

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT MPIGI**  
**AT MPIGI**  
**HCT-15-LD-CS-045-2017**

**SEMPIIRA NOAH ):::PLAINTIFF**

*SUING THROUGH HIS ATTORNEY BAKKA KENNETH ROGERS*

**VERSUS**

**1.NALIMA GODFREY**

10 **2.KATO JOHN SSALONGO**

**3.WALULYA KULANEMA**

**4.SEMULI ROBERT**

**5.SENTONGO HERMAN**

**6.MUHOOZI RONALD**

**7.BAFAKI JACKSON**

**8.ROBINAH NALUZZE**

**9.NASSOZI JANE:::DEFENDANTS**

**BEFORE HON: JUSTICE OYUKO ANTHONY OJOK**

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**JUDGMENT**

## **BRIEF FACTS**

On 23<sup>rd</sup> March 2017, the Plaintiff filed this suit against the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup> Defendants for declaration that the Defendants are trespassers on the suit land, orders of eviction against all the trespassers, An order of a permanent injunction, General damages for trespass and costs.

The Plaintiff averred that he had a desire to purchase land comprised of Block 226 Plot 26, 27 Measuring 100 acres situated at Buluusi Mpigi District and with that he went ahead to do a search at the land registry as part of due diligence.

10 The Plaintiff contends that the title was in the names of Dorothy Walusimbi, Caxton Kisitu and Walusimbi Annet herein referred to as the vendors with whom he went ahead and purchased the said land which was later transferred in the Plaintiff's names.

The defendants having jointly and severally trespassed on the suit land by having plantations on the suit land without the consent of the plaintiff hence denying the land owner usage of the same. ( See the case of Justine Lutaya Vs Stirling Engineers Co. Ltd SCCA No. 11 /2002 "Where trespass was defined to mean an unauthorized entry upon land which interferes with another person's lawful possession of the land").

## **Issues**

1. Whether the Plaintiff is the rightful owner of the suit property.
2. Whether or not the defendants are trespassers on the suit property.
- 20 3. What remedies are available for the parties.

## **Representation**

During the hearing the Plaintiff was represented by M/s Kazibwe- Kawumi & Co. Advocates while the Defendants were not represented.

On 4<sup>th</sup> March 2019 an order for substituted service was granted to the Plaintiff having failed several times to trace the defendants. See a copy of the Newspaper dated 20<sup>th</sup> March 2019.

The matter proceeded exparte as prayed by counsel for the plaintiff.

### **Submissions**

Counsel for the plaintiff gave oral submissions

Counsel submitted that the Plaintiff bought from Walusimbi Annet, Dorothy Walusimbi, Coxtone Kisitu in 2010 purchased 120 acres which was squatter free. In  
10 2016 when the plaintiff went to inspect the land, he found squatters and plantations but no houses.

During the hearing Court directed Mr. Musisi Edward (Clerk) from this Court to go to the disputed land for purposes of ascertaining whether there is any activity carried out on the said land and the period it was grown.

Mr. Musisi Edward upon visiting the land made a report which led me to the following findings as the matter was heard exparte.

### **Resolution of issues by Court**

This is a civil suit brought by the plaintiff against the defendants for a declaration that the plaintiff is the rightful owner of the suit property and that defendants are  
20 trespassers.

**S. 101 and S.102 of the Evidence Act** provides that, whoever desires any Court to give judgment as to any legal right or liability he or she kmlmust prove that those

facts exist and the burden of proof in a civil suit lies on that person who would fail if no evidence at all was given on either side.

In the case of **Ipolito Semwanga Versus Kwizera Buchana Paul & Others HCCS No. 61/2005** at page 2 from Fort portal by Justice Oyuko Anthony Ojok that,

“Under **S.101 and S103 of the Evidence Act**, the burden of proving all the above allegations lies on the plaintiff”.

In the instant case ,this being the Plaintiffs case, the burden of proof lies on them.

Counsel submitted that the Plaintiff bought 120 acres of land from Walusimbi Annet, Dorothy Walusimbi and, Coxtone Kisitu in 2010 which was squatter free. In 2016  
10 when the plaintiff went to inspect the land, he found squatters who are not lawful bonafide purchasers and that there were only plantations and no houses.

It’s trite law, that where evidence has been proved on the balance of probability by the Plaintiff, and it has never been rebutted ,it’s regarded as conclusive evidence.

Since the plaintiff has proved to Court that the plaintiff bought the said suit land from Walusimbi Annet ,Dorothy Walusimbi and Court went ahead to ascertain what’s on ground by sending the Court staff to find out what’s on the ground and indeed it was the defendants servant who carried out cultivation of seasonal crops without the consent of the plaintiff.

Judgment is hereby entered in favor of the Plaintiff on the following orders.

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1. The Plaintiff is the rightful owner of the suit property comprised on **Block 226 Plot 41 at Buluusi Mpigi District**.
  2. An order of eviction against the entire trespassers.
  3. A permanent injunction restraining the Defendants, their agents and servants from trespassing on the plaintiff’s land is hereby issued.

4. Costs of this suit awarded to the Plaintiff.

Right of appeal explained.

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**HON: JUSTICE OYUKO ANTHONY OJOK**

**JUDGE**

Judgment read in the presence of Counsel for the Plaintiff and the plaintiff's attorney.

Dated this 15<sup>th</sup> day of April 2021.

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**HON: JUSTICE OYUKO ANTHONY OJOK**

**JUDGE**