

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)

CIVIL SUIT NO.1236 OF1999

GERTRUDE PICHO ALI & ANOR ::: PLAINTIFF

VERSUS

HELEN BUSINGYE & ANOTHER ::: RESPONDENT

BEFORE: HON. MR. JUSTICE GODFREY NAMUNDI

JUDGEMENT

This matter has been in court since 1999. It has suffered endless adjournments and has been dismissed and reinstated more than once. It is a typical case of delayed and denied Justice to the parties. The Plaintiff's claim against the Defendants is jointly and severally for:

- I. An order for delivery of vacant possession of the land comprised in Mailo Register Kyadondo Block 243 Plot 256 situate at Mutungo Parish, Kitintale.
- II. A permanent Injunction prohibiting the Defendants and their servants or agents from Interfering with the suit property.
- III. Mesne profits at sh. 500,000/= per month from 1st January 1996 until the date of delivery of vacant possession.

The brief facts are that the late Picho Ali purchased the suit property from Ernest Serebe Kagwa on 6/12/1969 and became the registered proprietor thereof. When he died, his wife Gertrude Picho Ali and his brother Dr. Albert Picho Owiny obtained letters of Administration to his estate and became the Registered proprietors of the suit property.

In 1996, without the Consent or authority of the said Administrators, the 1st Defendant and the 2nd Defendant's father - Leo Mbalangu entered onto the suit property and started constructing buildings on it and have continued to do so despite warnings from the Administrators of Estate as well as Kampala City Council.

On 17/4/2002, the suit property was transferred to Fred Picho Kerali, the beneficiary who is now the Plaintiff. The Defendants filed a statement of defence in which they deny the Plaintiff's claims. They claim the late Mbalangu occupied the suit property with the consent of Ernest Kagwa, the mailo owner, and paid Busulu to him.

That he was not aware of the purchase of the land by the late Picho Ali. That by the time of the death of the late Picho Ali, the late Mbalangu was already living on the land and it was not until 1996 when Kampala City Council stopped the 1st Defendant from completing her house. That the 1st Defendant is the niece of the 2nd Defendant's father who built on the Kibanja with permission from the 2nd Defendant's father.

This matter was adjourned several times at the instance of Mr. Bwango, counsel for the Defendants who intended to file an amended statement of Defence. It was adjourned for the last time to 6/10/2016. On that day, the Plaintiff plus his counsel turned up while the Defendants and their counsel did not. The Plaintiff had 2 witnesses as the matter was scheduled for hearing that day.

Court decided to proceed with the hearing *ex parte* under the **Order 9 Rule 20(1)(a)** of the **CPR** and allowed the Plaintiff and his witnesses to file witness statements. The Plaintiff's case is based on the evidence of 3 witnesses namely:

1. Gertrude Picho Ali
2. George Picho Olarker and
3. Fred Picho Kerali.

PW1 Gertrude Picho Ali stated that her late husband bought the suit land in 1969 after he and the witness had visited the same and established that it had no developments thereon. He was registered as proprietor vide Instrument KLA55814 which is exhibited as PEX1.

She went into exile when her husband was killed. She came back in 1982 and on checking on the land found the same still vacant and undeveloped. The witness and her brother in-law Dr. Albert Picho Owiny then obtained letters of Administration to the estate of Picho

Ali. They were then registered as proprietors of the suit property. The Certificate of Title (copy) was exhibited as PEXH 2.

In November 1996, one Leo Mbalangu and one Hellen Busingye entered upon the Suit property and started construction thereon. The two were warned thru' the lawyers of the witness as well as Kampala City Council. The relevant communications are exhibited as PEXH 3-5. She then lodged a complaint of criminal trespass in the KCC court. This was in 1997. She later engaged Ms Masembe Kanyerezi who filed this suit after giving due notice to the Defendants. In the course of this case, she transferred her property to the current Plaintiff - her son to follow up the case, as heir of the late Picho Ali.

PW2 George Picho Owiny Olarker stated that he is the biological uncle of the Plaintiff. When Dr. Albert Picho Owiny died in 1996, he obtained letters of Administration for his estate in 1999. In 2001 he visited the suit land and noticed that Leo Mbalangu and Hellen Busingye had constructed on part of the suit land. He and PW1 then decided to transfer the suit property to the current Plaintiff, the eldest son of PW1. By then the current case had been filed. The said Fred Picho Kerali the current Plaintiff was subsequently registered as the proprietor of the suit property.

PW3 Fred Picho Kerali testified that he is the current registered proprietor of the suit property. The same was transferred to him as

the eldest son and customary heir of his father, the late Picho Ali. The said Picho Ali purchased the suit land in 1969 and became the registered proprietor. The current case was at one time before Justice Patrick Tabaro who ordered that a survey be carried out. This was done by M/s Paul Kiggundu and sons surveyors and a report was produced. (PEX 14).

