

THE REPUBLIC OF UGANDA
IN THE CHIEF MAGISTRATES' COURT OF MUBENDE HOLDEN AT
KASSANDA
CRIMINAL CASE No. MME. 134 OF 2002
UGANDA :::::::::::::::::::::::::::::::::::::: PROSECUTOR

VERSUS

MUYANJA ERIFAZ :::::::::::::::::::::::::::::::::::::: ACCUSED

BEFORE:- HIS WORSHIP A.D.A.G. LUWAGGA ESQ. (MAGISTRATE)

J U D G M E N T

Eriphaz Muyanja, herein called the accused person was brought before court charged with being a forcible detainer contrary to section 73 of the Penal Code Act. It was alleged in the charge sheet that during the month of August 2002 at Nsololo village, Kassanda sub-county in Mubende District; without any colour of right whatsoever, he held possession of Edita Nattabi's land as duly inherited from her brother Misaeri Kyeyune, in a manner likely to cause a breach of peace or reasonable apprehension a breach of peace against Edita Nattabi, who was by law entitled to the possession of the said land. He pleaded not guilty. This was a private

prosecution case lodged direct with court by Edita Nattabi under section 41 (3) of the Magistrate's Courts Act 1970 and the complainant called two witnesses in a bid to prove her case beyond reasonable doubt. These were (PW2) Paul Muwanga, and Susani Kamyia (PW3).

The salient but brief facts of the case are as follows:-

The late Yawasi Bajabagonda left land comprised on title block No. 339 Plot 1 situate at Nsololo Singo in Mubende District. He died in around 1930 and was survived by four daughters and one son. These were Yunia Namuyanja (late) Nanyonga Beatrice (late) Efrance Nabisingiri (late) son Misaeri Kyeyune (late) and Edita Nattabi who is the complainant and the only surviving daughter of the late Bajabagonda. It was the complainant's case, that Misaeri Kyeyune had succeeded his late father but as fate would have it, he too died shortly but left no children. He was subsequently succeeded by a clan's man (half brother) Bulega Yosamu who also died but left no children. As the only surviving child of Bajabagonda, the complainant Nattabi looked around within the clan for a heir and successor for the lineage of the late Bajabagonda. She picked on the present accused person Eriphaz Muyanja so that he be installed and then effect the

transfer of the title deed into his names for future administration of the estate. Before accomplishing this process, the accused person became chaotic. He started disposing off some portions of the burial ground and sold the same to Lugolobi. The complainant got disappointed with him and she denounced him as heir and successor.

Complainant went on, that she later nominated Paulo Muwanga (PW2) to be the heir and successor of Yosamu Bulega, Misaeri Kyeyune and ultimately heir to the great Bajabagonda Estate and entrusted him with the duty of pursuing the opening up boundaries of the mentioned estate of Bajabagonda so as to finally care take the same.

This did not please the accused person who had been removed as the heir to the great Ancestral Bajabagonda Estate.

On 23/8/2002 he forcefully came back to Nsololo, claimed to be the proprietor of the estate, and asked the chairman to inform some tenants that he had stopped them from cultivating the land (exhibit P1). The instrument upon which the clan council nominated and confirmed Paulo Muwanga as the heir was also tendered as exhibit P2.

It was on the basis of the above action that the complainant brought this case against the accused for being a detainer. The evidence of PW2 Paulo Muwanga and that of PW3 Kamyia, pointed to similar substance. That the accused wanted to forcefully occupy this land without any colour of right as he was no longer the heir to Yosamu Bulega, Misaeri Kyeyune or even the great Bajabagonda.

While on defence, accused defended that the complainant had bestowed upon him the authority of an heir and successor in 1998 and that he wrote to the tenants this year in August thinking that he was still one. That he never got to be informed that he had been disqualified or removed as a successor or heir. Muyanja defended, that the alleged sale of the burial ground was done through consensus with the complainant in a bid to raise 500,000/= to work out documents of surveying the land. He defended, that it was the clan head Susan Kamyia who installed him as heir and he wondered as to how he would have been removed without due notification to him. He further defended, that the four daughters of Bajabagonda each succeeded five acres of land at Mamunye and that this land at Nsololo was strictly in his command. He tendered the letter of the alleged clan head to

the Chairman LC1 confirming his succession as exhibit D1 and the Chairman LC1 letter to the sub clan head (Olunyiriri) of Nakisinge as exhibit D.2. He prayed that case be dismissed and he be acquitted alleging that he thought he had colour of right.

