

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT MBARARA

HCT-05-CV-CS-0095-2001

JAMES WILLIAM RWANYARARE.....PLAINTIFF

VS

1. THE ATTORNEY GENERAL
2. KUHANDA YOSAMU
3. BESIGA SAM
4. MUGANZI GODFREY
5. RWAKAGWEHA ALFRED
6. NISHABA MOSES
7. KEKIHOMI PHOEBI
8. NIWE AGABA DEUSON
9. AMURARI AMOS
10. ZIRIMPANGAERINEST
11. BWENDE LIVING
12. TINAKO ERICA
13. KACWEKA VAIROTI
14. NYAMBUU EVARISTA
15. KATIRA GRACE
16. SHALITA ALFRED
17. MWOREKO GODFREY
18. KINKUHAIRE JOE
19. RWAMUNONO PETERO
20. KITUTU NATHAN
21. TUMUHAIRWE MATAYO
22. KANYAMUTAMBA JOVIA
23. RWAKOJO STEPHEN

..... DEFENDANTS

BEFORE: THE HON JUSTICE LAWRENCE GIDUDU

JUDGEMENT

Dr. James William Rwanyarare, the Plaintiff, sued the Defendants for trespass and claimed compensation for loss of land, cows, and other farm property on former Ankole Ranching Scheme No. 3.

The Attorney General who filed a joint defence for all the Defendants denied liability.

The Plaintiff's case is that in 1976 he bought Ranch No. 3 in the then Ankole Ranching Scheme from James Kangaho. In 1983, he was registered as proprietor upon being given a lease of 21 years backdated to run from 1st November 1966. This was apparently because Kangaho had applied for a lease but the same had not been granted before he sold it to the Plaintiff. The Plaintiff developed the farm with exotic cattle, desilted valley dams, partitioned it into paddocks and did the fencing. He also had eucalyptus trees.

On 10th November 1990, some army men and LDUs invaded the farm in company of civilians with local or indigenous cattle and settled on part of the farm. The Plaintiff protested the invasion to no avail. He reported to local LCs and the Police but was told no one would interfere with settlement of landless cattle keepers.

As a result, the Plaintiff lost cattle totaling 876 due to infections from ticks brought by the invaders. His paddocks and fencing were damaged plus other property like dams and eucalyptus forests. In 2004, the government gave him a cheque for Shs.

17,0,000/= which he treated as part payment. 7 years after the invasion, the government sent a surveyor, the late Paul Bakashabaruhanga who surveyed of 3.17. square miles which was partitioned into small portions where the 22 Defendants were settled. The Plaintiff was left with 3 square miles.

The Defendants who never attended court proceedings throughout the trial of this case never adduced any evidence in their defence.

Agreed Issues

1. Whether there was a trespass
2. What remedies

During submissions, Mr.Ngaruye learned counsel for the Plaintiff contended that the fact that government paid the Plaintiff 17,0,000/= towards compensation, it means that the issue of trespass was admitted and asked court to deal with only the issue of quantum of damages. He asked me to award to the Plaintiff the following.

- (a) 1.602,589.300/= as value of the 3.17 Sq. miles given to the Defendants.
- (b) 526,800,000/= as value of 878 head of cattle that died.
- (c) 3,500,000,000/= as general damages for lost income from sale of cattle.
- (d) Costs of the suit.

Mr.Wanyama, Principal State Attorney disagreed and invited court to find that the Plaintiff who held a lease of 21 years from 1966, was no longer a registered proprietor when the Defendants came to the land in 1990. The lease expired in 1987 and reverted to government. He therefore asked court to dismiss the claim for compensation of the land.

Alternatively, he contended that the suit was barred by limitation since it was filed in 2001 when the alleged trespass occurred in 1990. He also relied on section 187 of the RTA which imposes limitation of 6 years.

Finally, he submitted that the Defendant was willing to pay 191,500,000/= less 17,000,000/= advanced (i.e. 174,500,000/=) and invited court to enter judgment against the Defendants for 174,500,000/= without costs.

In reply, counsel for the Plaintiff admitted that though the lease had expired, section 95 (4) of the Land Act entitled the Plaintiff to a fresh grant since he had developed the land and that the Plaintiff had an equitable interest as a lawful occupant. That the payment of 17 million to the

Plaintiff renders the objection about limitation redundant since the Defendant waived the right to invoke the law on limitation.