The same Judge visited the locus in quo in June. Thereafter, the Defendants dodged coming to court. The current status of the suit land is that it is still registered in the names of the Plaintiff.

The matter having proceeded ex-parte, there is nothing on record to support the Defendant's denials to the claim by the Plaintiffs. The Plaintiff framed the following issues for court's determination;

1. Whether the Plaintiff is the lawful owner of the Suit property.
2. Whether the Defendants possession of the Suit property is lawful.
3. Remedies available to the parties.

Issue 1.

Whether the Plaintiff is the Lawful owner of the suit property.

It is submitted for the Plaintiff that there is no doubt that the Plaintiff is the Registered proprietor of the suit property. This is supported by the documentary evidenced - Pexhibits 1, 2, 10, 11, 12, 13 and 16. The claim is supported by the evidence of PW1 and PW2 whose

testimony gives the history of acquisition of the land by the late Picho Ali and eventual transfer to the current Plaintiff.

These transactions are not challenged even in the statements of defence. It is submitted that the Plaintiff has acquired Title to the suit property in accordance with **Section 54** of the **Registration of Titles Act**. Further **Section 59** thereof is clear that a Certificate of Title is conclusive evidence of ownership. Finally, it is submitted that the Plaintiff has become the proprietor thru' succession as provided by Section 134 of the same Act.

Reference was made to the case of **ENN Lutaaya Vs Stirling Civil Engineering Company LTD SCCA II/2002**. In that case, the court held that **Section 56 RTA** empowers the holder of the title to take action for trespass even if such holder has not been in actual possession. It is my conclusion that in the absence of any challenge to the contrary, the Plaintiffs' claim as Registered owner is unassailable and has been proved to that effect.

Issue No. 2

It is submitted that the Plaintiffs' claim is that when the land was acquired it was undeveloped as per the evidence of PW1 who visited the same with her husband before purchase. Her husband was killed, and she had to go to exile. When she came back in 1982, she visited the suit property and it was still undeveloped. It is only in

1996 that Mbalangu and other Defendants entered into the Suit property without any claim of right thereto. PEXHIBITS 3, 4, 5, 6, 7, 8 and 9 all show the efforts by the Plaintiffs to prove ownership as well as warnings to the Defendants.

PW2 and 3 also relied on PEXH 14 and 15. The Defendants on the other hand claim they were bonafide and lawful occupants. They claim they were not aware of the Plaintiffs acquisition and that they used to pay Busulu to the former registered owner. No such evidence is produced or shown even by way of attachments to the statements of defence.

The entry of the Defendants onto the suit land was challenged as shown by the documentary evidence of the Plaintiffs which has remained unchallenged. It is submitted that the Defendants cannot be protected by **Section 29(2)** of the **Land Act**, as they cannot prove having been in occupation for 12 years prior to the coming into force of the **1995 Constitution**.

Reference was made to various cases namely:

- **Lubega Bonaventure Vs Lule Mathias- HCCA 17/004 KALA (2005) 762,**
- **Vanenso Babweyayaka & 5 Others Vs Kampala District Land Board (2001) KALA 363.**

All these authorities deal with bonafide occupancy/ownership. The Defendants clearly do not qualify for protection as bonafide occupants/owners as they only entered on the land in 1996, after the coming into force of the **1995 Constitution**.

Issue No. 2 is accordingly resolved in favour of the Plaintiff.

Issue No. 3

Remedies

The Plaintiff claims for

- Vacant possession,
- Permanent Injunction
- Mesne Profits at Sh. 500,000/= per month.
- General damages and
- Costs.

A part from Mesne profits, for which the Plaintiff has not provided enough evidence to enable court quantify them, I find that the other remedies are proved and due to the Plaintiff. The Plaintiff has clearly been unlawfully deprived of the use of his land that was lawfully acquired. The Defendants took advantage of the unfortunate circumstances of the Plaintiff and his predecessors in title to occupy the land.

I enter Judgement in favour of the Plaintiff and order as follows:

1. The Defendants to be immediately evicted from the suit land and vacant possession be given to the Plaintiff.
2. A permanent Injunction is issued against the Defendants from interfering with the suit property.
3. General damages for trespass, suffering and inconvenience be paid which I asses at Sh. 200,000,000/= (**Streams of life Living Water Ministries Vs Agnes Ocheing - HCCS 1088/98 KALA 2003**) refers.
4. Costs of the suit are awarded to the Plaintiff.

GODFREY NAMUNDI
JUDGE.
16/01/2017