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**THE REPUBLIC OF UGANDA**  
**IN THE SUPREME COURT OF UGANDA AT KAMPALA**

**[CORAM: TIBATEMWA-EKIRIKUBINZA; MUGAMBA; BUTEERA;  
TUHAISE; CHIBITA, JJSC]**

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**CIVIL APPEAL No.19 OF 2018**

**BETWEEN**

**SAUL KISIRIBOMBO RUMANDA :::::::::::::::::::: APPELLANT**

15  
**AND**

- 20  
1. **EMMY TUMWINE**  
2. **BETTY NYAKATUKURA**  
3. **JOVIA KYOMUGISHA**  
4. **KAMUGISHA GEOFFREY**  
5. **ALICE MIREMBE**  
6. **HARRIET KIRUNGI**  
7. **DENNIS TUMWESIGYE**

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:::::::::::::::::: **RESPONDENTS**

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*[An appeal from the decision of the Court of Appeal at Kampala before  
Hon. Justices: Obura, Musota and Madrama, JJA in Civil Appeal No.  
53 of 2017 dated 14<sup>th</sup> August 2018.]*

**Representation:**

30 *The appellant was represented by Mr. Bill Mamawi of M/S Greystone  
& Co. Advocates while the 1<sup>st</sup> respondent was represented by Mr.  
Edison Karuhanga and Ms. Akantorana Kobusingye all of M/S  
Kampala Associated Advocates. The 2<sup>nd</sup>-7<sup>th</sup> respondents were  
35 *represented by Mr. Alex Tuhimbise of M/S Tuhimbise &  
Co. Advocates.**

5 **JUDGMENT OF PROF. TIBATEMWA—EKIRIKUBINZA, JSC.**

This is a second appeal arising from the Judgment of the Court of Appeal. The background to this appeal is that in 2010 Emmy Tumwine (the 1<sup>st</sup> respondent), a son to the deceased John Reuben Nyakatukura, sued the Administrator General in the High Court for mismanagement of his father's estate. Emmy Tumwine prayed for general and exemplary damages.

By way of amended plaint, on 21<sup>st</sup> February 2014, Saul Kisiribombo (the appellant) was added as a 2<sup>nd</sup> defendant in an action for trespass to land comprised in LRV 990 Folio 15 Kashari Block 1 Plot 26 (the suit land). Furthermore, Emmy Tumwine added the 2<sup>nd</sup>- 7<sup>th</sup> respondents to the suit as co-plaintiffs since they were also beneficiaries to the estate of the late John Reuben Nyakatukura.

In 1976, the Administrator General had obtained a management order over the deceased's estate. The deceased had since 1972 been declared as a missing person.

It was contended by the respondents that the Administrator General only became an Administrator of the estate when Letters of Administration over the said estate were granted to him on 25<sup>th</sup> July 1977. Subsequently, on 30<sup>th</sup> January 1987, Violet Nyakatura, widow to the late John Reuben and now deceased, was also granted Letters of Administration over the same estate.



5 It is on record that on 26<sup>th</sup> November 1986, Saul Kisiribombo (appellant) purchased part of the suit land from Violet Nyakatukura. The respondents contended that the land Kisiribombo purchased belonged to the deceased.

10 Prior to the grant of Letters of Administration to the deceased widow, she sold part of the suit land measuring 4.8 hectares to Saul Kisiribombo (the appellant) who effected registration onto the certificate of title as owner in 1989 and started construction works in 2013.

15 On 15<sup>th</sup> December 1986, Emmy Tumwine together with Betty Nyakatukura (2<sup>nd</sup> respondent) lodged a caveat on the suit land. Subsequently, in 1988 a notice for removal of the caveat was issued to Tumwine and Betty. In response to the said notice, the duo filed an application in December 1988 to delay removal of the caveat.

20 Later on, in 2010, a suit was filed by the 1<sup>st</sup> respondent in the High Court of Uganda (family division) against both the Administrator General and Saul Kisiribombo (appellant).

25 The High Court held in favour of the 1<sup>st</sup>-8<sup>th</sup> respondents with orders *inter alia* that the suit land held by Saul Kisiribombo be handed back to the estate of the late John Reuben Nyakatukura. The court also ordered the Administrator General to pay compensation to the 1<sup>st</sup>-8<sup>th</sup> respondents for mismanaging the estate.

