THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
LAND DIVISION
CIVIL SUIT NO. 438 OF 2013

VICTORIA KAYIZZI…… PLAINTIFF

VERSUS

JUMA SEWAALINTE……. DEFENDANT

RULING

BEFORE LADY JUSTICE EVA K. LUSWATA

When this suit came up for hearing on 4th September 2014 learned counsel for the defendant raised a preliminary objection to the effect that the suit was time barred.

Counsel submitted that **Section 5 of the limitation Act Cap 80** is to effect that no action for recovery of land shall be bought after expiration of 12 years. That according to paragraph 4 of the plaint, the plaintiff claims to have bought land from the defendant in 1989 which is approximately 24 years from the date of purchase to the present date. That the plaintiff ought to have filed any claim arising out of the said transaction not later than 2001 and in addition, she does not plead in her plaint any disability as it is provided under **Order 7 Rule 6 of the CPR.** In support of the above counsel cited the cases of **Hammern Ltd & Anor Vs. Ham Ssali & Anor HCMA No. 449 of 2013** and **Henry Wabui & Anor Vs. Rogers Hanns Kiyonga Ddungu & 2 Ors HCCS No. 102 of 2009.**

Counsel further submitted that the plaint is for the recovery land. That the defendant in his WSD under paragraph 7(e), has been in occupation of the suit property ever since together with the beneficiaries of the estate of his deceased grandfather, Juma Sewaalinte to date. That the plaint is brought in a way which is intended to circumvent the law, since it is brought under a pretext that it is seeking specific performance of the contract of the sale of land yet in actual sense it is seeking recovery of the said land. In the case of **Hussein Hamdani Vs. Uganda Electricity Board HCCS No. 584 of 2003** it was held among others that the remedy of specific performance is an equitable remedy and that equity follows the law and therefore that if a suit is time barred the plaintiff cannot lawfully obtain a remedy under it by maneuvering through the doctrines of equity in order to achieve what the written law has clearly said he ought not to have achieved. In

the circumstances the present suit should be struck out with costs to the defendant for being time barred.

In reply, counsel for the plaintiff submitted that the rule of limitation will apply only after the time the plaintiff came to know of an adverse interference with her interest. That since the purchase of the land from the defendant, he never asserted a contrary view until 2012. That the court ought to investigate when the plaintiff came to know when the defendant had taken her land. He argued that the facts in the plaintiff indicate that following the purchase, the defendant signed a transfer form in her favour, but that she could not register the land since the defendant did not hand over the title claiming that it was lost. Subsequently in 2005, she entered upon and opened boundaries of the land without any objection from the defendant. That later in 2012, the plaintiff contacted the defendant to sign a fresh transfer form but he responded stating that he had never sold the entire land to her. He stated therefore that the only time the plaintiff got to know that her land was probably taken, was 2012 and this suit having been filed in 2013, is validly filed.

Counsel for the plaintiff also submitted that an acknowledgement by the defendant of the claim would under the law of limitation operate as an exception. That the plaintiff wrote a notice of intention to sue on 25/9/12 and in response, on 6/9/12, the defendant acknowledged that Shs.500,000/- had been received in respect to the sale of the suit land but denying the fact that 35 acres were sold. That the defendant conceded selling only 5 acres and repeated that stance in his lawyer's communication of 18/10/12. Counsel argued that the acknowledgement revived the claim and in that, he relied on the authority of **Concorp International (U) Ltd Vs Uganda Muslim Supreme council HCCS No.318 of 2002 and Madvani International S.A. Vs Attorney General SCCA No.23 of 2010**.

Section 5 of the Limitation Act Cap 80 provides that;

"*No action shall be brought by any person to recover any land after the expiration of 12 years from the date on which the right of action accrued to him or her or, it first accrued to some person through whom he or she claims, to that person.*"

The suit is in respect to land comprised in Block 147 Plot l9 at Bulyankuyege (thereinafter called the suit land). The plaintiff seeks an order of specific performance by the defendant of a sale

agreement in respect of the suit land in which the purchase price was made, general damages and costs. I do n agree with counsel for the defendant and in fact, it is not seriously disputed by the plaintiff that although the order sought is for specific performance, the plaintiff ultimately seeks to recover land which she paid for but was being withheld by the defendant. Thus, this would be a claim for recovery of land which can be stifled by limitation under Section 5 of the Limitation Act.

