

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT RUKUNGIRI
CIVIL SUIT NO.0010 OF 2022
(FORMERLY CIVIL SUIT NO.26 OF 2018)

ABDU KAGWA:..... PLAINTIFF

VERSUS

1. LEHAI JAMES NORMAN
2. KEBISON TOWN COUNCIL
3. BURYAHIKA MAKARA
4. KAHANYI CHARLES
5. KARAMUZI ENOCK
6. BEINOMUGISHA PETER
7. MAKURU CHARLES
8. BESIGWA EDSON
9. KETRA BAMULONDE
10.ARINEITWE FRED :..... DEFENDANTS

BEFORE: HON. JUSTICE TOM CHEMUTAI, JUDGE.

JUDGMENT

The Plaintiff filed this suit against the Defendants contending that he was the owner of the suit land, comprised in Block 20, Plot 37, land at Ruzhumbura, Kebisoni Town Council in Rukungiri District. He sought for the following;

- a) A declaration that the Plaintiff is the lawful owner of the suit land.**
- b) A declaration that the Defendants are trespassers on the suit land.**

- c) An order that the 1st Defendant's name be cancelled from the duplicate certificate of title of land comprised in Block No. 20 Plot No. 37 and the Late Sarah Nyiraneza's name be re-instated on the same.
- d) An order that the Commissioner for Land Registration registers the Plaintiff as the lawful owner of the suit land.
- e) A permanent injunction be issued against the Defendants, their agents, servants and anyone claiming from them from further trespassing on the suit land.
- f) An eviction order be issued against the Defendants.
- g) Mesne profits.
- h) General damages.
- i) Costs of the suit.
- j) Interest at court's rate on (i) and (J) from the date of filing till payment in full.

The 1st and 3rd Defendant filed their Joint Written statement of defence. They denied the Plaintiff's averment in the amended Plaint and contented that the suit land belonged to the estate of the late Ibrahim Rwatsika. The 1st Defendant raised a Counter-claim against the Plaintiff and sought for the following;

- a. A declaration that land described as Plot 37, Block 20 Kakinga, Kebisoni forms part of the estate of the late Ibrahim Rwatsika.
- b. A declaration that the purported land sale between the Defendant and the late Sarah Nyiraneza is unlawful.
- c. Cancellation of Letters of Administration of the late Rwatsika granted to the late Sarah Nyiraneza for a just cause.

- d. Cancellation of the letters of administration for the estate of the late Nyiraneza Sarah granted to the Defendant.**
- e. A declaration that the Defendant is a lawful occupant of the estate of the late Ibrahim Rwatsika.**
- f. A declaration that the sale agreement between the Defendant and Ngabirano Florence on the suit land is null.**
- g. A permanent injunction restraining the Defendant from transacting in the estate of the late Rwatsika without the consent of the Administrator.**
- h. General damages.**
- i. Costs of the suit.**

The rest of the Defendants (2nd, 4th, 5th, 6th, 7th, 9th and 10th) also filed a joint written statement of defence. They contended that the suit land was public land under the management of the 2nd Defendant. They averred that the suit land was before the suit, under the control of Kebisoni Sub-county. That the 2nd Defendant created space for lock-up shops on the suit land and thereafter offered to 4th, 5th, 6th, 7th, 8th and 9th Defendants to develop the lock-up shops. The brief facts of the case are that the suit land comprised in Block 20, Plot 37, Ruzhumbura County, Land at Kikinga, currently located at Kebisoni Sub-County in Rukungiri District measuring 14.1 acres, originally belonged to late Ibrahim Rwatsika. The late Ibrahim Rwatsika had two wives, one living in Kabale District (the grandmother of the 1st and 3rd Defendants) and the Late Sarah Nyiraneza who lived on the suit land. The late Sarah Nyiraneza was the official wife of the late the Ibrahim Rwatsika, having gotten married on 8th September 1956. However, the two did not produce children. The late Ibrahim Rwatsika passed on in 1969 and the late Sarah Nyiraneza took full

possession of the suit land. She also obtained the Letters of Administration vide Administration Cause No.21 of 1988. Accordingly, on 2nd February 1989, she was registered on the certificate of title as the Administrator of the estate of late Ibrahim Rwatsika.

