

UGANDA / JUDGMENT

Oluka v Mugoda & Another (Civil Appeal 64 of 2016) [2024] UGHC 861 (23 September 2024) [2024] UGHC 861

COURT

High Court of Uganda

BEFORE

Lubega, J

CASE / FILE NUMBER

Civil Appeal 64 of 2016

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT MBALE

CIVIL APPEAL NO. 64 OF 2016

(ARISING FROM PALLISA CIVIL SUIT NO. 002 OF 2015)

OLUKA BUTULUMAYO ::::::::::::::::::::::::::::::

VERSUS

1. MUGODA JOHN

2. OKALANG DANIEL :::::::::::::::::::::::::::::: BEFORE: HON. JUSTICE LUBEGA
FAROUQ JUDGEMENT

1. Introduction:

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2. The Plaintiff/Appellant who is now deceased instituted Civil Suit No. 004 of 2015 against the Defendants/Respondents for recovery of land, vacant possession of the said land, temporary injunction and costs of the suit.

3. Background:

- 4. The Appellant's facts in the lower court as per the plaint were that the Plaintiff's claim against the two Respondents was for recovery of two acres of land at Kadoki Village Akadok Parish, Pallisa sub-county in Pallisa district which the \$1st Respondent sold to the \$2nd Respondent without the consent of the family.
- 5. On the other hand, the 1st Respondent's facts in the lower court according to his written statement of defence the 1st Respondent stated that it is true there was a purported land sale agreement dated 28th of November, 1996, but in the eyes of the law, it was irregular and illegal abinitio as the \$1st Respondent lacked legal capacity to transact independently over the same thus irregularly and illegally sold one acre of land to the \$2nd Respondent in 1996 at Ugx: \$20,000/\$ = and 2 cows.
- 6. The 1st Respondent further contended that at the time of the alleged sale, Oluka Batulumaiyo the heir to Mudala Mariko and the rest of the family members were not aware and upon realizing that the family land had been illegally sold off by the 1st Respondent/defendant to the 2nd Respondent /defendant, they convened a meeting which was attended by the family members, clan members, local authorities and members of the public including the \$2nd Respondent. In that meeting, it was agreed and resolved that either the 1st Respondent refunds or pays back the items he was given by the \$2nd Respondent during the purported land sale or be given his share so that he allocates the same to the \$2nd Respondent.
- 7. That the \$2nd Respondent was called to be handed over another piece of land by the \$1st defendant in the presence of the family members, the clan members and the local authorities but the \$2nd Respondent chose to dodge to date hence, defying what had been previously mutually agreed upon in the meeting. The \$2nd Respondent having refused to take up the land suitably identified by the \$1st defendant as compensation for the previous one hence the suit.
- 8. The \$2nd defendant/Respondent on the other hand, in his written statement of defence averred that he is the rightful owner of the land comprised in Kadoki village, Akadok parish, Pallisa district having bought the same from Mugoda John on 28th of October, 1996. That he paid 2 cows and Ugx: \$20,000/\$ = for the suit land which was handed over to him on the same date
- 9. However, before the suit was determined on its merit, counsel for the \$2nd Respondent raised two preliminary points of law to wit- that the suit is time barred and that it does not disclose a cause of action.
- The trial magistrate resolved the above preliminary objections in 10. affirmative hence dismissed the suit for being time barred and for failure to disclose a cause of action.
- The Appellant was dissatisfied with the above decision hence this \$11.\$ appeal.

12. Grounds of Appeal

- (a) That the learned trial magistrate erred in law and fact when she held that the suit is time barred and does not disclose cause of action against the \$2^{nd}\$ Defendant thereby arriving at a wrong conclusion.
- (b) That the learned trial magistrate erred in law and fact when she failed to give an exhaustive scrutiny and proper evaluation of the evidence and legal arguments on record thus arriving at a wrong conclusion.
- (c) That the learned trial magistrate erred in law and fact when she failed to exercise her judicial function to hear the suit and examine the entire record of proceedings for errors thus occasioning a miscarriage of justice.
- He prayed that the appeal be allowed, the ruling and orders in Civil 13. Suit No. 002 of 2015 be set aside, and an order that the appellant has good title over disputed land and that costs in the lower court and those of the appellate court be awarded.

14. Legal Representation

Counsel Wamimbi Jude represented the Appellants. 15. The Respondents were not represented.

16. Submissions

17. At the court hearing, it was brought to the attention of court that the Appellant died and he was substituted by Epodi Joyce. That the Respondents were served but did not comply. So, the matter proceeded exparte under Order 9 rule 20 (1) (a) of the CPR. Court gave schedules within which to file the submissions and the Appellant indeed complied. I will consider them in the resolution of this matter.

Duty of the first appellate court 18.