5 Dissatisfied with the High Court judgment, Saul Kisiribombo  
appealed to the Court of Appeal on grounds, *inter alia*, that the  
trial Judge erred in not finding that the respondents' action was  
barred by the Limitation Act. Furthermore, that the trial Judge  
erred in holding that the suit land was part of the deceased's  
10 estate. On the other hand, the 1<sup>st</sup>-8<sup>th</sup> respondents cross-  
appealed on the ground that the learned Judge erred in law and  
fact when she held that the appellant acquired the land  
fraudulently and yet at the same time allowed him to benefit  
from the transaction by holding that a wife to an intestate owns  
15 50% of the estate and could therefore sell off her share.

Counsel for the 1<sup>st</sup>-8<sup>th</sup> respondents argued that because the sale  
of the land was illegal and fraudulent, the appellant should not  
have been allowed by the trial Judge to benefit from the illegality  
by retaining 4.8 hectares of the estate. The Court of Appeal, *inter*  
20 *alia*, held that:

- (i) A defendant who raises a defence of limitation under  
Section 19 (1) of the Limitation Act must demonstrate  
that he is a bonafide purchaser for value without notice  
of any fraud. That in the present case, the appellant  
25 purported to buy land from Violet Nyakatukura who  
was not a registered proprietor. He therefore had  
constructive notice that there could be other interests  
other than that of Violet whose name was not on the  
certificate of title. To make matters worse, that the  
appellant was subsequently registered on the title  
30 through unlawful Letters of Administration obtained by  
Violet which were for the sole purpose of getting the  
appellant registered on the title.



5 (ii) That according to Section 19 of the Limitation Act, the  
limitation period under Section 5 of the Limitation Act  
does not apply to suits against third parties who are  
bonafide purchasers for value without notice of fraud.  
That the suit was not time barred because the limitation  
10 period did not apply by virtue of Section 19 (1) (a) of the  
Limitation Act. Therefore, the beneficiaries were entitled  
to follow the assets into the hands of the appellant who  
had wrongfully received trust property into his  
possession.

15 (iii) That the appellant did not qualify to be considered as a  
bonafide purchaser for value without knowledge of  
defect in title.

In allowing the respondents' cross-appeal with costs, the Court  
of Appeal held that the holding of the trial Court that the widow  
20 passed 50% of the estate property which belonged to her in her  
own individual right cannot stand and was set aside because  
the Judge applied the Land Act, a statute which had not been  
yet passed into law in 1986 when the sale of land to Kisiribombo  
took place. That following the legal principle which bars  
25 retrospective application of statutes, the Judge could not apply  
the Land Act to the 1986 transaction.

In the result, Saul Kisiribombo's appeal was dismissed with  
costs both in the Court of Appeal as well as in the High Court.

Being dissatisfied with the decision of the Court of Appeal,  
30 Kisiribombo further appealed to this Court on the following  
grounds:

- 5       **1. The learned Justices of the Court of Appeal erred in law when they held that the respondents were beneficiaries under a trust envisaged under Section 19 (1) of the Limitation Act.**
- 10       **2. The learned Justices of Appeal erred in law when they held that the respondents' suit against the appellant was not barred by limitation.**
- 15       **3. The learned Justices of the Court of Appeal erred in law when they held that the defendant who raises a defence of limitation under Section 19 (1) must demonstrate that he is a bonafide purchaser for value without notice.**
- 20       **4. The learned Justices of the Court of Appeal erred in law when they held that the land comprised in LRV 990 Folio 15 Kashari Block 1. Plot 26 forms part of the estate of the late John Reuben Nyakatukura when the same had already been transferred to the appellant.**
- 25       **5. The learned Justices of the Court of Appeal erred in law when they failed to evaluate the evidence on record when they held that there was fraudulent breach of trust by the trustee thereby coming to a**
- 30       **wrong decision.**

**Prayers:**

The appellant prays that:

- (i) The appeal be allowed, judgment and orders of the learned justices of the Court of Appeal be set aside.



- 5 (ii) The respondents be condemned to costs in this Court as well as in the courts below.

### **Appellant's Submissions**

The appellant formulated the following six issues arising out of the grounds of appeal:

- 10 (i) Whether the respondents are beneficiaries under trust envisaged under Section 19 (1) of the Limitation Act.
- (ii) Whether the respondents' suit against the appellant was barred by limitation
- (iii) Whether a defendant who raises the defence of  
15 limitation under Section 19 (1) of the Limitation Act must demonstrate that he is a bonafide purchaser for value without notice of fraud.
- (iv) Whether the land comprised in LRV 990 Folio 15 Kashari Block 1 Plot 26 formed part of the estate of the  
20 late John Reuben Nyakatukura.
- (v) Whether there was fraudulent breach of trust by the trustee.
- (vi) What remedies are available.

