

THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA HOLDEN AT MBALE  
CIVIL SUIT NO.031 OF 2018

1.CHARITY ANGOPA

2.ANGOPA DENIS

3.MARY ANGOPA ::: PLAINTIFFS

(Administrators of the estate of the late NIMROD ANGOPA)

VERSUS

AMINA HERSI MOGHE ::: DEFENDANT

BEFORE: HON.JUSTICE BYARUHANGA JESSE RUGYEMA

JUDGMENT

[1] The plaintiffs; **Charity Angopa, Angopa Denis** and **Mary Angopa** all administrators of the Estate of the late **Angopa Nimrod** (herein after referred to as the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> plaintiffs) sued the defendant **Amina Hersi Moghe** for;

- a) A declaration that the defendant is a trespasser on the plaintiffs' land located at Asinge B Zone Kayoru Parish, Osukuru sub-county in Tororo District measuring approximately 6 acres and herein referred to as the suit land.
- b) A declaration that the suit land forms part of the Estate of the late Angopa Nimrod.
- c) A permanent injunction restraining the defendant from interfering with the suit land.
- d) General damages, interest thereon and costs of the suit.

[2] The plaintiffs' case as per the pleadings is as follows;

- a) The plaintiffs are administrators/administratrixes of the Estate of the late **Angopa Nimrod** who passed away in December 2012.
- b) Before the late **Angopa Nimrod** passed away, he had bought various pieces of land in Asinge B Zone, Kayoru parish, Osukuru Sub-county in Tororo District as follows;

On the 21<sup>st</sup> June 2010, the late **Angopa Nimrod** bought a piece of land from **Oketcho Wiberforce**, on the 25<sup>th</sup> September 2010, again bought another piece of land from **Oketcho Wilberforce**. On the 4<sup>th</sup> October 2010, bought land from the son of the late **James Osillo** and

on the 5<sup>th</sup> October 2010, bought a piece of land from **Oroni Gasta**. In total, the purchased land measured approximately six acres.

c) Immediately after the purchase of the above pieces of land, the late **Angopa Nimrod** took possession of the suit land and put the same under the care of the family of **Akai Laldlaw Baker** who looked after the land on his behalf.

d) That after the late **Angopa Nimrod** had passed on, on 18<sup>th</sup> /2/2017 the family of **Laldlaw Baker**, handed over the said land which was under their care to **Mary Angopa** (the widow of the late Angopa Nimrod), **Angopa Denis** (the son of the late Angopa Nimrod), and **Obwin Abraham** (the clan leader) who received it on behalf of the Estate of the late **Angopa Nimrod**. The plaintiffs have since been in possession and use of the land for cultivation of various food crops to date.

e) On the 13/7/18, the defendant together with 100 individuals armed with guns without any color of right, forcefully entered onto the plaintiffs' land, destroyed their crops and started constructing a perimeter fence and building thereon. The plaintiffs protested the illegal activities on the land in their possession and reported the trespass to the local authorities and Tororo Police Station. The defendant through her agents has however continued with the illegal construction on the land under the direct supervision of the defendant herself.

[3] The plaintiffs aver and contend that the activities of the defendant on the suit land are illegal and amount to trespass and that by reason of the matters aforesaid, the plaintiffs have suffered loss, psychological torture and damage for which they claim general damages from the defendant.

[4] On the other hand, the defendant in her written statement of defence (W.S.D) deny the plaintiffs' claims and contend as follows;

a) That the plaintiffs lack a cause of action against the defendant and that the claim is legally defective.

b) That the defendant is a Managing Director of Albatros Energy (U) Limited who in 2009, on behalf of Albatros Energy (U) Limited approached 3 people; **Nimrod Angopa** (the father of the three administrators of his Estate, now the plaintiffs), **Otang Francis** and **Okware Stephen** to whom she executed a power of attorney to help acquire land in Tororo for electricity generation project.

c) That the said **donees of the power of attorney** acquired the suit land from different vendors in the name of the late Angopa Nimrod using the defendant's funds.

d) That between 2010 and 2011, the said Albatros Energy (U) Limited, due to unforeseen circumstances abandoned the project of electricity generation and opted to transfer its operations to Hoima District and left the suit land under the care of the late **Angopa Nimrod**.

e) That unknown to the defendant and her company, on 15/12/2011 the late **Angopa Nimrod** mortgaged the property to a one now late **Akai Laldlaw Baker**.

f) That in 2018, the plaintiffs fraudulently took control of the suit land through a village meeting declaring themselves owners of the land and the particulars of fraud were; forging sales agreement claiming that the land belongs to their father whereas not, mortgaging (equitable) the suit land, stealthily attempting to sale the suit land and falsely claiming ownership and adverse possession.

