

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA

FAMILY DIVISION

HCT-00-FD-CS-0115-2006

JOWERIA KATENDE

PLAINTIFF

VERSUS

ZAIDI SEMAKULA

DEFENDANT

BEFORE: THE HONOURABLE MR. JUSTICE FMS EGONDA-NTENDE

JUDGMENT

1. The plaintiff is the widow of the late Juma Lulika Katende who passed away on the 26th February 2006. At the time of the demise of her husband they had a matrimonial home at Nakulabye, Katende Zone. The plaintiff in this action is seeking to recover possession of the matrimonial home, general damages for trespass, permanent injunction and costs of this suit. She contends that she was unlawfully evicted from the said premises by Wasswa Umaru, assisted by the defendant on 28th November 2006.
2. The defendant is one of the sons of the late Juma Lulika Katende and the plaintiff is his step mother. He denied evicting the plaintiff as alleged or harassing and or threatening to evict her from the said premises. He further asserted that he is not in possession of the disputed premises.
3. At the trial the plaintiff, who was unrepresented, called three witnesses in addition to herself. PW1 was the plaintiff. She testified that she stayed in the matrimonial home

with her late husband for 47 years. After the deceased's death children started stoning her and attempted to burn her. A door to the house was burnt. Afterwards the defendant came to the house and broke a pipe from the house. He ordered the plaintiff to move out of the house claiming it as belonging to him. The plaintiff saw that the defendant was tough and decided to move away from the house. She now stays with one of her children.

4. In cross examination she revealed that several grand children of the deceased, sons of the PW2, Ssalongo Lulika, the heir to her late husband were the ones occupying the premises in question. Their names are Kato Twaha, Seruntenga Kassim and Isma Mukiibi. One of her step children, Nkubi was also occupying part of the house. These people started staying in the house after the death of her husband.
5. PW2 was Ssalongo Lulika, the heir to the plaintiff's husband. He testified that the plaintiff was the widow of their late father after living with him for 47 years until his death. Waswa Umah and Kato Twaha were his children. .He stated that his children at the instigation of the defendant were torturing the plaintiff. He claimed that he knew these children were acting on the instigation of the defendant because when they arrested them and took them to court, it was the defendant that stood surety for them to be released.
6. In cross examination he admitted that Sadik Kaya and Zaidi Mulimira were his children who also stayed at the house in Nakulabye. But that these two were not staying in the main house. They were staying in boys' quarter and had been doing so before the death of his father. None of the defendant's children are living on the premises in question.
7. PW3 was David Livingstone Seruwo the Chairman of the Local Council One of Nakulabye, Katende Zone. He stated that he knew the plaintiff as the widow to the

late Juma Katende. They were living in his zone before the deceased's death. After the death of her husband, grand children of the deceased came and chased away the plaintiff's children from the house, and later chased away the plaintiff herself. They claimed that their father who was the heir was the one entitled to the house. Wasswa Umaru was one of those children. In cross examination he admitted that in a report he made to the police he never indicated that the defendant was involved in evicting the plaintiff.

8. PW4 was Mukiibi Sadak Kaya. He stated that he is a son of the PW2. He lives in the servants' quarters next to the disputed house. He knows the plaintiff. She is the widow of the late Juma Katende, his grandfather. The widow was chased out of the house by children whose father is PW2. Those children were under the influence of the defendant who promised to bail them out should they be arrested. He did bail them out when they were arrested. He knew this as he was also approached by the defendant but for him he was spy. The defendant claims that this house was bequeathed to him. The children, that is Kassim Seruntenga, Isma Juma Mukiibi, Swaibu Nkubi, and Twaha Kato, threw stones on the roof of the house and at its doors. They attempted to burn the house. They abused the plaintiff in public. Nkubi was an Uncle to PW4. That was the close of the case for the plaintiff.
9. DW1 was the defendant. He stated that he is a resident of Busega and that the plaintiff is actually his neighbour in Busega. He denied that he ever evicted her from the house at Nakulabye. Instead he stated that he was out of Kampala from 27th November 2006 to 30th November 2006 as they had gone to a village in Mityana to survey land. He stated that he did not have any control over the children mentioned in this case as these children belong to PW2.