At the hearing Counsel for the appellant abandoned ground 1  
25 of the appeal and argued the rest of the grounds and issues arising therefrom as one ground.

5 The appellant faulted the learned Justices of Appeal for holding that the respondents' suit against the appellant was not barred by the Limitation Act because the limitation period does not run against the beneficiaries.

10 The appellant contends that the suit for recovery of land if any was supposed to be against Violet Nyakatukura (deceased widow) who was the trustee and not him. That the respondents only chose to file a suit after her demise. Counsel referred to the authority of **Yoswa Kityo vs. Kirya Kaddu**<sup>1</sup> where Karokora J held that no action in respect of an estate could be entertained  
15 after the expiration of 12 years. Even if there was a trust where the defendant had been a trustee for the benefit of the plaintiff ... the action of the plaintiff was statute barred.

Another argument advanced by the appellant was that the respondents were aware of his registration on to the certificate  
20 of title and therefore the limitation period in **Section 5** of the **Limitation Act** applied. The Section 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  
25 accrued to some person through whom he or she claims, to that person.”**

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<sup>1</sup> (1982) HCB 58.



5 That in this case, the respondents got to know of the appellant's  
purchase of the land in question in 1986. That a period of 27  
years had lapsed before the suit for recovery of land against the  
appellant was instituted in the High Court. The appellant  
demonstrated the knowledge of the purchase of the land by  
10 referring to the application lodged by the respondents to revoke  
the grant of Letters of Administration to Violet Nyakatukura.  
That in the affidavit supporting the motion for revocation,  
Emmy Tumwine (the 1<sup>st</sup> respondent) stated that the widow had  
fraudulently sold the suit property to the appellant.  
15 Furthermore, the appellant contends that by the time the suit  
was filed against him in the High Court he had been in  
occupation of the land for over 30 years.

Counsel also argued that the Court of Appeal wrongly attributed  
fraud to the appellant who was a third party. That the proper  
20 trustee in the circumstances of this case was the Administrator  
General. The appellant did not purchase from the Administrator  
General but Violet Nyakatukura. That therefore, there was no  
fraud that could be attributed to the appellant who was a third  
party in the transaction.

25 It was the contention of the appellant's counsel that to uphold  
the finding by the Court of Appeal which is to the effect that  
mere knowledge of breach of trust by the respondents does not  
bring the limitation period into operation would be opening a  
flood gate for litigants who will willfully and with full knowledge

5 sit on their rights for long periods and then wake up all of a sudden to claim property. Counsel submitted that this would defeat the doctrine of laches and would encourage indolent litigants who would find comfort in knowing that even if they sat on their rights, they would still get a remedy in court.

10 **Respondents' reply**

Just like counsel for the appellant, both the respondents' counsel replied to the grounds of appeal as one ground. Although the 1<sup>st</sup> respondent was represented by a different lawyer from that of the 2<sup>nd</sup>- 7<sup>th</sup> respondents, the arguments  
15 raised are essentially similar. I will therefore address the arguments together.

The 1<sup>st</sup> respondent reiterated the arguments raised in the Court of Appeal and averred that the learned Justices of Appeal were right in holding that the suit was not barred by time.

20 The respondents contend that the appellant erroneously interpreted **Section 19** of the **Limitation Act** and argued that the said Section does not apply to the facts of the present case because there was no trust created. The respondents contend that a trust was created by virtue of **Section 25** of the  
25 **Succession Act** which provides as follows:

*"All property in an intestate estate devolves upon the personal representative of the deceased upon trust for those persons entitled to the property under this Act."*



5 Furthermore, Counsel also relied on the authority of **G.L. Baker vs. Medway Building and supplies Ltd**<sup>2</sup> which is to the effect that trust property can be traced to third parties and as long as there was fraud or fraudulent breach of trust, the period of Limitation does not apply.

