

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA  
LAND DIVISION SITTING AT NAKAWA  
CONSOLIDATED CIVIL SUITS NO.1036 OF 2018 & CIVIL SUIT  
NO.165 OF 2019.**

**KICONCO MEDARD.....PLAINTIFF**

**VERSUS**

**HON. PERSIS NAMUGANZA &148 ORTHERS....DEFENDANTS**

**JUDGMENT**

**BEFORE HON JUSTICE TADEO ASIIMWE.**

The brief background of the suit is that the plaintiff is the registered proprietor of the land comprised in Kyadondo Block 206 plot 671 Mpererwe having purchased the same from Paul Katabazi Bitarabeho (the administrator of the estate of the Late Paul Bitarabeho) in 2013 and completed payment in 2016. The certificate of title was transferred in his names on the 29/4/2016. At the time of purchase there were 17 persons introduced to him as trespassers with who commenced negotiations to settle through compensation. The plaintiff alleges that while compensating some of the original 17 occupants, the 3<sup>rd</sup> to 147<sup>th</sup> defendants appeared and presented

agreements claiming to be compensated as well for their Bibanja interests they purchased from Chrisper Bitarabeho hence this suit.

In the original suit, the Plaintiff originally sued the 3<sup>rd</sup> to 19<sup>th</sup> defendants for trespass, the 1st and 2nd for injunction, damages and the 20th defendant for failure to demolish illegal structures to his land. Before the commencement of hearing, an application no.341 of 2019 was filled by the applicants seeking to join the original 20 defendants as co- defendants. The said application was not opposed by the respondents and was allowed hence adding 128 defendants to the original 20 defendants making them 148 defendants.

It was however, brought to the attention of court that there were 3 suits (Civil suit no. 1036 of 2018, civil suit no 165 of 2019 and civil suit no.10 of 2012 for and against the plaintiff calls for consolidation of the cases since they all relate to the same dispute. All the parties agreed on the need for consolidation to resolve the issues at once. An order for consolidation was granted by court to consolidate the 3 cases. However before consolidation of the suits was effected, civil suit number 10 of 2012 was withdrawn hence consolidation off C S NO. 1036 OF 2018 AND CS NO 165 OF 2019. Subsequently following the

consolidation, order the number of defendants moved to upwards from 20 to 149 with Attorney General being added as the 149<sup>th</sup> defendant. As can be gathered from the pleadings in civil suit 165 of 2019, the plaintiff sued attorney general for compensation over the same land, permanent injunction, general damages, exemplary damages costs and interest.

All The defendants except the 2<sup>nd</sup> defendant filled there written statements of defence denying all these claims by the plaintiff. Subsequently the plaintiff also withdrew the case against the 3rd, 4th, 5th. 5th, 6th. 8th, 9th, 10th, 12th .13th, 15th, 16th, 17th, 18th defendant and the suit proceeded against the remaining defendants.

At scheduling the following facts were agreed upon;

- a) The suit land is comprised in Kyadondo Block 206 plot 671 Mpererwe, Kampala District.
- b) The plaintiff is the registered proprietor of the suit land comprised in Kyadondo Block 206 plot 671 Mpererwe, Kampala District.
- c) The 7<sup>th</sup>, 11<sup>th</sup>, 14th, 19<sup>th</sup> to 147<sup>th</sup> defendants hold Bibanja sales agreement for Lusanja, Wakiso District.

d) The 148<sup>th</sup> defendant is charged with the physical planning of Kampala city under section 7 of the KCCA Act, 2011 whose duties are to regulate all matters to do with physical planning within Kampala including but not restricted to approval of plans and or drawings for all permanent and temporary structures, renovations and alterations.

## ISSUES

The following issues were agreed upon by the parties for determination by this court;

- 1) Whether the 1<sup>st</sup> defendant incited the 3<sup>rd</sup> to 147<sup>th</sup> defendants to unlawfully settle and occupy the suit land.
- 2) Whether the 149<sup>th</sup> defendant issued directives for the 3<sup>rd</sup> to 147<sup>th</sup> defendant to stay and remain on the suit land
- 3) Whether the 148<sup>th</sup> defendant abdicated its duties as provided by under the law
- 4) Whether the 7<sup>th</sup>, 11<sup>th</sup>, 14<sup>th</sup>, 19<sup>th</sup> to 147<sup>th</sup> defendants are trespassers on the suit land
- 5) What remedies are available to the parties.