I would categorize the defence submission as matters that should have been raised in both the Written Statement of Defence and at the beginning of the trial before the case was settled down for hearing. Be that as it may, both the pleadings and the only evidence on record adduced by the Plaintiff and his farm manager, Charles Mwikukumo (PW2) leave no doubt that the Plaintiff was a registered proprietor of land comprised in LHR volume 1218 Folio 6 styled as Ranch No.3 - Ankole Ranching Scheme, Nyabushozi. There is no dispute that the tenure of 21 years from November 1966 expired in 1987. It is also not in dispute that the Defendants came to the land in 1990 long after the Plaintiff's title had expired.

Was there trespass? I was asked by the Defendant's counsel to find no trespass while, counsel for the Plaintiff argued there was trespass because the Plaintiff had an equitable interest and was entitled to a fresh grant under S. 95 (4) of the Land Act Cap. 277.

It is trite law that once the lease of the Plaintiff expired in 1982, the registrable proprietorship reverted to the Uganda Land Commission as Landlord under the then Public Land Act. The Plaintiff from 1987 became a customary owner and remained in effective and lawful occupation until 1990 when the Defendants came to the land. The owner of land under customary tenure is protected and is entitled to compensation for a public purpose or where the controlling authority grants a lease to some one else. The new lessee was duty bound to compensate any person occupying the land by customary tenure under section 24 (4) of the then Public Land Act and section 3 (3) (b) (iv) of the defunct Land Reform

Decree.

Indeed, under S. 25 of the then Public Land Act which was the prevailing land legal regime, before the Commission could alienate land occupied by a customary owner, it had to hear and consider that owner first before giving land to any other person. Even where the Commission felt some one else would develop the land better, it had to consider or hear the wishes of the customary owner.

See G.G Kigozi Mavambale vrs. Sentamu and another [1987] HCB 68. See also Garage Properties Ltd vrs. K.C.C. HCCS 576 of 1996 (unreported) and also Marko Matovu & others vrs. Sseviri and another [1979] HCB 174.

There is no contest to the Plaintiffs evidence that in 1990, while he was in effective occupation of Ranch No. 3 where he had a bout 900 head of exotic cattle with several developments of a modern farm that was being used by the University as a study and research unit on animal diseases, armed men in uniforms worn by government soldiers invaded the said farm and assisted civilian cattle keepers to move into with their diseased cattle that infected and caused death to the Plaintiff's modern herd. What would I call this if it is not trespass? Further, the Plaintiff's evidence which is still unchallenged is that in 1997, the late Paul Bakashabaruhanga was contracted by the government to survey off 3.17 sq. miles from the Plaintiff's farm which was distributed to the Defendants without compensation. There is no evidence that the Plaintiff was heard before such fundamental action to alienate half of his ranch was taken.

S. 95 (4) of the land Act cap.227 entitles the Plaintiff to a fresh grant with the implied condition that if he is not given a fresh grant his objections would have been answered first.

It was his evidence that he reported to the LC 1 Chairman and to the

Police and later to the Ranch Restructuring Board but none of these institutions could save the situation.

The learned Principal State Attorney for the Defendants asked me to dismiss the claim that section 187 of the RTA cap. 220 rendered the suit time barred.

True, section 187 of cap. 230 provides that no action for recovery of damages sustained through **deprivations** of land—shall lie against government-----unless the action is commenced within 6 years from the date of **deprivation**.

The Plaintiff's land was surveyed off (3.17 Sq. miles) in 1997 and divided into portion that were given to the 22 Defendants. That in my view is when the Plaintiff was **deprived** of his proprietary interests as a customary owner. Before the act of surveying and granting titles to the Defendants had been done, the Plaintiff was raising protests to those with administrative powers to save his ranch such as the police and the Ranch Restructuring Board in Kampala. The law of limitation in my view started to run in 1997 for purposes of section 187 of cap. 230 and the suit having been filed in 2001 means it was within 6 years.

What happened in 1990 was trespass but what happened in 1997 was a **deprivation of land** within the meaning of section 187 RTA.

