

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)

CIVIL SUIT NO 2245 OF 2015

1. KALYESUBULA ISAAC
2. KYOBE SAAD
3. KIYINGI PAUL
4. KALYESUBULA RONALD
5. MPANDE MARTIN :::::::::::::::::::: PLAINTIFFS

VERSUS

1. COMMISSIONER LAND REGISTRATION
2. JJAGWE BULEGA JOSEPH
3. NYONDO JULIUS
4. NANZIRI SYLVIA LWANGA :::::::::::::::::::: DEFENDANTS
(Administrators of the Estate of the late Mathias Bulega
Mitanda Lwanga)

BEFORE; HON.LADY JUSTICE NALUZZE AISHA BATALA

RULING ON A PRELIMINARY OBJECTION

Introduction;

1. In this case the Plaintiffs instituted this suit against the defendants for a claim against the Defendants jointly and severally for:



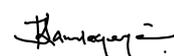
- i) Recovery of one Acre of land comprised in Block 265, Plot 689 land at Bunamwaya Wakiso District,
- ii) A declaration that the Plaintiffs are the beneficial owners of land comprised in Block 265, Plot 689 land at Bunamwaya Wakiso District,
- iii) A declaration that the 1st Defendant's actions of not cancelling the name of a one Mathias Bulega Lwanga from Block 265, Plot 689 are uncalled for,
- iv) A declaration that the registration of a one Mathias Bulega Lwanga on Block 265 Plot 689 was procured through fraud,
- v) A declaration that land comprised on Block 265 Plot 689 forms part and parcel of the Estate of the Late Bbosa Benson, Kibuuka Julius, Kaasa Steven, Kikukyaluyira Serunkuma and Kikoyo as beneficiaries to the Estate of the Late Isaka Serunkuma,
- vi) An order directing the 1st Defendant to cancel the name of Mathias Bulega Lwanga and replace it with those of the Administrator General,



- vii) An order directing the 2nd, 3rd and 4th Defendants to deposit the Duplicate Certificate of Title in Court,
- viii) A permanent Injunction against the sale or disposal of the suit land, mesne profits, General damages and costs to the suit.

Background;

2. The Plaintiffs' case is that the Late Isaka Serunkuma was the registered proprietor of the suit land and upon his death in 1969, the Administrator General took over the administration of the property of the Late Isaka Serukuma, and distributed the properties and particularly distributed the suit land to the Children of the Late Isaka Serukuma who are the fathers to the 1st, 2nd, 3rd, 4th and 5th Plaintiffs.
3. That these Children to the late Isaka Serukuma passed on at various different intervals before they could access their said share.
4. That in 1969 after the death of the late Isaka Serukuma, a one Mathias Bulega without letters of administration and any color of right got himself registered on the suit land as the owner.



5. The defendants in their respective defenses denied all allegations and the 2nd,3rd and 4th Defendant raised preliminary objections to include;

- i) That the Plaintiffs have no locus to bring the suit or claim since they are not direct beneficiaries to the Estate of the late Isaka Serukuma.
- ii) That the suit is time barred by the law on limitation.

Representation;

6. The plaintiffs were represented by Mpande Martin of M/S Lubega & Co advocates whereas the 2nd -4th defendants were represented by Joseph Kyazze of M/S Magna Advocates and there was no representation from the 1st defendant.

7. All Parties made submissions which have been considered herein.

Preliminary Objections;

8. Counsel for the Defendants raised two preliminary objections which are that;



i) **Whether the Plaintiffs have locus standi to bring the suit and to maintain an action for recovery of land?**

ii) **Whether the Plaintiffs' claim in the suit land is barred by the law of limitation?**

9. A preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of the pleadings, and which if argued as a preliminary point may dispose of the suit as discussed in *Mukisa Biscuit Manufacturing Co. Ltd v. West End Distributors Ltd [1969] EA 696*.

Whether the Plaintiffs have locus standi to bring the suit and to maintain an action for recovery of land?

10. To support their argument, Counsel for the Defendants relied on Order 6 Rule 28 and 29 of the Civil Procedure Rules which constitute the law that confers upon the discretionary power to determine a suit on the basis of preliminary points of law; if they are capable of disposing off the entire suit.