At the hearing, the plaintiff was represented counsel Babu Rashid, the its defendant by counsel Kumbuga Richard, the 2<sup>nd</sup>-147<sup>th</sup> defendants by Kiwanuka Abdallah, Luyimbazi Elias Nalukola and counsel Lukwago Elias while counsel Byaruhanga Dennis represented KCCA.

Counsel for the plaintiff raised a preliminary issue in which he sought certain remedies to be granted against parties who never filled a defence. He submitted that 2<sup>nd</sup> to the 18<sup>th</sup> defendants did not file a defence after they had been served by the plaintiff. He submitted that under Order 6 rule 10 of the civil procedure the consequences of not filling a defence is that the court shall proceed to hear the suit as if the defendants filled the defence and that those particular defendants are presumed not to have given a defence to counter the plaintiffs claim.

He further prayed that court enters judgement against them a fact that would be reflected in the remedies granted by court under issue five.

Whereas I agree with counsel for the plaintiff that once a party does not file a defence court proceeds as if the party had filled a defence as per order 6 rule 10 above, this does not automatically entitle the parties the remedies and orders

sought in the entire case against such defendants. The order simply means that court will proceed to resolve the issues at hand on the basis of the plaintiff's case and determine whether a case is made out by a party who has filled the pleadings. The fact and law still remain that he who alleges must prove and therefore the rule cited by the plaintiffs' counsel is subject to this rule of evidence. Therefore, the preliminary issue raised by the plaintiff's counsel will be resolved by court while determining the merits of the case against the defendants who never filled a defence. Therefore will not make a determination on this matter raised but proceed to resolve the issues as framed by the parties.

### **Issue 1**

***Whether the 1<sup>st</sup> defendant incited the 3<sup>rd</sup> to 147<sup>th</sup> defendants to unlawfully settle and occupy the suit land.***

As far as this issue is concerned, counsel for the plaintiff submitted that the 1<sup>st</sup> defendant incited the 3<sup>rd</sup> to 147<sup>th</sup> defendants to settle on his land unlawfully and to occupy the same. Counsel submitted that the 1<sup>st</sup> defendant held a meeting on the 5<sup>th</sup> September 2016 on the suit land and listened to only one side. That the plaintiff went an extra mile to notify the 1<sup>st</sup> defendant about the unfair act she had done through his lawyers as per D.exh.No.1. Counsel further submitted that the

1<sup>st</sup> defendant failed to adduce evidence to disprove the plaintiff's claim since she failed to even comply with court's directive to produce documents about this very matter during cross examination.

In reply, Counsel Kumbuga Richard for the 1<sup>st</sup> defendant relied on the 1<sup>st</sup> defendant's written statement of defence and submitted that the 1<sup>st</sup> defendant as the state minister for lands was petitioned by some defendants about the harassment from the plaintiff in relation to the suit land and she accordingly met them to investigate the complaint. That she equally received a complaint D.exh.No.1 from the plaintiff's lawyers requesting her in her official capacity to hear their side. But before she could accord the plaintiffs a hearing, she learnt that the matter was a subject of court proceedings and opted out. Counsel submitted that the acts of the 1<sup>st</sup> defendant were not outside her mandate as the State Minister for lands.

Under Section.101 of the evidence Act, when a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person. In this case, the burden of proof lies on the plaintiff to prove the incitement by the 1<sup>st</sup> defendant.

To incite according to the **Black's Law Dictionary, 8th Edition,**

**page 830** means to provoke or stir up someone to commit a crime.

According to the evidence on record the first defendant was invited by some of the defendants. The documentary evidence exhibited in court shows that 1<sup>st</sup> was invited by both parties as a minister of state for land matters to intervene in the disputes on the suit land. She managed to meet the defendants as part of her inquiry and advised them to stay on the land pending her investigations in the matter. The issue of not meeting the plaintiff was clarified by the 1<sup>st</sup> defendant in her cross-examination and her written statement of defence to be existence of the court case which led her to terminate her inquiry prematurely but her intention was to meet both parties.

