

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)

CIVIL SUIT No. 661 of 2016

M/S BIVAMUNTUUYO MARKET VENDORS

ASSOCIATION LTD.....PLAINTIFF

VERSUS

- 1. LEVY LUYOMBYA**
- 2. FRED SEPUUYA**
- 3. ABDU ALI SIMBWA NVIIRI**
- 4. SULAIMAN GIDONGO**
- 5. SEPUUYA KALANZI**
- 6. JAMES KAANA**
- 7. SIMON NAKABALE**
- 8. DEPHAS KIWANUKA**
- 9. M/S BIVAMUNTUUYO**

MARKET OWNERS LTD DEFENDANTS

BEFORE: HON. LADY JUSTICE FLAVIA NASSUNA MATOVU

JUDGMENT

1. INTRODUCTION:

The plaintiff filed this suit against the defendants for trespass on land comprised in Kyaddondo Block 5 Plot 584. He was seeking for a declaration that he is the rightful person to operate Bivamuntuuyo market on the said land until the termination of the lease, an order of vacant possession against the defendants from the suit land, mesne profits, general damages for trespass, punitive damages, permanent injunction, interest and costs of the case.

2. BACKGROUND:

Some time in 1997, one George William Kanya, the plaintiff's agent approached the 1st and 2nd defendants' family, Eriya Musoke with a view of establishing a market known as Bivamuntuuyo market on land comprised in Kyaddondo Block 5 plot 584. At that time Kanya believed that Eriya Musoke was the registered owner of the said land. He consequently entered into a partnership with the Eriya Musoke family which was registered on 28/8/1998. It was later established that the said land did not belong to Eriya Musoke but to one Rosemary Nalubega. Consequently, the plaintiff co. was incorporated and it entered into a formal lease agreement with the said Nalubega for a period of 10 years from the 1/11/2011. The plaintiff thus took possession and operation of the said market and erected more market stalls on the land.

On 11/10/2012, the 1st to 8th defendants holding out as Bivamuntuuyo Market partners, allegedly unlawfully entered onto the said land, locked the offices of the plaintiff, took their records and sent the plaintiff off the land thus interfering with their possession and operation of the market. The plaintiff complained to the Minister for Kampala who intervened and reinstated them back to the land. However, in August 2013, the 1st to 8th defendants registered the 9th defendant company and allegedly unlawfully entered onto the suit land as proprietors of the market to the present day.

The plaintiff claimed that the aforementioned acts of the defendants were unlawful and tantamount to trespass, since he

was the one rightfully in possession of the land and the 1st and 2nd defendants' family have no legitimate interest in the land. The said acts caused him to suffer loss of earning from the market for which he is entitled to mesne profits. He therefore filed the instant suit seeking for the aforementioned remedies.

The defendants on the other hand denied all the above-mentioned facts. They maintained the plaintiff had no locus to file the instant suit, and the same was filed in bad faith. They denied having committed any acts of trespass on the said land and insisted that the plaintiff had no proprietary rights to sue in respect of the said land. That the plaintiff had no nexus with the events of 1997 and equally had no nexus with the partnership deed dated 17/1/1998. The 7th defendant specifically maintained that he was a trader in Farmers Market ltd., which neighbours Bivamuntuuyo market owners ltd., and had no dealings whatsoever with Bivamuntuuyo market owners. Ltd. They therefore called upon court to dismiss this suit with costs.

3. ISSUES

At scheduling conference the parties agreed on the following issues.

- i. Whether the plaintiff has locus to sue for the land comprised in Kibuga Block 5 Plot 584 at Kalerwe, Gayaza road.
- ii. Whether the defendants are trespassers on the said land
- iii. What are the remedies available?



4. LEGAL REPRESENTATION

5. The Plaintiff was represented by M/S. Magellan Kazibwe & Co. Advocates & Legal Consultants while the Defendants were represented by of M/S Lubega, Babu & Co. Advocates.