10 Counsel thus agreed with the finding of the Court of Appeal that the suit land was a trust under the administration of the Administrator General. Furthermore, counsel submitted that the Court of Appeal rightly found that the suit for recovery of the land was saved under Section 19 of the Limitation Act  
15 because there was fraudulent breach of trust to which the Administrator General as trustee was privy. He added that such fraud was proved against the appellant as a third party. In support of this submission, counsel referred to Halsburys Laws of England 4<sup>th</sup> edition Volume 48, paragraph 593 which states  
20 that:

*“Where property is subject to a trust, the trust follows the legal estate wherever it goes, unless it comes into the hands of a purchaser for valuable consideration without notice.”*

The respondents' counsel argued that given the principles  
25 governing trust property, the burden was on the appellant to prove that he was a bonafide purchaser for value without notice but observed that the lower courts had found that he was not. Counsel submitted that where the appellant fails to discharge

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<sup>2</sup> (1958) 2 All.ER 532.

5 this burden, then the defence of Limitation is not available to  
him. Counsel argued that even if the appellant's submission  
that he purchased from Violet Nyakatukura and not the  
Administrator General was to be taken as true, he would still be  
liable because he purchased from a trustee who had no capacity  
10 to sell. Counsel contended that the transfer of land to the  
appellant in 1986 was done before Violet had obtained Letters  
of Administration and as such Violet could not pass proper title  
to the appellant. Counsel added that the appellant received the  
property with notice that it belonged to the beneficiaries and as  
15 such he was a constructive trustee.

Counsel further argued that knowledge of fraud is not a  
requirement under Section 19 of the Limitation Act. Therefore,  
the assertion by the appellant that the 1<sup>st</sup> respondent knew  
about the sale of the suit land to the appellant in 1988 does not  
20 in any way bar the respondents from bringing the suit.

In response to the appellant's reliance on the doctrine of laches  
and submission on the floodgates argument, the respondents  
argued that since the doctrine of laches is based on equity, the  
appellant ought to invoke it only if he has clean hands. He  
25 submitted that the respondents relied on the authority of  
**Stanbic Bank Uganda Ltd vs. Uganda Crocs Limited**<sup>3</sup> which  
cited the equity maxim that he who comes to equity must come  
with clean hands and argued that the appellant did not have

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<sup>3</sup> SCCA No.4 of 2004.



5 clean hands having been a purchaser of land from a trustee who breached her fiduciary obligations and had knowledge of the breach.

The respondents prayed that the appeal be dismissed with costs.

## 10 **Rejoinder**

No rejoinder was made.

## **Court's consideration**

15 The central question in the instant appeal is: *whether a claim for trust property can be pursued against a third party outside the prescribed limitation period in the Limitation Act.* In answering the question, interpretation of **Section 19** of the **Limitation Act** is critical.

**Section 19** of the **Limitation Act** provides as follows:

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

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

**(a) in respect of any fraud or fraudulent breach of trust to which the trustee was a party or privy; or**

25 **(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.**

30 **(2) Subject to subsection (1), an action by a beneficiary to recover trust property or in respect of any breach of**

5 trust, not being an action for which a period of  
limitation is prescribed by any other provision of this  
Act, shall not be brought after the expiration of six  
years from the date on which the right of action  
10 accrued; but 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.

15 (3) No beneficiary as against whom there would be a  
good defence under this Act shall derive any greater or  
other benefit from the judgment or order obtained by  
any other beneficiary than he or she could have  
obtained if he or she had brought the action and this  
Act had been pleaded in defence. (My emphasis)

20 Whereas the appellant claims that the respondents' suit was  
barred by the Limitation statute, the respondents claim it was  
not, because they are beneficiaries of trust property who are not  
barred by limitation periods according to **Section 19 (supra)**.

25 In order to understand Section 19, it is important to appreciate  
who the proper claimants would be, who the appropriate  
defendant(s) would be and the rationale behind its  
promulgation.

30 A claimant under Section 19 is a beneficiary under a trust.  
According to **Section 1 (r)** of the **Trustees Act**, a "trust" and  
"trustee" are interpreted to extend to implied and constructive  
trusts, and to cases where the trustee has a beneficial interest  
in the trust property, and to the duties incidental to the office  
of a personal representative, and "trustee" where the context



5 admits, includes a personal representative, and “new trustee”  
includes an additional trustee.

In cases of intestate estates, a personal representative holds the  
assets of the intestate in trust for the beneficiaries. According  
to **Section 1 (r)** of the **Succession Act**, a personal  
10 representative means the person appointed by law to administer  
the estate or any part of the estate of a deceased person.  
Therefore, in the instant case, the Administrator General who  
was granted the Letters of Administration to administer the late  
John Reuben Nyakatukura’s estate is a trustee and held all  
15 assets of the estate in trust for the benefit of the beneficiaries  
who include the children of the deceased.