From the above evidence, it is clear the 1<sup>st</sup> defendant did not conclude her investigations and as such could not have taken any decision that would amount to incitement as alleged. There is no evidence to prove that whatever she did was in her private capacity. On the contrary, there is evidence that she was invited in her official capacity as a minister of state for lands and thus whatever wrong action and/or omissions are actionable against the employer.

There was no sufficient evidence adduced by the plaintiff to the requisite standard that the 1<sup>st</sup> defendant indeed incited the



3<sup>rd</sup> to 147<sup>th</sup> defendant to settle and occupy the suit land since the said persons were found on the land when the minister visited the area. It is courts view that even if it were evidenced that she asked them to stay on the land, it was simply an advice to the parties pending investigations that were over taken by this court case and nothing more.

I therefore find that the 1<sup>st</sup> defendant's involvement in the land matter was in her official capacity as a minister of state for land matters and she did not incite the 3<sup>rd</sup> to 147<sup>th</sup> defendant to settle and occupy and stay on the suit land.

I therefore find that the 1<sup>st</sup> defendant did not incite the 3<sup>rd</sup> to 147<sup>th</sup> defendant to occupy and stay on the suit land. The 1<sup>st</sup> issue is answered in the negative.

Before I proceed to resolve the 2<sup>nd</sup> issue, there is need to determine the case against the 2<sup>nd</sup> defendant where no issue was framed by the parties.

The 2<sup>nd</sup> defendant HON rosemary Nansubuga Seninde was sued by the plaintiff for a permanent injunction, damages, costs and interest.

In abide to prove their case Pw1 testified before court that the

2<sup>nd</sup> defendant equally incited the 3<sup>rd</sup> to the 147<sup>th</sup> defendant to settle on his land and caused him financial loss due to failure to set up an industrial park. The plaintiffs never produced further evidence to prove how the minister incited the people who were already on the plaintiff's land to settle there. In courts view the evidence of the plaintiff alone is not sufficient proof of the alleged facts. One would have expected evidence of a criminal case filed against the minister or even produced evidence of a report to the local authorities. There was also no written instructions from the minister ordering the people to stay on the land whatsoever as was alleged. The plaintiff's evidence therefore falls short of the standard of proof required in civil cases hence failure to prove his case on the balance of probabilities against the 2<sup>nd</sup> defendant as well.

## **ISSUE 2**

***Whether the 149<sup>th</sup> defendant issued directives for the 3<sup>d</sup> to 147<sup>th</sup> defendant to stay and remain on the suit land***

Counsel for the plaintiff submitted that the President of the Republic of Uganda after the eviction visited the suit land and condoled with the evicted persons and further directed that they remain on the land subject to investigations and that there were no investigations that were made eventually. That such

submissions / utterances by the President encouraged people/defendants to remain on the plaintiff's land thus violating his constitutional right to own and enjoy his land.

In response counsel for the 149<sup>th</sup> defendant submitted that the President has never settled anyone on the land and that there was no Directive made by him allowing anyone to settle on the disputed land.

This court has considered the evidence of the plaintiff on record against the 149<sup>th</sup> defendant. The gist of his claim is that the president of Uganda issued directives that trespassers should stay on the land pending investigations which have not been done to date. Indeed when court visited locus and two tents from the office of the prime minister were found on land occupied by the some of the defendants. Courts understanding of this piece of evidence is that the presidential directive did not amount to giving/ donating land to any person but an interim measure pending investigation of the matter.

This interpretation of the plaintiff's evidence by court is supported by the evidence of DW9 Edrisa Sseremba who testified in this court and stated that "*the president didn't give us land. He told us to be on the land temporarily as the matter*

*is investigated*'.

The other piece of evidence in support of temporary stay through DW11 Birungi Irene Mugisha an employee with state house who o explained to court that she went with the president to the suit land where he educated people in regard to their rights and that he advised that the matter should be subjected to investigations and handled under the law. That he advised and directed that demolitions be halted until the commission probes in to the matter. That He went ahead to give the victims temporary shelter and food as the investigations were going on. She finally testified that she was not aware if the commission gave a report.

