

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(CIVIL DIVISION)
CIVIL SUIT NO.205 OF 2020

MUHUMUZA MUDAHINYUKA JACKSON
THROUGH HIS ATTORNEY MUTESA RONALD ::::::::::::::: PLAINTIFF

VERSUS

ATTORNEY GENERAL::::::::::::::::::::::::::::::::::::: DEFENDANT

BEFORE: HON. JUSTICE SSEKAANA MUSA

RULING

The plaintiff brought this suit against the defendant for compensation of father's cows which were taken in 1983 by the agent/ soldiers of the National Resistance Army (NRA) and property, general and special damages, interest and costs of the suit.

The plaintiff alleged that the NRA soldiers made a verbal agreement during the bush war with Aloysius Munyankwya Ruhinda, his biological father whose cattle was taken in phases at Mugakono in Ngoma at a forest gazetted land for the government area of Uganda.

The plaintiff alleged that he submitted his claim clarifying the agents of the defendants who used to collect the cows and thus breached the verbal contract by defaulting to compensate him.

The defendant filed its written statement of defence wherein it in denied any liability as to the allegations made in the plaint and stated that the plaint is bad

in law, a nullity ab initio, an abuse of court process and has no cause of action against defendant and should be dismissed and struck out with costs.

The defendant further alleged that the said Nyamurangwa Kapasi was not and is not a government agent. It also stated that the plaintiff's alleged cattle were allegedly taken in 1983 by the National Resistance Army which was not government in power and the Attorney General is not liable in any whatsoever for the said alleged actions. The defendant further contended that the suit is time barred by statute.

Representation

At the hearing, the plaintiff represented himself whereas the defendant was represented by *Mr. Ojambo Bichachi (SA)*.

The defendant raised a preliminary objection of law.

Whether the suit is time barred?

The court decided to determine this sole issue before delving into the merits of the case.

The parties were ordered to file written submissions on the preliminary objection which this court considered in determining this issue.

Determination

Whether the plaintiff's suit is time barred?

The plaintiff submitted that his claim is founded on the presidential decree of ex-gratia payment and compensation provided by government. He relied on section 22 (3) of the Limitation Act to state that where any right of action has accrued to recover any debt or other liquidated pecuniary claim and the person liable acknowledged the claim or makes payment in respect of the claim, the right shall be deemed to have accrued on and not before the date of acknowledgement or the last payment.

The plaintiff stated that as per *Gunya Co. Limited vs AG* Civil Suit No. 31 of 2011, such acknowledgement is required to be in writing and signed by the person making the acknowledgement. He further submitted that court stated that this renews causes of action founded only on recovery of land, right of a mortgagee of personal property to bring foreclosure action in respect of the property, recovery of debts or other liquidated claims and claims to personal estate of the deceased or to any share or interest in it.

The plaintiff submitted that, his claim forms part of these categories which he seeks to recover liquidated claim against the defendant since the president set a presidential directive for livestock compensation. The plaintiff further submitted that the defendant has on several occasions promised to pay compensation based on the acknowledgement which thereby constituting a renewed cause of action.

He further relied on *Spencer vs Hemmerde* [1922] AC at 534 where it was stated that if the attachment was made in the circumstances from which no promise to pay could be inferred, time would continue to run uninterrupted. The plaintiff therefore submitted that the preliminary objection raised by the defendant should be dismissed as against the plaintiff with costs.

The defendant's counsel submitted that the section 3 (1) and (2) of the Civil Procedure and Limitations (Miscellaneous Provisions) Act provides that no action founded on tort shall be brought against government after the expiration of two years from the date on which the cause of action arose. He stated that the any claim against government be it in tort, trespass, detinue, conversion, defamation and contracts have to be brought against the government before the expiration of three years from the date on which the cause of action arose.

Counsel noted that in the instant case, the plaintiff conceded that he was a minor and could therefore not file the suit under the prescribed time. It was further stated that the plaintiff avers that his cows were taken in 1983 and thus the cause of action arose then. While relying on *Nicholson vs England* [1926] 2KB 93, counsel

stated that the underlying principle of limitation is that once a cause of action has become barred, subsequent developments cannot revive it.

