

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

CIVIL SUIT NO: 38 OF 2011

Page | 1

JOVIA BATAKA-----PLAINTIFF

VERSUS

- 1. UGANDA INVESTMENT AUTHORITY**
- 2. UGANDA LAND COMMISSION-----DEFENDANTS**

BEFORE: HON. MR. JUSTICE HENRY I KAWESA

JUDGEMENT

The Plaintiff filed this suit against the Defendants jointly and severally for the following declarations:

- a) That the Plaintiff is the lawful owner of mature Eucalyptus plantation on a 15 hectares of land comprised in Kyadondo Block 234 plots 74, 114, 270 and 271 land at Kirinya.
- b) That the 2nd Defendant's allocation of the said land to the 1st Defendant without compensating the Plaintiff was unlawful and illegal.
- c) That the Plaintiff is entitled to compensation at the current value of the said Eucalyptus plantation numbering approximately 37,500 or as determined by a professional valuer.
- d) An order for compensation for the costs of bush clearing, planting seedlings, pesticides, weeding, construction of roads and temporary housing and administrative costs.

- e) An order for payment of general damages for the inconvenience occasioned as a result of the illegal actions/ omissions unto the above mentioned land.
- f) An order for general damages for any property destroyed and therefore lost.
- g) An order for payment of interest at a rate of 30% (*thirty percent*) per annum on the above from the date of judgment, until payment in full.
- h) Exemplary and punitive damages, and costs of the suit.

The facts of this case are that the Plaintiff, in 1994 was granted leave by National Forest Authority (NFA) formerly the Forest Department to plant Eucalyptus trees on 5 hectares of land for commercial purposes. That in 1996, NFA further added the Plaintiff 25 hectares which was neighbouring Ministry of Agriculture, Fisheries and Animal Industry which was being used by the Veterinary Industry as holding ground.

That since NFA had taken long without opening its boundaries, the Plaintiff found herself having planted the whole land comprised in Block 234 plots 53, 74, 114, 270 and 271 outside the NFA land, and that her plantation spread out by 25 hectares between 1994 and 1995. In addition, the Plaintiff also built temporary houses to be used in the protection of her interest which are still on land.

It is the Plaintiff's case that when NFA's land was de-gazetted and after a Court battle, both in the High Court and Court of Appeal, the Plaintiff, together with others won the case and were compensated by the 1st Defendant for the 30 acres that belonged to NFA.

That while surveying the land, without the Plaintiff's knowledge, permission and consent, the 1st Defendant surveyed off the said plots 53,74,114,270 and 271 and refused to compensate her claiming that the said land was not for NFA and the Plaintiff placed a caveat on the suit land which she believes still subsist.

That during the illegal survey, some of the Plaintiff's trees were destroyed and when BATU (British American Tobacco Uganda Ltd) took plot 53 out of the said plots, it compensated the

Plaintiff for the mature Eucalyptus trees on the express directive of the Executive Director of the 1st Defendant.

That the 1st Defendant is threatening to evict the Plaintiff from the remaining plots which are 74, 114, 270, 271 without compensation as it is required by the law. Further, that she is the bonafide equitable owner of approximately 37500 mature Eucalyptus trees comprised in Kyadondo Block 234 plots 74,114,270 and 270, land at Kirinya. And that due to the Defendants' illegal acts, the Plaintiff has lost part of her major source of income, and is still in the process of losing the remainder and as a result she has suffered loss of personal and commercial good, personal property, general damages, embarrassment, mental anguish and costs to her detriment.

It is evident on the file that both the Defendants were served with sermons but only the 1st Defendant filed a written statement of defence. In its amended WSD, the 1st Defendant denied all the allegations contained in the plaint.

In the joint memorandum, the following issues were raised for determination by this Court;

- a) Whether the Plaintiff's suit against the 1st Defendant is misconceived and an abuse of the Court process,
- b) Whether the Plaintiff was compensated for the woodlot and developments on plots 74, 114, 270 and 271, the land formerly held by veterinary department of Ministry of Agriculture, Animal Industries and Fisheries as a quarantine/holding ground and which land was also taken over by the 1st Defendant,
- c) Whether the Plaintiff is entitled to the reliefs sought in the plaint,
- d) What remedies are available for the parties?