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11. Counsel made Reference to Paragraph 1 of the amended plaint where he stated that the Plaintiffs are not suing as beneficiaries of the estate of Isaka Serukuma but apparently as beneficiaries of their respective deceased fathers' estates.
12. However, the suit property is not described in the plaint as forming part of the estate of the Plaintiffs' deceased fathers. It is being claimed as property allegedly forming part of the Estate of the Late Isaka Serunkuma and the order sought is to have the administrator General registered on the title after cancellation of Mathias Bulega Lwanga.
13. Counsel further submitted that the power to administer the estate and take any legal action for recovery of any property alleged to form part of the estate is vested by court in the appointed Administrators.
14. Counsel relied on sections 180, 191 and 192 of the Succession Act with section 192 stating that upon the grant of Letters of Administration, the Administrator is the one vested with authority over the estate.



15. Counsel went ahead and submitted that in the instant case, the Plaintiffs are not administrators of the estate of Isaka Serunkuma and that according to the Plaintiff, the estate has at all times since the death of Isaka Serunkuma in 1969 been administered by the Administrator General.
16. That in 2010, before the filing of the suit, the Administrator General was formally granted Letters of Administration of the said estate. The Plaintiffs annexed the grant marked as Annexure A under paragraph 5 of the amended Plaintiff.
17. That from their own pleadings, the Plaintiffs are seeking remedies on behalf of the Administrator General, as administrator of the estate of the Late Isaka Serunkuma that it is not averred that the letters granted to the Administrator General have never been revoked or recalled.
18. The Plaintiffs are not co-administrators with the Administrator General and therefore have no authority whether the Administrator General or Court conferring



upon them authority to sue in respect of the estate of the Late Isaka Serunkuma.

19. In reply, Counsel for the Plaintiffs relied on the case of ***Kithende Appolonia & 2 Others Vs Eleanor Wismer C.A.C.A No 34 of 2010*** where court of Appeal defined locus standi as the right that one has to be heard in a court of law or other appropriate proceedings. Once one has a direct interest in the matter, then one is eligible to claim relief respecting that matter if that one's interest is being adversely affected.

20. Counsel submitted that in the instant case the Plaintiffs are grandchildren of the late Isaka Serunkuma and are suing as beneficiaries of the said Estate, their fathers having passed away before accessing their rightful beneficial shares in the Estate.

21. Thus locus standi of the Plaintiffs was established at the time the suit was filed as the Plaintiffs expressly pleaded facts that gave them the legal standing to institute this suit and in these circumstances, the locus standi is legally conferred on the beneficiaries of an



intestate Estate and the Plaintiffs who are in that category have capacity to maintain the suit.

22. It was further submitted that the fact that letters of Administration were held or granted to the Administrator General does not take away the Plaintiff's right to claim in the Estate of the Late Isaka Serunkuma who was their grandfather.

23. Counsel submitted that sections 180, 191 and 192 of the Succession Act does not vest the power to take action for recovery of land in the Administrator appointed by court but only ensures that the legal title of the estate passes on to the administrator but does not vest the estate in the administrator as owner but in his or her character as administrator appointed by the court.

24. Counsel submitted that initially, the Plaintiffs had instituted a suit against the defendants and the Administrator General but according to the court record, the Administrator General and the Plaintiffs consented on 5th Feb, 2016 to have the suit against her withdrawn and she becomes a witness to the case. 

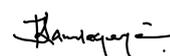
25. In rejoinder, counsel for the defendants stated that the Plaintiff's submissions are either misconceived or inconsistent with their pleadings and therefore contrary to the rule that parties are bound by their pleadings.

26. That the Plaintiffs did not sue as beneficiaries of the estate of the late Isaka Serunkuma but rather as beneficiaries of their late fathers. That the suit property was described in the plaint as allegedly forming part of the estate of the late Isaka Serunkuma and not the Plaintiffs' said fathers.

