

surprised on 6/8/2007 when the plaintiff wrote to him over signing a tenancy agreement in respect of the property in dispute which he ordinarily knew that it's Hoima Town Council that was in charge of vacating its tenants.

Evidence of the parties at trial- The Plaintiff's case

PW1 KAKOOZA KABYANGA CHARLES stated in examination in chief that on 6/9/2006 he purchased the suit property comprised in LRV 3921 Folio 25 Plot 23 circular road Hoima, measuring approximately 0.419 hectares by way of public service Housing sale after it had been offered to him by Uganda Land Commission for valuable consideration of UGX 37,000,000/= (Thirty-Seven Million Uganda Shillings only). That he was later registered as owner thereof on 8/10/08 and further stated that at the time of purchase, the defendant was residing in the Boys quarters on the suit property. That the defendant knew well about the well-publicized sale of Pool Houses by the Government of the Republic of Uganda to sitting tenants and that he had applied for the suit property.

He further stated that he notified the defendant of his purchase of the suit property immediately after the purchase in September 2006 , he notified him in writing of change ownership and asked him to enter into a tenancy agreement tenancy agreement with him on 6/8/2007, if he still wished to stay in the premises.

That the defendant in a letter dated 14/08/2007 refused to negotiate a fresh tenancy undertaking with him as a new owner and obstinately insisted that his landlord was Hoima Town Council. It was further stated in the plaintiff's statement that the defendant was staying in his house without his consent and was trespassing on the property since 2006 upon which he filed the suit No. 073 of 2009 to enforce his rights. That he stayed in the house since 2006, refused to pay rent, resisted eviction and denied entry into the premises causing him psychological torture and mental anguish.

In cross examination PW1 confirmed that he entered the house in the same year and that he entered as a tenant. That the defendant was residing in the boys' quarter as tenant of the Town Council and that when he bought the property, he wrote a letter to the defendant informing him of change of ownership. That no agreement was signed and the property was sold

through privatization. He further confirmed that the Uganda Land Commission leased the property to him but does not know when he became the owner of the property and further stated that he was not aware that the defendant was still a tenant of Hoima Town Council and that it never told him to vacate.

In re-examination, he stated that the house was sold on a government policy or privatization by selling the government houses to the sitting tenants and this was one of such houses. That the person eligible to apply to buy this house was a civil servant and that to his knowledge the defendant did not apply.

The defense case

DW1 MUSEKURA PETER stated in examination in chief that he was sued for rent but that he was a tenant of Town Council. That started staying at plot 23 Circular road and that it was a housing Municipal Council staff and was paying rent since 1980 to Hoima Town Council. That he was given the house to occupy as a worker there, and that the houses were open to occupation by any staff.

He further stated that he was not given evidence that the Plaintiff was the new owner of the property and upon inquiry from the plaintiff through a letter, the plaintiff did not reply to his letter. That upon inquiring from the Town Council, he was advised to look for another place and that in 2009 he handed over the house officially to the council. He further stated that the council stopped deducting his money and that he stopped paying rent and handed over in writing. That there was no evidence that the premises belonged to the plaintiff and that he has no evidence to show that the house is now his. He further stated that he was sued when he was still in the house and that had the plaintiff passed through the council, all that would not have arisen. He asked the court to find that he has not been occupying the house and that he has no tenancy agreement.

In cross examination DW1 confirmed that he filed civil suit No. 64/2014 in the High Court against the plaintiff and that this is a different case. He confirmed that they were both tenants and were paying rent since he was staying in the boys' quarters.

He confirmed that he never applied for this house as a pool house and that he was not aware that Hoima Town Council was bound to dispose the pool house. That he does not know the person occupying the house since he left the house and that the Town Council stopped deducting rent from his emoluments because they knew he had gone to court over the suit property. He further stated that he does not know whether the land is registered and that he last paid rent of UGX 30,000 to the Town Council.

In re-examination, he stated that by the time he left the house, he was not aware it was in the plaintiff's name and that he was not aware that it was no longer Town Council's property. He confirmed that he sued the plaintiff before High Court Masindi because he was never given a chance since there were three plots in one and he should have been given priority to purchase one of the properties since they were all workers.

