

THE REPUBLIC OF UGANDA  
 IN THE HIGH COURT OF UGANDA AT KAMPALA  
 LAND DIVISION  
 MISCELLANEOUS APPLICATION NO. 1110 OF 2022  
 ARISING FROM CIVIL SUIT NO. 812 OF 2020

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 1. JAMES SERUFUSA MUKASA  
 2. N.K SERUFUSA & SONS LIMITED-----APPLICANTS

V

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 1. JANE NAGAWA SERUFUSA  
 2. WILLIAM SERUWIZA  
 3. MIRIAM NAKITTO-----RESPONDENTS  
 (Beneficiaries of the Estate of the late  
 Nathan Kagodo Serufusa)

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Before: Hon. Lady Justice Olive Kazaarwe Mukwaya

RULING

This application is brought under Order 6 r 28, 29, 30 and Order 52 of the CPR and Section 98 of the Civil Procedure Act Cap 71 seeking orders that;

- 20  
 1. HCCS No.812 of 2020 is barred by limitation.  
 2. The Respondents/Plaintiffs have no locus standi to institute the said suit against the Applicants/Defendants and the plaint in HCCS No.812 of 2020 discloses no cause of action against the Applicants/Defendants.  
 3. HCCS No.812 of 2020 be dismissed with costs.  
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 4. The costs for this application be provided for.

Grounds for the Application

Briefly, the grounds for the application as set out in the affidavit of the 1<sup>st</sup> Applicant, Mr. James Serufusa Mukasa are as follows;

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- a) The Applicant is the Managing Director of the 2<sup>nd</sup> Applicant and 2<sup>nd</sup> Defendant in HCCS No. 812 of 2020.
  - b) The Respondent filed HCCS No.812 of 2020 against the Applicants for recovery of land comprised in Kyadondo Block 257 Plots 258,259,260 and 261 as beneficiaries to the estate of the Late Nathan Kagodo Serufusa.
  - c) However, the letters of administration to the said estate were granted on 23<sup>rd</sup> March 2000.
  - d) The Respondents only instituted the suit in 2020 which was way out of time allowable under the law therefore it is time barred.
  - 10 e) The Respondents have no locus standi and resultantly no cause of action is made out in the plaint against the Applicants in respect to the suit property in law which the Applicant contended is legally the property of the 2<sup>nd</sup> Respondent.
  - f) Further that the 3<sup>rd</sup> Respondent has no locus standi and no cause of action is made out in the plaint as against the Applicants.
  - 15 g) It is in the interest of justice that this application is granted.

**Affidavit in reply.**

In her response, the 1<sup>st</sup> Respondent Ms. Jane Nagawa Serufusa averred that;

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- a) HCCS No.812 of 2020 is not barred by limitation because it was instituted by them as beneficiaries in respect of property under a resulting trust.
  - b) From the plaint, a resulting trust was created in respect of the suit properties for her benefit together with the other beneficiaries.
  - c) The resulting trust was created since the late Nathan Kagodo Serufusa placed the suit properties with the management of the 2<sup>nd</sup> Applicant for the benefit of the beneficiaries of the estate.
  - 25 d) Despite being registered in the names of the 2<sup>nd</sup> Defendant, the properties remained personal property of the late Kagodo which explains why he gifted some of them to his children prior to his death in addition to bequeathing the remaining ones under his will dated 10<sup>th</sup> December, 1995.
  - 30 e) The twelve- year limitation period ceases to apply where the suit seeks to recover the suit property from a trustee. As long as administration of the estate is still open,

the affairs of such administration remain open to challenge in which case limitation does not apply.

- f) The final accounts of the estate have never been filed or made in Court therefore the administration of the estate had not been completed. Additionally, the plaint clearly shows that after the grant, proper distribution of the suit properties among the beneficiaries failed because the 2<sup>nd</sup> Applicant started laying claim to their ownership.
- g) The Applicant started illegally collecting rent from the occupation of the matrimonial property which was contrary to the Will of the late Kagodo. And the managing director of the 2<sup>nd</sup> Applicant proceeded to evict her and the other beneficiaries from the suit properties.
- h) The issue of whether or not the suit land is indeed trust property cannot be determined at this point except at the trial. She thus prayed the application be dismissed with costs.