Analysis on Locus Standi

27. It is trite law that a preliminary objection raises a pure point of law which is argued on the assumption that all the facts pleaded by either side are correct. It cannot be raised if any fact has to be ascertained by evidence. **(See; Mukisa Biscuit Manufacturing Co. Ltd Vs West End Distributors Ltd [1969] E.A)**

28. Hon. Justice Mubiru in the case of **Dima Dominic Poro Vs Inyani Godfrey, Civil Appeal No.17 of 2016** described locus thus, **"The terms locus standi literally means a place of standing. It means a right to appear**



in court and conversely to say that a person has no locus standi means that he has no right to appear or be heard in a specified proceeding.....It is trite that save in public interest litigation or except where the law expressly states otherwise, such as article 50 (2) of *The Constitution of the Republic of Uganda, 1995* which confers on any person or organization the right to bring an action against the violation of another person's or group's human rights, for any person to otherwise have *locus standi*, such person must have "sufficient interest" in respect of the subject matter of a suit, which is constituted by having; an adequate interest, not merely a technical one in the subject matter of the suit; the interest must not be too far removed (or remote); the interest must be actual, not abstract or academic; and the interest must be current, not hypothetical. The requirement of sufficient interest is an important safe-guard to prevent having "busy-bodies" in litigation, with misguided or trivial complaints. If the requirement did not exist, the

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courts would be flooded and persons harassed by irresponsible suits.

29. A beneficiary of an estate has locus to present any claim that is intended to protect the estate. It is well settled that persons who are legally entitled to bring legal actions to protect the estate of the late include a beneficiary to an estate, an administrator or legal representative, an administrator general under the Administrator General's Act.

30. Section 27 of the Succession Act as amended states those entitled to a share of a person who dies intestate as the spouse, dependent relatives, lineal descendants, and customary heir.

31. The Defendants in their submissions state that the plaintiffs are not direct beneficiaries of the estate of the late Isaka Serunkuma since they are grandchildren.

32. According to the section 1 (ma) of the Succession (Amendment) Act, 2022, **a "lineal descendant" means a person who is descended in a direct line from the deceased, and includes a child, a grandchild of the**



deceased and any person related to the deceased in a direct descending line up to six degrees downwards.

33. Therefore, the Plaintiffs being grandchildren of the late Isaka Serunkuma are lineal descendants as defined in section 1 (ma) of the Succession (Amendment) Act. 2022.

34. Counsel for the Defendants further submitted that since the Estate of the late Isaka Serunkuma was being administered by the Administrator General which letters have not been revoked or recalled, The Plaintiffs are not co administrators with the Administrator General and therefore have no authority whether the Administrator General or Court conferring upon them authority to sue in respect of the estate of the Late Isaka Serunkuma.

35. In my opinions when I look at the amended plaint, the Plaintiffs intention is to bring a suit as beneficiaries of their late fathers for their late fathers' share in the estate, which late fathers were beneficiaries to the estate of the late Isaka Serukuma.



36. **In civil Appeal No.0017 of 2016, Dima Dominic**

Poro Vs Inyani Godfrey & Apiku Martin, it was stated that, “by virtue of their status only, beneficiaries of an intestate cannot be said to lack sufficient interest in the subject matter, at least as persons who have suffered legal grievance, whether the issue at hand is an alleged inter meddling or deprivation of any part of an estate by third parties, or as persons directly and wrongfully deprived or likely to be deprived of their legal interest in the estate or where title is likely to be deprived of their legal interest in the estate of whose title to the estate is wrongfully affected, especially when the nature of the injury or loss suffered or likely to be suffered is personal to them.

37. The beneficiaries are interested persons, either directly or through their customary heir or legal representative, they are the best litigants since their interest in the Estate ensures that they present the case as well as it can be presented.

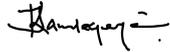
38. Counsel for the Defendants relied on section 181, 190 and 192 of the Succession Act as amended in which



it is provided that upon the grant of letters of administration, the administrator is the one vested with authority over the estate.

39. Counsel further relied on section 264 of the Succession Act which provides; after any grant of probate or letters of administration, no person other than the person to whom the same has been granted shall have power to sue or prosecute any suit or otherwise act as a representative of the deceased until the probate or letters of administration has or have been recalled or revoked.

40. In this particular instance, this section would apply if the Plaintiffs' claims were for the Estate of the Late Isaka Serunkuma whose estate is already being administered by the Administrator General.

41. However, by merely looking at the amended Complaint, the Plaintiffs seek to recover the suit land as a parcel that forms part of the estate of the Late Bbosa Benson, Kibuuka Julius, Kaasa Steven, Kikukyaluyira Serunkuma and Kikoyo who were the beneficiaries to the Estate of the Late Isaka Serunkuma. 

