

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)
CIVIL SUIT NO. 128 OF 2009

1. PAUL M. MUGERWA	}	:::	PLAINTIFFS
2. ELIZABETH NABAKKA			
3. J.B WALUSIMBI			
VERSUS			
1. SAAVA STEPHEN KIKONYOGC	}	:::	DEFENDANTS
2. MUSTAFA SSENKUNGU			
3. YONASANI RUBAIYAHO			
4. BWIRE JOSEPH			
5. MUTOTO YOSAMU			

REASONS FOR THE JUDGMENT OF 4TH DECEMBER, 2009 BY HON. MR. JUSTICE JOSEPH MURANGIRA

On 4th December, 2009 the parties after consenting to all facts and issues in contention to suit, this Court entered judgment on admission against all the defendants with costs in the presence of all parties and their counsel. The counterclaim was also dismissed with no orders as to costs. Then I promised to give full reasons for the summary judgment, of which I hereby do.

The background facts and pleadings of the suit are indicated here below:-

The three (3) plaintiffs through their lawyers M/s Katende, Ssempebwa & Co. Advocates brought this suit against the five (5) defendants, on 7th May 2009. The defendants on 29th May, 2009, through their lawyers M/s Katongole & Co. Advocates filed a joint written statement of defence with a counter-claim. The plaintiffs filed on record a reply and defence to the counterclaim.

The plaintiff's jointly and severally claimed against all the defendants in the plaint as shown here below:-

“9. The claim of the plaintiffs jointly and severally against the 1st defendant is for declarations that:-

(a) The 1st defendant has no proprietary or beneficial interest in property formerly described as Kyadondo Block 265 plot 148 at Bunamwaya and later described as plot 845 and subdivided into plots 2844, 2845, 2847, 2848, 2849 and 2850 in the names of C. Mukasa Semanda and J.B Walusimbi since 1969.

(b) That the 1st defendant mortgaged his proprietary interest to a bank and all of it was sold and he has no further interest in the property formerly described as Block 265 plot 148 at Bunamwaya in Wakiso District.

10. The plaintiffs aver that the 1st defendant has without any colour of right or title unlawfully and illegally purported to sell pieces of land out of the property formerly described as Block 265 plot 148 to the 2nd, 3rd, 4th and 5th defendants who had notice of the 1st defendant's lack of title or any possessory interest in the land.

11. The defendants jointly and severally are trespassers of the land comprised in the above mentioned title formerly described as Kyadondo Block 265 Plot 148 at Bunamwaya in Wakiso District and subdivided as stated in paragraph 9 (a) of the plaint and registered as hereinafter set out.

12. The plaintiffs jointly and severally claim against the defendants jointly and severally for injunctions restraining the defendants severally from each of them carrying out and continuing to carry out any unlawful and illegal constructions on the lands comprised in the above described titles details of which are supplied for each plaintiff and defendant below, for orders restraining the 1st defendant and all defendants from holding out to be the owners of any of any interest in any of the plaintiffs property described in particular herein below.

13. The plaintiffs further claim for declarations that the acts of the defendants severally violate each of the plaintiffs' property rights under article 26 of the Constitution of the Republic of Uganda for the land they occupy particularized here in below; for declarations that each plaintiff is entitled to possession as against the particular defendants who occupies his or her

land and for consequential orders of eviction of the defendants from the encroached part of the plaintiffs' land; special and general damages; interlocutory and permanent injunctions restraining the defendants jointly and severally, their servants, agents or assignees from interfering, occupying or otherwise trespassing or constructing on any part of the plaintiffs lands particulars of which are set herein below and for costs of the suit.

14.”

