THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA

HOLDEN AT JINJA

HCT-03-CV-CA-075-2021

(ARISING FROM CIVIL SUIT NO.032 OF 2019)

KATAKUWANGE MAKOOBA FRED::::::::::::::::::::::::::::::::::APPELLANT

VERSUS

1. **IKANZA MUHAMMAD**
2. **KAKANDE RAJABU::RESPONDENTS**

Land Appeal-

Held: *The Appellant's Appeal has no merit and is dismissed with Cost to the Respondent. The decision/judgement of Her Worship Kambedha Lydia, Magistrate Grade one of the Chief Magistrate's Court of Jinja, delivered on the 23rd day of September, 2021 is upheld in its entirety.*

BEFORE: HON. JUSTICE DR. WINIFRED N NABISINDE
JUDGMENT ON APPEAL

The Appellant being dissatisfied and aggrieved by the decision/Judgment of Her Worship Kambedha Lydia, Magistrate Grade one of the Chief Magistrate's Court of Jinja, delivered on the 23rd day of September, 2021 , appealed to this Honorable Court against the whole decision/Judgment and orders on the following grounds: -

1. The learned trial Magistrate erred in law and fact when she held that the 1st Defendant is the lawful owner of the suit land despite the uncontroverted evidence on the record proving the Plaintiff's ownership.
2. The learned trial Magistrate erred in law and fact when she failed to find that the Defendants were continuous trespassers on the suit land thereby occasioning a miscarriage of justice.
3. The learned trial Magistrate erred in law and fact when she failed to follow the laid, down principles of conducting locus in quo visit and thereby arriving at a wrong decision.

4. The learned trial Magistrate erred in law and fact when she failed to grant the remedies sought by the Plaintiff.

They prayed that:-

a) The Appeal be allowed
b) The decision of the trial court be set aside
c) Appellants be granted, costs of the Appeal and Court below.

THE BACKGROUND

The brief facts according to the Appellant is that this appeal arises from civil suit No. 32 of 2019 (JINJA). The appellant/Plaintiff sued the Respondent/Defendants for settling trespassing commuting private nuisance conversion and illegal construction of a permanent house in the suit land/plot and defamatory accusation.

He sought for damages for the loss suffered resulting from non-utilization of his land, mental torture and worry plus destruction of his image; and prayed for Judgement to be entered in his favor, a permanent injunction to restrain the Respondents to continue trespassing unto his land and declaration to the effect that the suit land situated at Mutai Central Zone Buwenge belong to him and costs of the suit.

On the other hand, the brief facts according to learned counsel for the Respondent is that Respondents/Defendants deny the allegations by the Plaintiff and aver that the 1st Respondent / 1st Defendant purchased land which includes the part forming the suit land on the 19th day of April, 1986 from a one Mathias Kiguwa Ndego measuring 30 feet by 4O feet in and immediately erected a house thereon.

That the 2nd Respondent/ 2nd Defendant is a caretaker on the 1st Respondent's land; and that the Appellant's land is clearly distinct from the 1st Respondent's. That the Appellant adduced evidence to support his case through himself as a single witness and the Respondents adduced evidence through themselves; 2nd Respondent being **DWI**, the 1st Respondent as **DW2** and **DW3** was Tabusibwa Sulaiman resident of Mutai Central where the suit land is situated.

From my own analysis, the Plaintiff/ Appellant alleged that he obtained the suit land by customary law from Mati Kiguwa on 31st July 1987, measuring 84 ft in width and 144 ft in length at a cost of 13,000 Ugandan currency as per Appendix ‘A’ attached.

The suit land is located in Mutai Central zone LC1 village Kagoma Parish-Buwenge Sub County, Kagoma County in the Jinja District. It is estimated to be 84 ft in width and 144 ft in length bordering late Nangobi Nsaigu in North and Babalanda in south, while in East is Muhammad Ikanza and Nangobi Nsaigu and in the west in runs from Main road of Jinja-Kamuli.