DW2 KINIMI CHARLES stated in examination in chief that the defendant was an employee in Hoima Municipality Accounts Division. He testified that all properties which, were in Central Government were put into the hands of the Local Governments upon which, Kabyanga got a chance as Town Clerk to occupy that building. He further stated that as the acting Town Clerk, he received complaints from Musekuura Peter that he had been served with a letter by the lawyers of Mr. Kabyanga to leave the house and pay arrears for the period he has been residing in the house.

He further stated that as the Town Clerk he called the Technical Planning Committee and shared the concerns with them and was informed that the house belonged to Town Council and that is why it was being reflected as an asset in Town Council returns and that Musekura Peter was paying rent to occupy it. That upon further inquiry and talking to Kabyanga, he was told that he had purchased the house from Uganda Land Commission which shocked him.

In cross examination he confirmed that the main house was built by central government and is not conversant with ownership of central government property. He also confirmed that he did not know who built the main house and that he had never seen the title of this land. He also confirmed that he is not familiar with procedure of government sale of pool houses and does

not know the person in occupation of that house now. He also stated that Kabyanga just told him that he had purchased the house from Uganda Land Commission and the house which was constructed does not belong to Musekura Peter.

In re-examination, he stated that by the time he left the house in issue was still being reflected as property of Town Council.

The trial magistrate gave judgment in favour of the Respondent stating that sufficient notice of change of ownership had been given to the appellant and also declared the appellant a trespasser.

The Appellant being aggrieved with the decision of the Chief Magistrate, filed the present appeal. The grounds of appeal are;

1. That the learned trial Magistrate erred in law and fact when he failed to properly subject the entire evidence to record to a thorough evaluation hence reaching an erroneous decision.
2. The learned trial magistrate erred in law and fact when he held that the appellant was a trespasser on the suit property.

Duty of the first appellate court

As the first appellate court, it is my duty to subject the evidence to fresh evaluation but bearing in mind that I never had the opportunity of seeing and experiencing the witnesses. See: **Uganda Revenue Authority versus Rwakasaija & 2 others No. 08 of 2007**. The duty of this court, as the first appellate court is to rehear the case on appeal by reconsidering all the evidence before the trial court and coming up with its own decision. The parties are entitled to obtain from the appeal court its own decision on issues of fact as well as of law. [**Pandya v R [1957] EA, 336; Father Narsension Begumisa & others v. Eric Tibekinga, SC Civil Appeal No. 17 of 2002 (unreported)**]. It is therefore incumbent on this court to re-evaluate the whole of the evidence adduced and come up with its own decision.

Representation

Mr. Baryabanza Aaron appeared for the Appellant whereas Mr. Simon Kasangaki, appeared for the Respondent.

Considerations of the Appeal

During the hearing of the appeal, both Counsel submitted orally in regards to the grounds of appeal. They proposed to argue grounds 1 and 2 concurrently.

Arguments for the Appellant

Counsel for the Appellant submitted that the trial magistrate reached a wrong decision when he held that notice of change of ownership had been given to the appellant. That had the trial magistrate evaluated the evidence, then he would have found that there was no proper notice given to the appellant regarding change of ownership. He further submitted that it was the respondent's evidence that he wrote a letter to the appellant requesting the appellant to come and negotiate with him terms of the appellants' stay on the suit premises and to him this was insufficient in giving notice to the appellant as to whether there was change of ownership.

That further there was nothing attached on exhibit PE2 to prove that ownership of the premises had changed and when the respondent served this letter to the appellant, the appellant immediately wrote to him a letter protesting and telling the respondent that he was a tenant of Hoima Town Council and therefore, there was no way how he could enter into a tenancy agreement with the respondent.

Counsel further argued that when the appellant protested to entering into a tenancy agreement with the respondent, the respondent did not reply the letter or furnish evidence to the appellant to prove that ownership of the house had actually changed. He further submitted that the appellant immediately went to the Town Council who confirmed to him that they were not aware that ownership of the house had changed upon which, the appellant remained in occupation of the house and continued paying rent to Hoima Town Council as can be seen from the receipts which were exhibited in court.

