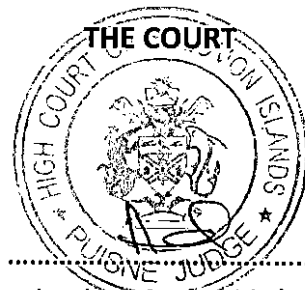


3. The 1st Defendant's application is made under rule 12.11 of the Solomon Islands Courts (Civil Procedure) Rules 2007 (CPR). It is premised upon section 5 as read with section 9 (2) and section 32 (2) (a) of the Limitation Act (Cap 18). The issue raised in the application is whether or not the Claimant is statute barred from pursuing this proceeding.
4. The facts as stated by the 1st Defendant is that registration of FTE over the land was entered on the 29th July 2008. It is asserted that the Claimant was aware of the said registration sometime in 2008. He did not commence this proceeding until the 17th November 2022 by way of filing his claim. The Applicant asserts that the time limited for filing of claim in relation to land is one of 12 years. It is further asserted that from the date of registration to the 17th November 2017 is a period of about 14 years. The claim is therefore time barred and must be dismissed.
5. The Claimant concedes that he has knowledge of the registration in about 2008. It is nonetheless his position that the continuous assurances from the 3rd Defendant had caused the delay in the filing of his claim.

Discussion

6. The court notes that section 9 (2) of the Limitation Act limits actions for recovery of land after the expiration of twelve years from the date on which the cause of action accrued to him.
7. It is not disputed that the cause of action in this proceeding accrued to the Claimant on the 29th July 2008. In paragraphs 7, 8 and 9 of his statement of case, he stated he knew of the registration in favour of the 3rd Defendant and subsequently to the 2nd Defendants. He alleges fraud and mistake during the process of registration in paragraph 11 therein.
8. Section 32 (2) of the Limitation Act provides for circumstances whereby allegation of fraud and mistake are raised by an aggrieved party. The limitation would run from the time a claimant discovered such fraud, concealment and mistake.
9. Taking into account paragraphs 7, 8, 9 and 11 of the Claimant's statement of case together with the contents of paragraph 20 and subsequent paragraphs in his sworn statement it is obvious that he had knowledge of the alleged fraud and mistake in about 2008. No particular date was mentioned.
10. If I take it to be 31st December 2008, which is the last day of the year as the commencement date, the 12 years limitation period would ordinarily end on the 31st December 2020.

11. This proceeding was commenced and filed by the Claimant on the 17th November 2022. From the 31st December 2008 to the 17th November 2022 is a period of 13 years, 10 months and 17 days. The period of delay would then be is one of 1 year, 10 months and 17 days.
12. I have perused the Claimant's Claim and his sworn statement filed on the same date. Having perused them, there is no substantial reasons given why he had not pursued his interest from 2008 until the 17th November 2022. He merely stated he was relying upon the assurances of the 3rd Defendant. I am not satisfied that it is a good enough reason for the Claimant to wait for almost 14 years before pursuing his claim.
13. I have further noted that from the Claimant's pleadings and sworn statement, I am unable to see any other reason to use my discretion under section 39 of the Limitation Act to condone his delay.
14. I am hereby satisfied that the Claimant's claim is time barred under section 9 (2) and section 32 (a) of the Limitation Act. It is hereby dismissed with cost. I further order that cost is only in respect of the 1st Defendant. The 2nd and 3rd Defendants did not file any submission to the 1st Defendant's application and are therefore not entitled to cost.



Justice Maelyn Bird

Puisne Judge