The plaintiff did not adduce any evidence to rebut the defence evidence of DW9 and DW11. There was no evidence to support the fact that an official directive was made or issued by H.E the President of Uganda that allowed the 3<sup>rd</sup> to 147<sup>th</sup> defendant to take or remain on the land. The evidence of DW11 and DW9 clearly shows that the president expressed sympathy towards the victims of the eviction and such sympathy did not imply any directive to allow the defendants to take the suit land but rather a temporary stay on the land pending the investigations of the matter which investigations included this court's determination of issues at hand. The suit land was therefore never donated to

any one for ownership purposes. I have also noted that none of the defendants claim on the land was based on either a donation or encouragement from the president. Their claim is for ownership of Bibanja on the suit land. This is therefore not a case of compulsory acquisition of land by government where compensation to a landowner is a pre-liquisite. I therefore find that the case against the 149<sup>th</sup> defendant lacks merit on the balance of probabilities and the same is here by dismissed. This issue also fails.

### **ISSUE 3**

***Whether the 148<sup>th</sup> defendant abdicated its duties as provided under the law***

The 148<sup>th</sup> defendant is the Kampala Capital city Authority (KCCA) whose mandate is established under the KCCA Act of 2011. Counsel for the plaintiff submitted that the Authority absconded its duty under **section 7(k)** of the KCCA act. He submitted that DW13 who was the Deputy Director Physical Planning admitted that a complaint was raised to them on illegal structures on the suit land and the same letter the plaintiff requested administrative action to demolish the illegal structures but the 148<sup>th</sup> defendant did not respond as required by the law. Counsel cited the cases of **Muluta Joseph V Katama Sylvan SCCA No.11 of 1999** and **Owori Boniface &12 Ors HCCS**

**NO.360** of 2013 where court held that Kampala Capital City Authority has the duty to enforce building permissions and where there is non-compliance and construction without permission, the Authority can demolish the structures on the land without any compensation.

In reply, Counsel Byaruhanga Dennis for the 148<sup>th</sup> defendant submitted that at the time the complaint was raised by the plaintiff, there was a court dispute and a temporary injunction. That the dispute is still pending in this court at the moment. He further submitted that due to the court cases, KCCA could not interfere with the on-going court processes as a reason for failure to take appropriate steps.

This court is aware that Kampala Capital city Authority (KCCA) is a Government entity established by the Kampala Capital City Act 2010 and it is mandated to handle physical planning matters in Kampala as a statutory duty. The law requires that an enforcement notice be issued by the Authority in such circumstances where there are illegal structures on land under its jurisdiction in line with **Section 46** of the Physical Planning Act 2010 which provides as follows;-

*1). A local physical planning committee shall serve an enforcement notice on an owner, occupier of developer of the*

*land, in the form specified in the Ninth Schedule where the committee is satisfied that the development of land has been or is being carried out without the required development permission, or that any of the conditions of development permission granted under this act have not been complied with.*

The above provision mandates the Authority to intervene in such situations where there are illegal constructions on land. However, KCCA could not have dealt with such structures on land amidst conflicts of ownership and court orders in place restraining any person to interfere with the status quo. Paul Katabazi Bitarabeho (court witness no 2) in his evidence testified that there were a series of cases at the time such as Civil Suit No. 625 of 2014 which were on going. He testified that court had granted him a temporary injunction restraining any one from interfering with the suit land. Similarly evidence on record, clearly shows that there are no clear demarcations between Kampala and wakiso in this area. The issue was clarified by a joint survey report at the orders of court, which clearly put it under the management of KCCA. The observation of court is that all defendants did not know where the suit land falls. This situation was compounded by a number of disputes and court orders over the suit land.

Therefore, the plaintiff should not have expected the 148<sup>th</sup> defendant (KCCA) to disobey a court order to enforce its mandate. I find the actions of the 148<sup>th</sup> defendant in failing to demolish the illegal structures amidst the confusion arising out of land disputes, court orders and the exact location of land forgivable in the circumstances. This issue is also answered in the negative.

