THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA; AT KAMPALA

(LAND DIVISION)

CIVIL SUIT No. 97 OF 2011

(Oral Application Arising there from)

FARIDAH NANTALE..... PLAINTIFF/RESPONDENT

VERSUS

1. ATTORNEY GENERAL
2. COMMISSIONER LAND REGISTRATION
3. UGANDA LAND COMMISSION
4. HOUSE OF DAWDA (U) LTD. ::::::: DEFENDANTS/APPLICANTS
5. ACCESS (U) LTD.
6. KAMPALA INTERNATIONAL UNIVERSITY

BEFORE: - THE HON. MR. JUSTICE ALFONSE CHIGAMOY OWINY – DOLLO

RULING

The Defendants, in this suit, orally raised a preliminary point of objection, on two grounds. First, is that the suit discloses no cause of action against them; and second, that the suit is time–barred. They therefore urge Court to dismiss the suit; with costs. The application then in effect seeks the rejection of the plaint on grounds of limitation, and or the dismissal of the suit for not disclosing any cause of action. It appears that the Defendants raised the objections orally, upon the contention that these two grounds of objection are points of law, and are manifest from the plaint; hence, there is no need to adduce any further evidence in support of the application.

Ground No. 1: Whether the Plaintiff's suit is barred by statute.

The reason the Defendants contend that the suit is barred by the statute of limitation, is that the suit land was vested in the Commissioner of Transport in 1962; so, the suit the Plaintiff brought in 2011 was already time–barred. The Plaintiff however contends that the 2nd, 3rd, and 4th Defendants alienated the suit land in 2006, when they fraudulently transformed Mailo land Kibuga Block 7 Plots 16A–28A, registered in the name of her late father Mohammed Gavamukulya Mukoloboza, into Freehold Register Volume 219 Folio 4. This they registered in the name of the 3rd Defendant; which, in turn, leased it to the 4th, 5th, and 6th Defendants.

She further states in the plaint, as amended, that in 2006 the Defendants created FRV 440 Folio 17, Plots 16A–28A Nsambya Road out of Freehold Register Volume 219 Folio 4; and reverted it to the 3rd Defendant. She therefore contends that the suit filed in 2011 was well within the permissible period provided for under the law of limitation. 0.7 r.11 (d) of the Civil Procedure Rules provides that a plaint shall be rejected where, from the statement in the plaint, the suit appears to be barred by any law. In ***Wycliffe Kiggundu Kato vs Attorney General – S.C.C.A. No. 27 of 1993*** *– the Court said: –*

> *'A distinction must be drawn between an application to reject a plaint and one when a matter of law is set down for argument as a preliminary point. That distinction was very clearly explained in* ***Nurdin Ali Dewji & Others vs G.M.M. Meghji & Co. and Others (1953) 20 E.A.C.A. 132.*** *The distinction is that under Order 7 rule 11 (a) of the Rules an inherent defect in the plaint must be shown rather than that the suit was not maintainable in law. In the latter case a preliminary point should be set down for hearing on a matter of law ... if the State insists that as a matter of law no suit can be brought, the State should not try to have the plaint rejected under Order 7 rule 11, but should apply to have the suit dismissed on a preliminary matter of law.'"*

What the authority above is saying is that for an objection founded on limitation, which is a matter of law, the objection should not seek a rejection of the plaint; but should seek to have the suit dismissed. This means to justify an objection to the suit, grounded on limitation, which is strictly a matter of law, there is need to adduce evidence to enable Court establish which of the two position is the correct one. The pleadings in the instant case show that there is a dispute between the opposite parties as to whether the alleged alienation of the suit land took place in 1962 or 2006. The date of alienation is not a defect inherently apparent from the face of the plaint and its annextures; contrary to the requirement of the law.

Unfortunately, the Defendants have sought to rely on attachments to the pleadings, as well as introducing a number of documents in their submissions to prove their case. As was restated by OGOOLA P.J. in ***Yudaya Lutta Musoke vs Greenland Bank (In Liquidation) HCCS No. 506 of 2001 [2002] KALR 533***, preliminary points of objection are only justifiable when they are founded purely on law, argued on the face of pleadings. Where Court has to go beyond the pleadings and seek to rely on evidence adduced, or where the objection seeks the exercise of judicial discretion, it is improper to do so by way of preliminary point of objection. It must await a trial to determine it. In stating so, he relied on ***Mukisa Biscuits vs Western Distributors [1969] E. A. 696***, where at p. 701 the Court stated as follows: –

> *"The first matter relates to the increasing practice of raising points, which should be argued in the normal manner, quite improperly by way of preliminary objection. A preliminary objection is in the nature of what used to be a demurrer. It raised a pure point of law, which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of points by way of preliminary objection*

does nothing but to unnecessarily increase costs and on occasion, to confuse the issues. This improper practice should stop."