The late Sarah Nyiraneza passed on in 1995. The Plaintiff on 29th April 2004, was granted the Letters of Administration for the estate of the late Sarah Nyiraneza. The Plaintiff tried to register himself on the certificate of title. The 1st Defendant lodged a caveat on the same on 31st March, 2005, alleging that the late Sarah Nyiraneza had fraudulently obtained Letters of Administration to the estate of the late Ibrahim Rwatsika and she fraudulently registered herself on the certificate of title to the suit land.

The 1st Defendant was, on the 5th July, 2018, registered on the certificate of title as the Administrator of the estate of late Sarah Nyiraneza in Administration Cause No.015 of 2018 and 676 of 2018 of the late Ibrahim Rwatsika. The 1st Defendant further subdivided the suit land which was originally was Plot 37 into plots 447,448 449,450,451 and 452.

The Plaintiff averred that he is the owner of the land comprised in Block 20, Plot 37 land at Ruzhumbura, measuring approximately 14.1 acres (suit land). He claimed that he purchased the suit land from the Late Sarah Nyiraneza (a widow and Administrator of the estate of the late Ibrahim Rwatsika) in two separate transactions of 1989 and 1993.

The Defendants disputed the Plaintiff's claim of ownership of the suit land. The 2nd Defendant averred that the suit land is public land while the 1st and

3rd Defendant averred that the suit land belonged to the estate of the late Ibrahim Rwatsika and which was being administered by the 1st Defendant.

Representation

During the hearing of this matter, the Plaintiff was represented by Counsel Atuhaire Phiona from M/s Atuhaire Phiona & Co. Advocates and the Defendants were represented by Counsel Mwensigye Mark from M/s Mark Mwensigye & Co. Advocates.

There were agreed facts which included the following;

- The suit land was titled land comprised in Block 20, Plot 37, Ruzhumbura County, Land at Kikinga, measuring 14.1 acres, located at Kebisoni Town Council, Rukungiri District.
- That the suit land belonged to the late Ibrahim Rwatsika and later was registered in the name of the late Sarah Nyiraneza (widow).
- That Plaintiff occupies part of the suit land.
- That the 2nd Defendant has licensees who occupy the rest of the suit land.
- The suit land is registered in the name of 1st Defendant.
- That suit land was subdivided into plots i.e. 447,448 449,450,451 and 452.

The following issues were framed at trial;

- 1. Whether the land sale transaction between the Plaintiff and the late Sarah Nyiraneza was lawful.**

2. Whether the suit land forms part of the estate of the late Ibrahim Rwatsika.
3. Whether the 2nd Defendant owns part of the suit land.
4. Whether the cancellation of the late Sarah Nyiraneza as Administrator of estate of the late Ibrahim Rwatsika was lawful.
5. Whether the Plaintiff / 1st Defendant lawfully obtained the Letters of Administration for the estate of the late of the Sarah Nyiraneza
6. Whether the Plaintiff has a cause of action against the Defendants and whether the 1st Defendant in the counter-claim has cause of action against the Plaintiff.
7. Remedies.

In the course of the hearing of the case, the parties entered into a consent that the suit against the 3rd, 4th, 5th, 6th, 7th, 8th and 9th Defendants be unconditionally withdrawn and the said Defendants were to be bound by the outcome of the case since they derived their interests from the 2nd Defendant. Further, the 10th Defendant by consent of the parties was struck off from the record as a Defendant.

The Plaintiff called five witnesses who include, the **PW1**, the Plaintiff, **PW2**, Kangangi Saniya, the Plaintiff's wife, **PW3**, Beinomugisha James, who allegedly wrote the sale agreement between the Plaintiff and the late Sarah Nyiraneza, **PW4**, Muzamiru Kagwa, son of the Plaintiff, **PW5**, Generous Nakantu Kwikiriza.

The Defendants called four witnesses who included, **DW1**, Twesigye Edison, **DW2**, Twinamasiko Emmanuel, brother to 1st Defendant, **DW3**, Keshaha

Alderine, the Town clerk for the 2nd Defendant, **DW4** Agaba Martin, the Senior Land Management Officer for Rukungiri District.

