

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)
MISCELLANEOUS APPLICATION NO.2946 OF 2023
(ARISING FROM CIVIL SUIT NO.1003 OF 2023)

BARUNGI RICHARD:..... APPLICANT

VERSUS

KASOZI MADINA :..... RESPONDENT

BEFORE: HON.LADY JUSTICE AISHA NALUZZE BATALA

RULING

Introduction;

1. *Barungi Richard* herein after referred to as the applicant brought this application against *Kasozi Madina* herein after referred to as the respondent by way of a Miscellaneous application under provisions of Section 33 of the Judicature Act Cap.13, Sections 7&98 of the Civil Procedure Act Cap.71 and Order 7 rules 11(d)&(e) of the Civil Procedure Rules SI-71-1 seeking for orders that;

- i) That the plaint in HCCS No.1003 of 2023 be rejected and struck off court record and the entire suit be dismissed with costs for being barred in law and it is res-dicata
- ii) That the main suit vides Civil Suit No1003 of 2023 does not disclose a cause of action against the 3rd defendant/applicant.

- iii) That Civil Suit No.1003 of 2023 is frivolous, vexatious and an abuse of court process and the same should be dismissed with costs.
- iv) Costs of the application be borne jointly by the respondent and his lawyers.
- v) The plaint vides civil suit No.321 of 2022 be struck out for it does not disclose any cause of action against the applicant/2nd defendant.

Background:

2. The suit land originally formed part of the land of the late Yokana Gabiri who sold 6 acres of his land to the late Erenesiti Kawesa and the same Erenesti Kawesa sold 0.71 acres of his land to the late Halima Nakiwala in 1952, a subdivision was made and the land was registered in the names of the late Halima Nakiwala leaving a residue that formed plot 109 measuring 5.29 acres in the names of Erenesti Kawesa. Upon death of Erenesti Kawesa, the administrators of his estate transferred the said land into their names and distributed it among beneficiaries where the late Nakitto Sarah was given plot 939 block 215 as her beneficial share in the estate of the late Erenesti Kaweesa.
3. In 2003, the late Ahmed Sembatya (beneficiary to the estate of the late Halima Nakiwala) wrongfully trespassed on plot 939 block 215 claiming that the same is part of the estate of the late Halima Nakiwala.

4. Nakito Sarah (beneficiary to the estate of Erenesti Kawesa) instituted civil suit No.105 of 2006 against the late Ahmed Sembatya where in the administrators of the estate of the late Ahmed Sembatya were substituted as defendants upon his death. The matter was heard and determined in favor of the plaintiff Nakito Sarah. In July 2023, the administrators of the Estate of the Late Ernesti Kaweesa transferred the suit land comprised in Block 215 Plot 939 land at Kyadondo into the names of the late Nakitto Sarah the beneficial owner.
5. The late Nakitto Sarah sold the suit land to Keeya Keneth and Lutanda Richard who then sold the suit land to Barungi Richard the applicant herein who got registered on the title in July 2023. The respondent brought the HCCS No.1003 of 2023 as a beneficiary of the Late Nakiwala Halima being the daughter of the late Ahmed Sembatya after the determination of HCCS No.105 of 2006.
6. More so the suit HCCS No.1003 of 2023 was brought in the pendency of civil appeal No.279 of 2023 against the decision of HCCS no.105 of 2006 which was lodged by the administrators of the late Ahmed Sembatya who are grandchildren of the late Halima Nakiwala and siblings to the plaintiff/respondent who also claims the suit property under the title of the late Halima Nakiwala.

