

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
LAND DIVISION
CIVIL SUIT NO. 311 OF 2011

ADMINISTRATOR GENERAL OF UGANDA

SUING THROUGH

- 1. KAROLI MWEBE**
- 2. WANYANNA NORAH HARRIET.....PLAINTIFFS**

VERSUS

- 1. KITATA ABUDALLAR**
 - 2. JJUKO BAMWEYANA**
 - 3. MUKASA RONALD**
 - 4. MOSES MUTAAWE**
 - 5. GODFREY NKOBKU**
 - 6. RONNIE MUTYABA**
 - 7. SIRAJE BUTCHAMAN**
 - 8. KIWANUKA KIWANDA**
 - 9. LUKWAGO KASSAJJA**
 - 10. DIANA NAMUKASA**
 - 11. NAMUYIGA AGNES**
 - 12. KOBUSINGYE ROSE**
- DEFENDANTS**

BEFORE HON. LADY JUSTICE PERCY NIGHT TUHAISE
JUDGEMENT

The Plaintiffs instituted this suit against the Defendants for declarations that land comprised in Kyadondo Block 22 Plot 375 forms part of the estate of the late Yozefu Kalibala Sepuya; that the suit land is private mailo land and does not form part of the crown/Kabaka's land; and that the defendants are illegally occupying land comprised in Kyadondo Block 22 Plot 375; an order directing the defendant to vacate the suit land; a permanent injunction to restrain the defendants, their agents and workmen from trespassing on the suit land or in any way interrupting/interfering with the plaintiffs' use and enjoyment of the land; general damages, interest and costs of the suit.

The plaintiffs' case is that since 1958 the suit land has at all material times been registered in the name of Yozefu Kalibala Sepuya. The suit land had at all material times been vacant until about 2005 when the defendants started encroaching on the same claiming that the suit land formed part of crown/Kabaka's land. The plaintiffs told the defendants to stop trespassing but they refused to heed and continued trespassing and illegally selling parts of the suit land. The plaintiffs together with other beneficiaries notified the Buganda Land Board and all relevant authorities about the defendants' encroachment and requested the said Board to notify the defendants that the suit land was not part of crown land. The letters of administration to the estate of the late Sepuya were granted to the administrator general of Uganda who in 2007 gave powers of attorney to the plaintiffs to bring this suit.

The record indicates that the defendants were duly served with court process, and there is an affidavit of service to that effect, but they did not file a defence within the stipulated time. A default judgment was consequently entered against them by the Registrar of this Court on 14th December 2011 and the matter was set down for hearing *ex parte*.

When the case came up for hearing, this court directed that the witnesses should file sworn witness statements after which their Counsel would file written submissions.

I have looked at the witness statements duly filed by the witnesses. However, contrary to court directives, the witness statements were filed but they were not sworn before a Commissioner For Oaths. I do not understand why the plaintiffs' Counsel defied the court directives by not having the witnesses' evidence sworn as required before he filed them.

It is the law that even whether a suit proceeds *ex parte* or not, the burden of the plaintiff to prove his/her case to the required standards remains.

In this case where the witness statements are not sworn, I find it difficult to treat them as credible evidence. I find Counsel's filing of unsworn witness statements when court directed him to file sworn witness statements to be an abuse of court process. This suit is accordingly dismissed, and any costs incurred are to be personally met by the plaintiffs' Counsel for not exercising due diligence in handling this matter.

Dated this 22nd day of November 2012.

Percy Night Tuhaise.
JUDGE.