6. LAW APPLICABLE

The Constitution of the Republic of Uganda 1995,

The Judicature Act Cap 13

The Registration of Titles Act, Cap 230

The Land Act, Cap 227

The Evidence Act, Cap 6

The Civil Procedure Act, Cap 71

The Companies Act, 2012

The Civil Procedure Rules,

Common Law and Case law.

7. PLAINTIFFS EVIDENCE

The plaintiff called two witnesses who both made witness statements that were admitted as their evidence in chief and they both gave sworn evidence.

- i. **PW1** was Kamya George William. He testified that he is one of the members of the plaintiff company which was formed to carry and run a market business. That 1st and 2nd defendants were sons of late Erisa Musoke. That he came to know the 3rd, 4th, and 8th defendants when they started business of running a partnership under the name Bivamuntuuyo

market. That the 1st to 8th defendants are members of the 9th defendant company which was incorporated in 2013.

- ii. That in 1997 he together with other members of the plaintiff company came up with an idea of starting a modern and organised market and consequently came up with the name Bivamuntuuyo. They identified vacant land and were informed that the land belonged to late Erisa Musoke. Through 1st defendant who was a son to late Erisa Musoke, they got permission to use the land for their intended purpose but on condition that the 1st defendant was made part of the intended business. They eventually got clearance from Kampala City Council and they were permitted to carry out business of market on the said land. At some point they got misunderstanding when the 1st defendant and family members of late Erisa Musoke started to forcefully bring other members into management of the market without the consent of the founding members. They eventually agreed to enter into a formal partnership with the family of late Erisa Musoke. This was in 1998 and the partnership was called Bivamuntuuyo market. They also executed a two-year tenancy agreement with family of late Erisa Musoke in 2005 which was renewed in 2007 and extended to 20 years.
- iii. During this time a dispute arose about ownership of the land between one Nalubega Rosemary and the family of late Erisa Musoke. It was later resolved and decided that the family of Erisa Musoke were bonafide occupants of the land while Rosemary Nalubega was the registered proprietor and lawful owner of the said land.



24/10/23

- iv. In 2011, Bivamuntuuyo market which was a partnership was transformed into a company limited by guarantee, under the names of Bivamuntuuyo market vendors Association ltd. After this incorporation, they entered into a fresh tenancy/lease agreement with the true registered owner, Rosemary Nalubega in 2012 for 10 years. They then operated the business smoothly without any interference and paid all required rental dues.
- v. That in 2012, the defendants went and attacked the offices of the plaintiff located on the said land with the assistance of the Resident City Commissioner Kampala, Hashaka Mpimbambaza. At that time the plaintiff was the lawful owner who was managing and collecting dues from vendors and other market users. The plaintiff managed to resist this and were able to get back into their business premises.
- vi. However, in 2013, the 1st to 8th defendants formed the 9th defendant company, with names somehow similar to those of the plaintiff, entered into the market locked the plaintiff's offices and hijacked the management of the market. That the plaintiff's case against the defendants was for trespass onto the plaintiff's premises located on Kibuga Block 5 Plot 584. To date the 9th defendant through the 1st to 8th defendants are still in unlawful occupation of the business premises. The defendants had caused loss of income to the plaintiff amounting to 840,000,000 over a period of 7 years. PW1 tendered to court several documents in support of his evidence.



24/10/23

- vii. In cross examination he stated that the title of the said land had changed and now it was registered in the names of Fulgencio Kalibbala, George Sempijja and Brigadier Kayanja. That PW1 had no lease agreement with the said three registered owners. That the agreement tendered as Exh.P 14 was the agreement between the plaintiff and Rosemary Nalubega. However, the plaintiff does not appear in the agreement. That the receipts tenderd as Exh P 15 were issued by Pioneer properties. Rose Nalubega never signed on the receipts and the receipts do not describe the land. That there were no receipts of the plaintiff for the market dues. That the 1st to 8th defendant under the 9th defendant have been in possession of the land since 2014.
- viii. In re examination, he stated that the business was started in 1997. They derived interest from the family of Erisa Musoke and Rosemary Nalubega never complained about none payment of dues.
- ix. **PW2** was Kirumira Badru. He testified that he was a lawfully appointed attorney of Rosemary Nalubega. That in 2011, the plaintiff entered into a tenancy agreement with Nalubega Rosemary for 10 years and renewable. The plaintiff duly paid dues as agreed, but in 2013, he learnt of wrangles over occupation of the land between plaintiff and defendants. As landlord they did not know the 9th defendant since they had dealt with the plaintiff. That the defendants were trespassers on the premises because they never occupied the land in the first place but forced themselves there and pushed the plaintiff away from the premises.