During the trial, the 1st Defendant was directed to file witness statements which was adhered to and will be relied on by this Court.

The Plaintiff brought in 2 (two) witnesses who gave oral testimony including the Plaintiff.

I now resolve the issues as herebelow;

ISSUE 1

Whether the Plaintiff's suit against the 1st Defendant is misconceived and an abuse of the Court process

While submitting on this issue, Counsel for the 1st Defendant submitted on whether there was trespass committed by the Plaintiff, and whether there is abuse of Court process. Page | 4

It was Counsel's submission that the Plaintiff admitted that she was given a license to plant trees on the land that belonged to NFA and that the Plaintiff ended up planting trees on the land that belonged to the Veterinary Department of the Ministry of Agriculture, Animal and Fisheries.

That the 1st Defendant has never committed its self to compensate the Plaintiff and that this was what the office of the chief valuer replied to the Plaintiff in effect of the 1st Defendant on 13th August, 2003 and advised as reproduced herebelow;

- i. "This is not a case of compensation; your client's permit lapsed away back.*
- ii. Government expects her to harvest her trees.*
- iii. The permit was not granted subject to renewal or government buying the produce*
- iv. The trees are not perishable goods and there is no good reason why she should not harvest her trees since she was given notice to harvest the same two months ago"*

Counsel for the defence further submitted that the Plaintiff had no license to plant trees on the land that formerly belonged to Ministry of Agriculture and she is a clear trespasser on the said land. He cited the case of **Justine E.M Lutaqya versus Sterling Civil Engineering C.A No 11 of 2002**; where the Supreme Court held that;

"Trespass to land occurs when a person makes unauthorized entry upon the land; and thereby interferes with another person's lawful possession of that land. Needless to say, the tort of trespass to land is committed not against the land, but against the person who is in the actual or constructive possession of the land".

He submitted that this suit is misconceived since the Plaintiff as the trespasser had no right to institute the suit and benefit from the same.

In rejoinder to that, Counsel for the Plaintiff contended that the Plaintiff is not guilty of any trespass nor has she admitted the said trespass in the amended plaint.

That the 1st Defendant at the time of the alleged trespass was not yet in possession of the subject land and as such, she has no locus to raise and avail itself with the allegation of trespass as its defence.

Counsel went on to submit that any alleged trespass would have been raised by the 2nd Defendant but did not file a defence even after being served with summons that the Ministry of Agriculture never complained but acquiesced to the use of the land and recognized her as a squatter on the land.

It was Counsel for the Plaintiff's submission that the Plaintiff mistakenly planted trees on this part of the land in 1996 when NFA permitted her to plant the trees on the additional land.

That on July 14th 2003, the 2nd Defendant transferred the subject land to the 1st Defendant, thereby ending the 2nd Defendant's legal occupation of the said land.

Counsel further argued that under Section 3(1) (a) of the Limitation Act Cap 80 which limits the time for instituting actions founded on tort is limited to six years. He contended that this action is based as allegations which were, after 6 years is the limitation period.

I hereby reiterate the law on trespass to land as aptly stated in the case of **Justin E. M Lutaaya versus Sterling Civil Engineering C.A No 11 of 2002** as follows;-

“Trespass to land occurs when a person makes unauthorized entry upon the land, thereby interferes, or portends to interfere with another person's lawful possession of that land. Needless to say, the tort of trespass to land is committed not against the land, but against the person who is in the actual or constructive possession of the land”.

With the above definition in mind, I further hold that on the issue of the tort of trespass being time barred as urged by Counsel, I refer to the case of **Oala Lalobo versus Okema Jakeo Akech C.S No.20 of 2004** where Justice Remmy Kasule (as he then was) held that;

“Trespass to land is a continuous tort which cannot be affected by the limitations or the land Act...”