#### **ISSUE 4**

**Whether the 7th, 11th, 14th, 19th to 147th defendants are trespasser on the suit land.**

In respect to this issue, it was the submission of counsel for the plaintiff basing on the evidence of the plaintiff (pw1) that when he purchased the suit land it had only 17 known trespassers whom he intended to compensate after acquisition of the land. However, by 2016 when he concluded the payment of the land, the trespassers had grown to 147 , all claimed to have bought their Bibanja interests from Chrispa Bitarabeho they all claimed to be in possession of Bibanja interest agreements. Counsel for the plaintiff further submitted that the actual administrator of the suit land was Paul Bitarabeho (court witness NO.2) and all sales by Chrisper Bitarabeho were illegal. That this was because of the cardinal principle of law that one cannot pass a better title than what they have and one cannot



pass title over what they don't have. He cited **Godfrey Ojwang Vs Wilson Bagonza Civil Appeal No. 25 of 2002** to draw a foundation for his claim. Counsel further submitted that the geographical orientation of the land as per the joint survey report ( PExh.10) clearly showed that the suit land was located in Kampala- Mpererwe and not lusanja-Wakiso as claimed by all the defendants witnesses whom he claims are trespassers. Counsel for the Plaintiff also relied the evidence of PW2 Chrisper Bitarabeho the person from whom the defendants claim to have purchased their interests. She gave evidence of the effect that she never sold any one Kibanja over the plaintiff's land at Sekanyonyi-Mpererwe. The plaintiff's counsel also relied on evidence of PW3 who testified as the LC1 of Sekanyonyi-Mpererwe and confirmed to court that the 3rd to 147th defendants were not residents of his area and that he did not sign any sale agreement of the kibanja belonging to any of the said defendants. Counsel for the plaintiff finally submitted that DW1, DW2, DW3, DW5, DW6, DW7, DW8, DW9DW10, D12, DW14, DW15, DW16 and DW17 who gave evidence and tendered in agreements which clearly show that the Bibanja they purchased are situate in Lusanja in Wakiso District.

On the other hand, Counsel for the 3rd to 147th defendant submitted that by the time of purchase of the suit land, the 7th,

11th, 12th, 19th to 127th defendants were in full occupation of the suit land in their respective Bibanja. That at the time of the purchase the plaintiff was fully aware of these interests on his land but ignored them. Counsel submitted that during cross-examination, the plaintiff admitted that there was no sale agreement in respect to the suit land and did not even bother to make as search for the said land to ascertain whether there were interests at the time and had he done the search he would have found the defendants on the suit land. Counsel further submitted that the plaintiff has never been in possession of the suit land and thus is not entitled to the remedies sought. He referred to the various purchase agreements, which showed that the defendants were on the suit land way back in 2011 and yet the defendant was registered on the suit land just in 2016. Counsel relied on the case of **Nabanoba Desiranta & Anor V Kayiwa Joseph HCCS No.496 of 2005** which court determined that a purchase without due inquiries amounts to fraud.

Courts position is that enjoyment of one's private property is a constitutional right. It is an offence of trespass to interfere with one's right to property. That is why Trespass is still a criminal offence in the laws of Uganda. It is intended to punish those who interfere with one's private ownership to property. Trespass consists of any unjustifiable intrusion upon or

interference with the land in possession of another and can be one of the following:

1. Entering upon a land in possession of another without permission.
2. Remaining on land entered with permission after request to move has been made (e.g. being sent away by a landlord and you refuse to go away, it is trespass to land).
3. Placing or throwing away any object upon it without any lawful justification.

The commonest form of trespass to land is the personal entry by the defendant onto the land or building occupied by the plaintiff. The trespass must be voluntarily so that if a person is carried or forced into another land on his part there is no trespass as was held in **Smith Vs Stone. 08 F.2D 15(9th Cir.1962)**

The Supreme Court in the case of Justine **E.M.N Lutaaya vs. Stirling Civil Eng. Civ.Appeal No. 11 of 2002**, held that trespass to land occurs when a person makes an unauthorised entry upon another's land and thereby interfering with another person's lawful possession of the land.

