

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**CIVIL DIVISION**  
**CIVIL SUIT 437 OF 2005**

**MUSA NSUBUGA ::: PLAINTIFF**

**VERSUS**

**1.DR. YUSUF KIZITO**

**2. NASSOZI KIZITO ::: DEFENDANTS**

**BEFORE: HON JUSTICE ELDAD MWANGUSYA**

**JUDGMENT**

The plaintiff in this suit, MUSA NSUBUGA filed a suit against his brother DR. YUSUF KIZITO and NASSOZI M. KIZITO, a wife of Dr. Yusuf Kizito. The claim against the defendants was for:-

- a. General damages for breach of contract
- b. An order of specific performance
- c. A permanent injunction restraining the defendants, their agents, servants and/or workmen from interfering and/or in any way by interrupting the plaintiff's use and enjoyment of the suit land.
- d. Duly executed transfer forms in favour of the plaintiff.
- e. Costs of the suit.
- f. Any other relief as court may deem fit and just.

According to the plaint the facts constituting the cause of action are that the plaintiff supplied and transported clonal coffee clones and seedlings to the defendants who were establishing a coffee farm/shamba in Buwambo. In consideration of the work done for them the 1<sup>st</sup> defendant

executed an agreement in which the plaintiff was given approximately 0.25 decimals of land on Block 197 Plot 330. The first defendant showed him the plot of land of which he took possession and started utilizing by planting food crops and a banana plantation. He also fenced it off and made bricks for his house. When the plaintiff approached the defendants to give him a certificate of title and sign Transfer Forms in respect of the property they refused to do so. The Defendants claimed that they deserved the right to identify another piece of land for the plaintiff who brought this action for the reliefs already stated in this judgment.

In their Written Statement of Defence the defendants denied that they had given the plaintiff land in consideration of any services rendered but in sympathy of the life he was leading. They denied that the 1<sup>st</sup> Defendant at any time conducted the plaintiff around this suit property, identified or allocated it because the land is co-owned with the 2<sup>nd</sup> Defendant. They averred that the plaintiff never brought any transfer forms because the land had never been identified surveyed or demarcated.

At the commencement of the trial the parties agree on the fact that a portion of land measuring 0.25 of an acre was given to the plaintiff by the Defendants.

There were two issues framed for resolution, namely:-

1. The location of the given portion of Kyadondo Block 197 Plot 330 Kitetika.
2. Remedies available.

The plaintiff's testimony was that he made a coffee shamba for the defendants at Buwanika Buwambo in consideration of which he was given the piece of land. According to the plaintiff the 1<sup>st</sup> defendant executed an agreement which was tendered in court as exhibit P.1. The plaintiff testified that he inspected the land which was shown to him by the 1<sup>st</sup> defendant and the inspection was in presence of Mwalimu Rashid Wamala who testified in this court as Pw.2. He started utilizing the land and the 1<sup>st</sup> defendant wrote a letter to him confirming that he had shown the plaintiff the piece of land and was requesting him to keep some coffee seedlings for him. The letter was exhibited and marked Exh. P.2. The letter was disputed by the defendant who denied having written it.

PW2 Wamala Rashid testified that he was present when the first defendant showed the plaintiff a piece of land where to build. The plot was near a borehole.

The first defendant, Yusuf Kizito testified that he knew the plaintiff as his young brother whom he had brought up. Following his expulsion from the seminary the plaintiff returned home when he was psychologically disturbed. They gave him a quarter of an acre of land at Kyadondo Block 197 Plot 330 but it was not in consideration for any work the plaintiff did for them. He testified that the consideration was love and affection. His explanation for the non transfer of the title to the plaintiff was that by the time they gave the land to the plaintiff they had not secured the title from one Hajati Najjuko from whom they had bought the land and when the title came out the position of the plot had changed and it was not possible to give the plaintiff the plot he was claiming and he never showed him any demarcation of the plot. He was ready and willing to give the plot he promised him in the area.

In cross examination he denied having breached any agreement but could not give the plaintiff the plot he was claiming on the main road because he did not own it.

The first defendant died after he had given his testimony in court. After his death, his elder brother Henry Lwanga was substituted as defendant in this suit after obtaining Letters of Administration for the estate of his brother.

In his testimony Henry Lwanga testified that he was aware that his late brother gave the plot of land to the plaintiff in consideration for the work the plaintiffs did to propagate clonal coffee seedlings from the plaintiff nursery at Kasawo which he transported and planted at the deceased's land at Buwambo. The deceased executed an agreement witnessed by the late Kezimbira Miyingo and the 2<sup>nd</sup> defendant. The deceased informed them and their late father of this agreement. Later the 2<sup>nd</sup> defendant started complaining that the plaintiff had been given a piece of land that was strategic and advised her husband that the plaintiff should be given another plot. But in the meantime the plaintiff had started utilizing the plot by making about 10,000 bricks and enclosing the plot with barbed wire. The 2<sup>nd</sup> defendant was not happy with the development and she destroyed the bricks and the barbed wire installed by the plaintiff. His late brother left a will in which he stated that the case brought to court by the plaintiff would be decided by court. The will confirmed what he stated in his testimony that he had given the piece of land to the plaintiff but it was not on the consideration of the work he allegedly did for him. The will which was tendered as an exhibit was dated the 24.12.2005. The deceased defendant testified on 13.06.2007.

