

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**[LAND DIVISION]**

**CIVIL SUIT NO. 82 OF 2005**

**NDAZIZAALE IRENE ::::::::::::::::::::::::::::::::::::::::::::::::::::::: PLAINTIFF**

**VERSUS**

**1. MUGUMYA ELLY**  
**2. JAMES SENYONJO KATONGOLE } ::::::::::::::::::::::: DEFENDANTS**

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

**JUDGMENT**

The Plaintiff sued the Defendants for allegedly demolishing structures she built on **Block 203 Plot 390**. She claimed compensation and a declaration that the actions of the Defendants in demolishing her house were wanton, extremely negligent, illegal and unlawful.

The Plaintiff contended that as a result of the actions of the Defendants she lost her newly built house estimated at Shs.11,000,000/= (eleven million) she suffered considerable loss and damage which she holds the Defendants liable jointly.

The 1<sup>st</sup> Defendant on his part contended inter alia, that he was shown property which was subject of Mengo Court Decree and lawfully executed the said decree as directed in the warrant by handing over vacant possession to the 2<sup>nd</sup> Defendant and that he could not be held liable for the subsequent actions of the 2<sup>nd</sup> Defendant.

The 2<sup>nd</sup> Defendant on his part contended that he was the Decree holder in Mengo Court Suit No. 444 of 2002 between him and a one Mulwana who had encroached and trespassed on his land comprised in **Block 1351 Plot 203 at Kawala**. That the above property was not situated on Plot 390 Block 203 as alleged and that the removal of the property was not wanton, negligent, illegal and unlawful because there was a Court Order giving vacant possession and was done in the company of the 2<sup>nd</sup> and 1<sup>st</sup> Defendants following orders from Mengo Court. The 2<sup>nd</sup> Defendant claimed later that the house was demolished because it had encroached on his land.

The following issues were agreed upon during the scheduling conference:-

*(1) Who demolished the structures?*

*(2) Whether the Demolition of the Plaintiff's structure was legal.*

*(3) To what extent did the Plaintiff's structure encroach on the 2<sup>nd</sup> Defendant's land?*

*(4) Remedies available to the parties.*

#### **Issue No. I: Who demolished the structures?**

In his pleadings in paragraph 8, the 1<sup>st</sup> Defendant averred among other things, that he executed a lawful decree in the manner directed by the warrant from Court. By his own testimony the 1<sup>st</sup> Defendant stated that he removed the property of the Defendant (meaning Mulwana) and handed over vacant possession to the Plaintiff (James Ssenyondo Katongole). Given the fact that it was the house of the Plaintiff (Ndazizaale Irene) which was demolished to give

that vacant possession the 1<sup>st</sup> Defendant would automatically be liable to the Plaintiff. In his evidence the 2<sup>nd</sup> Defendant does not deny demolishing the Plaintiff's structure. He only tried to justify his actions by relying on the Mengo case that it was Mulwana's house and that the house had encroached on his land. Looking at the pleadings and evidence in totality, there is no doubt that it was the Defendants who demolished the structure in question.

**Issue No. 2: Whether the demolition of the Plaintiff's structure was legal.**

It was the contention of the Plaintiff that the demolition was not legal for the following reasons.

- (a) The Mengo Civil Suit No. 444 of 2002 was between the 2<sup>nd</sup> Defendant and a one Mulwana Godfrey. The Plaintiff was not a party to it.
- (b) The Court Order did not direct demolition of property.
- (c) The 2<sup>nd</sup> Defendant did not claim that Mulwana trespassed on his land and built thereon a house. The complaint was about Washing Bay.
- (d) By the year 2004 the 2<sup>nd</sup> Defendant did not legally own the land in issue because the lease which had been granted to the 2<sup>nd</sup> Defendant's father had expired in 1988 so the 2<sup>nd</sup> Defendant did not have any legal right on the land formerly described as **Rubaga Block 203 Plot 1351**.
- (e) Even if the Plaintiff's house had extended beyond the land of Yowana Nyika's Plot 203 there was no justification for the 2<sup>nd</sup> Defendant to demolish the house because:
  - (i) He had no legal authority to demolish.

- (ii) The house did not belong to Mr. Mulwana.
- (iii) The 1<sup>st</sup> and 2<sup>nd</sup> Defendant acted in excess of the authority they purported to have under the Court Order.

The 1<sup>st</sup> Defendant contended that there was ample evidence from **Dw<sub>1</sub>** and **Dw<sub>2</sub>** that the structures in question was encroaching on the Plaintiff's land and that it was immaterial that the lease of the head title had expired.