That it is their submission that had the respondent furnished evidence proving that ownership of the land had changed, the appellant would have made an agreement with him to stay in the suit land as a tenant of the respondent but that he did not.

Counsel for the appellant further submitted the appellant vacated the suit premises in 2009, and officially handed over the premises to the Council, since he was not aware that these premises belonged to the respondent. He further submitted that it was imperative for the respondent after purchasing the said house to have informed Hoima Town Council and served it with the notice of change of ownership and at the same time served the appellant with notice of change of ownership. That it was Hoima Town Council to inform the appellant that ownership of this house had changed and to advise him that if he wanted to continue staying in the house, he should contact the Respondent, as the new owner which was not done.

It is the appellant's submission that from the foregoing, it was erroneous for the trial magistrate to hold that the appellant was given notice and was a trespasser in the absence of evidence to show that he was aware of the respondent's ownership over the suit premises.

He prayed that the appeal be allowed.

Arguments for the respondent

In response, counsel for the respondent submitted that the Learned Chief Magistrate was alive to the burden and standard of proof in adjudicating upon the dispute between the appellant and the respondent. He further submitted that the Learned Chief Magistrate rightly held that the respondent/plaintiff was a sitting tenant of the suit property comprised LRV 3921 Folio 25 Plot 23 Circular Road at Hoima, measuring approximately 0.419 hectares from 1992 – 2004 as his official residence in his capacity as Town Clerk.

In support of his case, he submitted that the respondent applied for the house as a pool house from the Pool Houses Allocation Committee and on 6/9/2006 it was offered to him by the Secretary of Public Services Houses Sale Committee. That on 17/1/2007, the respondent accepted the offer in

writing and on 6/9/2006 he purchased the house from Uganda Land Commission under a mortgage arrangement by Housing Finance Bank and that later on he was registered as owner on title on 8/10/2008.

Counsel further submitted that the respondent notified the defendant/appellant of change of ownership and required him to negotiate a fresh tenancy which, he declined by reasons where of he became a trespasser on the property which was the correct finding of the lower court. That the Chief Magistrate rightly held that notice had been given because of these reasons.

He further argued that the aspect of notice was an agreed fact No. 6 in the lower court as per page 8 of the record of proceedings paragraph 3 which states that the plaintiff notified the defendant to sign a tenancy agreement on 6/8/2017 but he declined. That that was notice.

Counsel relied and cited the case of **Annet Zibiha vs Attorney General High court civil suit No. 109/2011** that where parties to a suit agree to a fact and an equivocally admit to it at scheduling, such fact is taken as established and the defendant is stopped from denying that fact. That having agreed to that fact at scheduling it was established, it was no longer a disputed fact for trial which could be denied in the lower court or this court on appeal.

He also referred to the cases of **Stanbic Bank (U) Ltd vs Uganda Cross Ltd, Supreme Court Civil Appeal No. 4/2004** and **Tororo Cement Co. Ltd vs Frokina International Ltd, Supreme Court Civil Appeal No. 2/2001**, where it was observed that once a fact is agreed at scheduling, it is established and no longer a point for trial. I respectfully agree with the position of the law.

Furthermore, counsel submitted that the appellant admitted that when he was served with a notice of change of ownership, he wrote to the respondent. He referred court to exhibit 2 and 3 of the defense, whose import was that the appellant knew about change of ownership of the property but was not happy about it. That during cross examination of the appellant, he admitted that he had filed a suit in this court challenging the process by which, the respondent had bought the house and had been

registered owner. He further stated that looking at the record of proceedings, the process of acquisition of the plaintiff's interest is well detailed. He submitted that the defendant/appellant knew the house had been bought by the Respondent but he refused to vacate.

On the aspect of notice, he submitted that when suit No. 73/2009 was filed it contained an annexure of a title and a demand for vacant possession. That the defendant was still in the house and he vacated only later on 4/12/2009, long after the suit had been filed. He submitted that there was notice or a process that brought to his attention that ownership had changed and a copy of the title supplied to him. That it does not therefore lie for the appellant or his counsel to argue or convince the court that they were not aware of the change of process.

