

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MBARARA

HCT-05-CV-CS-0095-2003

COLUMBUS RUTARUGA..... PLAINTIFF

VS

BUSHENYI-ISHAKA TOWN COUNCIL..... DEFENDANT

BEFORE: THE HON. MR. JUSTICE P. K. MUGAMBA

JUDGMENT

This suit is instituted by the plaintiff as owner of a piece of land, customarily held, against a local authority. It is the case of the plaintiff that the defendant trespassed on her land by constructing a road through it. The plaintiff did not give her consent. She was not compensated either. She seeks the following remedies:

- a) An order that the defendant pays the plaintiff Shs. 15,000,000/= as compensation for the value of the land as stipulated in paragraph 7 of the plaint.
- b) General damages.
- c) Costs of the suit.
- d) Exemplary damages.
- e) Interest on a), b) and c) above from the date of judgment until full payment.
- f) Interest on d) at court rate from the date of taxation of the bill of costs till full payment.

At the scheduling conference some facts were agreed as well as issues. The facts agreed were:

1. That the plaintiff is administratrix of the estate of the late Rutaruga Deusdedit as evidenced by letters of administration annexed to the plaint.
2. That the statutory notice, annexure C to the plaint, was served.
3. That the reply to the statutory notice, annexure Z to the written statement of defence, was served.

Issues that were agreed were:

1. Whether the plaintiff is the customary owner of the land where the road in issue is.
2. Whether the employees, servants or agents of the defendant constructed a new road or whether they tarmacked an existing murrum road.
3. Whether the defendant agreed to compensate the plaintiff
4. Whether the plaintiff's suit is time barred.
5. Whether the plaintiff is entitled to any remedies.
6. If so, what is the quantum of remedies?

The background to this case is not complicated. Initially I shall view it from the standpoint of the plaintiff. She applied for and was granted letters of administration to a plot of land in Ishaka Township. The piece of land had been purchased by her deceased husband whose estate she administers. The land is 150 ft by 100 ft in extent. She even paid ground rent for it. On 26th April 2001 employees, servants or agents of the defendant while acting in the course of their duties entered the plaintiff's land without her consent and constructed a road on part of her land. She was given no compensation. The land taken up by the said road was 50 ft by 100 ft which is worth Shs. 15,000,000/=. She approached officials of the defendant regarding need for compensation but they continued promising to do so until February 2003 when the Town Clerk finally told her that she would not be paid anything. This case is in consequence.

Regarding the first issue it is the evidence of the plaintiff that she owns a plot of land and that the plot is customarily held. She proffered evidence of that as Exhibit P.3. The defence did not contest evidence of this claim. What the defence contested however was the further claim that the road known as Kabirisi Road which had a tarmac surface placed on it in around April 2001 went through her land. The plaintiff and both her witnesses, PW2 and PW3, testified that the road was constructed around April 2001 and went through the plaintiff's land. It was their evidence they had seen personnel, a grader and other earth moving equipment at a site where PW1 had invited them to go saying her land was being encroached upon. No map or plan was availed by the plaintiff to show the extent of the supposedly encroached upon land. There was no evidence either of loss incurred if any when the road was made to pass through the plaintiff's land. For the defendant all the five witnesses testified that the road which was dressed in tarmac had existed earlier on as a murrum road. What happened, according to their evidence, was that

the murram road was upgraded in 2001. It was defence evidence that the dimensions of the road remained unchanged. Exhibit D1 was copy of the minutes of Bushenyi/Ishaka Town Council Executive Meeting held on 18th November 1988. Minute 9/88 thereof makes mention of the road in issue as being in existence then; years before the events of 2001. Exhibit D2 shows the detailed plan of Ishaka Township made as far back as 1989. The road in issue is manifest there. My conclusion here is that no evidence has been advanced by the plaintiff to show that her land was encroached upon by the defendant as alleged but that there is evidence that the tarmac surface was put on an already existing murram road which has no relationship with the plaintiffs land holding. Needless to say the burden is on the one who alleges to prove. See Ss. 101,102 and 103 of the Evidence Act. This finding should take care of the second issue also.

Concerning the third issue, it is the plaintiff's case that the defendant undertook to compensate her for the construction of the road through her land. It was the plaintiff's evidence that the undertaking was made on behalf of the defendant by the Town Clerk and the Chairman L.C. III. Evidence of this was her testimony and that of PW2 and PW3. Both the Town Clerk Hanyurwa Arthur (who has been Town Clerk from 1993 to date) (DW1) and the L.C. III Chairman Eldad Katunda (DW4) deny they ever made such a commitment like they deny the road passed through her land. The Works Supervisor Agabwe Nankunda Barnard stated that the tarmac surface was put on an already existing road. At some stage he said the Town Clerk had promised to pay compensation to the plaintiff but later prevaricated saying he never heard what the conversation between the plaintiff and the Town clerk was about. As a matter of fact there was no written evidence of any undertaking by the defendant to compensate the plaintiff. Lack of this and the evidence of DW1 and DW2 in denial lead me to the inevitable conclusion that there was no such undertaking.

The fourth issue is whether the suit is time barred. From the pleadings in the plaint the construction of the road happened around 26 April 2001. According to paragraph 8 of the plaint the plaintiff kept hoping she would be paid compensation until February 2003 when the Town Clerk finally told her no compensation would be forthcoming. The suit was instituted on 2nd September 2003. I relate again to Paragraph 8 of the plaint: the Town Clerk kept the plaintiff in hope of getting compensation and because of the time taken, the pleadings state, the action is not time barred. I now turn to Order 7 rule 6 of the Civil Procedure Rules which provides:

‘Where the suit is instituted after the expiration of the period prescribed by the law of limitation the plaintiff shall show the grounds upon which exemption from such law is claimed.’

This was amplified in *Iga vs Makerere University* [1972] EA 65. The action here is a tort of trespass against a local authority. According to section 3 of the Civil Procedure and Limitation (Miscellaneous Provisions) Act, Cap 72 an action of this nature ought to be instituted within two years of the date of the cause of action. I observed earlier on that the alleged construction of the road occurred on 26th April 2001. In order for the suit to be filed within time it ought to have been filed before 26th April 2003. Consequently when it was finally filed on 2nd September 2003 it was outside time and had to comply with provisions of order 7 rule 6 CPR. While the plaintiff gives the unsupported claim that she was kept waiting for compensation by the defendant, I do not find this ground enough for the delay as she could have gone ahead and filed the suit. Inevitably I find the action is barred by limitation.

All in all, this suit is dismissed and there is no need to consider issues 5 and 6 as they are moot in the circumstances.

Costs to the defendant.

P. K. Mugamba

Judge

7th June 2005

7th June 2005

Mr. Ngaruye for the plaintiff

Both parties absent

Ms Tushemereirwe court clerk

Court:

Judgment read in open court.

P. K. Mugamba

Judge