I have perused the extensive submissions of Counsel for and against this application. The Respondents brought this suit as beneficiaries of a trust created by the late Nathan Kagodo Serufusa, during their lifetime. The 2<sup>nd</sup> Applicant, according to Annexure A1, A2, A3 and A4 to the Plaint; has been the registered proprietor on the five certificates of title to the suit land comprised in Kyadondo Block 257 Plots 258,259,260 and 261, since 1985. To explain the cause of action against the 2<sup>nd</sup> Applicant, paragraph 5(b) of the Plaint states;

'An order directing the 2<sup>nd</sup> Defendant a resulting trustee of the aforementioned properties to transfer title of the suit land to the administrators of the estate of the late Nathan Kagodo Serufusa'. (the underlining is mine for emphasis)

**Order 31 of the Civil Procedure Rules** provides for suits by or against trustees, executors and administrators. Sub rule 1 provides;

*Representation of beneficiaries in suits concerning property vested in trustees*

*In all suits concerning property vested in a trustee, executor or administrator, where the contention is between the persons beneficially interested in the property and a third*

person, the trustee, executor or administrator shall represent the persons so interested, and it shall not ordinarily be necessary to make them parties to the suit but the court may, if it thinks fit, order them or any of them to be made parties.

### Issue One

#### 5 Whether HCCS No.812 is barred by limitation?

Counsel for the Applicants argued that **sections 20 of the Limitation Act, Cap 80** imposes a 12- year period within which to bring a claim of the nature before this court and that the Respondents' suit is therefore time barred.

Section 20 of the Act provides;

#### 10 *20. Limitation of actions claiming personal estate of a deceased person*

*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*

15 *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 Plaint indicates in its heading that the Plaintiffs are suing as beneficiaries of the estate of the late Nathan Kagodo Serufusa, who died on the 5<sup>th</sup> August 1998. Paragraph 5(k) of the Plaint states that letters of administration (with the will annexed) to his estate were

20 granted to the 1<sup>st</sup> Defendant and the 2<sup>nd</sup> and 3<sup>rd</sup> Plaintiffs on the 23<sup>rd</sup> March 2000 vide Administration Cause No. 658 of 1999. It is further averred by the Plaintiffs that 'proper' distribution of the estate properties failed because of the 2<sup>nd</sup> Defendant's actions. Efforts to secure their beneficial interests by enlisting the help of a Mr. Sendaula Ronald on the 15<sup>th</sup> January 2020 also failed. Hence this suit.

25 This suit seeks inter alia, a declaration that land comprised in Kyadondo Block 257 plots 258, 259,260 and 261 at Mawanga Munyonyo is held in trust for the estate of the late Nathan Kagodo Serufusa.

Counsel for the Respondents submitted that the suit is not barred by limitation because it was instituted by them in their capacity as beneficiaries in respect of recovery of property under a resulting trust. He added that the administration of the estate is still open to challenge, and the statute of limitation does not apply. He relied on the definition of 'resulting trust' given by **Robert Meggry and William Wade in their book, The Law of Real Property, 2012 at page 414-415;**

'an implied or resulting trust is said to exist where, on a conveyance of property, a trust arises by operation of equity. However, the basis of such trusts is the presumed intention of the settlor or of the parties whose conduct leads to their creation...'

Counsel argued that the question before the court for determination, which was not barred by limitation, was whether it was intended that N.K Serufusa & Sons Ltd takes all the beneficial interest in the suit properties? Did the late N.K Serufusa as a settlor abandon his interest in the suit property? To answer these questions, Counsel for the Respondents answered these questions in the negative. Counsel added that the fact that the Certificates of Title are silent on the trust, a presumption arises that a resulting trust was created going by the conduct of the deceased and the beneficiaries in relation to the suit properties. Such a presumption could only be rebutted by the Applicants' leading evidence to that effect.

