

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT MASINDI
CIVIL SUIT NO. 0042 OF 2020

KAAHWA FRANCIS ::: PLAINTIFF

VERSUS

**CHONGQUING INTERNATIONAL CONSTRUCTION CORPORATION
LTD (CICO) ::: DEFENDANT**

BEFORE: HON. JUSTICE BYARUHANGA JESSE RUGYEMA

JUDGMENT

- 1] The plaintiff sued the defendant construction company for trespass to land, unjust enrichment, general damages, compensation, restitution, mesne profits, permanent injunction and costs with interest.

- 2] The plaintiff's case is that he is the owner of the land at **Bukumi village, formerly Nyamasoga A, Nyamasoga parish, Biiso sub-county, Buliisa District**(hereinafter referred to as the suit land). That the defendant company unlawfully entered upon the suit land, committed acts of trespass by illegally excavating murram out of about 13.5 acres. That as a result, the defendant company has unjustly enriched itself by illegally excavating and using murram from the land for construction of a road.

- 3] The plaintiff particularized the trespass as follows:-
 - i) Unlawfully entering the plaintiff's land.

- ii) While thereon, establishing a burrow pit on the land and excavating tons of murrum, rock and stones out of the suit land.
 - iii) Refusing to enter a contract with the plaintiff for burrow pit activities.
 - iv) Interfering with the plaintiff's possessory interest.
 - v) Denying the plaintiff entry, possessory title and use of the suit land
 - vi) Excavating murrum for road construction without paying the plaintiff and without his consent.
 - vii) Unjust enrichment
- 4] At the commencement of the hearing of this suit, as the plaintiff had intimated in his rejoinder to the defendant's Written statement of Defence (WSD) through his Counsel, successfully raised a preliminary point of law/objection to the effect that the defendant had no valid statement of defendant (WSD) on court record in so far as the statement of defendant was not signed by the Registrar and sealed by the Honorable High Court. The defence was accordingly struck out for it violated the provisions of **O.9r.1 (i) CPR**. The matter was set down for hearing under **O.9r.10 CPR**. Upon the Written Statement of Defence (WSD) being struck out and set down for hearing, Counsel for the defendant opted not to participate in the further hearing of the suit.
- 5] From the pleadings on record, the issues for determination of the main suit appear as follows:-
- i. Whether the plaintiff is the lawful owner of the suit property/land.

- ii. Whether the defendant trespassed on the suit land.
- iii. What remedies are available in the circumstances.

BURDEN OF PROOF:

- 6] **S.101 of the Evidence Act** provides that whoever desires any court to give judgment as to any legal right or liability depends on the existence of facts which he or she asserts must prove that those facts exist and the burden of proof lies on that person. In **Sebuliba versus Cooperative Bank Ltd (1982) HCB 129**, it was held that the burden of proof in civil proceedings lies upon the person who alleges and the standard of proof is on the balance of probabilities.
- 7] In the instant case, the burden of proving that the suit land belongs to the plaintiff is on the plaintiff. The plaintiff also has the burden of proving that the defendant is a trespasser.

RESOLUTION OF THE ISSUES:

- 8] Issues 1 & 2 will be combined because the resolution of one leads to conclusion of the others.
Issues No. 1 & 2: Whether the plaintiff is the rightful owner of the suit land and whether the defendant is a trespasser.
- 9] To prove ownership of the suit land, the plaintiff PW1, testified through his witness statement that he is the owner of the suit land at **Bukumi Village, formerly Nyamasoga "A", Biiso Sub-county, Buliisa District** as evidenced by the sale agreement dated 20/10/2006 which indicates, that he purchased it from a one **Seremoth Gafabusa** of Biiso at a sum of 30 million shillings.