- x. Later on, Rosemary Nalubega sold the land to Brigadier Kayanja Kalibbala Flugencio and George Sempijja but she introduced the plaintiff to the new land owners and they continued to occupy the land and run the market business. He attached several documents in support of his evidence.
- xi. In cross examination he stated that the plaintiff was not owner of the land but a tenant. That there was no complaint from the three registered proprietors of the said land. The plaintiff rented the land for 10 years from 2011. The name of the plaintiff is not reflected on the agreement Exh P14. There was no board resolution when the agreement was made.
- xii. In re-examination, he stated that the people mentioned in Exh P 14 are directors of the plaintiff.

8. DEFENDANTS EVIDENCE

The defendants called 5 witnesses who all made witness statements that were admitted as their evidence in chief and they all gave sworn evidence.

- i. **DWI** was Sulaiman Gidongo the 4th defendant. He testified that he was a business man working at Kalerwe market under Bivamuntuuyo Market Owners ltd. This business was run by the 1st defendant as Chairman, himself as vice chairman, 8th defendant as secretary and 3rd defendant in charge of security. The 2nd defendant, together with Kawalya Geofrey, Eron Nakitende, and Margaret Mugalula were beneficiaries of late Erisa Musoke. The 5th and 6th defendants were vendors in Bivamuntuuyo Market Owners

Ltd. 7th defendant was vendor and manager of Farmers Hall market which neighbours Bivamuntuuyo Market owners ltd.

- ii. Bivamuntuuyo market owners ltd was found on land comprised in Block 5 Plot 584 owned by late Erisa Musoke under the management of his children and administrators i.e. 1st defendant, 2nd defendant, Kawalya Godfrey, Michael Mugalula and Eron Nakitende. The plaintiff company was a sham company incorporated to steal their business and land owned by late Erisa Musoke. In 1997 he together with 10 other people started a market business. These included 1st defendant, Fred Kavuma, George William Kanya, Eron Nakitende, Nviri Abdu, Ali Simbwa, Kawalya Geofrey, 2nd defendant, 8th defendant, and late Byuma.
- iii. That he had never trespassed on the said land because he was there with the permission and consent of its owners who were the family of late Erisa Musoke and he had been doing his business on the land since 1997 to the present day.
- iv. The plaintiff had never done any business on the said land and he was not aware of the agreement made in 2011. That Rosemary Nalubega was not the owner of the said land because she had sold it off and was no longer the registered owner thereof. That Nalubega was sued by Jackson Kikayira Musoke now deceased and the court decided that the family of Erisa Musoke were the rightful owners of the land.


24/10/23

- v. In cross examination he stated that he didn't know when the 9th defendant was formed. He was a member of the 9th defendant and they first had a partnership with his co-defendants called Bivamuntuuyo Market partners which was formed in 1997. They did business in the same location. Exh P3 was their partnership deed. The said partnership eventually transformed into Bivamuntuuyo Market owners ltd. He had signed on the memorandum and articles of association of the plaintiff Exh P 11. He could not tell which of the two companies i.e plaintiff and 9th defendant was incorporated first. He was one of those who represented the partnership in 2005 and signed on the tenancy agreement then Exh. P5. When the tenancy agreement was renewed, he still signed on behalf of the partnership Exh P 7. He never participated in Exh P 14.
- vi. **DW2** was Levi Luyombya, the 1st defendant. He testified that he was the chairman of the 9th defendant. That their family had been in possession of the land Block 5 Plot 584 since 1932. That in 1997, DW1 (4th defendant) approached their family with PW1 and Kavuma Fredrick and others and asked to join their family to do business on their land. At that time there were old structures on the land. He sought permission from KCC and they were granted permission to start and run a market on the said land. In 1998, they formed a partnership called Bivamuntuuyo market of which he was the chairman with 80 shares. In 1999, two of their members i.e. Kavuma Fred and PW1 abandoned them and joined with Rosemary Nalubega and