PW1 Jovia Battaka the Plaintiff herein, stated that in 1994 in October, she was given 5 hectares from NFA and it was the first permit, and later she was given 25 hectares to plant trees where upon she put in roads for the fire breaks and built in workers' staff quarters. She stated that she planted 30 hectares belonging to NFA and 25 hectares belonging to Ministry of Agriculture.

In her testimony, PW1 was told by NFA that the 25 hectares did not belong to NFA, however, she was compensated for the trees on the 30 hectares that belonged to NFA by the 1st Defendant after de-gazetting the forest through a Court Order under *HCCS No.671 of 1998 Kabs Twijukye and 32 others versus Uganda Investment Authority*. She stated further that after the compensation, she completely moved out of the 30 hectares and remained with 25 acres which belonged to Veterinary and Agriculture and which land was given to some investors.

She avers that on part of the 25 hectares, she was compensated by BATU after valuation was done for only one plot, which is plot 53 but she was not compensated for the rest of the plots which includes 270, 271, 114 and 74 which constitute the 25 hectares and that trees on these plots were cut down by the 1st Defendant. PW1 avers that when she contacted NFA for assistance, they replied her on 20th November, 2000 stating that she had planted trees beyond their boundaries.

In cross examination, PW1 confirmed to Court that she planted beyond NFA land and that she had no permit to plant on Ministry of Agriculture's land and she exceeded by 12 hectares (25 acres). That she was not given time to remove her trees and it is not her fault that NFA did not show her the boundaries.

PW1 contradicted herself when she was referred to a document in which she was given time to remove her trees when she stated that the trees were not mature enough and she did not take any step since she was still waiting for her trees to mature, that trees mature at 18 years and 13 years at which stage the trees can be harvested for electric poles.

PW2 Joseph Biribona a valuation surveyor stated that this firm considered mature trees at the rate of 100,000/= per tree and that the trees they found were all mature. PW2 created an inconsistency with PW1's testimony during cross examination when he stated that a tree is deemed mature at 8 to 10 years.

In reply to the above assertions, the 1st Defendant, through the witness statement of its' deputy Director; Semakula Godfrey dated 29th January 2018, stated that the land that was allocated to the 1st Defendant was free from incumbrances as the farmers were compensated.

He avers that PW1 was requested to harvest her tress but she refused and she decided to bring this suit for compensation. That she had every opportunity to harvest her trees but refused in a bid to collect money from the 1st Defendant.

Page | 7

In cross examination, DW1 argued that part of the land acquired by the 1st Defendant was for NFA and that the other was for Ministry of Agriculture, hence the land was from two different sources and the land from NFA was compensated to PW1.

Upon close scrutiny of the exhibits attached, it is evident from the documents on the file that the Plaintiff was given two permits one for 5 hectares (PE1(b)) dated 14th October 1994 which permit was to run up to 13th September 1999. The 2nd permit (PE1(a)) was for 25 acres which was granted on 25th October 1996 to expire on 24th October 2001. Both permits were granted to the Plaintiff by National Forestry Authority (NFA). This gives a total of 30 hectares of land which the Plaintiff affirms that she was compensated for. However, it is her allegation that she exceeded the 25 acres into the land of Ministry of Agriculture and Veterinary Department and she wants to be compensated for the same.

Whoever comes to equity must have done equity; according to the permits which are of less value to this matter, they show the extending of a license to the Plaintiff for 30 hectares and the latest expiring on 24th October 2001. These two permits indicate the land which was recognized and compensated for by the 1st Defendant.

What is in dispute is the 4 plots of land, plots 74, 114, 270 and 271, land at Kirinya which were never allocated to the Plaintiff but she claims she has not been compensated for. The Plaintiff herself concedes to the fact that she planted 30 hectares belonging to NFA and 25 hectares belonging to Ministry of Agriculture.

Given the fact that the Plaintiff accepts the fact that the 25 acres are not part of the land given to her by NFA, this alone makes her a trespasser on the suit land.

