

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)
CIVIL SUIT NO.758 OF 2023

HAJJI JAMADA WALIGO ::::::::::::::::::::::::::::::::::: PLAINTIFF
VERSUS
FINNEY MUKASA ::::::::::::::::::::::::::::::::::: DEFENDANT

BEFORE; HON. LADY JUSTICE NALUZZE AISHA BATALA
RULING ON PRELIMINARY OBJECTIONS.

Introduction;

1. This is a ruling in respect of preliminary objections that were raised by counsel for the defendant during mention. The objections are based on a claim that the plaintiff's suit is barred by the law on res- Judicata and by that the same suit is time barred under the law of limitation. Both parties were directed to file submissions regarding the preliminary objection.

2. Background;

3. The plaintiff instituted Civil Suit No.758 of 2019 against the defendant for declarations that he is the lawful and bonafide owner of the suit land comprised in Block 7 Plot 1289 situate at

Kibuye, that the defendant is a trespasser onto the suit land, an eviction order, demolition order and a permanent injunction against the defendant and his agents.

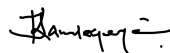
4. The plaintiff's claim against the defendant is that on the 23rd of December 2004, he purchased the suit land from a one Ssemirembe Henry at a total consideration of UGX 37,000,000 and immediately after the purchase he took possession of the same land and to the plaintiff's dismay in August 2019, the defendant trespassed on the suit land and constructed buildings thereon.

Representation;

5. The plaintiff was represented by Ogomba Isa and Sebbi Muhammad of M/S Bbaale & Partners Advocates whereas the defendant was represented by Jimmy Rubaale of M/S Luhom Advocates. Both parties filed submissions which I have considered in the determination of this objection.

Issues for determination;

- i) ***Whether Civil Suit No.758 of 2019 is barred by the law of limitation?***



ii) Whether Civil Suit No.758 of 2019 is barred by the law of res-judicata?

Resolution and determination of the issues;

Whether Civil Suit No.758 of 2019 is barred by the law of limitation?

6. Counsel for the defendant submitted that section 5 of the limitation Act cap. 80 limits actions for recovery of land to 12 years from the date when the cause of action arose.
7. Counsel for the defendant also submitted that the defendant predecessors noticed that the plaintiff had encroached on the access road and the court yard in 2005 and they filed a suit in the land tribunal vide land claim No. 149 of 2005 currently Civil Suit No.16 of 2008 at Makindye Chief Magistrate Court. The plaintiff bringing this suit in 2019 after the cause of action accruing in 2005 renders the suit barred by limitation.
8. In reply, counsel for the plaintiff submitted that the cause of action arose in 2019 when the defendant erected a wall fence on the plaintiff's land not in 2005 as alleged by the defendant. The plaintiff submitted that he has always been in possession of the same land not until the defendant constructed a wall


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fence on the plaintiff's land leading to the institution of the civil matter and criminal matter.

9. Counsel for the plaintiff further relied on the decision **in Odyeki and Anor vs Yokonani & 4ors CA 09 of 2017** Where learned Justice Stephen Mubiru held that an action for trespass is a continuing tort and not subject to the law on limitation and further held that section 5 of the limitation Act is of proprietary claims not possessory claims.
10. 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.
11. 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 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.”

12. 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)***
13. 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.
14. In the instant case, it appears that the biggest question of the day is when did the cause of action accrue?
15. This is a suit based on trespass as a cause of action, the said interference is deemed to have occurred in 2019 when the plaintiff discovered that the defendant had established a wall on the plaintiff's land, this therefore means the limitation time started to run in 2019 when the plaintiff realized that the defendant had interfered with his land. 

16. In the premises the 1st objection in respect to the suit being time barred is hereby overruled.

Whether Civil Suit No.758 of 2019 is barred by the law of res-judicata?

17. Counsel for the defendant submitted that the plaintiff's instant suit offends the les pendens rule and the law on res judicata by virtue of Civil Suit No.16 of 2008 before the Chief Magistrate court of Makindye.
18. Counsel for the defendant relied on provisions of section 6 of the Civil Procedure Act cap 71 and the decision in **Springs International Ltd Vs Hotel Diplomat Ltd & Anor CS No.227 of 2011** to render the plaintiff's suit barred by the law on res judicata and the same being an abuse of court process.
19. In reply counsel for the plaintiff relied on the provisions of section 6 of the Civil Procedure Act and the decision in **springs international ltd vs hotel diplomat(supra)** where a number of considerations have to be looked at to consider whether the instant suit is barred by the "lis pendens" rule and these are;

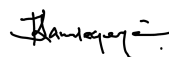


- i) Whether the matter(s) in issue in the instant suit are directly and substantially in issue in a previously instituted suit.**
- ii) Whether the previously instituted suit is between the same parties.**
- iii) Whether the suit is pending before in the same or any other court having jurisdiction to grant the reliefs claimed.**

20. I am in agreement with the authorities referred to by both counsel and I will proceed to qualify the above listed conditions to the case at hand.

Whether the matter(s) in issue in the instant suit are directly and substantially in issue in a previously instituted suit

21. The matter in issue in the instant suit is one of possessory rights where the plaintiff seeks declaratory orders that the defendant is a trespasser to the suit land. Whereas the matter in issue in Civil Suit No.1 of 2008 is one based on an easement that passed via the defendant's land. I don't find any relation to



the matters in issue vide the two civil suits, therefore this condition has not been fully met.

Whether the previously instituted suit is between the same parties.

22. The two suits only have the plaintiff to the instant suit as the only common party to the said suits, the other parties are completely different persons.

23. I will draw reference to the decision in ***Kazooba Francis V M.k creditors ltd & Ors CS.No.218 of 2016 by Justice Boniface Wamala***, it was held that parties being different in both cases is enough for the inapplicability of the principle of Lis pendens and that being a party to a pending suit is not enough to cause the principle of Lis pendens to be invoked. In the instant case, the plaintiff is the only common party to the tow suits.

24. Therefore, I am of the view that this condition has not met by the defendant in the instant suit.

Whether the suit is pending before in the same or any other court having jurisdiction to grant the reliefs claimed.

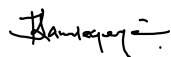


25. Civil Suit No.758 of 2019 is pending before the high court of Uganda the land division where as civil suit no.16 of 2008 is pending before the chief magistrate court of Uganda, these are two different courts of different and distinct jurisdiction.

26. In the premises, this honorable court is of a finding that the les pendens rule does not apply to the case at hand and the instant suit is not barred by the law on limitation hence the two preliminary objections raised by counsel for the defendant are hereby overruled with the following orders;

- i) Civil Suit No.758 of 2019 is to proceed on its own merit.
- ii) I make no orders as to costs.

I SO ORDER.



NALUZZE AISHA BATALA

JUDGE

11/04/2024