

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA HOLDEN AT MASINDI**  
**HCT-12-CR-LD-0018 OF 2009**

- 1. GLADYS MAKAZI }
- 2. BOROROZA BAMURANGYE GRACE }
- 3. MUKADEREVA GLADA }
- 4. TEREZA BARIOMUNYANA }
- 5. MAHORO REBECCA }
- 6. JOY MUHAIRWE }
- 7. JOYCE NYIRAGAHINJA }

**T/A MASINDI PORT WOMEN’S GROUP } .....PLAINTIFFS**

**VERSUS**

**KAMUGUNDA ERIC .....DEFENDANT**

**BEFORE THE HON. JUSTICE RUGADYA ATWOKI**

**JUDGMENT**

The plaintiffs are a group of women trading as Masindi Port Women’s Group. They sued the defendant for a declaration that they are the rightful owners of land measuring 258 hectares; in Rwenkunya, part of Kibanda Block 9, and a declaration that the defendant was in illegal occupation of the land. They prayed for orders of vacant possession, damages for trespass, mesne profits, a permanent injunction and costs of the suit. I will henceforth refer to hectares in its abbreviated form of Ha or ha.

The plaintiffs claim that sometime in 1990’s, they agreed with the defendant to acquire some 3 square miles of land. In that oral agreement, the defendant was to take 2 square miles while the plaintiffs took 1 square mile. They commenced the process of land acquisition by getting recommendations from the elders. These included the defendant, and to file application forms with Masindi District land office. Meanwhile they went into occupation of the suit and it measures 258 hectares. The defendant moved faster and secured a lease for the 518 Ha., which became Kibanda Block 9 Plot 31A. The remaining 258 Ha., remained as Kibanda Block 9 Plot 31B. This is the disputed land which I will henceforth refer to as the suit land.

It was alleged that the defendant later went behind the plaintiffs and fraudulently acquired the 258 Ha of Plot 31B, threatened the women being a senior military officer, and chased them out of the suit land. He took possession and has since developed the same. Hence the suit.

The defendant denied the allegations. He denied any agreement to separate land with the plaintiffs. He stated in his written statement of defence that the land measuring 776 ha originally belonged to his father. It was taken over by one Kwehiha, but after the war, he reclaimed it all. He secured a lease initially for 518 Ha, but later applied for the remaining 258 Ha. He was in occupation and had fully developed the suit land.

He denied threatening let alone chasing the women from the land. The women used to graze their cattle in this land but it was because they had kept the same with his Uncle who lived on suit land.

At conferencing, the following facts were agreed.

1. The defendant has no title to suit land.
2. The defendant did have title from 1990 to 1995 when the initial period of 5 years expired.
3. The defendant is in possession of the land at this point in time.

Three issues were framed for court's determination as follows.

1. Whether the plaintiffs have any interest in suit land;
2. Was the initial lease offer of 5 years lawfully obtained by the defendant?
3. Remedies available to the parties.

During its checkered history, this case traversed three Judges and a number of Counsel. During the final hearing, the plaintiffs were represented by Mr. Simon Kasangaki while the defendant was represented by Mr. Lubega Willy.

PW1 Gladys Makazi told court that she was a member of the Masindi Port Women's group. The partnership deed of the group was exhibited as PE3. The group bought cows and sought pasture land for grazing. The defendant told them there was land available for purchase owned by one Kwebiha, located in Rwenkunya village, Katugo parish Masindi Port sub county. It measured 1 square mile. The neighbours were Kataraihika, Kamugunda the defendant, Tera, and a swamp.

All these people including the defendant recommended them in their application for the suit land to Masindi District Land Office. The application for rural land was exhibited as PE5. The General Receipt for sh. 1000 in respect of that application was exhibited as PE6, and the form of recommendation by elders PE4 showed the 2<sup>nd</sup> signatory as Capt. Kamugunda while the applicants were Masindi Port Women's Group.