Applicant's evidence;

7. The application is supported by an affidavit deposed by **Mr. Barungi Richard** the applicant which sets out the grounds of the application including the following;

- i) That the applicant is the registered proprietor of land comprised in Kyadondo Block 215 Plot 939 land at Kulambiro and he is in the possession of the same.
- ii) That the proprietary issues of the suit land were fully heard and determined in civil suit No.105 of 2006; Nakitto Sarah vs Nakiwala Safina & others
- iii) That the suit was heard on merit and determined in favor of the plaintiff (Nakitto Sarah).
- iv) That the administrators of the late Ahmed Sembatya filed a notice of appeal vide civil appeal No.279 of 2023 in the court of appeal being dissatisfied with the determination of HCCS No.105 of 2006.
- v) That the main suit HCCS No.1003 of 2023 does not disclose any cause of action against the applicant and the same is barred by the law on limitation.
- vi) That the main suit HCCS No.1003 of 2023 is an abuse of court process since the suit land is a subject in the appeal.
- vii) That the proceeding of HCCS No.1003 of 2023 may result into dissenting judgments/orders made by this honorable and court of appeal.
- viii) That it is just and equitable that this application be granted.

Respondent's evidence;

8. The application is responded to by an affidavit in reply sworn by **Mrs. Kasozi Madina** the respondent in which she states the following among others;

- i) That the respondent is a beneficiary to the Estate of the late Halima Nakiwala to which the administrator general was granted the letters of administration.
- ii) That the applicant has never been in possession of the suit land and he forcefully tried to take possession of the same when he had already filed this matter in court by bringing the tractors on the suit land destroyed the applicant's crops
- iii) That the registration of the applicant onto the certificate of title as the registered proprietor was fraudulent which the applicant was involved in.
- iv) That all the proprietary issues to the suit land are to be resolved in the main suit HCCS No.1003/2023
- v) That the respondent and the applicant have never been part of HCCS No.105 of 2006.
- vi) That the late Nakittto Sarah brought civil suit No.105 of 2006 without the consent of other administrators of the estate of the late Kaweesa Ernesti.
- vii) That the suit HCCS No.1003 of 2023 is not res-judicata since the respondent was not party to HCCS 105/2006.
- viii) That the alleged appeal civil appeal No.279 of 2023 is between the administrators of the late Ahmed Sembatya and the late Nakitto Sarah yet I am not a beneficiary to the said estate.
- ix) That HCCS No.1003 of 2023 discloses a cause of action against the applicant which is fraud, trespass and that explains why the other defendants filed counter claims.

- x) That HCCS No.1003 of 2023 is not barred by limitation since it is premised on fraud and she got to know of the same in July 2023.
- xi) That the subject of the appeal does not have any bearing on the determination of HCCS No.1003 of 2023.
- xii) That it is just and fair that this application be dismissed.

Representation;

9. The applicant was represented by **Mr.Bemanyisa Adonija** of M/s MBS Advocates whereas the respondent was represented by **Mr.Mutayamba Geodfrey** of M/s Kivumbi Madinah Kikomeko Advocates & Solicitors. Both parties filed their affidavits and submissions which I have considered in the determination of this application.

Issues for determination;

- i) Whether the HCCS No.1003 of 2023 is barred by the law on limitation?
- ii) Whether HCCS No.1003 of 2023 should be struck out on ground of res judicata?
- iii) Whether the plaintiff suit HCCS No.1003 of 2023 discloses a cause of action against the applicant?
- iv) Whether HCCS No. 1003 of 2023 is an abuse of court process?
- v) What are the remedies available to the parties?

Resolution of the issues;

i) **Whether the main suit HCCS No.1003 of 2023 is barred by the law on limitation?**

10. Learned Counsel for the applicant submitted that the suit was time barred and the cause of action if any was barred by limitation as the right of the plaintiff who claims title over the land as to form part of the estate of the late Halima Nakiwala dates as far back as the year 1952 and at best 1986 when the said Halima Nakiwala died, Counsel cited the case of **Miramago Vs Attorney General [1979] HCB 24** for the proposition that the period of limitation begins to run as against the plaintiff from the time the cause of action accrued until when the suit is actually filed.