It should be noted that a person who sues in trespass is a person in possession of the land. Possession may either be possession in law, Possession in fact or immediate possession. In **Justine E.M.N Lutaaya vs. Sterling Civil Eng (supra)** it was

held that possession does not only mean physical occupation but also includes constructive possession.

In this case evidence shows that some defendant purchased their Bibanja interests from Chrisper Bitarabeho and others from amongst themselves. This is evidence by the agreements which were admitted on record. However, the common seller to the majority is Chrisper Bitarabeho. No single piece of evidence is on record to show that any of the defendants bought land from the original owner of the land or the administrator (Paul Katabazi Bitarabeho).

The said Chrisper Bitarabeho testified in this court as PW3 and stated that she did not sell to any of the defendants the land in dispute at Sekanyonyi-Mpererwe, which in her view is the plaintiff's land and insisted that she sold some of the Bibanja in question to some of the defendants in a different area from the land in dispute. At locus she was able to point at the land she sold to some of the defendants which was indeed far away from the suit land at a distance even beyond court's view. Secondly, some of the defendant's agreements which were admitted in court indicate the land they bought was in Lusanja Wakiso district.

However, basing on the joint survey report PEXh10; and the

locus visit it, it became clear that the suit land was situate in Mpererwe Kampala district and not in Lusanja as the defendants wanted court to believe.

At locus I observed that the land in dispute was situate in Mpererwe Kampala district. It however borders land in lusanja where the defendant's agreements fall. There were a few structures on the suit land, two tents and most of the land was vacant. I also observed that some properties/ structures belonging to people (parties and non- parties) to the suit were affected by boundaries of the suit land. Those that were affected by the boundaries are Nalongo kavuma Iddi, kiihera musefaru, Kamba Daniel, Eli Ayoti, luyima Patric and kirunda Ivan.

PW3 Ssejemba Henry, the LC1 chairman of Sekanyonyi-Mpererwe ( where the suit land is situate) testified in court and confirmed that the 3rd to 147th defendants were not residents of his area and that he had never signed any sale agreement of the kibanja belonging to any of the said defendants. The only picture that can be clearly drawn from this evidence is that the defendants were misled and confused about the exact location of the land they bought. Their problem

was compounded by the ignorance of the chairman LC1 of lusanja DW3(kibuka) who continued to administer land in Kampala yet he was chairman of Lusanja in Wakiso district.it is therefore not surprising that he signed on agreements for the sale of land in Kampala and not Lusanja. This he confirmed in court and at locus.

However even if the defendants Bibanja were to be found located ,in the disputed land their claim would face challenges on the basis that they acquired their interest from a wrong party. The proper party is the administrator of the estate who is clothed with the authority to deal with the estate.

Court witness No.2 ,Paul Katabazi Bitarabeho told court that he was the right administrator of the estate of their late father having obtained the letters of administration in the year 2012. He disputed the transitions made by Chrispa Bitarabeho her sister, as he never authorised her to sell any part of the estate. This evidence was not contested in court and it negatively affects the defendants claim.

Its trite law that no person is authorized to deal with the Estate of the deceased except for someone with letters of Administration. The general position under the law as per

**Section 191 of Succession Act (supra) is that;**

“Except as hereafter provided, but subject to section 4 of the Administrator General’s Act, no right to any part of the property of a person who has died intestate shall be established in any court of justice, unless letters of administration have first been granted by a court of competent jurisdiction.”

Clearly, this provision would render any acts of a person or persons in relation to the estate of the deceased person illegal, null and void if that person has not obtained Letters of Administration. This is because it is only by the grant that a person or persons are clothed with the legal authority to deal with the estate or any part of the estate of the deceased.

**In Makula International vs. His Eminence Cardinal Nsubuga & Another [1989] HCB 11; and Neptune Noratan Bhatia vs. Crane Bank Ltd CACA No. 75 of 2006** court noted that once an illegality is brought to the attention of the court it cannot be ignored.

It is therefore clear that even if it were to be true that the defendants acquired their bibanja interests in the suit land, their purported Bibanja interests can only be derived from Chrisper Bitarabeho who did not have authority to sell. Therefore, their

claim as bibanja holders cannot be said to be valid in law and cannot succeed. The rightful person who had authority to sell was the administrator, Mr.Bitarabeho Katabazi Paul who was not even known by all the claimants. Some witnesses who testified as Dw6 and Dw10 informed court that they did not know who Paul Katabazi Bitarabeho (administrator) was and that they had never seen him.

