

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KABALE
CIVIL APPEAL NO. 004 OF 2011

(From Kabale Chief Magistrate's Land Case No. 89 of 2009)

BARYA GEORGE & 2 OTHERS ::::::::::::::::::::
APPELLANTS

VERSUS

CAPITAL SAW MILLS LTD ::::::::::::::::::::RESPONDENT

BEFORE HON. MR. JUSTICE J.W. KWESIGA JUDGMENT

This appeal arises from the decision of His Worship, Praff Rutakirwa, Chief Magistrate of Kabale, made on 9th March, 2011. In the decision appealed against in Civil Suit No. 089 of 2009, The Chief Magistrate dismissed the suit on a preliminary objections raised by the Respondents Advocate that the case was Res Judicata and that the Appellants had no cause of action and the suit was frivolous. At this hearing the Appellants Advocate had applied for stay of hearing Civil Suit 089 of 2009 pending the outcome of miscellaneous application Number 147 of 2002 that had been filed in the High Court to set aside Judgment and Decree in Civil Suit No. 106 of 2011 in which The High Court had

dismissed Civil Suit No. 106 of 2001, Israel Barya Vs Dr. Sabiiti Suruma. The decision decreed that The Suit property, Plot 2/4 Garage Street, Kabale belonged to Dr. Sabiiti Suruma and ordered Israel Barya to give vacant possession of the Suit property. From all the proceedings that took place in the several suits between the parties Miscellaneous application number 147 of 2002 appears to have kept pending up to date. For a period of over nine (9) years the Applicant has never pursued this application which this appeal contends, the Trial Magistrate should have waited for. In grounds 3 and 4 of appeal hereby paraphrased the Appellants stated that the trial Magistrates hurriedly passed a ruling in land case 0089 of 2009 despite the Appellants pleas that the suit stays pending the outcome of Misc. Application 147 of 2002 that sought setting aside the decision in Civil Suit 106 of 2001. The pleadings and submissions of the Advocates for the Appellants and the Respondent do not state the fate of this Application which by 9th March, 2011 had been pending for nine (9) years. There are no good reasons shown why it has never been heard. This application, no doubt is a clear example of what parties and Advocates do to buy time, abuse court process to defeat justice. Notwithstanding this notorious Miscellaneous application 147 of 2001, the Appellants filed at Kampala Registry, Civil **Miscellaneous Application Number 598 of 2006, BARYA GEORGE & 2 OTHERS VS DR, EZRA SABIITI SURUMA.** In this Application the Applicants now Appellants sought;

1. To set aside the decree dated 18th October, 2001 in Civil Suit No. 106 of 2001.
2. To stay execution of the decree. This application was dismissed with costs to the Respondent.

If the Miscellaneous Application No. 147 of 2001 was still pending, it has been overtaken by the events by virtue of the decision in Miscellaneous Application No. 598 of 2006 which was filed subsequently, over the same subject matter between the same parties. The Resultant position is that the decision in High Court Civil Suit Number 106 of 2001 and the decree extracted there from dated 18th October, 2001 still stands, namely, that Dr. Ezra Sabiiti Suruma or his Successor in title take vacant possession of the suit premises comprised in plot 2/4 Garage Street, Kabale Municipality. In view of the above I find no merits in grounds 1, 3 and 4 of this appeal and they ought to fail. The second ground of appeal states that the trial Chief Magistrate erred to hold that issues in Miscellaneous Application 147/2001 arising from High Court Civil Suit No. 106 and those of Kabale land case 0089 of 2009 were the same and Res judicata. In his Submissions to discredit the Chief Magistrate's decision, Mr. Bwagi contended that Miscellaneous Application 147 of 2002 was still pending in which Barya was seeking setting aside the ex-parte Judgment in Civil Suit 106 of 2001. This matter was resolved in Miscellaneous Application No. 598 of 2006. The issues

contained in Miscellaneous Application 147 of 2007 are Res Judicata.

Considering the Appeal as a whole the only residue issue is whether the Appellants are entitled to compensation by the Respondents. The Trial Magistrate did not close the appellant from being heard on merit by refusing to wait for a none existent ruling that was hoped to set aside the decision in Civil Suit 106 of 2001 as set out in details above. The appellants failed to proceed with their suit in Civil Suit 0089 of 2009 despite the fact that court gave them the opportunity to do so.

I have had the opportunity to peruse yet another application namely **Civil Miscellaneous Application No. 43 of 2011 Barya and 2 others Vs Capital Saw Mills Ltd.** Before the Chief Magistrate, seeking stay of execution of decree given in Civil Suit No. 089 of 2009 which application was dismissed. The chain of endless and un successful applications and suits above clearly show a design by the appellants to continuously buy time and defeat execution of the decree issued by the High Court in Civil Suit Number 106 of 2001. Mr. Bwangi submitted that the Appellant would be willing and ready to give vacant possession on compensation by the Respondent for the development to the suit property that were done with consent of Parkashkaur who repossessed the property and sold it to the Respondents predecessor in title.

Without prejudging the issue of compensation, it is a triable issue as to whether it is the Respondent to compensate the Appellants. The Respondent is the registered proprietor and has been so declared and decreed by the courts before. This is a commercial property in which the Respondent has invested and it would be illegal to allow the Appellants to perpetuate their illegal occupancy to the prejudice of the Respondent. Despite the fact that the issue of compensation is not Res Judicata, legally it is not a condition precedent to giving vacant possession of the suit property.

Section 17 (2) (a) of The Judicature Act empowers this court to prevent abuse of process of the court by curtailing proceedings or discontinue delayed proceedings. In view of the above history and analysis of the outcomes of the meandering proceedings filed in the courts of law by the Appellant, I find that it is not for them to decide who should compensate them, this would be determined by the court. The Appellant's appear to be insensitive to the fact that they are liable to being sued for illegal occupancy since they occupy the suit property contrary to a High Court decree valid since 18th October, 2001.

In view of the above, I have found no merit in the Appeal as a whole it is dismissed with costs. It is further ordered that the

Appellants shall give vacant possession of Plot 2/4 Garage Street Kabale Municipality to the Respondent without further ado.

Dated at Kabale this **21st** day of **September, 2012.**

KWESIGA

JUDGE

21/9/2012

In the presence of:

Mr. Bwagi for Appellant absent.

Rev. Bikangiso for Respondent.

All the parties are present,

Mr. Joshua Musinguzi- Court-Clerk