Counsel concluded that the trial magistrate rightly held that the appellant was a trespasser when he refused to negotiate fresh terms of tenancy with the respondent who was the registered owner of the property and vacated later on after the suit had been filed against him. He asked the court to dismiss the appeal, award costs of the appeal to the respondent and those of the lower court.

In rejoinder counsel for the appellant agrees that it was an agreed fact that the plaintiff notified the defendant to sign a tenancy agreement but what they disagree with is that the appellant had notice of change of ownership.

He further stated that the appellant filed a case in court after the respondent had testified and tendered in court certificate of title and that is when the appellant learnt that the ownership of this property had changed to the respondent. He further submitted that since he was also a sitting tenant on the said premises he filed a case in court challenging the said certificate of title. That had it been true that he was aware, he would have filed it earlier.

Counsel further insists that there was no evidence that change of ownership had been availed to the appellant until 2009 when the matter was filed in this court and a certificate of title was filed and availed to him and that is when he vacated the premises. He prayed that the appeal be allowed.

Determination of the Appeal

Section 101(1) of the Evidence Act places the onus to prove the case in regards to the suit land on the Appellant. This burden must be discharged on a balance of probabilities.

The main issue in contention is whether the appellant was given proper notice regarding change of ownership of the suit premises.

The appellant states that he was not given proper notice regarding change of ownership stating further that nothing was attached on exhibit PE2 to prove change in ownership. Counsel submitted that the appellant immediately wrote to the respondent a letter protesting and telling him that he was a tenant of Hoima Town Council and therefore, there was no way how he could enter into a tenancy agreement with the respondent.

The respondent on the other hand stated that he applied for the house as a pool house from the Pool Houses Allocation Committee and on 6/9/2006 it was offered to him by the Secretary of Public Services Houses Sale Committee. That on 17/1/2007, the respondent accepted the offer in writing upon which, he purchased the house from Uganda Land Commission under a mortgage arrangement by Housing Finance Bank and that later on he was registered owner on title on 8/10/2008. He further stated that he notified the defendant/appellant in this court of change of ownership and required him to negotiate a fresh tenancy which, he declined by reasons where of he became a trespasser on the property which was the correct finding of the lower court.

The appellant further contends that notwithstanding writing to the respondent protesting about the same, he did not reply the same upon which, he went to the Town Council who confirmed to him that they were not aware that ownership of the house had changed. That the appellant remained in occupation of the house and continued paying rent to Hoima Town Council, as can be seen from the receipts which were exhibited in court.

The appellant further submitted that by the time the he left the suit premises in 2009, he was not aware that these premises belonged to the respondent

and contends that it was imperative for the respondent to have informed the Town Council after purchasing the said house and serve it with the notice of change of ownership and at the same time serve the appellant with notice of change of ownership.

Upon perusing the letter written to the appellant by the respondent dated 6th August, 2007, it was to the effect that he was officially informing the appellant that he had been allocated Plot 23 Circular Road at a value of UGX. 37,000,000. He further asked the appellant if he had any documents related to the house and if not, to meet with him to make a tenancy agreement on 18/08/2007.

The appellant replied to this letter congratulating him for having purchased the Council House on Plot 23 Circular Road but noted that he would not sign the tenancy agreement because the Town Council had not addressed him on the issue yet. He also observed that the premises belonged to the council despite congratulating the Respondent for having been allocated the house to purchase under the Civil Servants House Pooling Scheme.

The Respondent did not reply the Appellant's letter but went ahead and purchased the property and registered it in his names on 8th October, 2008 and a certificate of title in his names was exhibited in court to.

It is not disputed by both parties that the respondent notified the appellant about the allocation of the house to him under the Civil Servants House Pooling Scheme and asked him to enter into a new tenancy agreement with him as the new owner of the house on 6/8/2007, as indicated above and agreed to in the agreed facts. The real point in contention for the appellant is that the Respondent gave him insufficient notice about the change of ownership. The appellant contended that since the premises belonged to the Town Council, then it should have been the council to inform him of change in the ownership of the suit premises and not the Respondent.