42. In the case of ***Israel Kabwa Vs Martin Banoba Musiga Civil Appeal No.52 of 1995***, legitimate beneficiaries' rights to protect their interest in an intestate's estate were recognized. Even though the Respondent in this particular case did not have letters of administration, he was able to bring a suit to cancel a certificate of title on the basis of fraud.
43. This case establishes that by virtue of section 27 of the Succession Act as Amended, a son to a deceased is a legally recognized beneficiary to an estate of the deceased.
44. The principle is therefore that a beneficiary to an estate has locus standi to institute legal proceedings for purposes of protecting an estate. In ***Naluyima Marble v Reg Board of Trustees of Seventh Day Adventist Church and Geoffrey Mukiibi Civil Suit No 0073 of 2011***, it was held that section 264 would apply if the injury complained of is by or against the estate of a deceased person.
45. It would not apply where a beneficiary seeks to protect their interest in an estate for which a grant has



or has not been made as to hold otherwise would suggest that beneficiaries cannot sue erring administrators of estate in which they have an interest.

46. Not differing from the above decisions, my opinion is that a beneficiary aggrieved with how the estate is being administered has locus to institute legal proceedings.

47. The Plaintiffs in their amended Plaint attached a distribution schedule that shows the suit land being distributed to their late fathers. Once property has been distributed under the law, in this particular instance the Administrator General acting as Administrator having distributed the property, that property now forms part of the estate of that person to whom it has been distributed to.

48. Therefore, the Plaintiffs bringing a suit to recover land that forms part of their late fathers' estates (land that was distributed to their late fathers from their father's estate the late Isaka Serunkuma by the Administrator General) cannot be said not to have locus.



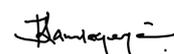
49. In the circumstances the objection fails as the plaintiffs are found to be with locus standi to institute the suit.

Issue 2; whether the plaintiffs' claim in the suit land is barred by the law of limitation?

50. Counsel for the defendants submitted that the plaintiffs seek to cancel the registration of Mathias Bulega Lwanga, as the registered proprietor. That it is an agreed fact that the registration of Mathias Bulega Lwanga which is sought to be challenged was effected on the 17th day of June 1976 under Instrument Number 80955.

51. Counsel also submitted that before that it is an agreed fact that upon the death of the Late Isaka Serunkuma in 1969, his estate was administered by the Administrator General, who distributed the estate.

52. That the plaintiffs attached annexure "B" which they plead in paragraph 5(c) of the amended plaint to be a distribution schedule by the Administrator General and it is dated 1972. That it is the plaintiffs' claim that the suit property comprised in Kyadondo Block 265 Plot



689 was distributed to their respective deceased fathers in 1972.

53. He further submitted that the suit land to wit Kyadondo Block 265 Plot 689 was created as a result of a sub-division which fact the Administrator General was aware of by 1972. The Administrator was also aware of the existence of Plot 689 by 1972 because it appears in the distribution schedule of 1972. The plaintiffs' purported fathers and beneficiaries of the estate of the Late Isaka Serunkuma were also aware of the status of the suit property.

54. Counsel added that Mathias Bulega Lwanga was in possession since acquisition in 1967 until his death in 1992. Between 1969 when the administrator General took over administration of the estate and 1972 when he distributed it, no action was taken against Mathias Bulega Lwanga regarding the alleged fraud or forgery of a mutation and transfer form of the suit property as is now being alleged.

55. The plaintiffs themselves plead in Paragraph 5(e) of the amended plaint that at the time of the distribution



of the estate they were minors but when they attained majority age, they engaged Mathias Bulega to access their land in vain. By 1992, when Mathias Bulega Lwanga died, they never took any legal action. Not even the Administrator General took any such action to recover the land from the Late Mathias Bulega.

56. He also added that the plaintiffs under paragraph 5 (f) of the amended plaint state that in 1997 they sought the intervention of their Ndiga Clan Leader to prevail over the family members of the Late Mathias Bulega Lwanga to return the land. Neither the plaintiffs nor the Administrator General took any legal action for recovery of Land or cancellation of Mathias Lwanga Bulega from the title from 1997 till 2015 when they filed the instant suit.

