

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA**

HIGH COURT CIVIL SUIT NO.211 OF 2002

ADMINISTRATOR GENERAL

SUING THROUGH GRACE NATAYA:..... PLAINTIFF

VERSUS

SUNDAY EDWARD MUKOL :..... DEFENDANT

BEFORE: HON. MR. JUSTICE ELDAD MWANGUSYA

RULING

The Plaintiff, who is the Administrator General of Uganda is the administrator of the estate of KEVINA AJERU NATAYA by the virtue of a grant of letters of Administration issued by this court.

In a suit filed against the Defendant on the 9th April 2002 the Plaintiff seeks order of this court as follows:-

- (i) A declaration that the late Nataya's estate was at all material times the lawful and/or bona fide occupant of the piece of land at Kabalagala Trading Center on Block 244 being the suit land.
- (ii) A declaration that the Defendant unlawfully encroached and trespassed on the land belonging to the estate of late KEVINA AJERU NATAYA at Kabalagala Trading Centre on Block 244.

- (iii) An order of eviction of the Defendant from the Plaintiff land and demolition of the Defendants unlawful developments on the said land.
- (iv) Special damages at the rate of Shs.800,000/= per month from 1st January 1999 until fully recovery, plus 2,400,000/= spent by the Plaintiff in vain on stopping the Defendant's act of trespass.
- (v) General damages for trespass.
- (vi) Aggravated damages for trespass.
- (vii) Costs of the suit.
- (viii) Interest on the decretal sum at the rate of 20% per annum from the date of filing the suit until full recovery.
- (ix) A permanent injunction restraining the Defendant from trespassing on the Plaintiff's suit land belonging to the estate of late KEVINA AJERU NATAYA.
- (x) Any other relief that the court shall deem fit.

The Defendant denied the entire claim by the Plaintiff and contended that the Plaintiff's suit is res judicata as the facts in issue in the instant suit are substantially the same as those which were resolved in Buyinja Zone L.C.I court Kabalagala Parish, Makindye Division between the Plaintiff and the Defendant's predecessor in title. The judgment of the Local Council court held on 12.03.2000 was annexed and is reproduced hereunder:-

"COURT HELD ON 12/03/2000.

Court Judgment.

Case Grace Nataya vs Nabaggala Christine Nataya complainer and Nabaggala Defendant.

1. According to the documents presented by Nabaggala it satisfies that she was given ownership of land from the (late) Allen Walusimbi and it's the same land that Nataya has the house on.
2. According the Affidavit presented by Nataya Grace that was sworn by Nabaggala Christine at the Commissioner for Oaths on 30/11/95 article No.8 satisfies that the late Kevina Nataya mother of Grace Nataya bought only where the house is.
3. Even the statement Nabaggala has given is similar to the article No.8. Finally having got the evidence from both sides. And not divided either, the L.C.I court has been satisfied that the place is owned by Nabaggala and she is free to go and develop the area.
4. We have judged this case during the absence of the complainer and the L.C.I court permits whoever is not satisfied with the judgment to take another step forward

Section 7 of the Civil Procedure Act provides as follows:-

“No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try the subsequent suit or the suit in which the issue has been subsequently raised, and has been heard and finally decided by that court.”

Both Ms Jan Ahiteng, Counsel for the Defendant and Mr. Bwanika Counsel for the Defendant cited the case **MBABAALI VS WILLIAM KIZZA and ADMINISTRATOR GENERAL 1992 – 93 HCB 243** where the citizen applying the above rule was laid down. According to this authority a matter is stated to be res judicata when.

- (i) A matter in issue was directly in issue in a former suit.

- (ii) The subsequent suit should be between the same parties under whom they or any of them claim.
- (iii) The court which tried the first suit must be of competent jurisdiction to try the subsequent suit.
- (iv) That the issue in the subsequent suit must have been heard and finally decided in the first suit.

I will first determine as to whether or not the Local Council I court which determined the former suit had jurisdiction to determine the issue of ownership of the suit property now before this court.

S.5 of the Executive Committee (Judicial Powers) (cap 8) Laws of Uganda provides as under:-

- (1) Subject to this Act and any other written Law, every court shall have jurisdiction for the trial and determination of:-
 - (a) Causes and matters of as civil nature specified in the first schedule to this Act.
 - (b) Causes and matters of civil nature governed only by customary law and specified in the second schedule to this Act.
 - (c) Causes and matter arising out of bye laws dully made under the Local Government Act.
- (2) In any suit relating to causes and matters specified the first and second schedules:-
 - (a) The jurisdiction of the court shall in respect of causes and matters specified in Part 1 of the First schedule be restricted to causes and matters where the subject matter in dispute does not exceed five thousand shill; and
 - (b) The jurisdiction of the court in respect of causes and matters specified in Part II of the First schedule and in the Second schedule shall not be restricted by the monetary value of the subject matter in dispute.

(3)"

Part 1 of the First schedule to the Act lists Debts, Contracts and Assault and Battery while Part 2 lists Conversion and Trespass.

The Second schedule lists Civil Suits governed by Customary Law and these include, Land disputes relating to Customary tenure.

The jurisdiction of the Local Council courts under the above jurisdiction has been subject of interpretation the case **Maria Kevina Sentamu vs Kyaterekera Growers Cooperative Society 1996 1 KALR 160, 162.** cited by Mr. Bwanika where His Lordship Musoke-Kibuuka states as follows:-

“the word ‘trespass’ as under the Second part of the first schedule to the RC (Judicial Powers) Statute 1988 cannot be said to include the entire range of the civil disputes, which are normally covered under the ambit of the legal concept of trespass. This is more particularly so, in my view, because the Second schedule to the same Statute specially specifies the kind of land disputes which the Resistance Committee Courts can entertain being those arising out of land being held under Customary tenure. The land, which was involved in the dispute purportedly determined by the RCI Court is not land held under customary tenure. On the contrary, the land in question is owned and its proprietary title is registered under the Registration of Titles Act cap 205. Consequently it appears to me, that R.C.I Court did not possess competent jurisdiction to entertain the dispute arising out of that land.

It follows, therefore, that the rule of res judicata cannot apply to this case

Preliminary objection cannot be sustained, as the determination of the dispute by R.C. Court was a complete nullity.”

I agree with His Lordship Musoke-Kibuuka and likewise find that the Local Council Court did not have jurisdiction to determine ownership of the suit property. This suit is not res judicata and as a consequence the preliminary point of Law is rejected and dismissed.

The costs of this objection will abide the outcome of the main suit.

ELDAD MWANGUSYA

JUDGE

28.03.08

ORDER:

This ruling is to be delivered by the Assistant Registrar (Family) as I am currently on Leave.

ELDAD MWANGUSYA

JUDGE

28.03.08

28.03.2008

Jane Akiteng for Defendant holding brief for Chris Bwanika.

Defendant present

Ruling read.

E. ARUTU

ASST. REGISTRAR

28.03.08