The evidence of Ekosani Naluswa (DW2) and that of Edward Semmanda (DW3) was similar in substance to that of the accused person. They confirmed that the accused is the true successor of the Estate of Bajabagonda.

From the foregoing, this court has at hand only two issues to determine in this case.

- (i) Whether the accused in dock is the legitimate successor and heir of the late Yosamu Bulega, Misaeri Kyeyune and the great Bajabagonda or his estate.
- (ii) Whether the accused person is guilty in terms of section 73 of the Penal code Act.

In reply to the first issue, I must point it out that there is not a single scintilla of evidence pointing to the fact that the accused was enthroned as heir and successor to the Bajabagonda Estate. He alleged that (PW3) Susan Kanya as a clan head installed him, a thing Kanya himself denied in totality. Kanya confirmed on oath before this court that he installed Paulo Muwanga as heir and successor to Misaeri Kyeyune and the great Bajabagonda. The complainant himself also confirmed that she was just in process of introducing the accused as heir and the latter became disorganized before the introduction. The accused himself landed a death blow to his otherwise good defence. He could not know when he was installed, and where the ceremony took place. He does not even disclose which parties were present. I have further looked at the letter (exhibit D1) allegedly written by the sub clan head introducing the accused to the LC1 Chairman Semmanda. The words or contents in the letter are different from the signature below. It is uncertain as to whether it was not a forged letter. Besides, the exhibit D.2 does not introduce Muryanja as the beneficiary to the clan head of Nankisige. It is dated 30/9/98 and it clearly introduces the complainant Edita Natabi and another Nabisingiri as the beneficiaries. Indeed, there is no certification from the clan head Kafuuma of Butambala to fortify fact that the accused is the true heir. Indeed, there

are no letters of administration issued by any court of law, or certificate of no objection from the Administrator General to the effect that the accused ever succeeded Yosamu Bulega, Misaeri Kyeyune or the great Bajabagonda. Furthermore, there is no document to the effect that the accused engaged any surveyors to open up boundaries or that he has ever procured a title deed in that regard as duly transferred in his names.

The accused in his defence conceded, that it was the complainant who was bestowed with the authority of nominating and appointing a successor. She is the only surviving biological daughter of the great Bajabagonda and therefore had powers to appoint heir to Misaeri Kyeyune her brother as he died without a child. It would be true that she is the one entrusted with powers to dismiss or disqualify one. I find it as a fact that the accused messed up things, disappointed the complainant Edita Nattabi and he was subsequently disqualified as heir by the clan. I accordingly hold, that there is no evidence qualifying the accused to be the heir, successor or beneficiary of the estate of the late great Bajabagonda, Misaeri Kyeyune or the subsequent Yosamu Bulega. The complainant and the clan refused and rejected him to be one. Paulo Muwanga was so legitimately installed.

I shall now embark on the second issue. The ingredients of s.73 of the Penal Code Act are very loud and clear. They underline words like “breach of peace” and “without any colour of right”. It is this court’s view that if somebody gets disqualified from succeeding any estate after messing himself up, he goes a head to severe relationship with the complainant and he travels back to Mutetema but comes back to Nsololo and grabs land or evicts tenants after learning that a successor has been installed, whereas he is not the son, grandson or brother of the late Bajabagonda or his son Misaeri Kyeyune, such action must constitute a breach of peace and without any colour of right. The ingredients of section 73 are therefore satisfied. Complainant has proved her case beyond reasonable doubt. Accused shall be found guilty contrary to section 73 of the Penal Code Act and I do convict him as charged.

A.D.A.G. LUWAGGA, ESQ.

MAGISTRATE

1/11/2002.

1/11/2002:-

Accused present.

Complainant present.

Judgment read in open court.

A.D.A.G. LUWAGGA, ESQ.

MAGISTRATE

1/11/2002.

Complainant:-

Pray for serious sentence.

Accused:-

Pray for leniency.

Court:-

Sentence to fine of 50,000/= in default six (06) months. Also to compensate the complainant 50,000/= under section 209 of Magistrates' Courts Act 1970.

A.D.A.G. LUWAGGA, ESQ.

MAGISTRATE

7/11/2002.