It is also alleged that the Plaintiff/ Appellant lent money worth UGX 35,000/= to Ikanza Muhamad the 1st Defendant /1st Appellant who gave the Plaintiff/ Appellant his plot measuring 12 ft in width running from Nangobi Nsaigu to Katakuwange Mukoba Fred and 18 ft in length running from Nangobi Nsaigu to Babalanda. This took place on the 31st day of July 1987.

That all the time since Plaintiff/ Appellant bought and lent money to Ikanza Muhammad, the 1st Defendant was away from home most of the time due to state duties. This was the time the 1st and 2nd Defendants trespassed on the suit land and constructed a two roomed house running from the plot of Muhammad Ikanza and crossing into the plot of Katakuwange Mukooba Fred. That the Plaintiff/ Appellant and both Defendants continued to do the same even when sued into L.C.I Court.

He further claimed that on 11th of February 20l6, Ikanza Muhammad through Tabusibwa Sulaiman paid the said loan, repossessing his plot which he gave as security, but refused to leave Katakuwange's land Muhammad Ikanza and Kakande Rajabu had trespassed on.

That the Plaintiff/ Appellant sued both Defendants at Community Based Service/ Probation Office at Buwenge Sub County on 28" June 2016 as per **Appendix ‘B’.**

That Community Based Service/ Probation Officer matched Katakuwange Mukooba Fred the Plaintiff and the 1st Ddefendant Muhammad Ikanza and 2nd Ddefendant Kakande Rajabu to the Magistrate Grade II Kagoma Court for further management as per **Appendix ‘C’.**

That in June 2016 and August 2016, he took action to inquire the 1st and 2nd Defendants as to why they were trespassing, committing private nuisance, conversion by settling and constructing in the said land but the both turned harsh and violent and replied by charging the claimant in **Criminal Case No.JIN-CO-0288/ 16 Appendix ‘B’**.

That while the claimant was in prison, the 1st and 2nd Defendants planted themselves boundary *Biloowa* marks on this suit land measuring 16 ft in width and 41 ft in length. The Plaintiff/ Appellant sought redress from the

Judicial Service Commission vide **Reference No. PRI/07/2017** who advised him to sue both Defendants in a civil case for private nuisance by interference with easement and all natural rights of the Plaintiff/Appellant by trespassing, conversion, illegal construction of a permanent house in the suit land.

That by reasons of matters aforesaid the Plaintiff/Appellant has been subjected to untold suffering, mental torture, anguish, agony and inconveniences as he had to run up and down, to and from the various offices to save a plot of land afore said from being trespassed into and conversion; and claims special and general damages from the 1st and 2nd Defendants.

Further, that the claimant's action against the 1st and 2nd Defendants is for settling, trespassing, commuting private nuisance, conversion and illegal construction of a permanent house in the suit land/plot and defamatory accusation. He reflected the particulars as follows:-

PARTICULARS AND GENERAL DAMAGES

1. Loss of utilization of the suit land being occupied the 1st and 2nd Defendants.

2. Mental torture, anguish, agony and inconveniences.

3. Destroying his image and reputation in Civil Service, General Public as a Police

Officer.

He therefore prayed that Judgement is entered in his favour with reliefs that a permanent injunction to restrain the 1st and 2nd Defendants from trespassing on the suit land, special damages and general damages, a declaration that the said suit land at Mutai Central Zone belongs to him, costs of the suit and any other remedy court deem fit.

On the other hand, the Defendant's/Respondent's jointly and severally deny each and every allegation of fact and law contained in the Plaint and responded by way of Preliminary Objections to the effect that the suit is :-

1. Misconceived in as far as it does not conform to the mandatory provisions of the Mediation Rules and ought to be struck off.
2. Frivolous and vexations, malicious, activated by criminal intentions, does not disclose any cause of action and is a waste of Court's time and ought to be dismissed with costs to the Defendants; and

3. Incompetent in so far as it offends the **Limitation Act** and ought to be struck out court record.

In specific reply to Paragraph 1 of the Plaint, they contended that the Plaintiff is a renowned witchcraft practitioner with a shrine in his courtyard and acts in an eccentric manner and a disgraced former Police Officer.