The witness told court that they moved in, put their bulls in suit land under the care of Kezekia the Uncle of the defendant. They filed application form for rural land and a copy dated 1<sup>st</sup> November 1990 was exhibited. She told court that the defendant chased away their Chairperson Grace Bororoza among others. Being the LCIII Chairperson, the defendant refused to appear before the LC I court.

PW2 John Bosco Kamanze was husband to one of the members of the women's group. He told court that he was assisting them as most were illiterate. He described the land and its neighbours, Kamugunda is in the West, the late Gafiire to the East, next is late Yosia Kataraiha, to the South is late Bigirwenkya. The land which measured 3 square miles originally belonged to late Kwebiha, but his lease expired. The parties herein agreed to apply for the same, with the defendant taking 2 square miles while the plaintiffs would take 1 square mile.

The witness told court that the women went into occupation of suit land and started grazing their cattle in the same. They applied for the same as the witness assisted them. Even the defendant was assisting the women to secure signatures from the elders and the RC's, to support their application for rural land. Later the defendant took the women's application forms to the Masindi District Land Office. The witness told court that there was peace for about three years, and then the defendant started chasing the women away from suit land. After a lot of intimidation and threats, the defendant eventually chased all the women out of suit land in 1999, including their Chairperson.

Court was informed that the women sought help from the LC's but these being at LCI and LCII levels, these feared to confront the defendant who was the LCIII Chairperson. In cross examination, the witness told court that he got to know about the dispute in 1999. The information to the women's group about the existence of the land, the death of the original

leaseholder Kwebiha, and expiry of that lease was from the defendant. The witness confirmed the same from the records in the land office in 2010.

PW3 Tera Mukulangira told court that he was a Special Police Constable (SPC) and resident in the area. Sometime in 1993, the defendant brought to him and to others as elders to sign land application forms. The forms were for women's group. He and other elders signed in support of the application by the women's group. The land in question was 1 square mile out of the 3 square miles which were originally owned by late Kwebiha. The witness identified his name on the application form exhibit PE4. He told that he did not know the fate of the application. But after he signed on the application forms, both the defendant and the plaintiffs started grazing their cattle on suit land.

PW5 Grace Bamurangye Bororoza was one of the pioneers of the Masindi Port Women's Group, and later its Chairperson. They had a building in Masindi Port which they constructed in 1992. They owned jointly up to 30 bulls. They applied for rural land in 1993. The necessary land forms were filled in and signed by the required people. The defendant was the one taking her around to the elders and LC officials to obtain their signatures. The defendant also signed as an elder. He was in total support of the women's group at that time.

After lodging the requisite land forms, they shifted their cattle from Mzee Rwabugarama's place where they were being kept to suit land. One Moses was the herdsman and he was resident on suit land. The kraal was exactly in the spot where the defendant built his permanent house. The shifted to the suit land in January 1995 and Kamugunda chased them away at the close of 1996.

The witness told court that Kamugunda was the one who identified the land which was vacant as free land and informed them. He advised that they apply for one square mile while he applied for two square miles. The group put on suit land 28 bulls. When their cattle strayed into those of Kamugunda, he threatened her with a pistol, if they did not quit the place. She accordingly shifted the cattle to her husband's place. They reported to the Chairperson LCI, but he told them that Kamugunda being an army man, he could not confront him.

In 1977, some people shot at her home and she was given a guard when she reported. The guard was also killed, and she fled the area. She only learnt that Kamugunda had titles to the suit land

during mediation when the suit was before the Ass. Registrar. Kamugunda constructed the permanent house on suit land during the pendency of the suit, and it was deliberate.

In cross examination she told court that Kamugunda was the person who took her to the Land office in Masindi and told them of the existence of one square mile free for allocation next to his two square miles. When asked to sign for the women as a neighbour on the recommendation forms, he was the 1<sup>st</sup> to do so and he signed as Capt. Kamugunda. The District Land Committee allocated the women this land, but their file got lost during the shifting of the office of lands.