On the face of it this may look plausible if the issue of who owned the premises is not considered. The house under consideration was the property of the Government of Uganda, with the Uganda Land Commission as the registered owner. Hoima Town Council, was only holding the property in trust on behalf of the Government of Uganda and much as it was receiving

rent from this property, this did not confer proprietary rights in this property on it. The property was for Government of Uganda, which at this point had offered similar properties to civil servants to purchase under the Pool House Scheme. So if there was any one who should have notified the Appellant about change of ownership of this property, it should have either been the Government of Uganda or the buyer/ allocate of the premises. As for Hoima Town Council, it could have as matter of courtesy, and not statutory obligation, advised its worker that the premises were no longer available to him and should therefore seek alternative accommodation.

In view of the above, the letter written by the Respondent to the Appellant was adequate as it gave notice to the Appellant, that the premises he was living in had been allocated to him to purchase under the sale of public house to civil servants under the Pool House Scheme, which was widely known to civil servants and was therefore known to the appellant since he was also a civil servant. If the Appellant, had wanted to find out whether the house had been allocated to the Respondent, he should have gone to the Pool Housing Scheme Committee to establish this fact but instead chose to go the Town Council because he was unhappy with the allocation and not that he did not know the new owner. I may also hasten to add that the fact that the Appellant filed a suit in the High Court challenging the allocation of the house is sufficient proof that he knew of the allocation of the house to the Respondent.

Accordingly, I find that the appellant was given sufficient notice by the respondent about change in the ownership of the suit premises and if the respondent wanted to purchase the same as the sitting tenant who deserves priority, then he would have used the opportunity to apply for them.

Upon analyzing the plaint, it was filed in the lower court on 26/10/2009 and the certificate of title was attached to it showing the new ownership of the suit premises. The appellant submitted that even at the point of leaving the suit premises, he did not know that ownership of the same had changed. According to the record of evidence in the agreed facts, the appellant permanently vacated the suit premises on 4/12/2009, way after the plaint was filed.

From the evidence adduced, I agree with the respondent that the trial Chief Magistrate rightly evaluated the evidence when he held that the appellant was given sufficient notice on the change of ownership of the premises.

On the second issue that the learned trial magistrate erred in law and fact when he held that the appellant was a trespasser on the suit property.

The **Halsbury's Laws of England 3rd Edition vol.38** defines Trespass as... "***Trespass to land is unauthorized entry upon land***"

Also in the case of **Justine E.M.N. Lutaaya Vs Stirling Civil Engineering company Civil Appeal No. 11/2002(SC)**; Defined trespass to land as follows;

"Trespass to land occurs when a person makes an unauthorized entry upon land, and thereby interferes or pretends to interfere with another person's lawful possession of that land"

In **Busiro Coffee Farmers & Dealers Ltd –v- Tom Kayongo & 2 others HCCS 532/1992 Byamugisha, J** held that ".....trespass to land is unlawful interference with another person's right to land, the person bringing the action must be in actual possession or entitled to its possession at the time of filing the action.

In the present case, the trial magistrate in his judgment found that the appellant became a trespasser from the time (2008) when the property was registered in the names of the Respondent.

It is evident as already discussed above that the appellant stayed on the suit premises even when the respondent notified him on the issue of entering into a new tenancy agreement with him through a letter dated 6/8/2007. However, during that period the premises had not been registered in the names of the respondent until 2008 when he obtained the certificate of title in his names. It is my finding that the trial magistrate rightly evaluated the evidence and found that the appellant had become a trespasser since 2008 when the property was registered in the respondent's names and he continued challenging his ownership of the property. A tenant or a licensee,

like appellant had become, especially after change of ownership of the premises, who challenges the title of the landlord is a trespasser at law and therefore subject to ejection. See: **Joy Tumushabe and Another vs. Anglo African and Another SCCA 7 of 1999.**

Drawing from the above findings and cited cases, I accordingly dismiss the appeal with costs to the respondent.



Gadenya Paul Wolimbwa

JUDGE

18th August 2021

I direct the Registrar of the Court to email the judgment to the parties on 25th August 2021.



Gadenya Paul Wolimbwa

JUDGE

18th August 2021