Exceptions to the general rule are allowed and they would in respect of this claim be found in Sections 22-24of the Limitation Act. According to Section 22 (1), where there has accrued any right of action to recover land, and the person in possession of the land acknowledges the title of the person to whom the right of action has accrued, the right shall be deemed to have accrued on and not before the date of acknowledgement. Even then, under Order 7 rule 6 of the CPR, a party seeking protection, must in their plaint indicate the ground upon which the exemption from that law is claimed, and the provisions of the CPR appear to be mandatory.

Counsel for the plaintiff opposed the objection on two grounds. Firstly that if time had run against the plaintiff, then it was resurrected by the apparent acknowledgment of the contract of sale by the defendant or, that time could only begin to run against the plaintiff after she became aware of the defendant's adverse claim to the suit land.

I am mindful of the legal requirement that the issue of limitation need be deducted from the face of the pleadings and nothing more. Going by the facts in the plaint, the transaction which is the basis of the claim was made in 1989. On the face of it, a plaint being lodged in 2013, (25 years after the event) would make the claim time barred. A keen scrutiny of the plaint shows that no specific grounds for an exception against the rule of limitation were properly formulated in the plaint which appears to be a mandatory requirement under 0.7 Rule 6 CPA.

An attempt was made to refer to the alleged acknowledgment when the plaintiff attached two letters in which the defendant allegedly opposed the sale of 35 acres but conceded to the sale of 5 acres and offered to refund the purchase price already made or, offer a sale of that portion at an enhanced price. This evidence which is yet to be proved and not specific facts stated in the plaint. In my estimation, it would have been necessary for the plaintiff to have specifically laid out in pleadings the facts of the alleged acknowledgement of the contract by the defendant. In

my view, the Limitation Act cannot be read in isolation of the Civil Procedure Rules which guides court on how claims should generally be formulated and presented in pleadings. In any case, Section 22 appears to be open to a situation where the party putting up the defence of limitation is in possession of the land in question. The plaint clearly puts the plaintiff and not the defendant in possession. However, I hasten to add, that the rule allows the plaintiff to plead facts from which a reasonable inference can be made that the suit is not time barred, but if they do so, then the issue of limitation becomes a triable issue which can only be determined after hearing evidence on the matter. I am not persuaded therefore, that this argument for the plaintiff, can at this point in the suit offer her the protection of an exemption against limitation and it thus fails.

The above notwithstanding, limitation in all its aspects is subject to the time a cause of action is said to have accrued to the plaintiff. According to the plaint, the plaintiff purchased the suit land from the defendant in 1989, executed a transfer but the defendant did not hand over the duplicate certificate of title claiming that it was lost. That in 2005, the plaintiff opened boundaries of the suit land using a surveyor identified by the defendant. That subsequently during 2012, the defendant declined when requested by the plaintiff to sign fresh transfer forms and hand over the certificate of title. That he denied having ever sold the land to the plaintiff which prompted the plaintiff to file the present suit. Those facts as stated by the plaintiff are supported by Annexture "E" to the plaint in which it is clearly shown that during July 2012 and October 2012, the defendant (through his lawyers) was not ready to go ahead with the transaction or at least was prepared to go ahead with it, on new terms.

On those facts, I do agree with counsel for the plaintiff that the right to sue accrued in 2012 when the plaintiff asked and the defendant declined to sign fresh transfer forms and hand over the certificate of title or denied ever having sold the land to or in the alternate, offered to perform the contract on different terms. This was the breach against which the plaintiff seeks specific performance and general damages in her claim. In my view, before 2012, the plaintiff had no reason to believe that the defendant had an adverse claim to the land in part or in whole. His alleged conduct to assist her with the survey by providing a surveyor and apparent silence over her ownership since the date of purchase, would lead her to believe that she owned an equitable interest in the land that only needed formalization through registration. I therefore do not agree with the submissions of counsel for the defendant that the right to sue accrued in 1989 when the

plaintiff claims to have bought the suit land. Therefore, if I were to agree, which I do, that the cause of action arose sometime in 2012, then the suit which was filed in September 2013, could not be said to be time barred.

In conclusion the preliminary objection is dismissed with costs and the suit shall proceed to hearing of the issues on merit.

I so order.

EVA K. LUSWATA
JUDGE
15/9/14