

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

CIVIL SUIT NO. 737 OF 2006

ERAM MUJUZI KAGGWA ::::::::::::::::::::::::::::::::::::::: PLAINTIFF

VERSUS

CITY COUNCIL OF KAMPALA ::::::::::::::::::::::::::::::::::::::: DEFENDANT

BEFORE: HON. MR. JUSTICE RUBBY AWERI OPIO

JUDGMENT

The Plaintiff Eramu Mujuzi Kaggwa brought this suit against the Defendant Kampala City Council for the following remedies.

- (1) A declaration that the Defendant has no proprietary interest in property comprised in Kyadondo Block 216 Plot 91 at Buye (the suit property).
- (2) A declaration that the Defendant was a mere licensee on the suit property.
- (3) An order for the Defendant to cease managing the school on the suit property.
- (4) A declaration that the Defendant is a trespasser on the suit property and an eviction order for the Defendant to vacate the suit property or in the alternative and order for the Defendant to compensate the Plaintiff with a payment equivalent to the current market price of the suit property.

(5) Mesne profits.

(6) Costs of the suit.

The background facts constituting the cause of action are as follows:-

The Plaintiff's father, the Late Shem Kiseke Mukwaba Tabyetisse was one of the greatest educationists of his time. He founded Kalinabiri Primary School on the suit land. He first established the school from his residential house and later built a block of classrooms which was grass-thatched before proceeding to construct permanent houses around 1949.

In 1956 the Late S. K. Mukwaba offered the school together with the suit land to the Buganda Government in order to promote education in the area. It was agreed that the Buganda government would jointly manage the school with the Committee that was already in place managing the said school affairs. Ssabasajja's Government was to be responsible for meeting the school needs, such as paying teachers' salaries, maintenance of buildings and the school equipments and all school dues collected were to be deposited with the treasury of the Government of Ssabasajja Kabaka. It was agreed that whenever necessary the Kabaka's Government would accept a deduction of not more 10% from the fees collected to be paid to those who founded or who built the school. The above agreement however lasted up to 1967 when the Kingdom was abolished by the Central Government after the Kabaka's crisis of 1966. The Uganda Government eventually took over all the schools managed by the Buganda Government. The Central Government was responsible for the management of the school but during the decentralisation process the Central government appointed Kampala City Council (the Defendant) as its agent to take over the school. Through the Ministry of Education donor fundings were

extended to the school from a Norwegian Religious Organisation in which more classroom blocks, kitchens and toilets were constructed on the suit land.

When the Plaintiff's father died, the Plaintiff inherited the suit property and accordingly became the registered proprietor and part of the foundation body.

Sometime in 2003 the Defendant fell out with the Management Committee of the school which prompted the Plaintiff to file the instant suit.

The Defendant denied the claim in toto and contended inter alia, that it was the Plaintiff and/or his predecessors in title who divested ownership and/or control as well as management of the school in favour of the Defendant and/or the predecessors in title, thereby relinquishing the proprietary or equitable interest in the said school. The Defendant further contended that it came into occupation of the suit school with consent of the Plaintiff/Plaintiff's predecessors in title and has been in occupation since 1956 hence, *if so facto*, it is a lawful tenant with full protection as to its security of tenure.

Alternatively, the Defendant contended that at all material times, it had been in occupation of the land undisturbed by the Plaintiff or anyone acting on his behalf and accordingly enjoys security of occupancy as a bona fide occupant and that the relationship between the Plaintiff/Plaintiff's successors in title and the Defendant/Defendant's successor in title, when the former divested control ownership and management of the school, amounted to a takeover, and/or to partnership/joint venture which has not been dissolved.

During the scheduling conference the following facts and issues were agreed:

Facts:

- (1) The Plaintiff is the registered proprietor of the suit land.
- (2) Part of the school (Kalinabiri) Primary School) is situated on the suit land.
- (3) The school was established in 1956 and still occupies the suit land.
- (4) The Defendant took over management of the school.

Issues:

- (1) Whether the Defendant is a lawful or bonafide occupant of the suit property.*
- (2) Whether the Plaintiff is entitled to vacant possession of the suit property and or to evict the Defendant.*
- (3) Whether the suit was jointly managed by the foundation body and the Defendant.*
- (4) What remedies are available to the parties.*

Resolution of issues:

Issue No. I: Whether the Defendant is a lawful or bonafide occupant of the suit property.

Section 29 of the Land Act (Cap 227) defines a lawful occupant and a bonafide occupant as follows:

“(1) Lawful occupant means;

(a) A person occupying land by virtue of the repealed:-

(i) Busuulu and Envujjo Law of 1928.

(ii) Toro Landlord and Tenant Law of 1937.

(iii) Ankole Landlord and Tenant Law of 1937.