Counsel for the Plaintiff submitted that the Plaintiff was a squatter who was recognized by the Veterinary Department; it is trite that a squatter cannot acquire a legal title on someone's land. According to the **Black's Law Dictionary 6th Edition** at page 1403, a squatter has been defined to mean;

“One who settles on another's land, without legal title or authority. A person entering upon land(s) not claiming in good faith the right to do so by virtue of any title of his own or by virtue of some agreements with another whom he believes to hold the title.”

It is on this basis that I find that the Plaintiff was a trespasser on the 25 acres of land which were never allocated to her, wherefore; this issue terminates in the positive.

Issue 2

Whether the Plaintiff was compensated for the woodlot and developments on plots 74, 114, 270 and 271 the land formerly held by the Veterinary Department of Ministry of Agriculture, Animal Industries and Fisheries as a quarantine/holding ground and which land was also taken over by the 1st Defendant.

I have already found that the Plaintiff trespassed on the suit land. She was compensated for the land she legally acquired, it is improper for Court to compensate the Plaintiff for an illegality she committed (*Court cannot sanction an illegality*). See the case of **Makula International versus His Eminence Cardinal Nsubuga (1982) HCB 11.**

It is on record that the Plaintiff was given an opportunity to harvest her trees on the land she trespassed upon but she refused to obey. This is in accordance with the notice dated 4th December 2003 in which the Plaintiff was required to harvest her trees and leave government land before 10th December 2003, which notice she agreed to during the cross examination. Prior to this notice, on 16th July 2002, a public notice was issued with the general public by former Namanve Cattle Holding Ground (*alleged owners of the 25 acres*) that those who were carrying out various activities to maximize one month and wind up their activities, which notice the Plaintiff ignored.

It is on this record still that when the Plaintiff contacted NFA for help, they advised her that the land she occupied did not belong to its' firm, but it belonged to the Veterinary department. This

is the time she would have harvested her trees having been put to notice that she had trespassed on the suit land.

To this effect, the Plaintiff deserves no compensation from the Defendant, moreover, at the time she was notified (4th December 2003) to harvest her trees, the alleged permits which gave her authority to plant trees had long expired and she had not applied for renewal of the same given the fact that there was a clause in the permit which allowed renewals.

Issues 3 and 4, whether the Plaintiff is entitled to the reliefs sought in the plaint; and what remedies are available for the parties.

The last issues are in relation to reliefs and remedies.

The Plaintiff sought for Court declaration that she is the lawful owner of the mature Eucalyptus plantations on 15 hectares of land comprised in Kyadondo block 234, plot 74, 114, 270 and 271 land at Kirinya and that the 2nd Defendant's allocation of the said land to the 1st Defendant without compensating the Plaintiff was unlawful and illegal. That the Plaintiff is entitled to compensation at the current value of the said Eucalyptus plantation numbering approximately 37,500 or as determined by a professional valuer, an order for compensation for the costs of bush clearing, planting seedlings, pesticides, weeding, construction of roads and temporary housing and administrative costs. An order for payment of general damages for the inconvenience occasioned as a result of the illegal actions/omissions unto the above mentioned land, and order for general damages for any property destroyed and therefore lost, an order for payment of interest at a rate of 30% (*thirty percent*) per annum on the above from the date of judgment until full payment in full, exemplary and punitive damages, and costs of the suit.

Having found that the Plaintiff was a trespasser, the Plaintiff had no cause of action against the Defendants and is not entitled to any of the remedies sought from Court. The Plaintiff was and is a trespasser on the suit land.

Judgment is entered for the Defendants against the Plaintiff with costs.

.....

Henry I. Kawesa

JUDGE

29/05/2018

29/05/2018:

Plaintiff absent.

Festo Tindyebwa for Patrick Kabagambe for 1st Defendant Absent.

Court: Judgment delivered in the presence of the said parties above.

.....

Henry I. Kawesa

JUDGE

29/05/2018