[5] The suit came up for hearing on the 11<sup>th</sup> day of October 2019 when the 2<sup>nd</sup> plaintiff **Denis Angopa** (PW<sub>1</sub>) led his evidence and was cross examined on the same. On the 26<sup>th</sup> day of May 2020, it came up for further hearing but the defendant and her counsel were absent. The court on being satisfied that the defendant and her counsel had been effectively and duly served but failed and or refused to appear and attend, court proceeded to determine the matter under **O.7 r.4 CPR** in the face of this back drop;

a) The plaintiffs in their capacity as administrator/administratrixes of the Estate of the late **Nimrod Angopa** filed this suit on the 18<sup>th</sup> day of July 2018. By March 2019, witness statements for both parties and scheduling had been concluded.

b) The suit was fixed for hearing on the 5/9/19. On the due date, the 2<sup>nd</sup> plaintiff/PW<sub>1</sub> and his counsel were present. The defendant's representative was also present but her counsel was absent and as a result hearing could not commence. The defendant was given the last adjournment. The matter was adjourned to 11/10/19.

c) On 11/10/19, hearing commenced with the testimony of the 2<sup>nd</sup> plaintiff (PW<sub>1</sub>) upon which the matter was adjourned to 30<sup>th</sup> and 31<sup>st</sup> January 2020. On the 30<sup>th</sup> January 2020, the plaintiffs and their counsel were present but the defendant and her counsel were

absent. This necessitated the issuance of hearing notices to the defendant and her counsel. Hearing notices were eventually issued and duly served upon the defendant's counsel for hearing the suit on 26/8/20. On the due date, the defendant and her counsel opted not to appear despite the defendant's counsel firm formerly acknowledging receipt by stamping and signing on the hearing notices for the date. No reason was advanced for their absence.

[6] In the absence of any reason advanced for the defendant and her counsel's absence and or their inability to attend court on the day the suit was fixed for hearing, court proceeded to hear and determine the suit under **O. 17 r. 4 CPR**. Counsel for the plaintiffs presented the remaining 9 witnesses who had appeared in court for examination.

[7] Issues for determination by court are;

1. *Who owns the suit land.*
2. *Whether the defendant is a trespasser.*
3. *What remedies are available to the parties.*

[8] Burden of proof. It is settled that in civil matters, the burden of proof is on the plaintiff to prove his case on a balance of probabilities (**Sections 101-103) of the Evidence Act**. It is therefore incumbent upon the plaintiffs to prove the facts constituting the claim on the balance of probabilities to obtain judgment in their favour; **NON PERFORMING ASSET RECOVERY TRUST VS S.R NKALUBO & SONS LTD CIVIL APPEAL NO.34 OF 2005 (CA)**.

#### ***ISSUE NO.1 Who owns the suit land.***

[9] It is the plaintiffs' case that the plaintiffs are the administrator/administratrixes of the Estate of the late **Angopa Nimrod**. That before **Angopa Nimrod** passed away, he had bought various pieces of land in Asinget "B" Zone Kayoru parish, Osukuru Sub-county, Tororo District, from various sellers including **Oketcho Wiberforce** on 21/6/2020 and 25/9/2010, **Osillo James** on the 6<sup>th</sup>/10/10, **Oroni Gaster** on the 5/10/10; (the purchase agreements were admitted in evidence and collectively marked **P.Exh 3**) The defendant on the other hand does not dispute the above facts but claims that the deceased **Angopa Nimrod** purchased the pieces of land totaling to 6 acres of land on her behalf.