Further, the plaintiffs in the plaint prayed for judgment against the defendants in the following terms:-

- (a) A declaratory judgment is issued that the 1st defendant has no proprietary or beneficial interest in property formerly described as Kyadondo Block 265 plot 148 at Bunamwaya and later described as plot 845 and subdivided into plots 2844, 2845, 2846, 2847, 2848 and 2850 in the names of C. Mukasa Semanda and J.B Walusimbi since 1969.
- (b) A declaratory judgment is issued that since the 1st defendant mortgaged his proprietary interest to a bank and the bank sold, he has since then lost all interests in the property formerly described as Block 265 plot 148 at Bunamwaya in Wakiso District.
- (c) A declaratory judgment is issued that the sale agreements between the 1st defendant and 2nd, 3rd, 4th and 5th defendants out of the property formerly described as Block 265 plot 148 are illegal null and void *ab initio*.
- (d) That the defendants jointly and severally are trespassers of the land comprised in the above mentioned titles of the property of the registered proprietors in plots 6029, 5780, 5781, 5782 and 577 out of land formerly described as Kyadondo Block 265 plot 148 at Bunamwaya in Wakiso District.
- (e) Declarations that the plaintiffs jointly or severally are entitled to vacant possession of the part encroached by each of the defendants who has encroached on a particular plot registered in the names of particular plaintiff or plaintiffs as described in the plaint.
- (f) The plaintiffs jointly and severally claim against the defendants jointly and severally for injunctions restraining the defendants severally from

each of them carrying out and continuing to carry out unlawful and illegal constructions on the lands comprised in the above described lands details of which are supplied for each plaintiff and defendant above.

- (g) For orders restraining the 1st defendant and all defendants from holding out to be owners of any interest in any of the registered land in the names of any plaintiff jointly or severally described in the plaint.**
- (h) For declarations that the facts of the defendants severally violate each of the plaintiffs property rights for the causes of action described in the plaint under article 26 of the Constitution of Republic of Uganda for the land they occupy particularized above; for declarations that each plaintiff is entitled to possession as against the particular defendants who occupies his or her land.**
- (i) For consequential orders of eviction from the portion of the plaintiffs land encroached by any of the defendant/s described in the plaint.**
- (j) That an interlocutory injunction be granted to stop any defendant who is constructing from further constructing on any of the plaintiffs' land described above pending final disposal of the suit.**
- (k) That a permanent injunction doth issue restraining each and every defendant, their servant/s or agent/s from interfering with or otherwise in any way dealing with any of the plaintiffs' land described above.**
- (l) General damages for trespass and unlawful and unconstitutional deprivation of property.**
- (m) Exemplary damages.**
- (n) For any other relief as may flow from the causes of action and as this honourable Court may deem fit to grant.**
- (o) Costs of this suit.**

The suit came up for hearing before me on 3rd September 2009 and it had to be conferenced. I then followed the provisions of Order 12 rule 1 of the Civil Procedure Rules, Statutory Instrument NO. 71-1. I engaged the parties in a number of scheduling conferences with the aim of assisting the parties to reach an amicable settlement of the dispute between themselves. The parties cooperated and held meetings within the Court building premises which resulted into a settlement of this case.

During the scheduling conference on 10th September 2009, two (2) issues imaged:-

- (a) Whether the 1st defendant sold to the rest of the defendants Bibanja interests.
- (b) That this suit land in any case is outside the boundaries of the plaintiffs' suit land.

The parties at that stage agreed that the question of boundaries could be established by professional surveyors. I gave them go a head to use their respective private surveyors to open the boundaries of the suit land.

On 12th October, 2009, the plaintiffs came up in Court with a survey report. Mr. Mukembo Phillip for the defendants requested for a short adjournment to 16th October 2009 also to get their own survey report as indicated earlier in the Court proceedings.

The Court allowed the adjournment to 16/10/2009. On 16th October 2009, Mr. Mukembo Phillip for the 1st, 2nd, 3rd and 5th defendants informed Court that the outcome of their survey report (defendants) was similar with survey report of the plaintiffs but with small variations. On those premises, Mr. Mukembo Phillip for the defendants made prayer that they be given at least two weeks to allow the parties to meet for an amicable settlement. Counsel for the plaintiffs did not show any objections. The parties indeed were committed to a settlement of the dispute out of Court. The matter was adjourned to 02nd December 2009 to allow the parties reach a settlement of the case out of court.