That the 2nd Defendant is only a caretaker of the 1st Defendant's estate with no claim whatsoever in the suit land in the result that he has been wrongly joined as a party in this suit and shall apply to court to retire and/or strike him from these proceeding with Costs.

The 1st Defendant contended that he purchased his land on the 19th day of April, 1986 at a consideration shillings 2,000/=from a one Mathias Kiguwa Ndego whose area measured 30 ft in width and 40 ft in length and immediately erected a house thereon which he left in the hands of the 2nd Defendant to look after; and that there is no way he would trespass on the Plaintiff's land when the latter only purchased his plot purportedly in July 1987 when the former was already in possession of his land **as per Annexure "A".**

That the purported Agreement of the Plaintiff allegedly measuring 84 feet in width and 144 feet in length as false, fraudulent, criminal and a figment of his fertile imagination. He presented the particulars of Fraud as follows:-

a) The alleged 84 feet in width would dispossess his neighbor Aminsi Kitawu of his plot
b) The alleged 144 feet in length would dispossess the 1 defendant of his plot whom he ironically admits as his Neighbor.
c) The agreement is not witnessed by the 1 defendant as a neighbour
d) The plaintiff grabbed Nangobi Nsaigu's land where he buried his son yet he had not performed his part of the bargain of installing electricity in the old woman's house before her death.

In answer to Paragraph 8, that the Plaintiff admits that he was paid his money therefore the land which had been ceded as security was redeemed by the 1st Defendant and that redeeming is not an act of trespass.

Further, that the Plaintiff is still an accused person vide **JIN-CO-0288/16** and has never been acquitted but intimidated the Magistrate by reporting her appointing institution and she stepped down.

And that the Plaintiff as a witchdoctor and in cahoots with another witchdoctor Isabirye Martin were caught red-handed planting satanic fetishes

at the door step and behind the 2nd Defendant's residence whereof a case of criminal trespass was lodged, sanctioned and prosecution commenced before the presiding Magistrate chickened out of the case; and he still stands charged with the offence of criminal trespass and they intend to re-ignite it.

Finally, the Defendants denied of altering any boundary marks rather it is the Plaintiff who has been doing so but failed to uproot the roots.

REPRESENTATION

When this matter came before me for hearing, the Appellant was self-represented while the Respondent was absent but represented by learned counsel Mr. Shafiq of Justice Centres Uganda. Both sides were directed by Court to file Written Submissions and they each complied although filed out of the scheduled time.

THE LAW

It is now settled law that it is the duty of the Plaintiff to prove his or her case on the balance of probabilities. In relation to the onus of proof in civil matters, the burden of proof lies on he who alleges a fact and the standard is on the balance of probabilities, and not beyond reasonable doubt as in criminal case. It is provided for in **Sections 101, 102, and 104 Evidence Act** and is discharged on the balance of probabilities. The standard of proof is made if the preposition is more likely to be true than not true.

The standard of proof is satisfied if there is greater than 50% that the preposition is true and not 100%. As per Lord Denning in ***Miller v Minister of Pension [1947] ALLER 373;*** he simply described it as 'more probable than not." This means that errors, omission and irregularities that do not occasion a miscarriage of justice are too minor to prompt the appellate court to overturn a lower court decision. **See *Festo Androa & Anor vs Uganda SCCA 1/1998.***

It is also the position of the law that in the proof of cases, unless it is required by law, no particular form of evidence (documentary or oral) is required and no particular number of witnesses is required to prove a fact or evidence as per **Section 58 Evidence Act and Section 33 Evidence Act**. A fact under evidence Act means and includes: -

(i) Anything, state of thing, or relation of thing capable of being perceived by senses as per **Section 2 1(e) (i) Evidence Act**.