This court takes cognizance of the fact that it is the first appellate 19. court and therefore under a duty to evaluate all the evidence on the court record and come up with its own decision. See: **Fr. M. Begumisa & Ors V.**

E. Tibegana SCCA No. 17 of 2003

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Analysis of Court. 20.

- I have studied the lower court record and noted as already observed \$21.\$ that Civil Suit No. 64 of 2016 was dismissed on two points of law to wit-
- (a) That the suit is time barred by the law of limitation and

- (b) That the suit does not disclose a cause of action.
- 22. I will determine the grounds as outlined in the memorandum of appeal.
- 23. Ground No.1: That the learned trial magistrate erred in law and fact when she held that the suit is time barred and does not disclose cause of action against the \$2^{nd}\$ Defendant thereby arriving at a wrong conclusion.
- 24. A cause of action was defined by the Supreme Court in **Attorney General V. Major General David Tinyefuza** Const. Appeal No 1 of 1997 as-

"...every fact which if traversed, it would be necessary for the *Plaintiff to prove in order to support his right to a Judgment of the Court. In other words, it is a bundle of facts which if taken with the law applicable gives the Plaintiff a right to claim relief* against the Defendants".

- 25. It is trite that a cause of action is disclosed when it is shown that the plaintiff had right, and that right was violated, resulting into damages and the defendant is liable. (See: *Tororo Cement Co. Ltd vs Frokina International Ltd*; Civil Appeal No. 21 of 2001)
- 26. In *Narottam Bhatia Hemantini Bhatia & Boutique Shazim Ltd* SCCA No. 16 of 2009, court held that-

"In determining whether a plaint discloses a cause of action, *Court must look at the plaint, and annexures thereto with an* assumption that all facts as-pleaded are true."

- In the present case, under paragraph 3 of the plaint, the plaintiff 27. averred that- "The plaintiff claim against the two defendants is for the recovery of two acres of land at Kadoki village Akadot Pallisa Sub- County Pallisa district which the defendant No.1 stealthy sold to the \$2^{nd}\$ defendant without the consent of the family members."
- Though not pleaded in the plaint, the plaintiff attached a copy of the 28. letters of administration issued to him on 19th of August, 2014 as an annexure to the Plaint.
- From the plaint, the Appellant did not plead the capacity under 29. which he brought the matter and yet he alleges that whoever disposed it off, did it without the consent of the family members. Technically, the Plaintiff's right in any given suit is established from the capacity in which he or she is suing or from the cause of action but in the current suit, the Appellant did not describe the capacity in which he sued the Respondents at all.
- Secondly, from the title of Civil Suit No. 002 of 2015, the Appellant 30. sued in his personal capacity. Following that position, court could not attach value to the annexure which was attached on the Plaint in absence of any pleading to the contrary.

- Counsel for the Appellant while arguing that the Appellant had a 31. cause of action, referred court to the written statement of defence of the 1st Respondent to justify his claim yet the law is that when establishing whether a suit discloses a cause of action or not, court looks at the Complaint and the annexures thereto but not the written statement of defence.
- The position of the law is that for the suit to disclose a cause of 32. action, the Complaint must indicate that the Plaintiff enjoyed a right which was violated by the Defendants. (See: Auto Garage V. Motokov (1971) EA \$514)\$
- However, according to the Complaint, the right which the Appellant 33. enjoyed was not shown.

I therefore find that the trial magistrate was right when she found 34. that the Complaint did not disclose a cause of action against the 2nd Respondent.

This ground of appeal accordingly fails. 35.

- I will now determine whether Civil Suit No. 002 of 2015 was time 36. barred.
- The Black's Law Dictionary 4th edition at page 2716 defines 37. limitation as a statutory period after which a lawsuit or prosecution cannot be brought in court.

Section 5 of the Limitation Act Cap 290 provides that-38.

> "No action shall be brought by any person to recover any land after the expiration of 12 years from the date on which the right accrued to him or her or, if it first accrued to some person through whom he or she claims, to that person."

Section 11 (1) of the same Act provides that-39.

"No right of action to recover land shall be deemed to accrue unless the land is in the possession of some person in whose favour the period of limitation can run (hereafter in this section referred to as "adverse possession"), and where under sections 6 to 10, any such right of action is deemed to accrue on a certain date and no person is in adverse possession on that date, the right of action shall not be deemed to accrue until adverse possession is taken of the land."

- In FX Miragago V. Attorney General [1979] HCB 24, it was stated 40. 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. That once a cause of action accrued, for as long as there is capacity to sue, time begins to run against the plaintiff and no subsequent disability or inability stops it."
- Justice Stephen Musota (as he then was) in Dr. Arinaitwe Raphael 41. & 37 ors V. Attorney General HCCS No. 201 of 2012 relied on Hilton Vs.

