

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**CIVIL SUIT NO. 602 OF 2004**

**DR E. K. MUWAZI:.....PLAINTIFF**

**VERSUS**

**MARY NAIGA NAMISANGO:.....DEFENDANT**

**BEFORE: HON. MR JUSTICE RUBBY AWERI OPIO**

**JUDGMENT:**

The plaintiff brought this action against the defendant for the following orders:-

- (a) A declaration that the plaintiff is the lawful owner of land comprised in plot 248 Block 35 Mutundwe.
- (b) A declaration that the defendant has no lawful claim to the land, the same having been sold as far back as 1944 and
- (c) A declaration that dealings in the land by the defendant are unlawful, illegal and fraudulent.
- (d) An order that the survey of subdivision as commenced by the defendant on the suit land is unlawful.
- (e) An order that the defendant is a trespasser on the suit land

and any dealings on the suit land be it a survey, sale or subdivision has no effect in law.

(f) An order of permanent injunction restricting the defendant, her agents, servants and or alleged purchasers from coming onto the land or effecting any form of transaction on the land register of the suit land.

(g) General damages.

(h) Costs of the suit.

The defendant was served by way of substituted service several times but neither filed written statement of defence nor attended court hearing. The matter accordingly proceeded ex parte.

The brief background facts of this case are as follows:-

Sometimes on 5<sup>th</sup> January 1944, the defendant's predecessors in title particularly a one Tororaina Nandaula of Kabowa sold three (3) acres of land to the Late Dr E.M. Muwazi who at that time already owned two acres of land in the same area. A survey to conglomerate the five (5) acres of land constituting all land was made on 30<sup>th</sup> November 1981. A title for the two acres of land in respect of the suit land has always existed and was properly demarcated as plot 248 Block 35 as

far back as 16<sup>th</sup> June 1983. The suit land was transferred into the names of the plaintiff on 15<sup>th</sup> July 1983 as her to the late Dr E.M.K. Muwazi and as sole beneficiary. Thereafter the plaintiff held the said title with undisturbed possession and the land has the grave of his late mother Lydia Muwazi.

A house was built on the suit land as far back as 1950 with nobody ever laying any claim of adverse ownership other than the family of the late Dr E.M.K. Muwazi.

On or about 14<sup>th</sup> October 2002 the defendant started laying a claim on the plaintiff's land. That claim was later abandoned after an explanation was given to the defendant's lawyers. On 9<sup>th</sup> August 2004 the defendant once again reactivated her claim claiming that she owned one acre of the suit land. Hence this suit.

The plaintiff adduced the evidence of two witnesses, Susan Ndagire (PW1) and Samuel Swazi (PW2).

PW1 Susan Ndagire testified that the plaintiff who was her brother was living in Germany and had given her power of attorney (exhibit P1) to handle his affairs. She testified that the suit property was their

family land where they were born and where their parents lived. She testified that her father a one Dr E.M.K. Muwazi bought the same property on 5/1/1944.

She tendered in a sale agreement in proof of her father's ownership (exhibit P3). She testified that the plaintiff was the registered proprietor of the suit land (exhibit P2) as heir to their late father.

She testified that because the plaintiff was living in Germany the defendant had taken advantage of his absence and also her sickness (she suffered a stroke) to claim that the suit property was hers.

Samuel Bwazi Mubiru Muwazi (PW2) testified in support of the evidence of Susan Ndagire PW1. He testified that the suit property belonged to the plaintiff who had inherited it from their father. He testified that their father had been on that land and the current house was built in 1953. Before that house, there was an old house which was built before 1953 but had got burnt. He testified that recently the defendant started disturbing PW1 who was caretaking the suit property. Because of that he was forced to incur expenses in traveling from London to give evidence. He stated that he has so far lost 562

pounds in air tickets and other expenses.

From the above evidence, it is very clear that the plaintiff is the registered proprietor of the suit land having inherited it as heir from his father who had bought it from the predecessors and family of the defendant. See exhibit P3. The suit land was bought by the late Dr Muwazi as far back as 5/1/1944. Since then no one has laid any claim for adverse possession until 14<sup>th</sup> October 2002 when the defendant started claiming ownership of the same. See exhibit P4. Since the plaintiff has shown that he has title to the suit property that is conclusive evidence of ownership. There is further evidence that the plaintiff and his family have been living in this land since 1944. for the above reasons I find that the plaintiff has proved his case in the balance of probabilities and accordingly find that he is the lawful owner of the suit land as opposed to the defendant. The defendant's claim is unlawful and illegal thereby putting her in the position of a trespasser. The plaintiff is accordingly entitled to all the remedies claimed and pleaded.

As to general damages, the plaintiff would be entitled to a sum of two

hundred thousand, as the defendant had not done much in execution of her threats.

The plaintiff demands a fund of 652£ as a refund of the cost of air tickets. That claim should have been pleaded and formed under special damages. Therefore this court cannot award that claim in this judgment. However, it could form part of the costs which is subject to the discretion of the taxing master.

In a nutshell, judgment is entered for the plaintiff with costs in terms set out above.

**RUBBY AWERI OPIO**

**JUDGE**

**17/10/2005.**

**18/10/2005:-**

Bagonza James holding brief for Mr Mukasa Sebugenyi for plaintiff.

Judgment read in chambers.

**RUBBY AWERI OPIO JUDGE**

**17/10/2005.**