Court's determination

I will first deal with issue five on the interest of 2nd Defendant in the suit land. The 2nd Defendant and its licensees in their joint written statement of defence averred that the contested suit land existed as public land "oruberera" prior to the tarmacking of Ntungamo- Rukungiri road. That prior to the creation of 2nd Defendant, the suit land belonged to the Kenbisoni Sub-county, and thereafter it was taken over by the 2nd Defendant.

I note that the suit land was titled land, which originally belonged to late Ibrahim Rwatsika as the first registered proprietor. It was thereafter transferred to the Late Sarah Nyiraneza and finally to the 1st Defendant. It was an agreed fact that the suit land belonged to the late Ibrahim Rwatsika. On record, there is a Boundary Opening Report, dated 24th January, 2022 done by Legacy Survey Consult which shows the previous ownership of the suit land and indicates that the suit land is currently held as a freehold interest in the names of the 1st Defendant.

The 2nd Defendant, DW3 and DW4 did not show by evidence when and how the Government acquired the suit land to become public land as they alleged. The evidence on the file as I have shown above indicates that the suit land is a freehold interest and currently registered in the names of the 1st Defendant' (a private individual).

I therefore hold the suit land was not public land hence the 2nd Defendant did not have an interest in the suit land which was originally owned by the late Ibrahim Rwatsika.

On issue one, whether the land sale transaction between the Plaintiff and the late Sarah Nyiraneza was lawful:- The Plaintiff averred that he purchased the suit land from the late Sarah Nyiraneza, who was the widow of the late Ibrahim Rwatsika. The Plaintiff presented to the Court a copy of the alleged land sale agreement dated 13th May, 1995, between him and the late Sarah Nyiraneza, which was admitted as exhibit PE1.

The suit land being registered land, a valid sale agreement between the Plaintiff and the late Sarah Nyiraneza should have at least led to the signing of the transfer forms by the seller (late Sarah Nyiraneza) in favor of the Plaintiff, which in this case was not done yet both parties were knowledgeable that the suit land was registered land. Hence purchase of the suit land by the Plaintiff is highly doubtful. The 1st Defendant adduced evidence that the late Sarah Nyiraneza hid from the Plaintiff the certificate of title of the suit land at the Ministry of Lands. This further shows that there was no intention of the late Sarah Nyiraneza to sell the suit land to the Plaintiff as he alleged.

I therefore, find that there was no valid land purchase transaction of the suit land by the Plaintiff from the late Sarah Nyiraneza.

Needless to say, from the Plaintiff's evidence and *locus in quo visit*, there is no doubt that the Plaintiff has been in exclusive possession of part of the suit land, which is the upper part across the Rukungiri-Ntungamo Road. The

Plaintiff has settled on suit land from 1978 and he has a homestead on the part of the suit land together his family.

DW1 in his testimony affirmed the fact the Plaintiff was using part of the suit land and he stated that the Plaintiff had a homestead with the late Sarah Nyiraneza on the suit land.

In case of **Omunga Bakhit v Agrasiela alias Daktari** , Civil Appeal No. 0005 of 2010, it was held;

“Uninterrupted and uncontested possession of land for over twelve years, hostile to the rights and interests of the true owner, is considered to be one of the legally recognized modes of acquisition of ownership of land (see Perry v. Clissold [1907] AC 73, at 79). In respect of unregistered land, the adverse possessor acquires ownership when the right of action to terminate the adverse possession expires, under the concept of “extinctive prescription” reflected in sections 5 and 16 of The Limitation Act. In such cases, adverse possession has the effect of terminating the title of the original owner of the land (see for example Rwajuma v. Jingo Mukasa, H.C. Civil Suit No. 508 of 2012). As a rule, limitation not only cuts off the owner’s right to bring an action for the recovery of the suit land that has been in adverse possession for over twelve years, but also the adverse possessor is vested with title thereto.

The law of limitation guarantees that people should be free to get on with their lives or businesses without the threat of stale claims being made. The Limitation Act also encourages claimants to bring their claims promptly and not, in the old phrase, “to sleep on their rights”. Section 5 of The Limitation

Act, which provides for limitation of actions for the recovery of land, states as follows;

No action shall be brought by any person to recover any land after the expiration of twelve years from the date on which the right of action accrued to him or her or, if it first accrued to some person through whom he or she claims, to that person."