On the duty of the first appellant court, the first appellate Court is mandated to subject the proceedings and Judgment of the lower Court to fresh scrutiny and if necessary make its own findings. ***Bogere Charles vs Uganda, Criminal Appeal No. 10 of 1996,*** where Supreme Court held that "*The appellant is entitled to have the first appellate Court's own consideration and views of the evidence as a whole and its own decision thereon. The first appellate Court has a duty to rehear the case and reconsider the materials before the trial Judge. Thereafter, the first appellate Court must make its own conclusion, but bearing in mind the fact that it did not see the witnesses. If the question turns on demeanor and manner of witnesses, the first appellate Court must be guided by the trial Judge's impression.*"

This being the first appellant court, it is duty bound to evaluate evidence and arrive on its own conclusion, bearing in mind that it did not have benefit of the observing the demeanor of the witnesses. The duty of the first appellate court is to re-evaluate, assess and scrutinize the evidence on the record. This duty was well stated in ***Selle vs. Associated Motor Boat Co. [1968] E.A 123***and followed in ***Sanyu Lwanga Musoke vs. Galiwango, S.C Civ. Appeal No.48 of 1995; Banco Arabe Espanol vs. Bank of Uganda S.C.C. Appeal No.8 of 1998.***

A failure to re-evaluate the evidence of the lower court record is an error in law. The appellate court has a duty to re-evaluate the evidence as a whole and subject to a fresh scrutiny and reach its own conclusion. ***See Muwonge Peter vs Musonge Moses Musa CACA 77; Charles Bitwire vs Uganda SCCA 23/95; Kifamunte Henry vs Uganda SCCA No. 10/1997.***

It is also trite law that the appellate court can only interfere and alter the findings of the trial court in instances where misdirection to law or fact or an error by the lower court goes to the root of the matter and occasioned a miscarriage of justice. ***See Kifamunte Henry vs Uganda SCCA No. 10/1997.***

Having satisfied myself and taken due recognition of the Law and rules of evidence applicable to a first appellate court, I will now turn to the substantive matters as raised in the Memorandum of Appeal and proceed to re-evaluate the evidence on record.

RESOLUTION OF THE APPEAL

PRELIMINARY POINT OF LAW

In their Written Submissions, learned counsel for the Respondents reiterated their arguments in the lower court at pages 2, 3, 4, and 5 that the suit by the Appellant is time barred as against **Section 5 of the Limitation Act**, and submitted that the 1st Respondent would be an adverse possessor as per **Section 11 of the Act**.

Further, that, at page 2 line 26 of the record of proceedings, the Appellant states that he purchased the suit land from Matia Kiguwa in 1987 and tendered in evidence the Agreement as **P.E.1** and that he left for Mbarara where he was a Police Officer and that when he came back after a period of two years, he found when "*the defendant had built in the plot he had mortgaged to him as security and also encroached on my plot by l6 feet to 42 feet.*" Page 3 line 24-28.

They argued that, the period of limitation for recovery of land is 12 years from the time of accrual of the cause of action as provided in **Section 5 of the Limitation Act**. That the Appellant in his own testimony became aware of the 1st Defendant's house on the suit land in the year 1989 and he wakes up to sue in the year 2019 when he filed this suit which is approximately thirty years (30) years from the time the cause of action accrued.

They therefore submitted that this suit is time barred, bad in law and ought to have been dismissed by the trial Magistrate; and prayed that this court be pleased to find that **Civil Suit No. 032 of 2019** is time barred and dismiss the same with costs to the Respondents.

The Appellant did not respond to the Preliminary point of law.

In resolving the Preliminary Point of Law, I have critically examined the record typed and certied record of proceedings as availed to me, the Judgement and submissions of learned counsel.

Order 7 rule 11 (d) Civil Procedure Rules (as amended), provides that;-

“11. Rejection of Plaint.

The plaint shall be rejected in the following cases—

...

(d) where the suit appears from the statement in the plaint to be barred by any law;”

....

