THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
HOLDEN AT MBALE

HCT-04-CV-CA-0111 OF 2013
(ARISING FROM SIRONKO LAND SUIT NO. 15/2009)

1. **WODENGA DANIEL**
2. **MIZURAIMU KHIISA**
3. **GIDUDU**
4. **MADIIBO KENNETH**
5. **WANZAGILO WILSON**
6. **SHABAN MUZEYI**
7. **GIZAMBA ROBERT**
8. **GYABI ROBERT**
9. **WONIALA DAVID**
10. **MASSA MOSES**
11. **WONIALA BADIRU**
12. **ARAMANZANI WONIALA**
13. **WONIALA MUTWALIBU**
14. **MUKONE PETER**
15. **WOBAYA HASSAN**
16. **NASONGO CHARLES :::::::::::::::::::::::::::: APPELLANTS**

VERSUS

BOYOBO SUBCOUNTY LOCAL
GOV'T COUNCIL :::::::::::::::::::::::::::::::::: RESPONDENT

BEFORE: HON. JUSTICE HENRY I. KAWESA

JUDGMENT

The appellants sued respondents in the lower court vide Sironko Land Suit N0.15 of 2009 for general damages for trespass to land and other reliefs arising out of the respondent's forceful occupation of the suit lands. Appellants claimed that they were given the land intervivos by their ancestors (Paragraph 4 of the plaint).

The respondents/defendants denied the claim and alleged that plaintiffs were mere trespassers with no claim of right on the suit land. After the trial the learned Trial Magistrate, found in favour of the respondents/ defendants and dismissed the plaintiffs' case with costs. Plaintiffs were dissatisfied and filed this appeal.

The appeal is premised on 3 grounds namely that;

1. The learned trial magistrate erred both in law and fact when he did not exhaustively evaluate the evidence.
2. The decision of the learned trial Magistrate did not base on the evidence adduced and thereby the same has occasioned a miscarriage of justice.
3. The decision of the learned trial Magistrate is based on misdirection of both fact and law.

The duty of this court as a first appellant court is to review the evidence and scrutinize it, with a view to make independent findings and conclusions; as stated in *PANDYA V.R(1957) EA 336*, also in KIFAMUTE HENRI V. UGANDA CR.A 10/97.

The evidence on record was as follows;

CW.1- Wedyezi Samuel informed court how the land used to be for whites who had planted eucalyptus trees. The ancestors gave out the land to the colonial Administrators who upon leaving gave it to the Bugisu District Government. This was between 1962-1979. The land then remained empty and free between 1979-1990s. In 2002 the LC111 in Buyobo convened a meeting to discuss use for the land. In 2009 a plan was drawn to put up a hospital, open market and lock ups. The plan was not implemented. By 2010 people began inviting themselves on the land,

after the local government put out an advert in 2009. It was the advert which prompted the people to come on the land illegally.

CW2- Gudoi Mazune Wilson stated that as a young person he was told that the land belonged to Buwotila clan. It was swampy area so they consulted the colonial Administrators on what could dry the land, this was about 1926. They began growing eucalyptus trees. At independence in 1962 the land remained in the hands of the colonial government. He confirmed that the local government in 2009 ran an advert and people took advantage and settled themselves thereon in 2010.

PW1- Wodenga Daniel, said the land used to belong to his late father **Eliazali Namusi**, by customary holding, since 1952 till 2009 when plaintiff trespassed on it by putting up lockups

In cross-examination he argued that the suit land was used by the colonial Administrators before independence. He also argued that sub county people used to go and cut the trees planted and left behind by the colonial government.

PW2 Shaban Muzeyi, said land used to belong to their ancestors. He confirmed the land had eucalyptus trees by as far back as 1956. Their ancestors donated the land to whites and he started using it in 1985 until 2009 when defendants encroached on it.

PW3 Gizamba Robert stated that the land belongs to his father who died in 1992. In 2009 the defendants encroached on the land. He stated that since 1996 he has been cultivating the land jointly and severally with his co-plaintiffs. He however confirmed in cross-examination that their ancestors had given the land to the colonial Administration, but regained it when the colonialists left.

PW4- Massa Moses, stated that he got **Obadiya Mayuya** who died in 1991. All of them inherited the land from their fathers. He stated that the land is situated where the sub county is situated.

In cross-examination he denied that no colonial government even used that land.

DW1 Hajj Yunus Wamini was sub county Chief in 1973 up to 1981 for Buyobo sub-county. When he was handed over office he was given 4 pieces of land- sonoli land, Buweri, Bugusege and Buyola. He averred that during the colonial days, white people planted eucalyptus trees, coffee nursery beds and the trees were used for firewood for the prison of Masaba. When they left the land remained for the Bugisu district Administration. He confirmed that plaintiffs trespassed on the land in 2009, but the land belongs to government.