Kamugunda then grabbed their land before they could get a lease. But the LC official and elders never signed for him. He used the signatures of their form. The witness testified that Kamugunda's wife had never been Chairperson of the group.

The defendant DW1 Major Eric Kamugunda told court that his late father Yeremiya Gutasobora shifted to the Masindi Port in 1969 and that was where they lived till 1981 when they were chased out by the war situation then. In 1988 when the war had ended, he returned to the area and settled there with his family.

He conceded that he indeed recommended the women's group, but disowned the document exhibit PE4. He contended that the women have never lived on suit land. He named where each of them lives. He denied threatening them or chasing them from suit land. He described the boundaries of the land. On the northern side is Mr. Kisaire. On the east is land of Gafiire which has been sold off in small pieces to different people. To the west is land of late Dr. Rwabugahya. It has also been sold off to different people in small pieces. To the south is late Nyendwoha, similarly divided up and sold to many different people.

He applied for lease of the land. His application was for 777 ha. The certified copy of the same was exhibited as DE1. The application was approved under ULC Minute Number ULC MIN 16/90(39)(a) of 7/2/90. The approval was for only 2 square miles, and a fresh survey was ordered.

The fresh survey was carried out and the land was sub divided into two plots 31A measuring 519 ha, and plot 31B measuring 258 ha. Instruction to survey was exhibited as DE3. The approval was given on 8/11/1990, and it mentioned Plot 31B measuring 258.93 ha. He told court

that he paid the relevant monies to the tax authorities. Exhibit DE4 is the tax clearance certificate for registration of plot 31B.

The deed plans for plot 31B were exhibited as DE5. He obtained a certificate of title for the same for an initial period of 5 years. A certificate of title in the names of Eric Kamugunda for plot 31A block 9 Kibanda land at Rwenkunya Masindi district for approx. 258ha for a term of 5 years commencing 1<sup>st</sup> December 1990 was tendered as exhibit DE7. This expired in 1995 or 1996. For that period of 5 years, he had no problem and he enjoyed quiet possession of suit land. The witness told court that his residence is situated on this plot 31B of 259ha.

He told court that there was an error on the face of the title. Instead of writing plot 31B, it was written plot 31A. The Permanent Secretary Ministry of Lands and Urban Development clarified the error in letter dated 1<sup>st</sup> September 2011 exhibit DE6.

He told court that he sold to one Karakire plot 31B, but his Aunt Maria Bisheshemuire who came from Nakasongola with Stephen Rwabudongo, and Rwampampa Livingstone took up plot 31B, experienced water problems. They instead bought plot 31A near the water and a valley dam. These three persons are still living on plot 31A. The defendant told court that the plaintiffs have never lived on suit land.

He told court that the women came to the suit land in 1992 when he had already settled on it. He stated that he never signed for them any recommendation for their application for the land. He stated that the form exhibit PE4 was a forgery.

He stated that he acquired the lease in 1990 and has not extended the lease. The plaintiffs are only being deceived by Mr. Kamanzi PW2. He told court that most of those plaintiffs are even his relatives. His wife was a member of the women's group.

During cross examination, the defendant admitted exhibits PE1 and PE2, but denied any forgery on his part. He stated that Kwebiha got title to the whole 777 ha, but never lived on the land. It was his father living on the same. The lease of Kwebiha of 5 years expired. He had no issues with the Kwebiha title. His father died in 1983, and left him living in this land. He clarified that he authorized the three people Maria Bisheshemuire and two men to live on plot 31A. He was not living on plot 31A, but on 31B. He was yet to secure extension of the term after expiry of the

initial one. He said his interest in suit land is customary as he was the one living on the same, and his father left him on it.