Further, under **Section 5 of the Limitation Act 80,** it's provided that;-

"1. Limitation of actions to recover land

"*No action shall be brought by any person to recover any land after the expiration of 12 years from the date on which 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".*

In the instant case, a close scrutiny of the Plaint in paragraph 4-7, captured verbatim for avoidance of doubt reveals that the Plaintiff stated that;-

"5. The claimant obtained the suit land by customary law from Matia Kiguwa on 31st July 1987, measuring 84ft in width and 144 ft. in length at a cost of 13,000 Ugandan currency Appendix A attached.

6....

7.The claimant further Lent money worth 35,000/= to Ikanza Muhamad the defendant No.1 who gave the claimant his plot measuring 12 ft in width running from Nangobi Nsaigu to Katakuwange Mukoba Fred and 18 ft in length running from Nangobi Nsaigu to Babalanda. This took place on the 31st July 1987.

*8.That all the time since plaintiff bought and lent money to Ikanza Muhammad Defendant No.1 was away from home most of the time due to state duties. This was the time Defendant No.l and Defendant No.2 trespassed on the suit land and constructed a two roomed house running from the plot of Muhammad Ikanza and crossing into the plot of Katakuwange Mukooba Fred the plaintiff and both defendants No.l and 2 continued to do the same even when sued into L.C.I court". **[Emphasis Added].***

From the above extracts of the Plaintiff's Plaint in **Civil Suit No.32 of 2019**, it is clear that he shows that the cause of action of trespass on the land accrued from 31st July, 1987 wherein that time he had lent money to the 1st Defendant and that he was also away since then where the Defendants then constructed a house thereon.

Further, he claims that from 31st July, 1987 and that while he was away most of the time, that is when the Respondents trespassed on the land, but he does not in any way state that he never returned back at all or was unaware of what was happening on the suit land.

It is also clear as rightfully submitted by learned counsel for the Respondents that on Page 3 line 24-28 of the proceedings, he also stated that when he came back after a period of two years, he found when "*the defendant had built in the plot he had mortgaged to him as security and also encroached on my plot by l6 feet to 42 feet.*"

It is therefore without a doubt that he was not under any disability or plead any other sufficient reason that estopped him as a Civil Servant/ Police Officer from exercising his rights to the suit land.

The **Limitation Act Cap 80** is a very strict and mandatory law and in the case of ***Departed Asian Property Custodian Board vs Dr. J.M Masambis Court of Appeal, Civil Appeal NO. 04 of 2004,*** Court held that the action against the appellant was time barred under the **Limitation Act Cap.80.**

Court further emphasized *"that this Court and the Supreme Court have held in many cases that enforcement of provision of a statute is mandatory....."*

I have had an opportunity to examine the Judgement of the learned Trial Mgaistrate where the same Preliminary Objections were raised, and it is clear in line... on page.... that the suit was dismissed for being statutory barred under **Order 7 rule 11 (d) CPR**.

Secondly, it must be noted that this whole suit was based on recovery of land. The position of the law is clear and well-grounded that with regard to actions for recovery of land, there is a fixed limitation period stipulated by **section 5 of The Limitation Act** which 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 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".

This limitation is applicable to all suits in which the claim is for possession of land, based on title or ownership i.e., proprietary title, as distinct from possessory rights.

It is noted that in paragraph .... of the Plaint, the Appellant/ Plaintiff respondent stated his claim to be "*.....*"

The nature of rights the Appellant/ Plaintiff sought to enforce in the suit were of a possessory nature, hence this was for all intents and purposes an action

for recovery of land, of which he contended they had been unlawfully deprived by the Respondents.

In the case *of* ***Iga v. Makerere University [1972] EA 65****),* court stated that 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.

It is also trite law that a Plaint that does not plead such disability where the cause of action is barred by limitation, is bad in law. The Appellants in the instant case did not plead any disability that occurred after he found out that the Respondents entered onto his alleged land.