tried to evict them from the land claiming that Nalubega was the owner of the land. A case was filed between Jackson Kikayira their brother / administrator to late Erisa Musoke and Rosemary Nalubega. The said case was decided in their favour when court ordered that they were the rightful owners of the land. Nalubega appealed but also lost the appeal.

- vii. During all this time they were in possession of the land and the plaintiff had never had title for the land and they were therefore not trespassers. The plaintiff was not party to the tenancy agreement made in 2011 on which suit was based.
- viii. In cross examination he stated that the 9th defendant was incorporated on 14/2/2013. That the documents show 14/2/2014. That the market was started in 1997 -1998 and Fred Kavuma plus George William Kanya were also founder partners. They registered the partnership as shown in Exh.P4. That the partners made a tenancy agreement (Exh P 5) with the Erisa family but this was wrong and he refused to append his signature. The plaintiff had never been on the suit land and the 9th defendant was incorporated in 2013. That Pexh. 7 was signed wrongly. That he did not know when the plaintiff was incorporated and had never been on the suit land.
- ix. **DW3** was Kana James the 6th defendant. He testified that he was a business man and trader in Bivamuntuuyo market owners ltd., market at Kalerwe. That he was sued by the plaintiff for trespass to land comprised in Block 5


24/12/23

Plot 584 but did not know the plaintiff and had no dealings with them. That the 1st, 2nd, 3rd, 4th and 8th defendants were his landlords at Kalerwe market, while the 5th defendant was a fellow trader. The 7th defendant was a trader in Farmers Hall market which neighbours the 9th defendant.

- x. That he knew his landlords very well for the last 15 years because he had been a trader in the market since 2003. That 9th defendant operated business on land of estate of late Erisa Musoke. He had never had any dealings with the plaintiff and had never paid any market dues to him. That he was not a member of 9th defendant and did not know why of all the traders in the market, he was the one who was sued by the plaintiff. That initially the 9th defendant started as Bivamuntuuyo market partners which was also under management of late Erisa Musoke family.
- xi. In cross examination he stated that he had operated business at Kalerwe market for about 19 years. That when started business in the market in 2003, 9th defendant was not there. At that time it was Bivamuntuuyo partners and the chairman was Kamya. That he had never seen the certificate of title to the said land but got to know the owner of the land when he saw the court order that was presented by the Erisa family. That he did not know the plaintiff. That on 11/10/2012, he was not in the market the whole day. Between 1997 and 2011, Kamya was operating in the market with Bivamuntuuyo partners but he had no office. He did not see him operating in the market in 2012.

- xii. That he started paying rent in 2003 to Bivamuntuuyo partners of which Kamya was a member. That he did not know whether plaintiff company was born out of Bivamuntuuyo partners. At the moment he was paying rent to 9th defendant and he was not a shareholder therein. He simply registered with the 9th defendant as business man. That he was not aware of any tenancy agreement between Bivamuntuuyo and Erisa Musoke. That the 7th defendant operates from Farmers Hall market which is different from the 9th defendant.
- xiii. **DW4** was Simon Nakabaale the 7th defendant. He testified that he was a business man, trader and manager in Farmers Hall market. He was sued by plaintiff for trespass to land comprised in Block 5 Plot 584 but he did not know the plaintiff. That the defendants were his neighbours and Farmers Hall market where he worked was different from the 9th defendant. That Farmers Hall market was owned by Donozio Musisi Sekyaya. He therefore did not know why he was being sued because he had never been a partner or member of Bivamuntuuyo. He had never trespassed on plaintiff's land.
- xiv. In cross examination he stated that he had known PW1 for the last 20 years and he used to work in Bivamuntuuyo market which was next to them. That Farmers Hall market was not tenant to anybody. The land on which it was situated belonged to Donozio Musisi Sekyaya, his father who has Kibanja interest thereon. The registered owner

was late Erisa Musoke. That it was not true that he had interfered with operations of Bivamuntuuyo market.