Since there was a resulting trust, Counsel conceded that under section 5 and 6 of the Limitation Act, the right of action expired in 2012. Twelve years after the letters of administration were granted. However, the Respondents' claim is brought in their capacity as beneficiaries to recover property under the resulting trust. In which case, the Respondents were protected under **section 19(1)(b) of the Limitation Act.**

*19. Limitation of actions in respect of trust property*

(1) *No period of limitation prescribed by this Act shall apply to an action by a beneficiary under a trust, being an action—*

(a)-

*(b) to recover from the trustee trust property or the proceeds of the trust property in the possession of the trustee, or previously received by the trustee and converted to his or her use.*

5 It was Counsel's submission that under **section 19(2) of the Act**, *the right of action shall not be deemed to have accrued to any beneficiary entitled to a future interest in the trust property until the interest fell into possession.* In the instant suit, some of the suit properties have not fallen into possession of the intended beneficiaries because the distribution of the estate has not been done. It is fact, according to Counsel, that brings the Respondents within the Limitation period.

10 Counsel further relied on the case of **Hadadi Mohammed Rajab & 5 Others v Muzamil Mohammed Rajab & 2 Others Civil Suit No. 188 of 2015**, where it was held that as long as administration of the estate is still open, the authority of the administrators is open to challenge; in which case limitation under **section 20 of the Limitation Act** does not apply. Counsel argued that in the instant suit, the final account of the estate had never  
15 been filed and therefore, the administration was not complete.

In rejoinder, Counsel for the Applicants submitted that; according to section 59 of the Registration of Titles Act, a certificate of title is conclusive evidence of ownership of the person registered as proprietor. Therefore, an alleged presumption of a trust cannot negate the 2<sup>nd</sup> Applicant's legal right to the suit properties.

20 **RESOLUTION**

There are some agreed facts in this suit. Two out of the three Plaintiffs in HCCS No. 812 of 2020 are also the Administrators of the Estate of the late Nathan Kagodo Serufusa, a responsibility they have been executing since 23<sup>rd</sup> March 2000. They however maintain that this suit is brought in their capacity as beneficiaries of the deceased's estate. Under  
25 **section 278 of the Succession Act**, the first statutory duty of administrators of the deceased's estate is to file an inventory within 6 months of the grant. This is a mandatory duty as I observed in the case of **Hadijah Ndagire and Anor v Mohammad Kasozi and 15 Others (Civil Suit No. 40 of 2014) [2021] UGHCLD 38 (8 February 2021)**.

**Section 278 of the Succession Act** provides;

*278. Inventory and account.*

*(1) An executor or administrator shall, within six months from the grant of probate or letters of administration, or within such further time as the court which granted the probate or letters may from time to time appoint, exhibit in that court an inventory containing a full and true estimate of all the property in possession, and all the credits, and also all the debts owing by any person to which the executor or administrator is entitled in that character; and shall in like manner within one year from the grant, or within such further time as the court may from time to time appoint, exhibit an account of the estate, showing the assets which have come to his or her hands, and the manner in which they have been applied or disposed of.'*

Additionally, **Black's law dictionary** defines an inventory as follows;

'A detailed list of articles of property; a list or schedule of property, containing a designation or description of each specific article; an itemized list of the various articles constituting a collection, estate, stock in trade, etc., with their estimated or actual values. In law, the term is particularly applied to such a list made by an executor, administrator, or assignee in bankruptcy.'

This court held in the **Ndagire case**, supra, that it was premature for any administrator to institute a suit for recovery of estate property without an inventory to support the claim. It is a fact that there is no inventory annexed to the Plaint in HCCS No. 812 of 2020. And while, the Respondents claim that they are beneficiaries and not administrators, with respect to this suit, I find I am unable to ignore the fact that two out of three of them are actually administrators to the late Kagodo Serufusa's estate. They, together with the 1<sup>st</sup> Applicant, their co-administrator, ought to have filed an inventory including the suit property as estate property within 6 months of receipt of the grant of letters of administration with the will annexed. Or within such period that the court would have permitted upon request for extension of time.