He further submitted that limitation of actions is not concerned with the merits and that this requirement cannot be overlooked. The defendant therefore submitted that this renders the whole suit incompetent for being filed out of time and prayed that the same is struck off with costs.

Analysis

The essence of a limitation law is that the legal right to enforce an action is not perpetual right but a right generally limited by statute. Where a statute of limitation prescribes a period within which an action should be brought, legal proceedings cannot be properly or validly instituted after the expiration of the prescribed period. Therefore, a cause of action is statute barred if legal proceeding cannot be commenced in respect of the same because the period laid down by the limitation law had lapsed. An action which is not brought within the prescribed period offends the provision of the law and does not give rise to a cause of action.

It is important to note that **Order 7, Rule 11 (d) of the Civil Procedure Rules** provides for instances where a plaint shall be rejected and states as follows to include where the suit appears from the statement in the plaint to be barred by any law. However, **Order 7 Rule 6** also requires that where a suit is instituted after the expiration of the period prescribed by the law of limitation, the plaint should show that grounds upon which the exemption from that law is claimed. This requirement was considered by the Court of Appeal in *Uganda Railways Corporation vs Ekwaru D.O and 5104 Others; Civil Appeal No. 185 of 2007* where it was held that if a suit is brought after the expiration of the period of limitation, and no grounds of exemption are shown in the plaint, the plaint must be rejected.

As stated by counsel for the defendant, **section 3 of the Civil Procedure and Limitation (Miscellaneous Provisions) Act** provides that no cause of action

founded on tort shall be brought against the Government after the expiration of two years from the date on which the cause of action arose.

Section 3 of the Limitation Act also provides that actions to recover any sum recoverable by virtue of any enactment, other than a penalty or forfeiture or sum by way of penalty or forfeiture, shall not be brought after the expiration of six years from the date on which the cause of action arose.

In the case of *Iga –vs- Makerere University [1972] E.A 65*, the court held that a plaint which is barred by limitation is a plaint barred by law. A litigant puts himself or herself within the limitation period by showing grounds upon which he or she could claim exemption, failure of which the suit is time-barred and the court cannot grant the remedy or relief sought but must reject the claim.

This court in its decision in *Dr. Arinaitwe Raphael & 37 Others vs Attorney General; HCCS No. 21/2012* quoting Hilton versus Sultan Steam Laundry (1964) 161, 81 per Lord Greene noted 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 insist on his strict rights”.

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. A statute of limitation is a law that bars claim after a specified period and the purpose of such a statute is to require diligent prosecution of known claims thereby providing finality and predictability in legal affairs.

The defendant raised a preliminary objection that the plaintiff's suit is barred by limitation and in support of this, counsel submitted that the plaintiff's claim against the defendant arose in 1983 when the National Resistance Army allegedly took the plaintiff's cattle without compensation. It is indeed true that the plaintiff's claim as presented in the plaint arose in 1983 and yet the suit was

only filed before this court in 2020 more than 40 years after the cause of action arose.

It is therefore very evident that the plaintiff's cause of action is time barred by the statute of limitation. In the case of *Departed Asian Property Custodian Board vs Dr. J.M Masambis Court of Appeal, Civil Appeal No. 04 of 2004*, the court noted with emphasis that the enforcement of provision of a statute is mandatory.

I do not concur with the plaintiff's submission that the acknowledgement and directive of the President for an *ex gratia payment* extend the time within which the cause of action runs and as such, I find that the case of *Gunya Co. Ltd vs A.G; Civil Suit No. 31 of 2011* that the plaintiff seeks to rely on inapplicable in the circumstances of this case.

A statute of limitation of action is designed to stop and avoid a situation like in the present case where the plaintiff is trying to commence an action which happened in 1983 after 37 years of slumber when human memory has faded. Under a statute of limitation, a plaintiff has no freedom of the air to sleep or slumber and wake-up at his own time to commence an action against a defendant. The purpose of limitations is that their conclusive effects are designed to promote justice by preventing surprises through revival of claims that have been allowed to slumber. *See Sulgrave Holdings Inc v FGN (2012) 17 NWLR p.309 (SC)*

I therefore find that the plaintiff's claim as against the defendant is time barred and thus strike out the suit with costs to the defendant.

I so Order.

SSEKAANA MUSA

JUDGE