- xv. **DW5** was Donozio Musisi Sekyaya. He testified that he had been proprietor of Farmers Hall Market since 2005. The market is located on land owned by late Erisa Musoke. DW4 was his son and manager of the market. That DW4 informed him that he had been sued by plaintiff for trespass but he had never heard of the existence of the plaintiff company. It was thus not true that DW4 had trespassed as alleged.
- xvi. In cross examination he stated that he had operated in Farmers Hall market since 2005 which is on land comprised in Block 5 Plot 584. That by that time there was Bivamuntuuyo market as well operating on the same land. That he knew PW1 as an idler who moves from market to market. He knew 1st defendant as owner of Bivamuntuuyo market but did not know about the relationship between him and PW1. That he did not know of any organisation or company that was running Bivamuntuuyo market. This was the close of the defence case.

9. LOCUS PROCEEDINGS.

The court visited locus in this case. At the locus PW1 showed court the market where the plaintiff allegedly used to operate. He informed court that the old building was destroyed during road construction. He also informed court that he was no longer operating in the market and it was the defendants operating therefrom.

Court observed that the market was known as Bivamuntuuyo market owners. DW1, DW2, DW4 and DW5 all confirmed that the market had been in existence since 1997. DW5 showed court his market Farmers Hall market which was just next to Bivamuntuuyo market owners market.

10. PLAINTIFF'S SUBMISSIONS

Counsel for the Plaintiff filed written submissions which I have carefully studied and need not reproduce them here because they are on court record. Briefly he submitted inter alia that the suit is not based on a claim for ownership, but possession as a holder of tenancy or lessee in actual physical possession. He cited the case of **Odyeki & Anor v. Yokonani & 4 Ors**,¹ which emphasized that an action for the tort of trespass deals with possessory rights and not proprietary rights. He thus concluded that on this basis, the plaintiff had locus standi to institute this suit.

He also cited the case of **Pule Opio alias Mugendo v. A.G**²; where trespass was defined to mean an instance where one enters or stays on someone's premises or land without permission. He submitted that the evidence of DW2 showed that he (DW2) was aware of the tenancy agreement marked PEX 5 and the testimony of PW1 plus the locus in quo visit showed that DW1 and other family members of the late Erisa Musoke are currently running the market which was proof of unlawful entry onto the suit premises.

¹ Civil Appeal No. 9 of 2017

² H.C.C.S No. 57 of 2007

11. DEFENDANT'S SUBMISSIONS

Counsel for the 1st, 2nd, 3rd, 4th, 8th and 9th defendants filed written submissions in reply which I have also carefully studied and need not reproduce here.

He submitted that the Plaintiff did not have locus standi before court since it is not the registered proprietor of the suit land. That the whereas PW2 testified that the current registered proprietors of the land are Elly Kayanja, Kalibala Fulgensio and George Sempijja, no lease agreement was produced between the Plaintiff and the said registered proprietors to authenticate their stay on the land.

Further that the plaintiff also did not have locus standi as no board resolution had been attached indicating authorisation of the Plaintiff company to file this civil suit.

Concerning trespass, Counsel cited the case of **Justine E.M.N Lutaaya v. Sterling Civil Engineering Co.**³ where it was held that trespass is not incumbent on one's possession of the land only, but one ought to have an interest in the suit land. He thus concluded that since the plaintiff has no interest in the suit land, then there was no trespass and called upon the court to dismiss the case.

Counsel for the 5th and 6th defendants also filed written submissions which I also carefully studied. He submitted that the 5th and 6th defendants were not trespassers but are merely licensees on the suit land. He relied on the case of **Thomas v. Sorrell (1673) Vaughn**⁴ which states that when one is a licensee,

³ S.C.C.A No. 1 of 2002

⁴ 124ER1098 at 1109



he/she acquires no interest in the land and his/her actions are regarded as lawful where they would have been unlawful, and thus the 5th and 6th defendants are not in trespass.