[10] The plaintiffs' witnesses **Angopa Denis** (PW<sub>1</sub>) testified how his father the late **Angopa Nimrod** purchased the several pieces of land from different individuals which constituted the suit land; (**P.Exh.3**

agreements). PW<sub>1</sub>'s evidence is supported by that of the widow **Mary Angopa** (PW<sub>3</sub>) and further supported by that of **Angopa Stephen** (PW<sub>4</sub>), **Yoweri Ekapolon** (PW<sub>7</sub>) and **Obwin Abraham** (PW<sub>10</sub>) who witnessed the purchase of the various pieces of land. The plaintiffs' witnesses; **Angopa Denis** (PW<sub>1</sub>), **Opuwa George** (PW<sub>2</sub>) who is a brother to the late **Akai Laldlaw Baker**, **Akai Wilson** (PW<sub>6</sub>) also a brother to the late **Akai Laldlaw Baker** and **Obwin Abraham** (PW<sub>10</sub>) further confirmed that the suit land was bought in the names of the late **Angopa Nimrod** but it was left under the care of the family of **Akai Laldlaw Baker**. On the 18/2/2017, **Akai Laldlaw Backer** handed over the land to the family of the plaintiffs (**P.Exh.2**). During cross examination, PW<sub>1</sub> explained that upon the hand over, the plaintiffs' family paid 13,000,000/= to the family of **Akai Laldlaw Baker** for keeping the land from 2010-2017. That it is therefore not correct that the late **Angopa Nimrod** had mortgaged the land to Akai Laldlaw Baker.

[11] In her defence, the defendant claims that she is the owner of the suit land. That the deceased late **Angopa Nimrod** and **2 others** purchased the suit land on her behalf. She however did not file a counter claim wherein she could assert her ownership and pray for judgment in her favour since she contends that the plaintiffs fraudulently took control of the suit land. Besides, she did not even file any witness statement to support her claims.

[12] It is clear that the defendant's claims are based on a power of attorney, she purported to had executed on 2/5/09 appointing **Nimrod Angopa** the deceased, **Otang Francis**, **Okware Stephen** to acquire land on her behalf. It is attached on her W.S.D.

[13] I have carefully perused and considered the power of attorney in question. The power of Attorney is not signed by the purported donees. It only bears the signature of the donor and the witness, Mr. Semakula Muganwa Charles. **Section 148 R.T.A** provides that;

*"No instrument or power of attorney shall be deemed to be duly executed unless either-*

*(a) the signature of each party to it is in latin character;"* together with the names of the donees.

[14] In the instant matter, I find the power of Attorney in question lacking the endorsement of the purported donees. It is a mere unilateral document drafted at the instance of the defendant but with no evidential value in this case as it has nothing to do with either the plaintiffs or the purported donees. In as far as therefore, the subject

matter of the suit is concerned, it is a worthless document that does not confer to the defendant ownership of the suit land.

[15] Counsel for the plaintiffs, besides, noted that the power of attorney was not even registered with the registrar of documents for it to have evidential value. As a public document, I find that it ought to have been registered but even if it had been registered, I would still find that it is legally lacking both in execution and in effect as it has no donees.

[16] Again as correctly put by counsel for the plaintiffs, Mr. Isabirye, whereas the purported power of attorney has 3 donees; **Nimrod Angopa, Otang Francis and Okware Stephen**, there is no agreement attached to the W.S.D or to the witness statement of **Okware Stephen** in the names of the 3 donees or either of them, for the benefit of the defendant. What she attached are copies of the agreements written in favour of **Nimrod Angopa** as the purchaser of the pieces of land that form the suit land whose originals were presented by the widow (PW<sub>3</sub>) during trial.

[17] I have also carefully perused the documents on the W.S.D pertaining to the purported transfer of money by the defendant to **Nimrod Angopa** for purposes of enabling him acquire land for the defendant as per the power of attorney. The alleged and purported transfer of the money is not evident in the **annextures D1, D2 and D3**. There is no evidence that **D2**, a cheque from **Laburnam Courts Ltd**, was cashed by **Nimrod Angopa** and that it was purposefully for the benefit of the defendant. The name of Nimrod is merely inserted in the **Laburnam Courts Ltd bank statement** without actual proof that he withdrew the money.

[18] Witness statements are a form of evidence offered by a party under **O.18 r.5 (A) CPR as amended**. The defendant's offered witness statements, and her pleadings, do not show any connection between herself or **Albatros Energy (U) Ltd** with **Laburnam Courts Ltd** to enable court ascertain what could have been the purpose of the cheque and the money. Besides, she never filed any witness statement as her evidence to support her claims. There is therefore, no evidence whatsoever that the defendant through any of her agents, call them donees purchased any piece of land on her behalf.

[19] As regards D3, attached to the W.S.D, it is a meaningless document as it refers to neither the **defendant** nor **Angopa Nimrod**.