In any event, even if a disability had existed, **section 21 (1) (c) of the Limitation Act** places the limit at "*thirty years from the date on which the right of action accrued to that person.*"

Furthermore, the court in ***Hope Rwaguma vs Jingo Livingstone Mukasa***, ***Civil Suit No. 508 of 2012*** held that "it was *stated that the two major purposes underlie statutes of limitations; 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*. ..."

The above case makes it clear that as a rule, limitation not only cuts off the owner's right to bring an action for the recovery of the suit land that has been in adverse possession for over twelve years, but also the adverse possessor is vested with title thereto.

Without much ado, I therefore agree with the submissions of learned counsel for the Respondents that the suit by the Appellant was long time barred and continues to be time barred as against **Section 5 of the Limitation Act.**

Thirdly, learned counsel for the Respondents relied on adverse possession. Adverse possession here means *'possession that is inconsistent with the title of any alleged true owner and time begins to run against the alleged true owner from the time that some other person has taken possession of the land'* as stated by Mr. Justice Dr. A Bashaija, J in ***Nabisere Geradine***

Mirundi vs. Harry Fred M Sseruga & another High Court Suit No. 565 of 2012 (Land Division) that :-*"It is now trite law that for a party to claim ownership by adverse possession …, the adverse possessor must have peacefully entered the land and had quiet possession unchallenged by the registered owner*. ***See: Nambalu Kintu vs. Kamira [1975] HCB 221; Karnaraka Board of Wakf vs Government of India & Ors [2004] 10 SCC 779."***

As to what constitutes adverse possession, the High Court approved the decision of ***Jnadu vs. Kirpal & Anor [1975] EA 225*** **at 323,** in which the court relied on the definition adopted in the case of **Bejoy *Chundra vs. Kally Posnno[1878] 4 Cal. 327 at p. 329*** where it was held that;

"By adverse possession, I understand to be meant possession by a person holding the land on his own behalf of some person other than the true owner, the true owner having immediate possession. If by this adverse possession the statute is set running and it continues to run for twelve years then the title of the owner is extinguished and the person in possession becomes the owner."

Section 16 of The Limitation Act, **Cap 80**, provides that *"at the expiration of the period prescribed by the Act for any person to bring an action to recover land, the title of that person to the land is extinguished".*

The essence of the above definition reflected in **section 16 of the Limitation Act (supra)** to the effect that at the expiration of the period of twelve years prescribed under **section 5 (e)** thereof, for any person to bring an action to recover land the title of that person to the land shall be.

Further, in ***AIR 2008 SC 346 Annakiti vs. A. Vedanayagam & Ors*****,** the Supreme Court considered in light of the Limitation Act of India with provisions similar to the **Uganda Limitation Act (Cap 80)** it was held that;

"Claim by adverse possession has two elements:

(1) The possession of the defendant should become adverse to the appellant; and (2) The defendant must continue to remain in possession for a period of 12 years thereafter. Animus possidendi as is well known is a requisite ingredient of adverse possession. It is now settled principle of law that that mere possession of land would not ripen into possessory title for the said purpose. The possessor must have animus possidendi and hold the land adverse to the title of the true owner. For the said purpose, not only animus possidendi must be shown to exist, but the same must be shown to exist at

the commencement of the possession. He must continue in the said capacity for the prescribed period under the limitation act. Mere long possession of more than 12 years without anything more did not ripen into a title".

Relating the above to this appeal, the Plaint in the trial court was very clear as per the paragraphs cited above. Adverse, actual, open, exclusive and continuous possession of the disputed land, from 1987 by the Respondents who settled on the suit land empowered them to take over the suit land as their own.

Again in ***Jandu vs Kirpal & Anor (1975) EA 225 at 323*** it was held *inter alia* that;

*"By adverse possession I understand to be meant possession by a person holding the land on his behalf (or on behalf) of some person other than the true owner, the true owner having immediate possession ---"***.**

And in ***Air 2008 SC 346 Annakali vs Vedanayagam & 3 Ors,*** the Supreme Court of India observed among others that;

"….The possessor must have animus possidendi and hold the land adverse to the title of the true owner."