It is an established principal of law that once a party does not know his land lord it is evidence enough to rely on to qualify him as a trespasser.

It is this court's finding that the 20<sup>th</sup> to 147<sup>th</sup> defendants trespassed on the plaintiff's land comprised in Kyado block 206 plot 671 since their purported bibanja interests are not located in the suit land and secondly they acquired their interests from Chrisper Bitarabeho who did not have authority to sell land belonging to the estate of Paul Bitarabeho before the same was distributed to her by the recognised administrator.

However, the 7<sup>th</sup>, 11<sup>th</sup>, 14<sup>th</sup> and 19<sup>th</sup> defendants namely Nansereko Madinah, Kanyike Fred, Kilabila John, and Nanyanzi Scovia lay in a different category of defendants. Evidence on record supports the position that they are among the original



17 occupants on the suit land that had been sued by the court witness 2 Paul Katabazi Bitarabeho (administrator of the estate of the late Paul Bitarabeho) in civil suit no 625/2014(pexh3). The said Paul Bitarabeho and pw1 confirmed to this court that the plaintiff was aware of the existence of these persons on the suit land at the time of purchase. He commenced negotiations with some of them so to compensate them. However according to PEX1-37(memorandums of understandings between the plaintiff and some of the defendants) the 7<sup>th</sup>, 11<sup>th</sup>, 14<sup>th</sup> and 19<sup>th</sup> defendants were not compensated by the plaintiff and yet he compensated their co- defendants in the original suit.

The conduct of the plaintiff while dealing with these four defendants places them in the realm of the doctrines of legitimate expectation in public law and estoppel. These doctrines intend to give relief to people when they are not able to justify their claims based on the law as was stated in **1.P.Massey, Administrative law 8th Ed. At pp344-345**. The essence is that you cannot represent to someone that they are entitled to something and turn around to penalise them when they stand up to claim it. In the instant case, it was the evidence of PW1 Mr. Kiconco Medard that he found 17 trespassers on the land and went in to negotiations with them, compensated some of them and others failed at negotiation

level when they asked for more money and the number grew beyond the original 17. From this evidence it is clear that the plaintiff represented to the original 17 persons he found on land that they were entitled to compensation a reason they exercised their powers at negotiations. The plaintiff is estopped from denying that he validated their occupancy when he commenced negotiations and compensation process to them. He actually succeeded in compensating and/or deal with 13 of them out of the 17 original occupants and withdrew cases against them leaving 4 of them who failed at negotiations.

Although these four defendants were originally trespassers, the plaintiff elevated them to a special category of trespassers when he represented to them that they were entitled to compensation. Principles of equity dictate that, the four defendants cannot be removed from the land without a level of compensation for the misrepresentation by the person seeking to evict them. Therefore, this court directs that before the 4 defendants above leave the land, the plaintiff compensates each one of them with an amount of money equivalent to the purchase price in their respective purchase agreements which were admitted in court.

This issue partly succeeds.

## **ISSUE 5**

### ***What remedies are available to the parties?***

#### **1. A declaration that the plaintiff is the owner of the land in dispute.**

On this prayer the plaintiff the plaintiff has been found to have purchased the land in dispute lawfully from the rightful administrator and got registered in April, 2016. The majority of the defendants having sought to be trespassers in the suit land, he is therefore declared a lawfully owner of the suit land comprised in kyadondo block 206 plot 671 subject to compensation of only 4 defendants mentioned in the judgement.

#### **2. GENERAL DAMAGES.**

*The plaintiff sought for general damages amounting to 500,000,000= (five hundred million)*

The law concerning general damages for trespass to land is that damages are intended to compensate the claimant for being kept out of his land on whatever basis they are assessed. General damages for trespass in all its forms is actionable per

se, i.e., there is no need for the plaintiff to prove that he or she has sustained actual damage. That no damage must be shown before an action will lie is an important hallmark of trespass to land as contrasted with other torts. But without proof of actual loss or damage, courts usually award nominal damages. Damages for torts actionable per se are said to be “at large”, that is to say the Court, taking all the relevant circumstances into account, will reach an intuitive assessment of the loss which it considers the plaintiff has sustained. General damages therefore are discretionary in nature.