Therefore as much as the Plaintiff failed to prove valid purchase of the suit land from the late Sarah Nyiraneza, there was uncontested evidence that he had been in adverse possession of part of the suit land, that is the land across the Rukungiri- Ntungamo Road, where he has exclusive possession. Hence per the doctrine of adverse possession, the Plaintiff is deemed to have acquired legal ownership rights in the said part of the suit land.

I deal with issues 2, 4, and 5 together because they are interrelated and they concern the previous ownership of the suit land and the estates of the late Ibrahim Rwatsika and late Sarah Nyiraneza. It was an agreed fact that the suit land belonged to the late Ibrahim Rwatsika and it was later registered in the name of the late Sarah Nyiraneza. While resolving issue 5, I found that the suit land was originally owned by the late Ibrahim Rwatsika and upon his demise, it was transferred to his wife, the late Sarah Nyiraneza. This resolves issues number two in the affirmative.

On the issues 4 and 5, which concerns with the cancellation of the Letters of Administration for late Sarah Nyiraneza as Administrator of estate of the late Ibrahim Rwatsika was lawful. If the Plaintiff / 1st Defendant lawfully obtained the Letters of Administration for the estate of the late of the Sarah Nyiraneza:-

The Defendants did not adduce any evidence to the effect that the late Sarah Nyiraneza fraudulently acquired the Letters of Administration to the estate of the late Ibrahim Rwatsika. The late Sarah Nyiraneza was legally married to the late Ibrahim Rwatsika on 8th September, 1956. A copy of the marriage certificate was exhibited in the Court. As the married wife of the late Ibrahim Rwatsika, she had legal rights to apply for the Letters of Administration for the estate of her Husband. As I have earlier noted in this judgment, the late Ibrahim Rwatsika had two wives, one at Kabale (who was the grandmother of the 1st Defendant) and the late Sarah Nyiraneza, whose matrimonial home comprised of the suit land. The fact that she did not produce children, did not stop her from acquiring the Letters of Administration.

I, therefore, find that the late Sarah Nyiraneza legally acquired the Letters of Administration for the estate of the late Ibrahim Rwatsika.

I will proceed with the process of cancellation of the Plaintiff's Letters of Administration and that of late Sarah Nyiraneza and further determine if the 1st Defendant lawfully acquired the Letters of Administration for the estate of late Sarah Nyiraneza and late Ibrahim Rwatsika.

The late Sarah Nyiraneza was granted the Letters of Administration for the state of the late Ibrahim Rwatsika under Administration Cause No. 21. Of 1988. The Plaintiff on 29th April, 2004 acquired from the Court the Letters of Administration for the estate of the late Sarah Nyiraneza under Administration Cause No. 0025 of 2004.

The 1st Defendant under Administration Cause No. 015 of 2018 applied for Letters of Administration of the estate of the late Ibrahim Rwatsika and he

was granted the same to administer the estate of the late Ibrahim Rwatsika and that of late Sarah Nyiraneza under Administration No.676 of 2018.

The proceedings that led to the grant to 1st Defendant of the above Letters of Administration were exhibited by the Plaintiff as PE.8. From the proceedings, the Learned Assistant Registrar, noted well that Letters of Administration for the estates to the late Ibrahim Rwatsika were granted to the late Sarah Nyiraneza and the Court had a copy of the grant on the file.

The Learned Assistant Registrar was aware that the Letters of Administration granted to the late Sarah Nyiraneza had not been revoked. The 1st Defendant informed the Assistant Registrar that he was not aware whether the said letters had been revoked or surrendered to the Court.

The Assistant Registrar without ascertaining the revocation of the Letters of Administration for late Sarah Nyiraneza proceeded and identified the 1st Defendant and recommended to the Judge, to grant the Letters of Administration and the same was granted on 6th June, 2018 to the 1st Defendant.