(b) A person who entered the land with the consent of the registered owner and includes a purchaser.

(c) A person who had occupied land as a customary tenant but whose tenancy was not disclosed or compensated for by the registered owner at the time of acquiring the leasehold certificate of title.

(1) Bonafide occupant who before the coming into force of the Constitution

*(a) had occupied and utilised or developed any land unchallenged by the registered owner or agent of the registered owner for twelve years or more;
or*

(b) had been settled on land by the Government or an agent of the Government or an agent of government which may include a local authority;

(2)....

(3) For avoidance of doubt, a person on land on the basis of a licence from the registered owner shall not be taken to be a lawful or bonafide occupant under this section.”

From the evidence on record it is not in dispute that the Plaintiff is the registered proprietor of the suit land there is a certificate of title proving that part of the school (Kalinabiri Primary School) is situated on the suit land since its establishment up to the time the Defendant took over its management from the Plaintiff's Late father Mr. Semu Kiseke Mukwaba, who in 1956 entered an agreement with Buganda Government to jointly manage the school and assist in funding its activities. The said Agreement was adduced in evidence as exhibit P₂. It was executed on 7th August, 1956. This agreement is very important as it created the foundation of the relationship between the Plaintiff and the Defendant. Under **Section 90 of the Evidence Act** once there is a written document it is important to rely on it.

In the said agreement the late Mukwaba wilfully agreed without duress to entrust with the Trustees of the Government of Ssabasajja Kabaka the school as well as the buildings and other property around. The Trustees of the school and the Government of the Ssabasajja Kabaka as well as their agent were from that day onwards to run the school together with the Committee that had been managing the school.

In the agreement Agou Lule, the Education Secretary General of Buganda Government confirmed that the Ssabasajja Government would be responsible for meeting the school needs such as paying teachers' salaries, maintenance of the buildings and school equipments. All school dues collected were to be deposited into the Treasury of the Government of Ssabasajja Kabaka in accordance with the Accounting System of the Treasury. Whenever necessary,

the Kabaka's Government accepted to make a deduction of not more than 10% from the fees collected to be paid to those who founded or who built the school. The school norms and principles were to be adhered to and the school was to be run by the School Management Committee and the School Trustees of the Government of Ssabasajja Kabaka in accordance with the laid down procedure.

The above agreement should be read together with an earlier document signed on 27th March, 1950 by Eramu Mujuzi Kaggwa who offered three acres of land located at F. C. 7245 Volume 633 Folio 10 to Kalinabiri Private School for purposes of running the private school. In case the proprietors of the school failed to use the land for the purpose intended i.e. running the school, the land would be returned to the proprietor. The meeting of the parents of the pupils of the school appointed Haji Juma Gyagenda, Welfred M. S. and Semu Kiseke Mukwaba as Trustees of the school.

From the above evidence, it is clear that the relationship created by the agreement exhibit P₂ and exhibit D₄ does not support the Definition of a lawful or bonafide occupant as spelt out under **Section 29** of the **Land Act**. The Defendant's contention is that it entered the suit land with consent of the owner. The key requirement is that entry into possession must be with the consent of the registered owner of the land.

In the instant case, there was no entry of possession of the suit land. The agreement only entrusted the Defendant with the management of the school. It did not give them any right of tenancy. Furthermore, according to the document giving the school land, the land was supposed to be used only for the purpose of operating a school and failure to subscribe to that, the land had to be returned to its proprietors.

As far as bonafide occupancy is concerned, again, the relationship created by the agreement does not subscribe to the definition of a bonafide occupant as envisaged under **Section 29 (2) (a) of the Land Act**. For someone to be called a bonafide occupant he or she should be a person who before the promulgation of the Constitution of 1995 had occupied or improved certain land without being challenged by the registered proprietor for a period of 12 years. Unlike in lawful occupant, a bonafide occupancy is created without the consent of the land owner.

In this case, the Defendant entered the suit land upon invitation of the Plaintiff for the sole purpose of managing the school which was built on the suit land. The Defendant could not therefore be called a bona fide occupant. It is apparent that the Defendant appreciated this scenario that their role was just to manage the school and that was why Dw₁ the Head Teacher of the school testified that they used to pay royalties to the Foundation body (**exhibit D₂**). It is also clear from the evidence of Dw₁ that the suit property belonged to the Plaintiff. She testified that at one time a telecommunication company went to the school requesting for a lease over the suit property where they could erect their mast and that the school administration told them that the suit property belonged to the Plaintiff. She stated this,

“... we organised a meeting attended by the Plaintiff and Orange Telecom and we told them that the land belonged to the Plaintiff. We told them that for us we deal with day to day management of the school....”