It is therefore clear from the facts on which this case is based and the above cited law that it can be discerned that the person alleging adverse possession ought to both recognize the true owner of the land in issue as well as demonstrate that the said true owner was having immediate possession of the land in issue.

In the current case, the evidence led reveals that the Respondents/ Defendants can succeed upon adverse possession claim because the Appellant/ Plaintiff in this case.

From the above, it is clear that the Appellant/ Plaintiff's lack of activity on the suit land amounted to abandonment or neglect of his rights if at all he had any; therefore, the Respondent's adverse possession deserves protection for their diligence. The Appellant/ Plaintiff in this case had allowed his right to be extinguished by his inaction and by said extinction of rights, the 1st Respondents got possession as adverse possessor, which transformed into ownership; and as already stated above, he never pleaded any disability that stopped him from following up on his rights to the suit land from 31st July, 1987 to 2019 when the suit out of which this Appeal was filed in the lower court. This still would put any claims he had barred by limitation as per **Section 5 of the Limitation Act (supra).**

Further, the adverse possession principle lays down a rule of substantive law by declaring that after the lapse of the period, the title ceases to exist and not merely the remedy. This means that since the Appellant/ Plaintiff, by allowing his right to be extinguished by his inaction, he could not recover the land from the Respondents.

It is therefore my finding and decision that the learned Trial Magistrate Grade 1 did not make any fatal error of fact and law when she allowed the Respondent's Preliminary Points of Law after ascertaining the actual facts.

Having found out as I have, I have also read and analyzed all the evidence led by both sides in this case; and I'm still persuaded that the learned trial Magistrate did not erred in both law and fact since the Appellant/ Plaintiff's Plaint is glaringly clear that this suit is time barred and that the doctrine of adverse possession is applicable to it.

For all the reasons given above, it is my finding and decision that the 1st Respondent is an adverse possessor as per **Section 11 of the Limitation Act**; and I so hold.

I have not found any cause of action against the 2nd Respondent in this case who is clearly only a caretaker of the 1st Defendant's estate with no claim whatsoever in the suit land.

For all the reasons given above all the Preliminary Points of Law as submitted upon by learned counsel for the Respondents SUCCEED; and I see valid reason why I should indulge myself in the substantive grounds of Appeal since doing so would only be a moot.

Finally, it is now well established law that costs generally follow the event. *See* ***Francis Butagira vs. Deborah Mukasa Civil Appeal No. 6 of 1989*** *(SC) and* ***Uganda Development Bank vs. Muganga Construction Company (1981) HCB 35***. Indeed, in the case of ***Sutherland vs. Canada (Attorney General) 2008 BCCA 27*** it was held that courts should not depart from this rule except in special circumstances, as a successful litigant has a 'reasonable expectation' of obtaining an order for costs.

In the instant case, the Respondents/ Defendants have succeeded in this Appeal against the Appellant/ Plaintiff, and I find compelling and or justifiable reason to deny them the costs of this Appeal and in the lower court. Accordingly, Judgment is entered for the Respondents/ Defendants.

In the final analysis, it is my decision and it hereby ordered as follows;_

i. That this whole Appeal FAILS and is accordingly DISMISSED.
ii. The Judgment and Orders of the Trial Learned Magistrate Grade one in **Civil Suit No. 086 of 2012** are hereby upheld in their entirety.
iii. It is declared that the Respondent is the owner of the suit property.
iv. The Costs of this Appeal both in this Honourable Court and in the lower Court are awarded to the Respondents/ Defendants.

I SO ORDER

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JUSTICE DR. WINIFRED N NABISINDE
JUDGE
05/03/2024

This Judgment shall be delivered by the Magistrate Grade 1 attached to the chambers of the Resident Judge of the High Court Jinja who shall also explain the right of appeal against this Judgment to the Court of Appeal of Uganda.

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JUSTICE DR. WINIFRED N NABISINDE
JUDGE
05/03/2024