[20] In conclusion **Section 110 of the Evidence Act** provides thus;

*"110, Burden of proof as to ownership. When the question is whether any person is owner of anything of which he or she is shown to be in possession, the burden of proving that he or she is*

*not the owner is on the person who affirms that he or she is not the owner.”*

In the instant case, it is not in dispute that the plaintiffs are in possession and the defendant is merely attempting to gain possession. The defendant has not discharged the above burden of showing that the plaintiffs are not the owners of the suit land. The 1<sup>st</sup> issue is therefore, in the premises answered in the affirmative that the plaintiffs are the owners of the suit land that forms part of the Estate of the late **Nimrod Angopa**.

***ISSUE NO.2 Whether the defendant is a trespasser.***

[21] It is the evidence of **Angopa Denis** (PW<sub>1</sub>) and that of the widow (PW<sub>3</sub>) that on the 13<sup>th</sup> day of July 2016, agents of the defendant without any color of right entered upon the plaintiffs’ land and destroyed crops and erected a fence thereon. That PW<sub>1</sub> immediately reported the matter to Tororo police station but that the acts of trespass have continued.

[22] **Wasike Wilson** (PW<sub>5</sub>); a police officer attached to CIID Department Central Police Station, Tororo who on 13/8/18 was attached to the political department of land risk, testified supporting the evidence of PW<sub>1</sub> and PW<sub>3</sub> that on 13<sup>th</sup>/8/18, upon a complaint from **PW<sub>1</sub>** and **Obwin Abraham** (PW<sub>10</sub>), proceeded to the scene, suit land and found agents of the defendant carrying out activities of fencing off the suit land. When he directed that the trespass stops, he was threatened with an action that would lead to his loss of job since the defendant was attached to State house. It is the submission of counsel for the plaintiffs that normalcy prevailed when court issued an injunction to the Respondent and her agents restraining them from construction and interfering with ownership, possession and use of the suit land.

[23] ]In **JUSTINE LUTAAYA Vs STIRLING CIVIL ENGINEERING CO. CIVIL APPEAL NO. 11/02 (SC)**, trespass was defined as

*“an act where a person makes an unauthorized entry upon land and thereby interferes, or purports to interfere with another person’s lawful possession of the land.”*

[24] In the instant case, having found that the plaintiffs are the lawful owners of the suit land who are in physical possession, it follows that the acts of the defendant in her attempt to gain possession of the land amount to trespass. **Issue no.2** is therefore answered in the affirmative that the defendant is a trespasser on the suit land.

***ISSUE NO.3 What remedies are available to the parties.***

[25] The principle in law governing damages is that the plaintiff should be restored to the position he/she would have been in thus the principle of restitution intergrum; **CHARLES ACIRE Vs MYAANA ENGOLA H.C.C.S NO. 143/93**. Trespass to land as a tort is actionable per se without the need to prove damages but in the assessment of the quantum of damages, court takes all the relevant circumstances into account; **VOLO MICHAEL Vs DRATE F. KENYI H.C.C. APPEAL NO.18/17**, the value of the subject matter, the inconveniences that the party was put through at the instance of the opposite party e.t.c; **ROBERT CUOSSENS Vs A.G S.C.C.A.NO.08/99**.

[26] In the instant case, the plaintiffs clearly showed how they were in physical occupation of the suit land by way of cultivation of food crops. The land was sustaining their livelihood. The defendant on the 13/7/18 caused the destruction of their crops, they must have suffered grief and psychological torture amidst the trespass led by armed men. It was an intentional trespass without any respect of the authorities including police which intervened. There was an element of impunity. In the circumstances of this case, an award of Shs. 30,000,000/= as general damages is found appropriate. The sum shall carry interest at court rate from the date of judgment till full payment.

[27] In conclusion therefore, judgment is given in favour of the plaintiffs in the following relief terms;

1) The plaintiffs are entitled to the declarations that;

a) The suit land forms part of the Estate of the late **Angopa Nimrod**.

b) The defendant is a trespasser on the plaintiffs' suit land.

2. A permanent injunction doth issue restraining the defendant, her agents and work men from interfering with the suit land.

3. General damages of 30,000,000/= (Thirty Million Shillings Only) shall carry interest at court rate from judgment date till full payment.

4. Costs to the plaintiffs.

**Dated at Mbale this 18<sup>th</sup> day of February, 2021.**

**Byaruhanga Jesse Rugyema**

**JUDGE.**