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Sultan Laundry (1964) 161, where lord Green held that- "the statute of limitation is not concerned with merits, once the axe falls, it falls and a defendant who is fortunate enough to have acquired the benefit of the statute of limitation is entitled of course to his rights".

- According to the lower court record, the 1st Respondent averred that 42. he sold the suit land to the 2nd Respondent on 28th of October, 1996 which means Civil Suit No. 002 of 2015 was instituted 19 years after the sale, which is way beyond the 12 years allowed by the law to recover land.
- The Appellant did not plead any disability, fraud or mistake which 43. would have prevented the lower court from applying section 5 of the Limitation Act.
- \$44.\$ Counsel for the Appellant submitted that the trial magistrate failed to consider the fact that the suit of this nature falls under section 15 of the Limitation Act.
- 45. Section 15 of the Limitation Act provides that-

"For the purposes of the provisions of this Act relating to actions" for the recovery of land, an administrator of the estate of \$a\$ deceased person shall be deemed to claim as if there had been no interval of time between the death of the deceased person and the grant of the letters of *administration.*" (Emphasis added)

Giving a natural interpretation to the contents in section 15 quoted 46. above, the provision simply means that in matters concerning recovery of land by an administrator, the time shall be considered to have started to run right from the date of the deceased's death. Therefore, any land which is claimed after 12 years whether belonging to the deceased's estate or not, will be barred by the time limitation stipulated under section 5 of the Limitation Act.

The above argument is further emphasized by section 20 of the 47. Limitations which provides that-

"Subject to section 19(1), no action in respect of any claim to the personal estate of a deceased person or to any share or interest in such estate, whether under a will or on intestacy, shall be *brought after the expiration of twelve years from the date when the right to receive the share or interest accrued, and no action* to recover arrears of interest in respect of any legacy or damages in respect of those arrears shall be brought after the expiration of six years from the date on which the interest became due."

The above was further emphasized in Kiwanuka Fredrick 48. Kakumutwe Vs Kibirige Edward CA No. 272 of 2017, it was stated that-

> "At the time the plaintiff commenced court action in 2010, his *title to the suit land had for long been extinguished by operation* of law and in law he no longer had any interest or estate or title in the suit land upon which to base the action seeking the remedies sought from court"

- 49. In the instant case, the Respondent purchased the suit land in 1996 and Civil Suit No. 002 of 2015 was instituted in court on 3rd February, 2015 beyond the 12 years required by the law hence, the Appellant extinguished his right to claim for the suit land.
- The claimant's claim is therefore time barred. There is no evidence 50. on record to show that the claimant was under any disability to sue. Additionally, even if a disability had existed, section 25 (d) of the Limitation Act protects a purchaser for value who purchased the land without the knowledge of the vendor's fraud.
- Counsel for the Appellant further submitted that the trial magistrate 51. over looked the provisions of Order 13 rule 6 of the CPR which provide for judgment on admission due to the fact that the 1st defendant admitted to have illegally sold the land to the Respondent which would have entitled the Appellant to a judgment in default and the same was overlooked.

Order 13 rule 6 of the Civil Procedure Rules SI.71-1 provides that-52. "Any party may at any stage of a suit, where an admission of facts has been made, either on the pleadings or otherwise, **apply to the court for such judgment** or order as upon the admission he or she may be entitled to, without waiting for the determination of any other question between the parties; and the court may upon the application make such order, or give such judgment, as the court may think just." (*Emphasis mine*)

On the proper perusal of the above provision of the law, it obvious 53. that where there is any admission of any fact, it is the duty of any party to the proceedings to apply to court for a judgment on admission, but it is not upon the initiative of court. For that reason, court cannot be faulted for having not done so.

In the circumstance, I find that the trial magistrate properly found 54. that Civil Suit No. 002 of 2015 was time barred.

55. Ground No2: That the learned trial magistrate erred in law and fact when she failed to give an exhaustive scrutiny and proper evaluation of the evidence and legal arguments on record thus arriving at a wrong conclusion.
- Grounds No.2 is too general and contravene Order 43 rule 1 (2) of 56. the Civil Procedure Rules.
 - It has been held in several authorities of court that where a ground 57. of appeal contravenes Order 43 rule 1 (2), the same must be struck off the court record.
 - Subsequently, ground No. 2 is struck off the court record. 58.

Ground No.3: That the learned trial magistrate erred in law 59. and fact when she failed to exercise her judicial function to hear the suit and examine the entire record of proceedings for errors thus occasioning a miscarriage of justice.

Considering my findings in ground No. 1, the trial magistrate orders 60. and decision did occasion any miscarriage of justice.

This Appeal is hereby dismissed. 61.

The Respondents having not participated in the hearing of this 62. appeal, no order is made as to the costs.

I so order.

LUBEGA FAROUQ JUDGE

Ruling delivered via the emails of the parties on the 23rd of **September**, 2024

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Prepared on 14 October 2026 · Esheria