Having understood who the proper claimant is under Section  
19, it is important to discover who the proper defendant is. This  
is the bone of contention in the instant case. The respondents  
20 argue that the appellant was a proper defendant whereas the  
appellant argues he was an innocent third party having  
purchased part of the suit land from the mother of the  
respondents (Violet Nyakatukura). The appellant in essence  
argued that Section 19 provides for actions against a trustee  
25 who breached their duty not a third party like himself.

The Court of Appeal in addressing the issue as to whether a  
third party who acquired property on account of fraud or  
fraudulent breach of trust by a trustee can be sued without  
regard to the law of limitation held as follows:

5     *“We can conclude from the wording of Section 19 (1) (a) of the Limitation Act that the Section saves an action by a beneficiary under a trust. It further qualifies the action to be in respect of any fraud or fraudulent breach of trust to which the trustee was a party or privy...”*

10    The above holding reveals the Court of Appeal’s interpretation of Section 19. In essence, the Court stated that Section 19 applies to both trustees and third parties. I am in agreement with this interpretation. The presence of Subsection (b) which specifically deals with trust property in the possession of the trustee makes one believe that Subsection (a) deals not only  
15    with the trustee but also any person claiming through him.

The respondents relied on the authority of **G.L. Baker vs. Medway Building and supplies Ltd (supra)** to support their case. The brief facts of the case are that the plaintiff company  
20    (G.L. Baker) employed Titley as its auditor. Titley was also a director and accountant for the defendant company (Medway Building and supplies Ltd). The plaintiff company gave Titley a sum of 80,000 pounds to be held in trust. Titley instead fraudulently paid 6,161 pounds of the money he was entrusted  
25    to the defendant company. Titley was sued for the fraud and ordered to refund the money which he failed to do. Upon this failure, the plaintiff company sought to recover from the defendant company the sums which it had admittedly received from Titley.



5 The questions resolved by the court of first instance were:

(i) Whether the plaintiff company can recover from a third party.

(ii) Whether the defendant company was in a position to rely on the Limitation Act to defeat the Plaintiff's claim.

10 The court (Danckwerts J) held as follows:

(i) No limitation period was applicable as the proceedings against the defendant company was because of Titley's fraudulent payments and the action was in respect of a fraud or fraudulent breach of trust to which the trustee was a party or privy within  
15 Section 19 (1) (a) of the 1939 England Limitation Act.

(ii) Assuming, however, that the six year Limitation period enacted by S.19 (2) of the 1939 Limitation Act were the relevant limitation period, nevertheless, the commencement of the period was postponed under S.26 (a) as the action was based  
20 on the fraud of Titley through whom Medway Ltd claimed until the discovery of the fraud within six years before the action was begun.

In reaching the above conclusions, Danckwerts J applied the following ratio by Lord Denning in the case of Nelson vs. Larholt  
25 [1947] 2 ALLER 751: "... money taken from the rightful owner, or, indeed, from the beneficial owner, without his authority can be recovered from any person into whose hands it can be traced unless it reaches one who receives it in good faith and for value

5 *without notice of the want of authority.*" Thus, the Judge held  
that in order to defeat G.L. Baker's action, the defendant  
company had the onus of establishing that it received the  
money in good faith and for value without notice of the want of  
authority. Although the defendant company had innocently  
10 received the money from Titley, the court held it had not  
furnished consideration for it. Therefore, the action could not  
be defeated.

The implication of the above persuasive English authority is  
that trust property can be traced in the hands of a third party  
15 who is not a bonafide purchaser for value without notice.

Another authority relied on by the respondents is the English  
case of **Williams vs. Central Bank of Nigeria**<sup>4</sup>. I find that the  
authority is not to their benefit although it is instructive on the  
subject matter at hand.

20 The brief facts of the case are that Williams instituted a suit  
against the respondent Bank in 2014 alleging that he was a  
victim of a fraud, dating to 1986, in which he was induced to  
act as a guarantor of a fraudulent transaction to import food  
into Nigeria. Under this transaction, Williams paid \$6,520,190  
25 to Mr. Gale (an English solicitor) that was to be held in trust  
pending the release of certain funds in Nigeria. It was alleged  
that Gale, in fraudulent breach of trust (knowing that the funds  
had not been released to Williams in Nigeria), transferred

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<sup>4</sup> [2014] UK (Supreme Court) 10.