Mwesige George was a witness who testified from the locus. He told court that he was a herdsman and had as a neighbour to suit land for 22 years. He told court that the land belonged to the plaintiffs. He was present in 1993 when the women applied for the land. Prior to that, it belonged to Kwebiha. The women occupied the land from 1995 to 1996 and were grazing their cattle on it. The permanent house on suit land was built in 2011 by the defendant, and that was the spot where the women's kraal used to be. Previously there were grass thatched houses on suit land.

In cross examination the witness told court that the defendant used to live in another piece of land about 8 miles from suit land. He admitted that he had two court cases over suit land with the defendant. His mother was a member of the women's group. He stated that the women at one time kept their cattle with Rwabugarambe the defendant's Uncle who also lives 8 miles away from suit land.

He testified that Kamugunda was one of the people who recommended the women in their application for suit land. Two people belonging to the women's group lived in the grass thatched houses on suit land. Even Bororoza used to live on suit land. The other women were living with their husbands in their respective homes away from suit land.

Mucukuya Godfrey also gave testimony from the locus. He was a herdsman living on the eastern side of suit land. He has lived here since 1968 when he was born. Originally the land belonged to Kwebiha. Thereafter the women acquired it and started grazing their cattle. Their kraal was at the spot where the defendant built a permanent house. The women were not living on suit land. But one of the workers Moses lived here. The defendant's father was called Gucururwa. He was a herdsman with no specific area of residence. The women stayed on suit land for about one year.

DW2 Kezekia Rwabugarambe was the Uncle of the defendant. He lived on the land since 1969 with the father of the defendant. They directed their educated son to apply for the land and he did, initially applying for 3 square miles. The witness used to keep the cattle of the women, about 18 bulls at his home away from suit land. They were stolen and recovered, and the women sold them. On his advice, they built a house from the proceeds. The suit land belonged to the

defendant. He sold part of the land he acquired to some other people including Maria Bisheshemuire. Kazoora owns 100 acres from suit land, being his share when the land was subdivided. He did not know Kwebiha.

DW3 Yakobo Kazoora was the brother of the defendant. He testified that he moved with his father the late Guchurwa to the land in 1969. The younger brother Kamugunda applied for the land and when it was granted, he divided it up amongst them. The witness received 100 acres from suit land. He knew almost all the members of the women's group, and he mentioned where they stay. None was a resident in suit land. The women got cattle and these were being kept by his uncle Kezekiya Rwabugarama somewhere in Masindi Port. The reason the women kept their cattle with Rwabugarama was because they had nowhere else to keep them.

DW4 Joyce Tumusiime was the wife of the defendant. She was also a member of the women's group. She was the 1<sup>st</sup> Chairperson but on account of lack of education, surrendered the leadership to grace Borororza. The group had no land in Masindi Port. When they had cattle, they kept the same with her father in law, Rwabugarama the Uncle of her husband. His wife was also a member of the group.

She was aware that her family moved into this area after the NRA bush war. They found Gufiire on the land, which he left to his son. Her father in law Guchurwa, the father of her husband was already dead by the time she married Kamugunda.

James Mugoya was a court witness. He was the Land Officer with Masindi District Local Government. He was familiar with the land in dispute. The area known as block 9 plot 31 Kibanda was originally three square miles ie 777.6ha. The original title holder was one Kwebiha whose lease term of 5 years expired sometime in 1988.

In 1998 Major Eeric Kamugunda applied for the entire piece, but was only granted 518 ha. The area was thus subdivided into plot 31A measuring 518 ha, and plot 31B measuring 258 ha. The file for Kamugunda is LWB 6778. A certificate of title was prepared under minute ULC 16/90(a) (39) of February 1990, vide application No. 3152.it was prepared on 1<sup>st</sup> March 1990.



The Land Officer told court that there was an attempt by Major Kamugunda to register the 258 ha, but that was not successful as the same file number as being used as for the 518ha, which is not allowed. There was no other offer to Kamugunda for the 258 land under plot 31B.