11. Counsel further submitted that the suit is also for recovery of land which ought to have been filed within 12 years from the date the cause of action accrued. Counsel relied on Sections 5,6 and 20 of the Limitations Act.

12. In response, Counsel for the respondent submitted that the suit was not barred by time. Counsel also further re-emphasised the position that in determining the limitation period, court looks at the pleadings only and no further evidence is required. (*See; Mukooza Micheal Semazzi Vs Ibulaimu Kironde Kabanda & Anor HCCS No 889 of 2017*).

13. Counsel also cited Section 25 of the Limitations Act for the position that in actions of fraud against the defendant or any person from whom he or she claims, the period of limitation does not begin to run until the plaintiff has discovered such Fraud.

Determination of court;

14. The Black's Law Dictionary 4th Edition at Page 2716 defines limitation as a statutory period after which a law suit or prosecution cannot be brought in Court.

15. The rationale behind the statutes of limitations is protecting defendants from having to defend stale claims by providing notice in time to prepare a fair defence on the merits, and requiring plaintiffs to diligently pursue their claims. Statutes of limitation are designed to protect defendants from plaintiffs who fail to diligently pursue their claims. Once the time period limited by *The Limitation Act* expires, the plaintiff's right of action will be extinguished and becomes unenforceable against a defendant. It will be referred to as having become statute barred. Section 5 of the Limitations Act provides as follows; ***“No action shall be brought by any person to recover any land after the expiration of twelve years from the date on which the right of action accrued to him or her or, if it first accrued to some person through whom he or she claims, to that person.”***

16. In the instant case, this is an action for recovery of land based on title and the question to be asked is when did the cause of action accrue? It is clear that the plaintiff in the main suit who

is the respondent in the application is claiming as a beneficiary of the Estate of the late Halima Nakiwala who died in 1986. Section 6 (2) of the Limitations Act provides as follows;“***Where any person brings an action to recover any land of a deceased person, whether under a will or on intestacy, and the deceased person was, on the date of his or her death, in possession of the land or, in the case of a rent charge created by will or taking effect upon his or her death, in possession of the land charged, and was the last person entitled to the land to be in possession of it, the right of action shall be deemed to have accrued on the date of his or her death.***”

17. From the above section, I believe the respondent (plaintiff) in the instant case brings this action to recover 0.71 acres that allegedly belong to the Estate of the late Halima Nakiwala who died in 1986 and was the last person entitled to be in possession of the said land. In light of Section 6 (2) of the Limitations Act, the right of action accrued upon the death of the Late Halima Nakiwala in 1986. It has been 37 years from the time the cause of action accrued until Civil Suit 1003 of 2023 was filed.

18. A litigant puts himself or herself within the limitation period by showing the grounds upon which he or she could claim exemption, failure of which the suit is time-barred, the court cannot grant the remedy or relief sought and must reject the claim (**See; Iga Vs. Makerere University [1972] EA 65**).

19. This disability or inability must be pleaded as required by Order 7 rule 6 and 11 of *The Civil Procedure Rules*, which was not done in the instant case on perusal of the respondent's plaint. The inability pleaded by the respondent in her plaint under 5 (i) of the plaint is that inability subsequent to when the time begun to run and therefore inconsequential. In the addition, time begun to run when the late Halima Nakiwala died and one of the important principles of the law of limitation is that once time has begun to run, no subsequent disability or inability to sue stops it. (*See; Odyeki & Anor Vs Yokonani & 4 Ors Civil Appeal No 9 of 2017*)

20. Be that as it may, upon the determination of the first issue I do not find it relevant to determine the other issues as well since they will not have any impact on the gist of this application upon determination.

21. In the premises, I find Civil Suit No 1003 of 2023 is barred by limitation under Section 5 and 6 (2) of the limitations Act and therefore dismissed for being bad in law, No order as to costs of the application and Civil Suit No.1003 of 2023.

I SO ORDER.



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NALUZZE AISHA BATALA

JUDGE

31st /10/2023