The 2<sup>nd</sup> defendant did not testify in this trial. She never attended court when she was summoned to do so for reasons best known to her. Later on in the trial her counsel also absconded from the trial. From the testimony of her late husband and that of the current co-defendant the issues framed for resolution of the case will be determined.

After admitting the fact that the defendants gave the plaintiff a plot of land measuring 0.25 of an acre there was a contention as to whether or not it was in consideration of work the plaintiff did for the defendants or for love and affection as claimed by the defendants. My observations on this issue is that from the testimony of the plaintiff supported by that of Henry Lwanga the defendants gave the plaintiff the piece of land in consideration for work done by the plaintiff for the defendants. Henry Lwanga an elder brother of both the plaintiff and the deceased defendant was aware of the work the plaintiff did for the defendants and the circumstances under which the plaintiff was given the piece of land and I believed his testimony. I considered him an honest witness who in absence of the 2<sup>nd</sup> defendant genuinely wants to see an end to this dispute. My second observation is that whether it was in consideration of the work done or for love and affection the plaintiff was given the piece of land irrespective of the consideration. This is the land that he is claiming.

The second contention was that the defendants did not identify the piece of land that they had given to the plaintiff. The explanation of the deceased defendant was that they could not identify it because it had not been transferred from Hajat Mariam Najjuko from whom they had purchased the land. My observation is that the explanation rendered by the deceased does not seem to be correct.

He tendered a land title indicating that the land title in issue was transferred from Hajat Mariam Najjuko to Dr. Yusuf Kizito and Nassozi Mwamini Kizito on 31.10.2000. The agreement donating the piece of land in dispute was executed on 03.01.2001 which means that by the time the defendants executed the agreement they knew the location of the land donated to the plaintiff. Arising out of this issue was as to whether or not the defendants identified the piece of land donated to the plaintiff and showed it to him. Both the plaintiff and Henry Lwanga testified that the plaintiff was shown the piece of land which he fenced off from the rest of the defendants' land and started utilising it. In the agreement donating the land which the defendants admitted, it is stated that "*Musa has to be speedy in demarcating it off his land from ours on Block 197 Plot No. 330 at Kitetika starting from the main road*". No one has authority to vary this donation."

This indicates that from the time the land in issue was donated the defendants knew the land they had given to the plaintiff and from the testimony of the plaintiff and that of Henry Lwanga, the plaintiff was shown his piece of land which he started developing. This court does not believe that the defendants donated an unidentified plot of land to the plaintiff on 03.01.2001 and for more than five years they had not demarcated his plot from their one acre and it took this suit filed on 02.06.2005 for them to come out and say that by the time they gave him the plot of land they had not fully acquired it from the previous owner and did not know its extent when according to the evidence adduced by the plaintiff and Henry Lwanga the plaintiff started

developing his plot as soon as it was given to him because as I have already observed in this judgment the defendants had already acquired the land from the previous owner and the question that they did not know how far it extended did not arise. It is likely that after the plaintiff had been given the land the defendants changed their mind as to which part of the land the plaintiff should be given and that is why they did not want to transfer the area that he had started utilizing within their knowledge. Henry Lwanga said this much in his testimony which I believe.

In conclusion of the first issue the finding of this court is that the part of the land the plaintiff fenced off and started using is the one given to him by the defendants and their refusal to transfer it to him was in breach of contract and arising out this finding court now considers as to what remedies are available to the plaintiff.

The first remedy prayed for are General damages for breach of contract. On the evidence that the plaintiff was given a piece of land which he started utilizing until he was interrupted by the defendants especially the second defendant who destroyed his barbed wire and bricks he is entitled to damages for breach of contract. As already observed in this judgment the land was given to him in consideration for the work he had done for the defendants. He was rewarded for his sweat. The same defendants who voluntarily gave him the land should have completed the process without any hussle. He should have been allowed to continue his activities in the land without any interference from the defendants. This court will make an award of shs 5.000.000= (five million only) as general damages for the inconvenience the refusal to complete the transfer of the land has caused him.

The second remedy prayed for is an order of specific performance to be discussed together with the fourth one which is execution of Transfer Forms in favour of the plaintiff for the portion of the land measuring 0.25 of an acre. These two remedies are available to the plaintiff to give effect to the agreement executed by the defendants in respect of the land given to him. It is ordered that the defendants transfer 0.25 of an acre consisting of the portion of the land the plaintiff had fenced off and is known by both defendants as testified by Henry Lwanga, a defendant in this suit.

Following from the above a permanent injunction restraining the defendants, their agents, servants and/or workmen from interfering and/or in any way by interrupting the plaintiff's use and enjoyment of the suit land is also granted.

The defendants will meet the costs of the suit

Judgment is entered accordingly.

**Eldad Mwangusya**

**J U D G E**

**15.02.2013**

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