57. It is also the defendants' case that by 2015, when the instant suit was filed, it was about 39 years since the 1st defendant effected the registration of Mathias Bulega Lwanga as proprietor of the Land in 1976. It was also about 48 years since execution of the now contested mutation and transfer instrument by Isaka

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Serunkuma in 1967, over 46 years since the Administrator General took over Administration of the estate in 1969, Over 43 years since the Administrator General distributed the estate in 1972, over 23 years since the plaintiffs allegedly approached Mathias Bulega Lwanga to claim the Land before his death, and over 18 years since the plaintiffs allegedly sought to have the land returned from the family members of late Mathias Lwanga Bulega.

58. Counsel relied on Section 5 of the Limitation Act to the effect that ***no action shall be brought by any person to recover any land after the expiration of twelve years from the date the cause of action accrued to him or her or, if it first accrued to some person through whom he or she claims, to that person.***

59. Counsel further submitted that the plaintiffs' action would be time barred at all varying stages, when legal action ought to have been taken by them or their predecessors in title of the Administrator General.

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60. Counsel brought it to the attention of court that the initial action ought to have been taken by the administrator General as Administrator of the estate 12 years from 1969 when the administrator general took over administration of the estate, which expired in 1981, as by 1969, the mutation and transfer had been executed in favor of Mathias Bulega Lwanga who was in possession.

61. The second attempt should have been in 1972 when the administrator General is deemed to have distributed the estate of the Plaintiffs' now deceased fathers. The land was in possession of Bulega Lwanga.

62. The 12 years within which the Administrator General and the plaintiffs' fathers or beneficiaries of the estate of the Late Isaka Serunkuma would have taken action to recover the land expired in 1984.

63. Counsel also added that the third attempt was in 1976 when Mathias Bulega Lwanga was registered on the title. The action to recover land by way of cancellation of his name from the register on account of the alleged fraud should have been taken within 12

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years from 1976, which lapsed in 1988. No action was taken by the Administrator General or the plaintiffs' fathers, who were all alive then and entitled to take action. Counsel relied on **Section 15 of the Limitation Act**.

64. That by 2015 when the plaintiffs instituted the instant case, the 12-year limitation period prescribed by Section 5 of the Limitation Act had lapsed. The cause of action accrued in favor of the Administrator of the estate of Isaka Serunkuma and the Plaintiffs' fathers as beneficiaries in 1976. Counsel relied on **Nabisere v Mutebi & Anor Civil Suit No. 565 of 2012**.

65. That even in 1994 when the suit was fraudulently transferred into the names of Masikangabo David on the 23rd day of February 1994 under Instrument No KLA 164908, no action was taken by the Administrator General nor the plaintiffs from 1994 until 2015 after Mathias Bulega Lwanga was reinstated on the title.

66. Counsel prayed that the court be pleased to dismiss the suit with costs on grounds that it is barred by limitation.



67. In reply, Counsel for the plaintiffs submitted that Limitation is a point of law, which if found valid, would dispose of the suit. In determining this objection court is only required to consider pleadings of both parties. Counsel relied on **Fredrick James Jjunga & Anor v Mandhvani Group Ltd & Anor HCCS No 508 of 2014.**
68. Counsel also submitted that where fraud is pleaded, then Section 25 of the Limitation Act applies as an exception to the general rule, so the question is when did the plaintiffs become aware of the fraud? He submitted that how Mathias Bulega Lwanga was involved in the fraud is succinctly pleaded and awaiting to be proved at the trial.
69. Counsel brought it to the attention of court that there are varying years which relate to when the computation of time of the limitation period is deemed to have commenced.
70. Could it be the date when Isaka Serukuma died in 1969 or upon registration of Mathias Bulega Lwanga in 1976 on the title, or the period when the Administrator General distributed the Estate to the Late Isaka's

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children in 1972, Could it be the date when the plaintiffs alleged to have accessed the head of the Ndiga clan in 1997 when they attained majority age since they were minors? That all this is speculating and accurate information can only be obtained after a full trial.

71. Counsel concluded that the claim being based on fraud then the cause of action arose when they discovered the fraud and that this requires evidence on the matter. Counsel relied on **Sayiwako Murome v Yovan & Anor (1985) HCB 68.**

72. In rejoinder, Counsel for the defendants reiterated earlier submissions that Actions for recovery of Land should be brought within 12 years under Section 5 of the Limitation Act.

73. Counsel agreed with the exception in Section 25 of the Limitation Act but however maintained that a party who seeks to rely on the section must plead exemption and must specifically plead when they discovered the fraud.