- 10] According to the sale agreement (**P.Exh.I**), the suit land is described as customary land of approximately 500 acres at **Itutwe 'K' (Kikonko) in Biiso Sub-county, Buliisa District**. It bordered in the north by the **main Biiso-Butiaba Road**, in the south by **River Waki/Alam**, and in the east by **Lukumu Kadogoli** and in the west by the **Escarpment/UPDF Barracks**.
- 11] The plaintiff (**PW1**) explained that with creation of the new villages and new parishes, the suit land location name changed from Itutwe Village to Nyamasoga 'A' Village, Nyamasoga Parish and last year it changed to Bukumi Village. That even part of Biiso Sub-county is now Biiso Town Council. To support the above phenomenon, he presented a document referenced "UPDATED LIST OF ALL ADMINISTRATIVE UNITS IN BULIISA" and it is on record as **P.Exh.II**.
- 12] The above evidence of proof of ownership of the suit property was not challenged. In further support of the foregoing, the plaintiff attached a letter of the Secretary District Land Board to the District Surveyor dated 18/1/2007 wherein the suit land is part of the plaintiff's land intended for surveying and another from Buliisa District Local Government Chairperson as recommendation and authority for processing the suit land conversion from **Customary Tenure** to **Freehold** (P.Exh. III and P. Exh. IV). I do find the above, as proof on the balance of probability that the plaintiff is the lawful owner of the suit land.

13] **In Sheik Muhammed Waswa versus Kitara Enterprises Ltd, Civil Appeal No. 4/1987**, the East African Court of Appeal held that:-

“In order to prove the alleged trespass, it was incumbent on the appellant to prove that the disputed land belonged to him, that the respondent had entered upon that land and that the entry was unlawful in that it was made without his permission or that the respondent had no claim or right or interest in the land.”

14] To prove the unlawful entry, the plaintiff’s evidence is that the defendant company entered upon the suit land and established a burrow pit. They excavated rock and stones for construction of a multibillion road known as Hoima-Butiaba-Wanseko Asphalt Road. That during the pendency of this case and temporary injunction order, the defendant company further extracted murram worth millions of shillings (**P.Exh.V**) and as a result, it has unjustly enriched itself.

15] Again, the above evidence was not challenged at all. I find that it has been proved on the balance of probabilities that the defendant trespassed on the plaintiff’s land hence his present protests.

16] I accordingly answer the two issues in the affirmative in favor of the plaintiff.

Issue 3: What remedies are available in the circumstances:-

17] Having found that the plaintiff is the rightful owner of the suit portion of land measuring about 13.5 acres of the entire land of

the plaintiff measuring approximately 500 acres, judgment is found in favor of the plaintiff with the following orders:-

- a) A declaration that the plaintiff is the owner of the suit land.
- b) A declaration that the defendant is a trespasser
- c) Eviction order and a permanent injunction restraining the defendants by themselves, servants, contractors or workmen from further trespass on the suit land.
- d) Restitution/compensation; **Dr. Nasani Batungi** (PW2), a registered surveyor of Uganda with qualifications in BSc (Surveying) from the University of Nairobi, MSc (Surveying) from the University of Lagos and PHD (Land Management) from the University of Cape Town and a Consultant and Director with Plan Surveys and Mapping Consultant supervised a survey and conducted a valuation to estimate the quality of materials excavated from the Burrow Pit of land at the suit land by the defendant company. His report dated 15th/March/ 2021 is **P.Exh.VI**. The total mineral excavated from the site by the defendant by March 2021 is worth 552,839,548/=. I accordingly award the plaintiff restitution/compensation, Ugx. 552,839,548/=.
- e) General damages; considering the economic inconvenience and psychological torture inflicted on the plaintiff by the defendant's intentional entry into the land, the damage caused on the portion of the land measuring 13.5 acres by the excavation of murram, rock and stones, the defendant's stubborn acts of refusing to enter a contract with the plaintiff to burrow pit activities, unjust enrichment, I award the plaintiff general damages of 260,000,000/=.

- f) Mesne profits; the plaintiff did not lead any evidence to prove the mesne profits and as a result, mesne profits are not awarded.
- g) Costs; Costs follow the event (**S.27 (1) CPA**). They are accordingly awarded to the plaintiff as the successful party.
- h) Restitution/compensation and general damages to carry interest of 12.5% per annum from the date of judgment till full payment. Order accordingly.

Dated at **Masindi** this..... Day of 2021.

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BYARUHANGA JESSE RUGYEMA
JUDGE

DATE: 26/5/2021

Parties absent
Mr. Musinguzi for the plaintiff
Mr. Thembo Clerk

Court:
Judgment delivered in the presence of the above.

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BYARUHANGA JESSE RUGYEMA
JUDGE

26/5/2021