which the suit ought to have been filed had lapsed and expired, and that that a suit which is time barred by statute must be rejected because in such a suit a court is barred from granting a relief. Counsel buttressed her submissions with the cases of ***Mathias Lwanga Kaganda v. Uganda Electricity Board H.C.C.S No. 124 of 2003***; ***Sayikwo Murome v. Kuko & A' nor [1985] HCB 68 at P.69; Vincent Rule Opio v. Attorney General, [1990-1991] KALR 68; and Banco Arabe Espanol v. Attorney General, Bank of Uganda H.C.C.S No. 527 of 1997,*** among others.

Counsel further submitted whereas there are the exceptions under ***Section 5*** of the ***Civil Procedure and Limitation (Miscellaneous Provisions) Act (supra)*** the plaintiffs in this case did not pleaded any exemption from limitation as required under ***Order 7 r.6 CPR,*** and hence their failure to file their action in time was simply due to their dilatory conduct and that they did not follow through with their rights within the time when they were allowed to do so.

In reply, Mr. Furah Patrick, Counsel for the plaintiffs, submitted that the suit was filed well within time. That under ***Section 2(x) CPA*** a suit means all civil proceedings commenced in any manner prescribed, which means that proceedings commenced in a manner provided by law can constitute a suit, and that proceedings commenced in any other manner are not suits.

Counsel further submitted that ***Section 2(1) Civil Procedure and Limitation (Miscellaneous Provisions) Act (supra)*** prescribes the manner in which civil proceedings against Government are commenced, and no suit can be instituted against Government until expiration of forty – five days (sixty days at the time the suit was filed) after written notice has been delivered. For this position, Counsel relied on ***Konksier v. B. Goodman Ltd. [1926] IKB 421***; and ***Eriyasafu Mudumba v. Wilberforce Kuluse H.C.C.A No. 4 of 1991 [1994] KALR 738.*** Counsel submitted that without the delivery of service upon the Attorney General there

would be no suits against Government, and that suits against the Attorney General are initiated by statutory notice, and that this period is reckoned with in the computation of the period for bringing the action.

Furthermore, that proceedings in the instant case were instituted by a statutory notice served on the 1st defendant on 21/12/2001 just twenty days after the cause of action arose on 1/12/2001, and the case was filed in court on 11/12/2003, and that that puts the instant suit within the two – year period stipulated under the law.

Counsel also advanced the view that the cause of action in this case is an implied tort of trespass, against which time does not stop running since it is a continuous tort and every day constitutes a fresh cause of action. For this proposition Counsel relied on ***Mulla; The Code of Civil Procedure, Act V of 1908, page 965.*** Counsel prayed that the preliminary point be overruled.

Consideration.

The plaintiffs' claim, according to paragraph 4 of the plaint, is plainly for the recovery of the value of their properties lost when they were evicted from Katonga Wild Life Game Reserve. The cause of action is not implied trespass as contended by Counsel for the plaintiffs. According to ***Black's Law Dictionary, 8th Edition, at page 1541***, "trespass" means an unlawful act committed against the person or property of another; especially wrongful entry on another's real property. On the other hand, "eviction", for which the plaintiffs claim the value of lost property, means the process of legally dispossessing a person of land or rental property**.** ***(At page 594).***

The two are quite different and the facts that would be required to prove the causes of action in them are not the same. It is essentially the reason why the plaintiffs are neither seeking to recover the land from which they were evicted or its value, but only the value of the property destroyed in the process of the forceful eviction. It should be noted that in determining whether a plaint discloses a particular cause of

action or not, the court must look only at the plaint and its annextures if any, and nowhere else: See ***Kapeeka Coffee Works Ltd. & A'nor v.NPART, C.A.C.A. No.3 of 2000.*** One ought to determine a cause of action from facts plainly appearing on the face of the plaint. See ***Attorney General v. Maj. Gen. David Tinyenfuza, S.C.Constitutional Appeal No.1 of 1997.***

In the instant case, there is no implied tort of trespass that could be read into the plain facts averred in plaint by the plaintiffs. Recovery of the value of lost property as a cause of action is quite different from a tort of trespass, and as such the alleged continuous tort does not exist on the facts of this case.

Regarding the issue of limitation, the position of the law as was stated in ***F.X Miramago v. Attorney General [1979] HCB 24*** is that the period of limitation begins to run as against a plaintiff from the time the cause of action accrued until when the suit is actually filed, and not when service of the notice is effected. Once a cause of action has accrued, for as long as there is capacity to sue or be sued by the parties, time begins to run as against the plaintiff, and the provisions of the ***Civil Procedure and Limitation (Miscellaneous Provisions) Act*** as to limitation apply *mutatis mutandis*. It would follow that the position which was advanced by Counsel for the plaintiffs regarding institution of suits against Attorney General has no legal basis.

For avoidance of doubt, a suit is not regarded as duly instituted or filed against the Attorney General, and indeed against any other party, until it is received by court in the Court Registry, which acknowledges by stamping with the court stamp (usually a "received" stamp), and endorses as well as inserts a date on which the documents were received. Thereafter, a file is opened and it is assigned a case number and it is entered in the Court Register. Even though this exercise appears purely administrative in nature, it is invariably important as the formal initiation of

the court process that signifies the actual time on which an action is considered filed, and proceedings commenced for purposes of limitation of actions.

Section 11 of the ***Civil Procedure Act*** is also quite instructive as regards the issue of filing/institution of civil actions. For ease of reference, it is quoted below.

> "***Except as provided in this Act or the Magistrates Courts Act, suits and proceedings of civil nature shall be instituted in the High Court."***

Equally, ***Order 48 r. I CPR*** which provides for the procedure on the same point states that;

> "***Every suit in the High Court may be instituted at the central office of that court situated in Kampala or in a district registry.***" (Emphasis added)

The provisions above clearly show that proceedings are not considered as duly initiated until the suit is received by the court in the Court Registry of the court concerned in the manner aforementioned. The filing of a case entails filing of documents, and no document is considered as properly filed until the necessary court fees have been paid. See: ***UNTA Exports Ltd. v. Customs [1970] E.A 648.*** The necessary fees are assessed by the court on filing. It follows logically that filing of a suit refers to the time it is brought to the court, which does not envisage the period prescribed for serving the statutory notice on the Attorney General.

The above being the position, the computation of the time in the instant case commences from 01/12/2001 the date on which the cause of action arose up to 11/12/2003 when the case was filed in court. This clearly puts the suit outside the two - year period prescribed by law for bringing actions founded on tort against the 1st defendant. Needless to state, that a cause of action is the basis for determining a limitation period because it is the composite of the matters that ought to be proved to court for the action to succeed.

It is now established law that a suit which is time barred by statute 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 (supra); Onesiforo Bamuwayira & 2 Or's v. Attorney General (1973) HCB 87. Statutes of limitations are by their nature strict and inflexible enactments. Their overriding purpose is interest *republicae ut fins litum*, meaning that litigation shall automatically be stifled after a fixed length of time, irrespective of the merits of a particular case. Statutes of limitation are 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. See: ***Hilton v.Satton Steam Laundry [1946] IKB 61 at page 81***. For the foregone reasons, the instant suit is statute barred and the plaintiffs cannot obtain a relief as against both defendants. It is accordingly dismissed with costs.

BASHAIJA K. ANDREW
JUDGE
26/09/13