It was irregular for the Assistant Registrar to recommend the 1st Defendant to be granted the Letters of Administration for the estate of late Ibrahim Rwatsika, yet the same had been granted to late Sarah Nyiraneza and had not been be revoked. Furthermore, the Plaintiff had been granted the Letters of Administration for the estate of the late Sarah Nyiraneza.

The 1st Defendant was aware that the Letter of Administration for the late Ibrahim Rwatsika had been granted to late Sarah Nyiraneza, but he proceeded

and applied for the same. The 1st Defendant had earlier tried to apply for the Letters of Administration for the estate of late Sarah Nyiraneza under Administration Cause No.73 of 1995, however, it was caveated by the Plaintiff. The 1st Defendant applied for the Letters of Administration for the late Ibrahim Rwatsika, which were granted to him but further he was granted Letters of Administration for estates the late Sarah Nyiraneza. The Plaintiff had been appointed the Administrator of the estate late Sarah Nyiraneza and his Letters of Administration had not been revoked. This manifested taints of fraud on the part of the 1st Defendant.

In the matter of an application for revocation of Letters of Administration and grant instead to Piwa Clare and Biywaga Joan (Miscellaneous Civil Application No. 0053 of 2016). Justice Stephen Mubiru, stated that;

“There is only one way in which the name of an Administrator of an estate may be removed from a grant and that is by revocation of the grant and the making of a fresh grant. A court cannot simply strike out the name of one Administrator from a grant and continue on without revoking the grant. A fresh grant should be made because a grant is a public document and often must be produced to third parties as proof that the holder is the personal representative and thus enable him or her to administer the estate”

I, therefore, find that, the granting of Letters of Administration without revocation of the Letters of Administration granted to the Plaintiff and the late Sarah Nyiraneza over the estate of late Ibrahim Rwatsika was unlawful.

On issue 6, Whether the Plaintiff has a cause of action against the Defendant and the 1st Defendant has a cause of action against the Plaintiff:-

A cause of action was defined in the often cited case of **Auto Garage Versus Motokov (1971) E.A 514**, to the effect that a cause of action accrues when the Plaintiff enjoyed a right, that right was violated and that the Defendant is responsible. I find that the Plaintiff has no cause of action against the 1st Defendant as an individual. Further, I find partly, merit in the 1st Defendant's Counterclaim.

Before taking leave of the matter, I wish to note, that it was clear that the Plaintiff is in possession and he owns the upper part of the estate as earlier discussed in this Judgement. The 1st Defendant after unlawfully obtaining the Letters of Administration for suit land, proceeded to subdivide the suit land into Plots 447, 448, 449, 450, 451 and 452 from original Plot 37 of the suit land.

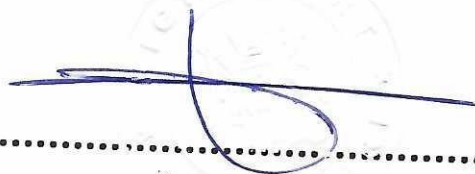
The 1st Defendant sold to the Uganda Nation Roads Authority (UNRA) Plots 447 and 449 measuring 0.060 hectares and 0.2008 hectares to be used as Road reserve for the Kagamba-Rukungiri Road Projects. Some of the Defendants i.e 3rd- 10 derived their interest from UNRA and some from the 1st Defendant. The parties who derived the interest from the 1st Defendant like UNRA and some of the Defendants are in law are called the bonafide purchasers for value without notice. Therefore, their titles will not be affected by the irregular actions of the 1st Defendant.

Therefore, I find no merit in the Plaintiff's suit. It is therefore dismissed with the following orders.

- 1. The suit land originally belonged to the estate of the late Ibrahim Rwatsika.**

2. The Plaintiff shall be entitled to the part of the suit land above Rukungiri -Ntungamo Road, where he has been in adverse possession.
3. The part of the suit land at the lower side of the Road, where the 1st Defendant created Plots belong to the owners.
4. The remaining land below the Road belongs to the family of the late Ibrahim Rwatsika.
5. The Plaintiff has not proved that he purchased the whole suit land from the late Sarah Nyiraneza.
6. The costs of the suit are awarded to the 1st Defendant.

Delivered at Rukungiri this.....^{7th}..... day of.....*March*..... 2024.



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TOM CHEMUTAI
JUDGE