In 2013 Mr. Mugoya was directed by the Permanent Secretary Ministry of Lands to inspect plot 31B and to report, after realizing that Masindi Port Women's Group was interested in the same. Indeed there was an application for the same by the women's group.

His inspection revealed that plot 31A was fully developed and occupied by Major Eric Kamugunda. In respect of suit land, plot 31B, this was fully occupied and developed by people including Rwabugarama Kezekia, Rwetekule Fred, Asiimwe Robert, Karakire Erifazi, Rwabudongo Stephen and Rwampampa Stephen. These occupants informed him that they bought their respective pieces from Eric Kamugunda. That report was dated 25/11/2013 and marked exhibit DE8.

I have had to set out in detail the evidence from both sides as witnesses were heard by different Judges. I only took on the case from the last witness. The issues for determination have already been set out above.

**Whether the plaintiffs have any interest in suit land.**

That was the 1<sup>st</sup> issue. The plaintiffs stated in their plaint that they were the lawful owners of suit land ie plot 31B measuring 258 ha. Their claim to ownership of the land stemmed from what they called an agreement with the defendant. PW1 Makazi Gladys told court that in 1993 the defendant told them about the existence of a square mile for acquisition. From the evidence on record, this was after the defendant had been allocated two instead of three square miles he applied for to the ULC. The evidence was that the defendant applied for three square miles, but was allocated only two. The remaining was what came to be known as plot 31B measuring 258 ha, which is the disputed land.

There was otherwise no document to show the agreement alleged in the plaint. The defendant denied it. PW5 Bororoza Grace told court that the defendant was the person who informed them of the land, took them to the Land Office and introduced them to the local leaders of the area. That means the basis of the plaintiffs claim to suit land arose from the magnanimity of the

defendant. The ULC allocated him 2 out of the 3 square miles he applied for. He informed his relatives of its existence. He introduced them to the elders. He took them to the Land Office in Masindi town. He was even ready to sign for them on the recommendation.

Once the women got to this, they moved. They had cattle which were being kept by the defendant's brother DW2 Rwabugarama. They moved them onto suit land, employed one Moses as their herdsman, built him a grass thatched house and put up another one for themselves. In other words, they took up possession of suit land. According to PW5 she told court that they moved onto suit land 28 bulls. They lodged their application for rural land complete with recommendations from the elders and neighbours. They paid the relevant fees in respect of application for rural land exhibit PE6. Plaintiff's witnesses told court that the defendant led her around and introduced her to the elders. As one of the neighbours, the defendant also wrote his name as Capt. Kamugunda supporting the women's occupation of suit land. Having moved onto land which according to PW5 was vacant, and with the recommendation of the elders and neighbours, the plaintiffs clearly established their interest in suit land. The 1<sup>st</sup> issue is answered in the positive. They showed and acquired an equitable interest in suit land.

**Was the initial lease offer of 5 years lawfully obtained by the defendant?**

This was a rather redundant issue considering the agreed fact that the defendant had no title to suit land at the time of filing the suit. However, it becomes relevant when court considers the recommendation of the Land Officer, a court witness in his report exhibit DE8, where he recommended that, *'Major Kamugunda is hereby also advised to apply for extension of lease for plot no. 31B to enable him make any transactions for the same e.g. sub division or transfers.'*

The evidence on record was that the defendant applied for and secured lease for plot 31A for 519 ha. There was no dispute or disagreement about that. In testimony in court, he stated that he also applied for and secured title to plot 31B for 258 ha, for the period commencing 1<sup>st</sup> December 1990 for a period of 5 years. He conceded that the term expired sometime in 1995 or 1996. His testimony was that he enjoyed quiet possession during the 5 years period. He tendered in court exhibit DE7. It read plot 31A, but the area was 258 ha. This was the title which was presented by the defendant in proof of his claim of ownership of plot 31B for 258 ha.