74. Counsel cited Order 6 rule 6 and 7 of the Civil Procedure Rules in which case the amended plaint fall short of the mandatory requirement.

75. Counsel maintained that where the action is for recovery of possession, the period of Limitation starts to run from the time, the person is dispossessed of the Land in dispute. Counsel relied on **Nyombayabo William v Bundibugyo District Local Government Civil Suit No 008 of 2020.**

Analysis on Limitation.

76. The statute of Limitations is a legal principle that sets a specific time period within which legal action can be taken for a particular claim. Once this time period expires, the right to bring an action is generally lost.

77. The purpose of the statute of limitations is to ensure that legal actions are initiated within a reasonable time frame, promoting fairness, efficiency and the finality of legal proceedings. **Section 5 of the Limitation Act** provides that; ***“No action shall be brought by any person to recover any land after the expiration of twelve years from the date on which***

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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.”

78. A litigant puts himself or herself within the Limitation period by showing the grounds upon which he or she seeks exemption, failure of which the suit is time barred. ***(See; Iga v Makerere University [1972] EA 65)***

79. It is an established principle of law that before determining whether a claim is time barred, it is important to identify the time when the cause of action accrued to enable the computation of time. ***(See; Kiwanuka Fredrick Kakumutwe v Kibirige Edward CACA No 272 of 2017)***

80. I have carefully perused the pleadings of the parties and the file and I will proceed to determine the matter in light of the pleadings and any admissions together with the written submissions of the parties.

81. In the instant case, it appears that the biggest question of the day is when did the cause of action accrue?



82. To sum up counsel for the defendants' submissions, he stated that the plaintiffs and the persons from whom they are claiming at various intervals had an opportunity to bring an action from recovery of Land against Mathias Bulega Lwanga but did not do so at any single point in time.

83. Counsel for the plaintiffs while stating various assumed intervals when time is deemed to have accrued averred that it is not possible to ascertain the exact period when the cause of action accrued thereby giving rise to a triable issue which would only be settled with evidence.

84. It is my observation that Mathias Bulega Lwanga being in possession since his acquisition of Land in 1967 until his death is not in dispute.

85. Section 6 (1) of the Limitation Act provides that;
“Where any person bringing an action to recover land, or some person through whom he or she claims, has been in possession of the land, and has while entitled to it been dispossessed or discontinued his/ her possession, the

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right of action shall be deemed to have accrued on the date of dispossession or discontinuance.”

86. Furthermore, Mathias Bulega Lwanga was registered as proprietor in 1976 and remained as the registered proprietor until his death in 1992. This fact is pleaded in the Written Statement of defense of the defendants and its veracity stands uncontroverted by the plaintiffs.

87. In **Justine E.M.N Lutaya v Stirling Civil Engineering Company Limited SC Civil Appeal No. 11 of 2002**, court observed that a person holding a certificate of title has, by virtue of that title, legal possession, and can sue in trespass. In other words, the Late Mathias Bulega Lwanga can be said to have taken possession in 1976. In the period between 1976 to 1992 no action was taken against the Mathias Bulega Lwanga to claim the land, not by the Administrator General or the beneficiaries to the estate of the Late Isaka Serunkuma.

88. I agree with Counsel for the defendants that in this case the alleged action to recover land should have been



taken against Mathias Bulega Lwanga within 12 years from 1976 given the fact that Administrator of the Estate and fathers of the plaintiffs were aware of the sub-division and occupation of Mathias Bulega Lwanga. This is according to the distribution schedule attached to the amended plaint and marked annexure "B". Even then no action was taken.

89. I have also taken cognizance of the plaintiffs' pleading that they were minors at the time of the distribution of the property in 1972. However, at the time they were not vested with the locus standi to bring any action in respect of the property as their fathers were still alive.

90. Be that as it may, assuming that the last one of them (the plaintiffs) in 1972 had 1 year, it is quite clear that they all must have attained majority age by 1992 when the late Mathias Bulega died. However, even after they attained majority age, no action was brought to recover the said land until 2015.

91. In 1994, it is stated under paragraph 5(n) of the amended plaint that after the death of Mathias Bulega



Lwanga, his son Masikangabo David without letters of Administration or Authority from the Administrator General and any colour of right fraudulently got registered as owner of the said Land on the 23rd day of February 1994 way back after the death of Mathias Bulega Lwanga.