5 \$6,020,190 to the Central Bank of Nigeria and personally retained the remaining \$500,000.

Williams brought a claim against the Bank on the basis that the Bank was a constructive trustee, and that it had dishonestly assisted Gale's fraud by knowingly receiving funds in breach of trust. Williams also brought a claim seeking to trace the misappropriated sums into the Bank's assets. The case was based on Section 21 of the 1980 Limitation Act of England which is in *pari materia* with Section 19 of Uganda's Limitation Act.

15 The High Court held that although the Central Bank could not be described as a trustee, Section 21 (1) (a) was not confined to actions against the trustee. It extended to an action against the Bank who participated in the trustee's fraud. The Court of Appeal agreed with the High Court and held that a party who is not a trustee but participated in the trustee's fraud can be sued.

The above holdings were overturned by the Supreme Court. One of the issues considered by the Court was:

- i. whether an action "in respect of" any fraud or fraudulent breach of trust under section 21(1) (a) to which the trustee was party or privy, includes an action brought against a party which is not a trustee (such as the Bank)?

The Supreme Court drew a narrow interpretation of section 21(1) (a) and held that the said section has nothing to do with

5 third parties. It only applied to actions against “true trustees”  
in respect of a fraud or fraudulent breach of trust (i.e. Gale-the  
solicitor). It is concerned with actions against trustees on  
account of their own fraud or fraudulent breach of trust. That  
it would not cover the Bank. Lord Sumption (who authored the  
10 lead judgment) noted that Section 21(1) applied only to claims  
against express or *defacto* trustees and not to claims against  
constructive trustees whose liability came into being as a result  
of the transaction impeached.

15 However the Lord Justice went on to hold that nevertheless the  
practical significant sole obligation is for the third party to  
restore the assets immediately; but this also does not make him  
a trustee.

20 Notwithstanding the above conclusion, Lord Sumption argued  
that, *the linguistic construction of the phrase “sued in respect of  
any fraud or fraudulent breach of trust to which the trustee was  
a party or privy” which appears in Section 21 seems to offer the  
interpretation that a stranger whose interest is hinged to a  
trustee who has breached the trust can be sued even though they  
are not a trustee in the true sense.*

25 I note that one of the reasons advanced by Lord Sumption as to  
why Section 21 did not apply to non-trustees was that:-

*“The liability of a non-trustee/ stranger to the trust was  
independent of any fraud on the part of the trustee.”* Lord  
Sumption explained that “the stranger’s liability arises by virtue



5 of knowingly receiving trust property. [That] *knowing assisters*  
are liable on account of their own dishonesty irrespective of the  
dishonesty of the trustees. The liability of a knowing assister has  
always depended on unconscionability of his conduct ... In  
practice, the trustee usually is dishonest and the alleged  
10 constructive trustee's conscience is affected because he has  
participated in the scheme with knowledge of that fact."

Thus, the Court concluded that since the Central Bank of  
Nigeria was not a trustee, the period of Limitation applied to the  
claims brought by Dr. Williams. The Limitation period remained  
15 a good defence to a non-trustee who does not have knowledge  
of the fraudulent breach of trust.

I note from the above persuasive English authorities of **Williams  
vs. Central Bank of Nigeria (supra)** and **G.L. Baker vs.  
Medway Building and supplies Ltd (supra)** that, whereas in  
20 the earlier case the House of Lords strictly interpreted the  
provisions waiving the limitation periods to apply to only  
trustees and not third parties, the latter case held that the  
waiver extended to third parties.

However, both authorities come to the same conclusion that  
25 where a third party knowingly receives property on account of  
fraud or fraudulent breach of trust by a trustee, then that  
property can be claimed by a beneficiary.

The question which then arises is: *whether the appellant (a third  
party) claiming through the widow (a trustee), is a bonafide*

5 *purchaser for value without notice of fraud or fraudulent breach of trust.*

The Court of Appeal in dealing with the issue as to whether the appellant was a bonafide purchaser for value without notice held as follows:

10 *“The appellant knew that Violate Nyakatukura was a widow and children of the deceased were residing on the land. He therefore knew the prior equitable interests of the children of the intestate. The appellant knew about the steps leading to transfer of the title into his names. He was no stranger to the dealings by which he*  
15 *was registered on the title deed of the suit property ... It follows that the appellant was not a bonafide purchaser for value without notice of fraud.”*

Indeed, the evidence on record indicates that the appellant knew (had knowledge) at the time of purchasing the suit  
20 property from the widow that she had no Letters of Administration which would have given her capacity to deal with the estate. Having realized this fact, the appellant assisted the widow in obtaining Letters of Administration to validate the earlier sale well aware that the Administrator General had long  
25 obtained Letters of Administration over the said estate.