12. SUBMISSIONS IN REJOINDER.

The plaintiff did not file submissions in rejoinder even though court had ordered him to file the same by 13/9/2023.

13. DECISION OF COURT

Issue 1

Whether the plaintiff has locus to sue for the land comprised in Kibuga Block 5 Plot 584 at Kalerwe, Gayaza road.

- a) Locus standi refers to the right to bring an action or to be heard in a given matter ⁵. Counsel for the defendants submitted that the plaintiff had no locus to file the instant suit because it had no interest in the suit property and secondly because it being a company, there was no board resolution authorising it to file the instant case. Counsel for the plaintiff on the other hand maintained that the plaintiff had locus to file the instant case because it was a tenant and thus in lawful possession of the suit land by virtue of the tenancy agreement that it had executed with the landlord and that the defendants had committed trespass when they interfered with his possession of the suit land.

⁵ (Black's law Dictionary 9th Edition).



- b) I must note that the position of the law concerning the need for a company to get a board resolution before filing a suit was considered at length in the case of **United Assurance Co. Ltd V AG**.⁶ In that case Chief Justice Wambuzi (as he then was) clearly stated inter alia that authority to bring an action in the name of the company is not one of the instances where a resolution is required. A careful perusal of the plaintiff's Memorandum and Articles of Association (EXH P11) shows that they were silent on the course of action to be taken in regard to institution of suits by the plaintiff. Therefore, going by the decision in **United Assurance Co. Ltd. V. A.G (supra)** – it was not mandatory for the plaintiff to get a board resolution before filing the instant suit.
- c) As regards proprietary rights, the defendants maintained that they were the rightful owners of the suit land. That while DW1, Levi Luyombya was recognized by the Senior Assistant Town Clerk and the Principal Health Inspector of Kawempe Division in DEXH 2 and DEXH 3 as the owner of the premises, the Plaintiff had not presented any certificate of title to prove its claim to the suit land.
- d) I however note actions for trespass do not deal with proprietary rights but possessory rights as rightly stated in the case of *Odyeki & Anor v. Yokonani & 4 Ors*, (supra) cited by Counsel for the Plaintiff. Further more in the case of **John Katarikawe versus William Katwiremu**⁷, it was observed by Justice Byamugisha, that interests in land,

⁶ S.C.C.A 1 of 1986.

⁷ [1977] HCB 210 at 214

include registered and unregistered interests. The plaintiff claimed to have a leasehold interest in the suit land having entered into a lease agreement with one Rosemary Nalubega which was adduced as evidence and marked as PEx. 13 and PEx. 14. A lease is a recognized land tenure in Uganda under the Constitution of the Republic of Uganda Article 237 (3) (d) thereof. Without going into the details of whether or not the said lease/ agreement was valid it is clear that prima facie the plaintiff appears to have had locus to file the instant suit in his capacity as an alleged tenant on the suit land .

- e) I therefore find that prima facie the plaintiff had locus to file the instant suit and thus resolve the 1st issue in the affirmative.

Issue 2

Whether the defendants are trespassers on the said land

- a) Trespass to land occurs when a person makes an unauthorized entry upon another's land and thereby interfering with another person's lawful possession of the land⁸. In the case of **Tayebwa Godfrey & Besigomwe Edison vs. Kagimu Ngudde**⁹ ,court guided that one's physical presence on the land or use or de facto control of it does not amount to possession sufficient to bring an action of trespass as one is required to have an interest in the subject land as well. Further in the case of **Justine E.M.N. Lutaaya vs**

⁸ *Justine E.M. Lutaaya vs. Sterling Civil Eng. Civil Appeal No. 11 of 2002.*

⁹ *Tayebwa Godfrey & Besigomwe Edison vs. Kagimu Ngudde Mustafa HHCS. No. 118 of 2012*⁹,

Sterling Civil Engineering Co¹⁰. the Supreme Court guided that trespass to land happens when a person makes an unauthorized entry upon land, and thereby interfering, or portends to interfere, with another person's lawful possession of that land.