The agreement executed between Orange Uganda Limited and the Plaintiff on 15/11/2008 acknowledged the Plaintiff's rights over the land.

The evidence of Dw₁ was corroborated by that of Dw₂ who testified inter alia, that the Plaintiff's father was the founder of the school and that the Defendant had no interest in the suit property. That, the Defendant only managed/administered the school. She said:

“... KCC has no developments on the land. KCC only supplied furniture, text books and other related scholastic materials. KCC has no interest in the suit property.”

In conclusion it is clear from the above evidence that the Defendant was not a lawful or bonafide occupant of the suit property. The Defendant was just a mere licensee.

Issue No. 2. Whether the Plaintiff is entitled to vacant possession of the suit property and or to evict the Defendant.

The reason for the above contention is the disagreement between the Plaintiff and the Defendant over management. The Plaintiff's father had the desire to support education in Buganda whereby he handed his structures and 3 acres of land with a firm condition that should the user of the land cease to be for education purposes the land should revert to the registered proprietor.

According to the evidence of Dw₁ and Dw₂,

the Defendant was still committed to its role in the management of the school by providing teachers and payment of their salaries and the general facilitation of the school. Accordingly the Defendant became a licensee by invitation. A licensee by invitation is defined by **Black's Law Dictionary, 9th Edition at page 1064 thus:**

“One who is expressly or implied by permitted to enter another’s premise to transact business with the owner or occupant or to perform an act benefiting the owner or the occupant.”

From the testimony of Pw₁, Dw₁ and Dw₂, the Defendant was permitted to enter the suit property to manage education institution which the Plaintiff’s father had founded. The Defendant went ahead to perform their obligation that the foundation body had requested. The only problem was that school management fell out with the foundation body. Being a licensee by invitation the Defendant was protected by the principle of proprietary estoppels. From the evidence on record since 1967 when it took over the school from the Buganda Government, the Defendant has been managing the school until around 2003 when misunderstanding erupted between the Plaintiff and the Defendant, something which I do not think the original founder of the school would have anticipated. However if one considers that the Defendant had run the school for close to 36 years and that through the Ministry of Education, the Central Government had solicited for a donation and received a grant from a Norwegian Religious Organisation which was used to develop the suit land by erecting classrooms, kitchens, toilets, it would be logical to reason that the vision of the Defendant was not far from that of the Plaintiff’s father who founded the school. I am of the view that the fact that the school was being managed by Government of Uganda contributed confidence in the Norwegian NGO to extend funds for the development of the school thereby giving the Defendant proprietary interest in the school. Therefore Defendant cannot be evicted all of a sudden.

Issue No. 3: Whether the school is managed jointly.

The evidence on record clearly shows that the school was not being managed jointly by the committee and foundation body. That explains why the parties

are in court. The issue of management is very pertinent. The Defendant was invited to run the school by an agreement (**exhibit P₂**). Once the Plaintiff are kicked out of the management then they would lose the attachment to the school which equally applies that their desire to support education according to the vision of the Founder (Mr. Mukwaba) would be undone. The foundation body did not want their land to be put to any other use apart from education purpose and to ensure that their vision was embraced, they made sure that the Foundation body was to form part of the school management. Therefore by kicking them out of management would prevent them from monitoring any change of use of the suit property. In short, it was unfortunate that school management and the Foundation body could not see eye to eye.

Issue No.4: Remedies available to the parties.

It is not in dispute that the Plaintiff is the registered proprietor of the suit property. I have also found that the Defendant is not a lawful or bonafide occupant on the land. However the Defendant is a licensee by invitation and they have invested time and money on the suit property which amounted to consideration that has enabled them operate within the agreement. But to solve this situation in its finality two things can be done: First, the Defendant and the Plaintiff should respect each other as both are stakeholders of the vision of the original foundation members. The Defendant should respect the Plaintiff's interest which they know since they referred Orange Telecoms Company to the Plaintiff as registered proprietor of the suit land. If the Defendant wants to kick the Plaintiff out of the management they have to compensate him for the value of the suit land and the original developments made thereon. In my view the option of compensating the Plaintiff would carry the day since it was his interest that he be compensated. This can be done after carrying out an independent valuation of the suit land. That is the only way to avoid any further wrangles in

management and it is the only way the vision of Mr. Mukwaba can be realised which was to promote education for the benefit of the community around the school. The Plaintiff should be awarded costs of this suit since it was the Defendant who forced him to go to Court. I so order.

HON. MR. JUSTICE RUBBY AWERI OPIO

JUDGE

12/3/2012

22/3/2012

Walukaga present for Plaintiff.

Kafumbe Ali holding brief for Mr. Lwere.

Judgment read in Chambers.

HON. MR. JUSTICE RUBBY AWERI OPIO

JUDGE

22/3/2012.

/gnm.