This title was under file No. LWB 6778. This was the file in respect of plot 31A for 519 ha. The Land Officer told court that it is not allowed to process two titles with different measurements under the same file number. He also testified that there was no offer from the District Land Board in respect of plot 31B Kibanda block 9 to anybody. Question would then be, where did the defendant get one from which he secured the certificate of title since none existed. The Land Officer pointed out that the defendant used the same for the 519 ha, to apply for 258ha, which was unlawful. It was also pointed out that the tax invoice which was used to clear the defendant for purposes of securing title to plot 31B for 258 ha, was a receipt for motor vehicle registration, certainly not tax clearance certificate for land registration purposes. This was exhibit DE4.

From all the above, the only reasonable explanation was that the certificate of title in respect of plot 31B measuring 258 ha, shown as exhibit P7 was not one issued by the Office of Titles. It therefore did not confer any ownership status on the defendant. Since there was no proof that it was the defendant who perpetrated the fraud in securing the title, I would not condemn him for the same. But it was obviously a fake title.

True the title in any event expired. Whatever the case, this means the land reverted or remained in the hands of the controlling Authority who, in the case of the district, is the District Land Board.

The recommendation of the land Officer quoted above was therefore of no value insofar it advised Mr. Kamugunda to apply for extension of the lease for plot 31B. There was no title in respect of plot 31B, and so he could not extend what was non-existent.

The only option would be for any interested party to apply for lease of plot 31B of block 9 Kibanda. The 2<sup>nd</sup> issue, for whatever it is worth is answered in the positive.

### **Remedies available to the parties.**

The plaintiff prayed for a declaration that they are the rightful owners of suit land measuring 258 ha. I had difficulties in making such a declaration. While I held that the plaintiffs had an equitable interest, that did not necessarily grant them or translate into ownership. The plaintiffs' interest in suit land was extinguished by the defendant when he forcefully chased them out of the

land, destroyed their possessions, humble as they may have been and put a halt to their developments in the ranching area.

On the other hand, this was land which was free for occupation. The defendant applied for the same, but was granted only a portion. The plaintiffs applied for the same and nothing came out of their application. It would not be correct to say that the District land Board stopped or refused to grant their application on account of the activities of the defendant. There was no evidence to that effect. When considering the equities, the first in time was first in right. The defendant had the first equity, he applied for the land first. For that reason, I will not make the declaration prayed that he was in illegal occupation of suit land.

That takes care of prayers for vacant possession or in the alternative, eviction. The evidence on record from the Land Officer and from the locus visit was that the defendant has developed suit land fully. He has his permanent residence on suit land. Considering the anguish, harassment, and mental pain that the plaintiffs endured from the defendant's actions when stopping them from carrying out their livelihood, and the resultant economic loss, they will be entitled to damages. I was asked to grant them sh.800 million in that regard.

I was not shown any evidence from which I would base to assess the general damages. For that reason, I will award general damages for the inconvenience to the plaintiffs of sh.100 million.

I was asked to award damages on mesne profits. I was not shown the nature and extent of the loss suffered, or the profit which accrued to the defendant as a result of his actions, to the detriment of the plaintiffs. I decline to award the same.

There was evidence that the defendant used high handed methods in curtailing the activities of the plaintiffs. He used the force of his office to threaten and harass the plaintiffs till they scampered off the suit land together with their cattle. That was high handed and calls for award of exemplary damages. I will award sh. 50 million to the plaintiffs in respect thereof.

In the end, the suit is decided in favour of the plaintiffs in the following terms.

1. The plaintiffs shall be paid sh. 100 million as general damages for being thrown out of suit land.
2. The plaintiffs shall be paid sh. 50 million as exemplary damages.

3. The defendant shall pay the costs of this suit.

As I stated earlier, the land belongs to the Controlling Authority. Any party interested is free to apply for the same or part thereof.

Rugadya Atwoki

Judge

31/10/2017.