- b) Therefore in order to prove its case against the defendants in the instant case, the plaintiff had a duty to prove on a balance of probabilities that it was in lawful possession of the suit land and the defendants unlawfully entered onto the suit land and thus interfered with his possession.
- c) The plaintiff claimed that defendants committed acts of trespass on 11/10/2012, when they entered on to the land comprised in Kibuga Block 5 Plot 584 at Kalerwe and unlawfully evicted him. The plaintiff further stated that it was in possession of the said land as a tenant on the said land by virtue of a tenancy agreement executed between the plaintiff and the land owner. In support of this fact the plaintiff tendered to court a tenancy /lease agreement which was admitted as EXH P14. After carefully studying the said tenancy agreement I noted as follows:
 - i) the said tenancy / lease agreement was executed on 1/11/2011 and was to run for a period of 10 years up to 30/10/2021.
 - ii) It was between Rosemary Nalubega as the landlord and several persons namely; George William Kamya, Fredrick Kavuma, Nakitende Dorcus, Nabugo Aisha and Wahabu Sekyanzi T/A Bivamuntuyo Market.

¹⁰ SCCA No.11 of 2002,



- iii) The plaintiff which is a company limited by guarantee was not a party to the said tenancy agreement even though at that time it was already in existence. According to the certificate of incorporation which was tendered as EXH P12, it was incorporated on 27th October 2008. It is a fundamental principle of law that once a company is incorporated or registered it obtains a legal existence that is separate from its owners, directors or officers. It becomes a legal person that has rights and obligations. Therefore, whereas it is true that as at 1/11/2011, when the tenancy agreement was executed, the plaintiff was in existence, the same was executed by other persons not being the plaintiff. These persons cannot claim to be one and the same person as the plaintiff in light of the above-mentioned legal principle. The plaintiff cannot seek to benefit from an agreement to which it was not a party.
- iv) The agreement to which the plaintiff was a party (EXH P13) was executed on 4/12/2011 during the subsistence of the forementioned agreement. Nonetheless, perusal of this agreement shows that the agreement was to run for a period of only 6 months and by quick calculation ought to have terminated on 4/6/2012.
- v) There is nothing to show that the said agreement was ever renewed.
- vi) The acts of trespass are said to have been committed on 11/10/2012 as indicated in the pleadings and evidence of PW1 plus EXH P16. At that time, the alleged tenancy agreement to which the plaintiff was a party had already lapsed and thus its continued occupation of the premises was

unlawful. On the contrary, it was Bivamuntuyo market the partnership that still had its tenancy running as indicated in EXH P14.

- vii) Evidence shows that Bivamuntuyo market was incorporated on 24/8/1998 (see EXH P4). The partnership deed that was tendered as EXH P3 provided a clause for dissolution of the said partnership. Clause 7 specifically stated that the partnership would be dissolved upon agreement of all partners or when arbitrators so decide. I did not see any evidence on record to show that the partnership was ever dissolved in accordance with the partnership deed. It is therefore clear that as at 1/11/2011, when the tenancy agreement (EXH P 14) was executed the partnership of Bivamuntuuyo market was still in existence. The agreement was therefore between the landlord and the partnership and not the plaintiff company. It is this tenancy that was expected to run until 30/10/2021.
- viii) Evidence on record also shows that the dispute concerning the suit land was extensively considered by court and it was resolved that the late Erisa Musoke was bonafide occupant of the said land. I note that many of the defendants in this case are beneficiaries to estate of late Erisa Musoke and occupy the said land in that capacity to the present day.
- ix) The plaintiff therefore failed to prove on a balance of probabilities that it was in lawful possession of the suit land and the defendants unlawfully interfered with its possession of the same on 11/10/2012.

Issue 3

What are the remedies available?

Having found as above, this suit hereby fails and is accordingly hereby dismissed with costs to the defendants.

Dated at Kampala this 24th **day of** October **2023.**



FLAVIA NASSUNA MATOVU

Judge.