Indeed, I would go further to hold that the giving of the Defendants titles chopped from the Plaintiff's customary holding while he was in occupation and busy protesting was an act of fraud that would render those titles null and void. See *G.G Kiaozi May am bale vrsSentamu and another* (Supra). The same was held in *MarkMatovu& others vrsSseviri* (Supra) which relied on *John Katarikawe vrs. Katweiremu & another [1977] HCB 187*.

Consequently, I would hold that there was a continuing tort of trespass

from 1990 to 1997 when the Plaintiff was formally deprived of his land by the government when it surveyed off half of it and gave strangers 22 land titles. Objections about limitation are, therefore, without substance and are dismissed.

The 2nd issue was quantum.

Exhibit "PI" per the value as follows:

- (i) Land taken by government (1983.56 acres at 0.6m. totals
1,190,136,000/=
 - (ii) Perimetre fencing = 275,000/=
 - (iii) Paddocking fence = 615,000/=
 - (iv) New fencing = 135,000/=
 - (v) Valley dam taken = 40,000,000/=
 - (vi) 2 acres of eucalyptus trees = 1,600,000/=
 - (vii) Disturbance = 369,828/=
- Grand Total = 1,602,589,3000/=

There was a submission from the bar by the Principal State Attorney that the government valuer put the value of land lost to government as 191,500,000/=.

Exhibit "PI" is a valuation report done on behalf of the Plaintiff by private valuers. Several adjournments were granted to the defence to produce evidence to the contrary from the Permanent Secretary Ministry of Lands but all was in vain. What is equally problematic is that the authors of the private valuation report did not give evidence to justify their figures. This leaves me in a situation having found that the Plaintiff is entitled to damages to approach the matter with good sense knowing that I am giving judgment in March 2010 when the valuation report was done in February 2008. The report is 2 years old and I take it that any exaggerations there

in may appear realistic figures 2 years after. Exhibit "PI" also provides comparable land prices for land that was sold recently at the time of the valuation report in ranches No. 2, No. 15, No. 21, No. 27 and 47 which are further deep in land than the Plaintiff's ranch that was 12 miles from the tarmac road.

Doing the best I can, I hereby award the following as special damages which have been proved:

(i)	Land compulsorily taken =	1.190,136.000/=.
(ii)	Perimetre fencing =	275,000/=
(iii)	Paddock fence =	615,000/=
(iv)	Erecting new fence =	135,000/=
(v)	Valley dam taken =	40,000,000/=
(vi)	Eucalyptus plantation =	1.600,000/=
(vii)	Value of 878 herd of cattle =	526,800,000/=
	Total special damages =	1,759,561,000/=

The Plaintiff asked court for 3.5 billion as general damages for lost income from the lost sales of cattle.

It is trite that general damages must be proved. It was the Plaintiff's evidence that he used to sell between 400 - 500 head of cattle per year. A breeder would cost 1,000,000/= and others 500,000/= per cow. The annual income according to the Plaintiff's testimony was between 50 - 60 million. It is not clear when the cows got finished or when the sales stopped after the infection and death of the cows. The Plaintiff testified that at the time he gave evidence he would be earning 150,000,000/= per year i.e. in February 2008. Of course, there should be an allowance that other factors could have affected the sales such as calamities or drop in market or reduced prices due to competition, taxes etc.

I shall award 60,000,000/= per year from 1990 to 2009 which translates into 20 years X 60 million = 1,200,000,000/= as general damages.

The Plaintiff has proved his claim on the evidence and is therefore entitled to have the costs of this suit.

I award the Plaintiff interest on the special damages at court rate from date of filing till payment in full and interest on general damages at court rate from date of judgment till payment in full. I should add that the factor of 30% interest in exhibit "PI" was not proved since its authors never testified and so I am unable to award it. All payments shall be less by 17,000,000/= which the Plaintiff admits receiving.

J u d g e
15/3/2010

Judgment delivered on 15th March 2010 in presence of both counsel. The Plaintiff is absent. Mr.Ngaruye for Plaintiff and Mr.Wanyama for Attorney General present. The 22 defendants are absent.
Tushemereirwe - court clerk.

j u d g e
15/3/2010