DW2 Wamboza, confirmed the government ownership collaborating DW1's evidence regarding the mode of acquisition of the land. **DW3 Mashate John Wakooli, DW4 Wetaka Geoffrey** collaborated each other's evidence confirming that when the colonial Administrators left, government took over ownership. DW4 handed in court several documents from the sub county to confirm the said ownership.

The court (lower) considered two issues;

1. Whether plaintiff or defendant are the rightful owners of the suit land.
2. What are the remedies?

In his judgment the learned trial Magistrate found that the suit belongs to the defendants

On appeal three ground of appeal have been listed. Appellants' counsel chose to argue them jointly. Respondent in his submission has raised two preliminary points of law which must be determined before dwelling into the main grounds. I will first deal with the preliminary objections as here below;

1. **Whether there was no Statutory Notice served on respondent/ defendant as required under Section 2(1) of the Civil Procedure and limitation Misc)(Provisions) Act and S1(h)(1) and 3(1)- 5 of the Local Government Act.**

Counsel for the defendant, considered the law at length on this point before the lower court, but no decision was made on it. Under SI (CPL (MP) A 1969 the law provides that:

> "*No suit can lie or be instituted against government until after the expiry of 60 days next after written notice has been delivered or left at the office of the Attorney General*."

This position was re-emphasized in *Rwakasoro & 5 Ors V. A.G (1982) HCB 40*

I have perused the pleadings and have failed to see the statutory notice on record. Neither is it annexed to the plaint, as pointed out in **Rwakasoro** above.

Also in *Pamba V Coffee Marketing Board (1975) HCB 369***,** held that;

> " *by virtue of section 1 of CPL (Misc Provisions) Act 1969, no suit can be instituted against a scheduled corporation unless written notice has been delivered or left at the office of Secretary of the corporation. Where service of statutory notice is denied, the onus of proof of service of such notice is*

on the plaintiff….where no such evidence is shown, the procedure was not followed, no suit could lie or be instituted against the defendant corporation…"

I am inclined to hold that this was the scenario before the lower court. The above procedure was not followed and the suit could not be sustained against the defendants as argued by the respondents. This objection succeeds.

The second objection raised was on the fact that the suit was time bared. Counsel referred to Section 5 of the Limitation Act Cap 80, and the case of *Iga V Makerere University CA 51/97*.

Section 80 of the Limitation Act provides that "no action shall be brought to recover land after the expiration of 12 years from the date on which the right of action accrued to him or her…"

I have gone through the evidence. The plaintiff's case seems to be that they obtained customary rights to the land from their fathers, who had donated the land to the colonialists, but when colonialists left they repossessed the land. Their complaint is that in 2009 the defendants encroached on their land with the intention of allocating it. This type of claim is in the category referred to in *Eridadi Otabong Waino V Attorney General (1991) HCB 45***,** that where a period of limitation is imposed, it begins to run from the date on which the cause of action accrues (in our case 2009) where for instance a trespass, libel, unlawful arrest or other act which itself constitutes a wrong, time begins to run from the act itself or if there are several acts in respect of each from the date of its commission.

The fact that plaintiffs refer to the period of 2009 as the time when the alleged trespass began then, they are not caught by the 12 years Rule

Furthermore, it was held in *Sayikwo Murome V Yovan Kuko & Anor(1985) HCB 68* that;

> "*Before the plaintiff can be required to show the grounds of exemption under limitation, it must be apparent from the plaint and not the defence that the suit is brought after the expiration of the period of limitation. The plaintiff must plead facts from which a reasonable inference can be made that the suit is time barred…. Since plaintiff disputed the claim….. the plaintiff's case was not prima facie time barred. The issue of limitation was a triable issue which could only be determined after hearing the evidence on the matter*." (Per **Odoki J.)**

The import from the above case is that limitation must be clearly shown from the pleadings on the plaint. The plaint in this suit does not specify any facts from which limitation can be inferred. It was only inferred from the evidence adduced. It was not therefore prima facie a case of limitation, and is therefore not time barred.

Regarding the grounds of appeal 1, 2 and 3 and arguments raised for and against by both appellants and respondents, it is my finding that the trial Magistrate's assessment of the lower court facts evidence and law was correct.

I found out that the plaintiffs' case was very weak. The witnesses greatly contradicted themselves. As reviewed above, the evidence from defendants

collaborated each other, and was supported with documentary evidence. The court witnesses (CW.1 and CW2) at locus confirmed the evidence of the defence. They all argued that this land was donated to the government. The special features of eucalyptus trees was referred to by all witnesses except PW3 who contradicted himself on whether he saw the trees or not

I have reached the same conclusion on this appeal as the lower court. Indeed the suit could have been dismissed for being procedurally incompetent due to not serving a statutory notice. However, the appeal also fails on all grounds for reasons as above. It's dismissed with costs to the respondents.

Henry I. Kawesa
JUDGE
13.11.2014