92. Furthermore, under paragraph 5(o) of the amended plaint it is stated therein that upon resistance from the Administrator General they said Masikangabo wrote to the then Commissioner Land Registration admitting that the said registration was fraudulently done which led to its cancellation. Annexure "F" of the letter amending the Register by the commissioner is attached.

93. However, it is also stated under paragraph 5(p) of the amended plaint that instead of directing reinstatement of the Late Isa Serunkuma, the Commissioner Land Registration again placed the suit land in the names of Mathias Bulega.

94. The astonishing aspect of this narrative is that despite being aware of the circumstances, none of the



parties involved namely the plaintiffs or the Administrator General took any steps to initiate Legal action for the recovery of the Land.

95. Again in 1997, the plaintiffs aver under paragraph 5(f) of the amended plaint that they approached the head of the Ndiga clan with a view of prevailing over the family members of the Late Mathias Bulega Lwanga to return their Land who kept on promising to return. At this point the plaintiffs were aware of the interest vested in the late Mathias Bulega but again did not bring any action to recover the land until 2015.

96. It is now a settled position of the law that where the suit is instituted after the expiration of the period prescribed by law of limitation, the plaint shall show the grounds upon which exemption from that Law is claimed. **(See Order 7 rule 6 of the Civil Procedure Rules).**

97. Counsel for the plaintiffs submitted that under **Section 25 of the Limitation Act**, where the action is based on fraud of the defendants or the cause of action is concealed by the fraud of the defendants the period of



limitation cannot begin to run until the plaintiff has discovered the fraud.

98. Counsel invited court to read paragraphs 4,5 & 6 of the amended plaint which indicate the fraud committed and concealed by the defendants.

99. I have carefully perused the plaint and I have found no pleading as to exemption from the statutes of limitation. They do not clearly specify the time when the alleged fraud was discovered.

100. In case where the plaintiffs fail to specify the time of discovery of the purported fraud in their pleadings, they are considered to have been cognisant of the fraud throughout all pertinent periods. **(See; Fredrick James Jjungu and Anor V Mandhavani Group Limited and Anor HCCS No 508 of 2014)**

101. With that being said, and considering all circumstances, there is one consistent element that pervades all of them, the suit is barred by the statute of limitations at every stage.

102. When the law suit was initiated in 2015, it had been approximately 39 years since the 1st defendant



registered Mathias Bulega Lwanga as the proprietor of the land in 1976. Additionally, it had been about 48 years since Isaka Serunkuma executed the contested mutation and transfer instrument in 1967, over 45 years since the Administrator General assumed Administration of the Estate in 1969, more than 43 years since the estate was distributed by the Administrator General in 1972, and over 23 years since the plaintiffs allegedly approached Mr Mathias Bulega Lwanga to assert their claim.

103. It can be deduced from the foregoing that the plaintiffs or their predecessors in title did not follow up their matter diligently. This is the ultimate objective of the statutes of limitations. At this point the claim is stale and the plaintiffs cannot be allowed to bring an action which their predecessors did not themselves bring before any court.

104. Like the hands of time, statutes of Limitations tick steadily, reminding us that justice delayed risks fading into the mists of memory, and the passage of time can render even the most righteous claims elusive.

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105. Extracted from the statement of **Justice John Paul Stevens, Former Associate Justice of the Supreme Court of the United States** wherein he said: ***“The statute of Limitations is a sword of Damocles hanging over the heads of litigants, reminding them that even meritorious claims must be pursued with diligence’.***

106. I am also persuaded by the case cited by Counsel for the defendants for the propositions that courts must rise to the occasion and address assertions of fraud brought forth by grandchildren, which were not pursued by their predecessors. ***(See; Prince Kalemera H. Kimera v the Kabaka of Buganda & Ors High Court Civil Suit No 523 /2017)***

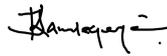
107. The 2nd issue is answered in the affirmative and the preliminary objection in regards to limitation is hereby sustained.

108. In consideration of the foregoing, it is the finding of this court that the second preliminary objection is sustained and the instant suit is dismissed with the following orders;



- i) That civil suit No.2245 of 2015 is barred by the Law on limitation under section 5 of the limitation act hence dismissed by this honourable court.
- ii) Costs of the suit are awarded to the defendants.

I SO ORDER.



NALUZZE AISHA BATALA

JUDGE

28/03/2024