It is important to note that on 2nd December 2009, when suit came for the recording of the settlement, the parties had not prepared and signed any settlement. Mr. Mukembo Phillip for the 1st, 2nd, 3rd and 5th defendants submitted that following the several meetings between the parties, and having failed to come to the conclusion of the matter, the defendants humbly prayed that a consent judgment on the terms prayed for by Counsel for plaintiffs be entered between both parties. That they don't insist on the defence, that rather they wanted the matter to be handled by the consent of the parties. That in the event of the parties not entering a consent settlement, that then the judgment will be entered against the 1st, 2nd, 3rd and 5th defendants. The aforesaid defendants had in fact admitted the claims by the plaintiffs in the plaint.

Furthermore, Counsel for the 4th defendant, Mr. Masereka Martin from M/s Bakiza & Co. Advocates submitted that the partly concurred with the submissions by Counsel for the 1st, 2nd, 3rd and 5th defendants' Counsel. That the defence of the 4th defendant squarely depended on the defence of the 1st defendant. That the whole issue depended on the ownership of the suit property of which the 1st defendant should have had legal or equitable interests that he should have passed to the 4th defendant. That the fact that the 1st defendant had conceded that he did not have any rights to pass to the 4th defendant, it left the 4th defendant with no option than to concede to the proposed consent. The 4th defendant prayed that the 1st defendant compensates him and that the costs of the suit be paid the 1st defendant.

From the submissions of both Counsel for the defendants, it is clear that the defendants consented to the suit with costs. In reply to the above, Mr. Madrama Christopher, Counsel for the plaintiffs in agreement with the defence made his presentations that this suit was filed in Court to declare that the suit land belongs to the plaintiffs. And that the 1st defendant held out to be the owner thereof when he had no proprietary interests in the suit land. That the suit is also for declarations that the sale agreements between the 1st defendant and the rest of the defendants are illegal, null and void. And that the 2nd, 3rd, 4th and 5th defendants are trespassers on the plaintiff suit land. That the suit is also for an order for vacant possession on the part that is occupied by the 2nd, 3rd, 4th and 5th defendants plus general damages at Shs. 50,000,000/= (fifty million shillings) and costs of the suit. He therefore, prayed for judgment to be entered in favour of the plaintiffs as prayed for in paragraph 16 of the plaint with costs still the defendants did not raise any objections to the said prayers.

The above stated settlement between the parties came a long way out of the mediation meetings both during court sessions and out of Court. After the survey reports which are on court record the defendants' doubts were cleared and they confirmed to Court that the disputed land is within the plaintiffs' land and the extent of the encroachment is described in the said survey reports. The mutual participation by the parties and counsel played a major role in having the matter settled without necessarily having to call witnesses.

After the survey reports the defendants clearly saw that they no longer had any defence to the suit. The defendants in their submissions to court abandoned their respective defences

and counterclaim. And they agreed that judgment be entered in the terms as pleaded in the plaint. My role, at that stage was to pronounce a judgment on admission of the claims in the plaint by the defendants of which I did.

The general damages was allowed at Shs. 50, 000,000/= which should spread equally on each defendant. The general damages are assessed on the basis that the actions of the defendants deprived the plaintiffs of the use and quiet enjoyment of the suit land for a long time. Further, the plaintiffs were brutally mistreated by the defendants. The defendants subjected the plaintiffs to hardships, fear and uncalled for economic expenses in the pursuance of their land rights as enshrined in Article 26 of the Constitution. The plaintiffs were entitled to be compensated in damages in the amount afore stated hereinabove. After all, when Mr. Madrama Christopher submitted on issue of damages the defendants did not raise any objections to the same. The defendants made my work simple.

In conclusion, it was because of the above reasons that judgment was entered in favour of the plaintiffs in the terms as prayed for in paragraph 16 of the plaint.

Dated at Kampala this 30th day of September, 2010.

JOSEPH MURANGIRA
JUDGE