Furthermore, the appellant had a duty to conduct due diligence over the property he was purchasing. Since the suit property was part of the deceased's estate, it was incumbent on the appellant to find out if the land was subject to other



5 beneficiaries interests. The need for thorough investigations before purchase of land was pointed out by this Court in the decision of **Fredrick J.K. Zaabwe vs. Orient Bank Ltd**<sup>5</sup>.

10 It is also a fact on record that the caveat which had been lodged by the 1<sup>st</sup> and 2<sup>nd</sup> respondents to stop any person from dealing with the suit land was irregularly removed to facilitate the registration of the appellant as a proprietor. On the premise of this evidence, the appellant does not qualify as a bonafide purchaser without notice of fraud. I therefore find no fault with the Court of Appeal's finding and conclusion on this issue.

15 Without prejudice to the foregoing, I must address the argument raised by the appellant which is to the effect that the respondent beneficiaries came to know that he had purchased the suit land in 1986 but they nevertheless sat on their rights to bring a claim which is now defeated by laches.

20 Even if the appellant's argument was taken to be correct, the result would not be different. **Section 25** of the **Limitation Act** provides for instances where the limitation period can be postponed. The Section provides in part as follows:

25 **Where, in the case of any action for which a period of limitation is prescribed by this Act,**

**... the period of limitation shall not begin to run until the plaintiff has discovered the fraud or could with reasonable diligence have discovered it; but nothing in this section shall enable any action to be brought to**

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<sup>5</sup> SCCA No.4 of 2006.

5       **recover, or enforce any charge against, or set aside any  
transaction affecting, any property which—**

10       **(d) in the case of fraud, has been purchased for valuable  
consideration by a person who was not a party to the  
fraud and did not at the time of the purchase know or  
15       have reason to believe that any fraud had been  
committed.**

The appellant argued that the respondents knew that he had  
purchased the suit land in 1986. Furthermore, that during  
cross-examination in the trial court, the 1<sup>st</sup> respondent testified  
15       that he knew that the widow wanted to transfer the said land to  
the appellant. Whereas this fact is on record, there is no  
evidence on record to show that the respondents eventually got  
to know the actual time when the transfer of the suit land into  
the appellant's name materialized. The conduct of the widow to  
20       sell the suit land is what triggered the respondents to lodge a  
caveat in 1986. It is on record that this caveat was irregularly  
removed to facilitate the appellant's registration. The period  
when the caveat was removed is not known by the respondents.  
It cannot therefore be argued that the respondents sat on their  
25       rights yet the facts show that they took legal steps to protect  
their interests. Furthermore, the period of limitation could not  
start to run until the respondents became aware of the  
fraudulent transfer of land. If 2010, the year in which the  
respondents filed the suit in the trial court is taken as the year  
30       when the time started running, then the respondents' suit is not  
time barred. The respondents' claim would still be within the 12



5 years window stipulated in **Section 5** of the **Limitation Act** for claims to recover land.

Thus, having reached a finding that Section 19 of the Limitation Act applies to third parties and that the appellant is not a bonafide purchaser without notice of the fraudulent breach of trust, I hold that no limitation period is applicable to the present matter. The origin of the suit against the appellant was hinged on the fraudulent dealings in the land as well as fraudulent breach of trust which the widow through whom the appellant claims was a party or privy.

15 Arising from my analysis above, I hold that the appeal fails and is accordingly dismissed with costs to the respondents.

Furthermore, the orders as to costs in the lower court as well as the cross-appeal filed in the Court of Appeal are hereby upheld.

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### **Orders of Court**

1. Since all the Justices on the panel in this matter are in agreement, this appeal is hereby dismissed with costs to the respondent.

25

2. The costs granted in the Court of Appeal and in the High Court are hereby upheld.

5 Dated at Kampala this .....<sup>30<sup>th</sup></sup> day of ...*October*..... 2020.

.....*Lillian Tibatemwa*.....  
**PROF. LILLIAN TIBATEMWA-EKIRIKUBINZA**  
**JUSTICE OF THE SUPREME COURT.**

10



**THE REPUBLIC OF UGANDA**

**IN THE SUPREME COURT OF UGANDA AT KAMPALA**

(Coram: Tibatemwa-Ekirikubinza; Mugamba; Buteera; Tuhaise; Chibita;  
JJ.S.C.)