It was, in the circumstances of the case before me, wrong for the Defendants to raise the issue of limitation by way of an oral preliminary point of objection, bereft of the requisite evidence adduced to support the contention; but instead depending on the pleadings and submissions from the Bar. This was improper, as this was not evidence. I therefore find no merit in this ground of objection; and so, I overrule it.

Ground No. 2: Whether the 1st to the 5th Plaintiffs' suit does not disclose a cause of action.

0.7 r.11 (a) of the Civil Procedure Rules provides for the rejection of a plaint where the statement of claim in the suit discloses no cause of action. In ***Auto Garage vs Motokov (No. 3) [1971] E.A. 514,*** at p. 519 Spry V–P held as follows: –

"if a plaint shows that a Plaintiff enjoyed a right, that the right has been violated and that the Defendant is liable, then, in my opinion, a cause of action has been disclosed and any omission or defect may be cured by amendment."

In ***Banco Arabe Espanol vs Bank of Uganda*** – ***SCCA No. 8 of 1998*** – ODER J.S.C. stated as follows: –

"As GEORGE C.J. said in ***ESSA JI vs SOLANKI [1968] E. A. 218*** *at 222, the administration of justice should normally require that the substance of all disputes should be investigated and decided on their merits, and that errors* ***or*** *lapses should not necessarily debar a litigant from the pursuit of his rights ... It would seem that the main purpose of litigation, namely the hearing and determination of disputes, should be fostered rather than hindered."*

In ***Mulindwa Birimumaso vs Government Central Purchasing Corporation C.A.C.A. No. 3 of 2002***. *(supra)* TWINOMUJUNI J.A. relied on ***Ismail Serugo vs Kampala City Council & Anor. – Supreme Court Constitutional Appeal No. 2 of***

1998 – in which MULENGA J.S.C. reiterated the law on what amounts to disclosure of a cause of action, as follows: –

"A cause of action in a plaint is said to be disclosed if three essential elements are pleaded; namely, pleadings (i) of existence of the Plaintiff's right, (ii) of violation of that right, and (iii) of the Defendant's liability for that violation. In ***Auto Garage vs Motokov (No. 3) [1971] E. A. 514,*** *at 519 D, after reviewing a line of precedents, SPRY V. P. put it thus: –*

'I would summarise the position as I see (it) by saying that if a plaint shows that the Plaintiff enjoyed a right, that the right has been violated, and that the Defendant is liable, then in my opinion, a cause of action has been disclosed and any omission or defect may be amended. If on the other hand, any of those essentials is missing, no cause of action has been shown and no amendment is permissible.'

A reasonable cause of action on the other hand, has been described as a cause of action which, in light of the pleadings, has some chances of success; see ***Drummond – Jackson vs British Medical Association (1970) W.L.R. 668****."*

In the light of these well stated authorities, I am unable to appreciate how anyone can with justification contend that the Plaintiff has not stated a clear cause of action. From the plaint, and its annextures, it is abundantly clear that the Plaintiff holds letters of administration of the estate of her late father whom she claims was the registered owner of the suit land in Mailo estate. The suit land is no longer registered under the Mailo register; but under the Freehold title, which she is contesting. True, the Defendants vehemently deny that the suit land was wrongfully vested in them. It is the duty of Court to investigate the claim; and it would be wrong for this Court to shy away from doing so. I therefore overrule this ground of objection as well.

Before taking leave of this matter, I cannot resist the urge to re–echo the strong and well founded deprecation issued, by Court in the ***Mukisa Biscuits vs Western Distributors [1969] E. A. 696*** case (supra), to parties, against unnecessarily raising *'points, which should be argued in the normal manner, quite improperly by way of preliminary objection'*. In the instant case, apart from unnecessarily adding onto costs of the suit, it has had the undesirable consequence of delaying the hearing and disposal of an otherwise old case. I therefore find no merit in any of these two grounds of objections. Accordingly, I dismiss them; with costs to the Plaintiffs.

Alfonse Chigamoy Owiny – Dollo
JUDGE

15 – 06 – 2015