Without the inventory, 20 years after the grant, it was impossible to identify the suit property as estate property held in trust or otherwise and that the Respondents were

beneficiaries thereof. Especially in this particular case where the certificates of title to the suit lands are all registered in the name of the 2<sup>nd</sup> Applicant. This registration dates back to over a decade prior to the deceased's death in 1998. Similarly, the absence of a final account was not an advantage as suggested by Counsel for the Respondents. If it had existed, it would have served to support their assertions about their beneficial interest in the suit property.

**Black's Law Dictionary** defines a trust as; "[a]n equitable or beneficial right or title to land or other property, held for the beneficiary by another person, in whom resides the legal title or ownership, recognized and enforced by courts of chancery.

Relatedly, the Law Dictionary defines Trust in the following detail;

*trust*

*n.* an entity created to hold assets for the benefit of certain persons or entities, with a trustee managing the trust (and often holding title on behalf of the trust). Most trusts are founded by the persons (called trustors, settlors and/or donors) who execute a written declaration of trust which establishes the trust and spells out the terms and conditions upon which it will be conducted. The declaration also names the original trustee or trustees, successor trustees or means to choose future trustees. The assets of the trust are usually given to the trust by the creators, although assets may be added by others. During the life of the trust, profits and, sometimes, a portion of the principal (called "corpus") may be distributed to the beneficiaries, and at some time in the future (such as the death of the last trustor or settlor) the remaining assets will be distributed to beneficiaries. A trust may take the place of a will and avoid probate (management of an estate with court supervision) by providing for distribution of all assets originally owned by the trustors or settlors upon their death. There are numerous types of trusts, including "revocable trusts" created to handle the trustors' assets (with the trustor acting as initial trustee), often called a "living trust" or "inter vivos trust" which only becomes irrevocable on the death of the first trustor; "irrevocable trust," which cannot be changed at any time; "charitable remainder unitrust," which provides for eventual guaranteed distribution of the corpus (assets) to charity, thus gaining a substantial tax benefit. There are also court-



*decreed "constructive" and "resulting" trusts over property held by someone for its owner. A "testamentary trust" can be created by a will to manage assets given to beneficiaries.*

This is a wide, broad and by all accounts an inclusive definition. If a trust existed, it would be visible. Counsel for the Respondents fervently submitted that it is a resulting trust that existed, by presumption, in this matter. On the other hand, Counsel for the Applicant argued that according to **Section 59 of the RTA**, a certificate of title is conclusive evidence of ownership of the person registered as proprietor. Therefore, an alleged presumption of a trust cannot negate the 2<sup>nd</sup> Applicant's legal right to the suit properties. I agree with Counsel for the Applicants. There was nothing on any of the suit titles to suggest the property was held in trust for the beneficiaries of the estate of the late Kagoda Serufusa.

I do agree with Counsel for the Respondents that, whether or not the subject matter property forms part of a resulting trust forming part of the estate of the late Kagoda Serufusa, is a question of evidence to be determined after the leading and hearing of evidence by the court. However, I am also persuaded, that the Respondent's claim is time barred. For almost two decades, the Respondents have been aware of their status as beneficiaries and their administrators to the deceased's estate and elected to take no action to lay their claim within the time prescribed under the law. In my view, there were no exemptions under **sections 5,6, and 19 and 20 of the Limitation Act** which could save the Respondents' action. The maximum period allowed under those provisions relating to recovery of land, trust property and estate property was 12 years. Time started running on the 23<sup>rd</sup> March 2000 and run out on the 23<sup>rd</sup> march 2012. This suit was filed eight years later. I find that HCCS 812 of 2020 is barred by limitation.

**Issue 1 is resolved in the affirmative.**

**In conclusion, I find that the follow-up questions of whether the Applicants have locus standi or whether the suit discloses a cause of action are rendered moot by this court's finding on Issue 1. I hereby allow this application and order that HCCS 812 of 2020 is barred by limitation. It is hereby dismissed with costs.**



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**Olive Kazaarwe Mukwaya**

**JUDGE**

**19<sup>th</sup> May 2023**

5 Delivered by email to Counsel for the Parties.