**CIVIL APPEAL NO: 19 OF 2018**

**BETWEEN**

**SAUL KISIRIBOMBO..... APPELLANT**

**AND**

**EMMY TUMWINE  
BETTY NYAKATUKURA  
JOVIA KYOMUGISHA  
KAMUGISHA GEOFREY  
ALICE MIREMBE  
HARRIET KIRUNGI  
DENNIS TUMWESIGYE**

**..... RESPONDENTS**

*[An appeal from the decision of the Court of Appeal at Kampala (Hon. Obura, Musota and Madrama, JJA) in Civil Appeal No. 53 of 2017 dated 14<sup>th</sup> August, 2018]*

**JUDGMENT OF CHIBITA, JSC.**

I have had the advantage of reading in draft the judgment prepared by my learned sister, Justice Lillian Tibatemwa-Ekirikubinza, JSC. I agree with her that this appeal should be dismissed. I also agree with the orders she has proposed.

Dated at Kampala this .....30<sup>th</sup>.....day of.....October.....2020

  
Justice Mike J. Chibita

**JUSTICE OF THE SUPREME COURT**





**THE REPUBLIC OF UGANDA**

**IN THE SUPREME COURT OF UGANDA AT KAMPALA**

**Coram: (Tibatemwa-Ekirikubinza; Mugamba; Buteera; Tuhaise; Chibita;  
JJ.S.C)**

**CIVIL APPEAL NO.19 OF 2018**

**BETWEEN**

**SAUL KISIRIBOMBO RUMANDA :::::::::::::::::::::::::::::::APPELLANT**

**AND**

- 1. EMMY TUMWINE**
- 2. BETTY NYAKATUKURA**
- 3. JOVIA KYOMUGISHA**
- 4. KAMUGISHA GEOFREY**
- 5. ALICE MIREMBE**
- 6. HARRIET KIRUNGI**
- 7. DENNIS TUMWESIGYE**

**:::::::::::::::::::::::::::::RESPONDENTS**

*(An appeal from the decision of the Court of Appeal at Kampala before Hon. Justices: Obura, Musota and Madrama, JJA, in Civil Appeal No. 53 of 2017 dated 14<sup>th</sup> August 2018)*

**JUDGMENT OF BUTEERA, JSC**

I have had the benefit of reading in draft the judgment of my learned sister, Lillian Tibatemwa-Ekirikubinza, JSC.

I agree with her reasoning, analysis and decision that this appeal should be dismissed. I also agree with the orders she has proposed.

  
.....

**Hon. Justice Richard Buteera  
JUSTICE OF THE SUPREME COURT**

**THE REPUBLIC OF UGANDA**

**IN THE SUPREME COURT OF UGANDA AT KAMPALA**

**[CORAM: TIBATEMWA-EKIRIKUBINZA, MUGAMBA, BUTEERA, TUHAISE,  
CHIBITA. JJ.S.C.]**

**CIVIL APPEAL NO. 19 OF 2018**

**BETWEEN**

**SAUL KISIRIBOMBO :::::::::::::::::::::::::::::::::::::: APPELLANT**

**AND**


- 1. EMMY TUMWINE**
- 2. BETTY NYAKATUKURA**
- 3. JOVIA KYOMUGISHA**
- 4. ALICE MIREMBE**
- 5. HARRIET KIRUNGI**
- 6. DENIS TUMWESIGYE ::::::::::::::::::::::::::::::::::::::RESPONDENTS**

**(An Appeal from the judgment of the Court of Appeal in Civil Appeal No.53 of 2017 dated 14<sup>th</sup> August, 2018 (Obura, Musota and Madrama, JJ. A)**

**JUDGMENT OF HON. JUSTICE MUGAMBA, JSC**

I have had the benefit of reading in draft the judgment prepared by my learned sister Hon. Justice Lillian Tibatemwa-Ekirikubinza, JSC. I agree with her reasoning and the orders she proposes.

Dated at Kampala this.....<sup>30<sup>th</sup></sup> day of.....<sup>October</sup>.....2020

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.....  
**HON. JUSTICE PAUL MUGAMBA**  
**JUSTICE OF THE SUPREME COURT**