

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT JINJA**

CIVIL SUIT NO. 15 OF 2002

NAKILULU NURU ::: PLAINTIFF

VERSUS

KABIRA MOSES ::: DEFENDANT

BEFORE: HON.MR. JUSTICE BASHAIJA .K. ANDREW

JUDGMENT.

Nakilulu Nuru (herein after referred to as the “plaintiff”) brought this suit against *Kabira Moses* (hereinafter referred to as the “defendant”) for orders, *inter alia*, of eviction against the defendant, general and special damages, permanent injunction restricting the defendant from further trespass on the land situate at Mawoitto Central Kakira, Jinja District (hereinafter referred to as the “suit land”) and costs of the suit. The defendant denied the entire claim and prayed for dismissal of the suit with costs.

It is called for to restate the background facts as can be summarized from the evidence adduced by both parties for ease of following. On 17.3.1994, one *Byakiika Haruna* (now deceased) bought the suit land from one *Topista Wambuyara*, and a sale agreement (*Exhibit P.I*) was executed to that effect. The deceased who was husband to the plaintiff took possession and occupied the property.

Later on 24.09.1997, the said *Byakiika Haruna* sold the same piece of land to the defendant, and a sale agreement (*Exhibit D2 a*) was also concluded. The purchaser then gave the vendor a period of three months to vacate the land. However, after the expiry of the period when the vendor was required to vacate he did not comply. The purchaser then sued the vendor to give vacant possession and on 17/02/2001 the High Court at Jinja ordered for the eviction of the vendor; which was done and the purchaser took immediate vacant possession of the suit property.

Meanwhile on 3.3.1998, the plaintiff had reported her husband to Legal Aid of Uganda Law Society, as per “*Exhibit P.II*” that he sold the suit property and bought land elsewhere with the proceeds, but did not develop it into a residential house for her to live in with her children. According to the contents of “*Exhibit P.II*” tendered in evidence by the plaintiff, the deceased was supposed to refund the purchase price to the defendant, and if he failed to do so, the plaintiff would leave the suit land and the deceased would give her Shs. 500,000/- to start a business that would help her to look after their children. Apparently, the husband did not comply as agreed and the family was subsequently evicted in 2001 on court orders stated above.

After the death of her husband, the plaintiff instituted the instant suit claiming the suit property and seeking orders already stated above. She called evidence of two witnesses (*hereinafter abbreviated as “PWs”*) including herself to prove her case. The defendant also adduced evidence of three witnesses (*hereinafter abbreviated as “DWs”*) including himself. He denied the claim and insisted that he lawfully purchased the suit property, which now legally belongs to him.

The plaintiff was originally represented by *M/s. Legal Aid of Uganda Law Society*, while the defendant was represented by *Mr. Okalang of M/s. Okalang Law Chambers*. The Plaintiff cross-examined the witnesses for the defence herself because she was no longer represented by her former lawyers. The following issues emerged from the proceedings:

- 1. Whether the suit land belongs to the plaintiff.**
- 2. Whether the defendant lawfully purchased the suit land.**
- 3. Whether the plaintiff is entitled to the remedies sought.**

On the first issue the plaintiff testified that she purchased the suit property together with her late husband, and that he should not have sold it without her consent as stipulated by the law. She tendered in evidence a sale agreement, “*Exhibit P.1*”, between her late husband and one Topista who sold the suit land to the deceased, to prove that the land

belonged to her. The second witness's evidence was found to be irrelevant to the issues under consideration and needs not be reproduced for avoidance of surplusage.

The defendant called evidence of DW2 one Sulait Byakiika, the elder brother to deceased and DW3, one John Kamau, formerly the L.C.1 Chairperson Mawoito in Kakira; the area where the suit land is situate. Both witnesses testified to have witnessed the sale agreement between Topista and late Byakiika Haruna, whom they insisted bought the land in his own right and not jointly with his wife.