The 2<sup>nd</sup> Defendant on his part contended that the Plaintiff's house had encroached into Block 203 Plot 1351 (2<sup>nd</sup> Defendant's land) by 9 x 36 metres i.e. 0.0324 hectares. That even after the demolition there was still encroachment. He further submitted that it was not in dispute that the 2<sup>nd</sup> Defendant was holder of the decree which decreed that land comprised in Block 203 Plot 1351 belonged to the estate of the late Christopher Katongole. That all activities on the 2<sup>nd</sup> Defendant's land were illegal and any structures thereon were also illegal. That the Decree affected everyone who trespassed on the land. That the contention by the Plaintiff that the 2<sup>nd</sup> Defendant's title had long expired so he had no legal interest on the land was misplaced because his father has acquired the suit land since 1950s as a Kibanja holder till his death. Lastly the 2<sup>nd</sup> Defendant contended that the Plaintiff was negligent in that she should have first surveyed off her land to ensure that what she had bought was her portion of the land.

From the evidence on record it is very clear that the Plaintiff did encroach on the 2<sup>nd</sup> Defendant's land. According to the surveyor's report dated 9<sup>th</sup> September, 2005 authorised by Mulalya Fred, Plot 1351 had been encroached by 9 x 36 metres (0.0324 hectares). That fact was not disputed by the Plaintiff. However, her contention was that the demolition of her house was illegal. The

warrant to the bailiff which gave rise to the demolition (**exhibit P<sub>4</sub>**) reads as follows:

***“You are hereby directed and ordered to put the said Senyonjo Katongole in possession of the same and you are hereby authorised to remove any person bound by the Decree who may refuse to vacate the same”***

In this case, the warrant ordered the bailiff to put the 2<sup>nd</sup> Defendant in vacant possession and remove anyone who had refused to leave the land. The decree ordered all agents of Mulwana (the Defendant in Mengo) to vacate the suit land forthwith. The Decree further slapped a permanent injunction restraining Mulwana (the Defendant in Mengo suit) his agents, etc from further trespassing on the suit land. In short, the Decree sealed that all the activities on the 2<sup>nd</sup> Defendant’s land were illegal, including any structures thereon. Giving vacant possession therefore meant that the bailiff was required to hand over the suit property minus illegal activities and structures hitherto on the suit land. The fact that the Plaintiff was not a party to the Mengo suit was immaterial since the decree canvassed Mr. Mulwana and all his agents or anyone trespassing on the suit land.

The submission by the Plaintiff that the 2<sup>nd</sup> Defendant title had expired so he (2<sup>nd</sup> Defendant) had no legal interest in the land, is surely misplaced because in his evidence, the 2<sup>nd</sup> Defendant was emphatic that his father occupied the suit land since 1950s as a Kibanja holder until his death when it passed on to the 2<sup>nd</sup> Defendant as the Administrator. The 2<sup>nd</sup> Defendant did establish his right *in rein* over the suit property. Since the structure in question was unwanted by the 2<sup>nd</sup> Defendant, its demolition was a legal process of giving vacant possession and curtailing any further trespass on the suit land. In conclusion therefore, the

conduct of the Defendants were lawful and protected under the law: See **Semakula v Musoke & 2 Others 1981 HCB 48.**

**Issue No. 3: To what extent did the Plaintiff's structure encroach on the 2<sup>nd</sup> Defendant's land?**

Evidence on record clearly shows that a survey was conducted in the presence of the Plaintiff, his Counsel and the Defendants whereby it was established that encroachment was 9 x 36 metres i.e. 0.0324 hectares: See **exhibit D.** Even after demolition there was still an encroachment of 3.5 feet. The above report was not disputed.

**Issue No. 4: Remedies.**

Having found that the Plaintiff had trespassed on the 2<sup>nd</sup> Defendant's land and having found that the Plaintiff's structure was demolished under order of Court to give vacant possession to the 2<sup>nd</sup> Defendant, it is my conclusion that the Plaintiff is not entitled to all the orders she prayed for. It is accordingly my finding that the Plaintiff's suit has completely no merit and it is dismissed with costs.

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

**JUDGE**

**2/7/2012**

**3/7/2012**

Mr. Makada present for 2<sup>nd</sup> Defendant.

Ms. Nakawoya Sarah present for Plaintiff.

Judgment read in Chambers.

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

**JUDGE**

**3/7/2012**

/nmg.