10. DW1 did not have any problem with the plaintiff. When she has no food in Busega she comes to him for food which he provides. He stated that the cause of the problem is PW2 who is covetous of the home in Nakulabye though it was not given to him. It is PW2 who put his sons in the house in question.
11. DW2 was Sande Yusuf Mukasa Lubwama. He is a grandchild of the late Juma Katende. Juma Katende was the father of his mother. He stated that on 27th November 2006 he went with DW1 to Mityana Singo and they came back on 30th November 2006. They had gone together as he was buying land from DW1 and they were also inspecting land of other people. He knew the people staying in Juma Katende's house. It is PW2's children. In 2007 the plaintiff complained to him about these children mistreating her and he advised her to report to the police.
12. DW3 was Patrick Kitandore Segindu. He was the chairman of the local council one at Busega. He knew the late Juma Katende. He had property in Busega. He was staying at Nakulabye. He knew the plaintiff. She stays in Busega now in the houses left by Juma Katende. Her son also built a house there. Juma Katende's land in Busega was distributed to the children and the widow. And that was the close of the case for the defence.
13. The parties did not frame any issues. And so the court will do so. Issue 1 is whether the defendant evicted or participated in the eviction of the plaintiff from her matrimonial home. Issue 2 is if the answer to issue 1 is in the affirmative, whether the plaintiff suffered any damages. Issue 3 is whether the plaintiff may be entitled to any other relief.
14. Before I deal with the issues set out above I shall out the law with regard to the both the burden and standard of proof. The standard of proof in civil cases is on a balance of probability. The party that wishes to establish a fact must do so on a balance of

probability. As stated by Denning J., (as he then was), in Miller v Minister of Pensions [1947] 2 All E R 372, at pp 373-374,

‘That degree is well settled. It must carry a reasonable degree of probability but not so high as it is required in a criminal case. If the evidence is such that the tribunal can say “we think it more probable than not,” the burden is discharged, but if the probabilities are equal, it is not.’

15. The Plaintiff on her pleadings asserted that a certain Wasswa Umaru evicted her from the house in question on 28th November 2006 and he did so with the assistance of the defendant. This she repeated in her testimony to this court, alleging that the defendant broke a pipe at the house and this frightened her. None of her witnesses supported this version of direct participation of the defendant in her eviction. On the contrary her witnesses asserted that it was PW2’s children who made it intolerable for her to stay in the house in question and that they were in fact reported to the Police for those actions. This was the evidence of PW2 and PW3 and to a certain extent PW4.
16. It was then claimed by PW2 that the defendant was suspected of aiding those children in view of the fact that he stood surety for them either at the police or in court. PW4 stated that it was the defendant that incited the grand children to evict the plaintiff from the premises and that he was privy to the defendant’s actions but he was only a spy.
17. In answer to this version of events the defendant stated that he did not support or sponsor the actions of those children of PW2 who were in any case adult and can answer for their own actions. He laid blame for this incident at the door of the father of those children who he said was using them to get hold of that property which was never given to him. He also was very clear that he was not anywhere near the house in question on the date he was alleged to have been there evicting the plaintiff. He

brought a witness, DW2, who corroborated his testimony that they were aware from Kampala from the 27th November 2006 to 30th November 2006.

18. It is the duty of the plaintiff to prove her case on a balance of probability. The case of the plaintiff on the pleadings is at variance, to some extent, with the evidence put forth by her witnesses. None of her witnesses support her version that the defendant evicted her from the premises directly. The defendant denied ever doing so at all and definitely that he was not in town on the date he was alleged to have gone to her home to evict her.
19. What is odd is that the people now occupying the property in question and who actually, on the evidence of every witness, were responsible for chasing her out of the house, were not made a party to this action. Those persons are of majority age and can take responsibility for their actions. Those persons are known. They occupied that house apparently together with the plaintiff for some time.
20. The defendant was not occupation of the house in question. He contended that it was PW2 who put his sons into that house. On the face of it this would be logical. What is held against him is that he stood as a surety for the children on some charge. To this charge he replied that he had also stood as a surety for his brother, PW2, when he had been arrested at the instigation of the plaintiff. He denied that being a surety meant that one was the sponsor of the impugned activities of the person for which one stood surety.
21. The evidence is simply too weak in my view to establish the claim that the plaintiff was evicted from the house in question by the defendant. Issue 1 is therefore answered in the negative. As issue 1 has been answered in the negative it is not necessary to consider the rest of the issues. I would dismiss the plaintiff's action with costs to the defendant.

Signed, dated, delivered at Kampala this 30th day of June 2009

FMS Egonda-Ntende
Judge