Indeed "*Exhibit P.1*", does not feature the name of the plaintiff either as purchaser or even as a witness. According to her own evidence, the plaintiff never witnessed the sale agreement because she was away at that time, and it follows that she could not have purchased the land as she claims. The suit land was solely purchased by her husband. The plaintiff has failed to prove that she participated in or purchased the suit land. If she had to lay any claim to the suit land, it was through her late husband as a spouse but not through outright purchase by herself or jointly with the deceased as she claims.

The deceased husband through whom the plaintiff would claim sold the suit land on 17.9.1997 to the defendant. Again the sale agreement was witnessed by DW2 and DW3, the then L.C.1 chairman of the area. The main contention by the plaintiff during the trial was that she was never made party to the sale transaction, and that she had not given her consent to sell the suit land.

With due respect, the plaintiff's contention is misdirected both in fact and in law. As a matter of fact, there is no requirement that a spouse signs an agreement as a witness for a transaction to be valid. For as long as the owner of the property could sell it, there would be no requirement that the spouse or children of the seller must sign as maintained by the plaintiff.

The plaintiff in paragraph 7 of her plaint states that:

“7. The transaction between the plaintiff (sic) and my husband was illegal for want of compliance with the Land Act and therefore abinitio (sic) and the defendant has not tiled in the said kibanja.”

If by reference to the “**Land Act**” the plaintiff meant **Section 39 (formerly S.40)** of the **Land Act (Cap 227)** which requires spousal consent before transacting in land, then it would be a misreading of the law as it relates to this particular case because the transaction was entered into on 17.9.1997, whereas the commencement date of the **Land Act (supra)** is 02.07.1998; which was long after the sale had been concluded. The defendant could, therefore, not be in breach of the law which was non-existent at the time the transaction was entered into.

It would also appear, on basis of the evidence adduced, that the plaintiff was not being honest when she testified that she was not aware of the sale transaction between her late husband and the defendant. DW1 and DW2 the elder brother to the deceased testified that the deceased sold the suit land after duly consulting with the plaintiff so that they could use the proceeds to purchase a bigger plot of land for the family elsewhere. This fact is also corroborated by “*Exhibit P.II*” which is the attempted settlement between the deceased and plaintiff before the Legal Aid Project of the Uganda Law Society, when the deceased husband agreed that he would use the proceeds from the sale of the suit land to buy another piece of land for the family and construct a residential house for the plaintiff and the children.

In addition, the uncontroverted testimony of DW2 is to the effect that immediately after the sale, the deceased physically handed over the money to the plaintiff, and that she was very well aware of that fact. Indeed, court observes that the plaintiff did not rebut this piece of evidence or take on the witness on this issue, whom she cross-examined herself. The evidence points to the fact that the plaintiff was all along well aware of the sale transaction. As rightly submitted by Counsel for the defendant, she only filed this suit against the defendant as an afterthought. Accordingly, the plaintiff has dismally failed to prove her ownership to the suit land on balance of probabilities.

On the second issue, the defendant adduced evidence as contained in “**Exhibits D 2 (a) & (b)**” to the effect that he purchased the suit land from the deceased in presence of DW2 the elder brother to the deceased, and DW3 the L.C.1 Chairman of the area at the time, among others. That when the deceased attempted to resist handing over vacant possession, the High Court ordered vide “**Exhibit D1**” that he vacates the suit land for the defendant, who was adjudged the lawful owner of the suit property. Item (a) of the decree states as follows:

“(a) That the plaintiff (defendant now) is declared the owner of the suit land together with the house thereon, situate at Mawoito Central Kakira, Jinja District.”

This court would do better than to gainsay itself on the above order, but rather to re-confirm the same with the effect that the defendant is the lawful owner of the suit land. The suit is accordingly dismissed with costs to the defendant.

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BASHAIJA .K. ANDREW
JUDGE
10.01.2013