*In this case as regards to the 7<sup>th</sup> 11th, 14<sup>th</sup> and 19<sup>th</sup> defendants. **This** court has already found that the plaintiff is estopped from denying that he validated their occupancy when he commenced negotiations and compensation processes with them. That being the case, the circumstances of this case do not justify the award of damages against them (7<sup>th</sup>, 11th, 14th and 19<sup>th</sup>) defendants.*

As regards the prayer for damages against the 127 defendants that moved court to be added as joint defendants, I am equally constrained to make orders of damages against them for reasons that they were confused against the exact location of

the suit land which was not even known by their LC1 chairman who witnessed there agreements. The majority who testified in court appeared to be illiterate and needed guidance from lawyers at the time of purchase. Although ignorance is not a defence the totality of the circumstances surrounding this case as per evidence on record bring out a general confusion of the demarcation of the suit land. They have also previously lost their structures, which were put down as a result of the eviction order.

It is therefore in the interest of justice not to make any orders to damages them.

### **3. A prayer for vacant possession and permanent injunction.**

*An order of permanent injunction is granted against the defendants who have been found trespassers in the suit land.*

*As regards vacant possession, the plaintiff has already been declared a lawful owner of the suit land subject to compensation of the 4 defendants. He is therefore granted vacant possession of the suit land with in a period of 1 month after full compensation of the 4 defendants here in named.*

### **4. COSTS**

***The plaintiff sought for an order of costs***

*In deciding this issue this court is guided by the provisions section 27 (1) of The Civil Procedure Act which confers upon a Judge, the discretion and full power to determine by whom and out of what property and to what extent costs incident to all suits are to be paid, and to give all necessary directions for that purposes.*

*Despite this very wide discretion, as a general rule the successful party in contested proceedings is usually entitled to an award of costs. It is the accepted general rule of our law that, in the absence of special circumstances costs follow the event. (see Ritter v. Godfrey (1920) 2 KB 47). However, this rule will yield where considerations of fairness require it. The court may as well exercise its discretion in awarding costs as a means of enhancing proper use of the scarce and expensive court resource.*

*In considering the exercise of its discretion and whether to “otherwise order,” court in the case of **ADRABO STANELY VS MADIRA JIMMY HCCS NO. 0024 OF 2013** while citing the case **Devlin J Anglo-Cyprian Trade Agencies Ltd v. Paphos Wine Industries Ltd, [1951] 1 All ER 873** formulated the relevant principle as follows:*

*The general proposition for that reason is that the unsuccessful*

*party seeking to be absolved of liability to pay the successful party's costs of the proceedings bears the burden of proving special circumstances*

*The special circumstances envisaged ordinarily involve some sort of misconduct on the part of the successful party. "Misconduct" in this context means misconduct relating to the litigation, or the circumstances leading up to the litigation. Such conduct may include;- a suit not brought bona fides, but rather as a vehicle to force or coerce the other party to bend to the plaintiff's will; where the successful applicant had failed on more issues than he had succeeded, that may make it reasonable that he or she bears the expense of litigating that portion upon which he or she has failed (see Forster v. Farquhar (1893) 1 QB 564)*

In the instant case, I have not found any misconduct on the part of the plaintiff relating to the litigation, however I have noted that that the plaintiff filed this suit against 5 different categories of people and raised 5 issues. The case has been dismissed on the first 3 issues which would ideally mean that the plaintiff would have been ordered to pay costs to the parties against whom this case was dismissed. However, evidence on record shows that the plaintiff has been denied use of his land temporarily to enable conclusion of

investigation in the matter. It is therefore in the interest of justice not to make such orders against the plaintiff.

On the other hand, the majority (127) defendants were not sued by the plaintiff but applied to be joined as co- defendants on their own vide miscellaneous application no. 341 of 2019 and were added to the case. They defended the case and lost and as a rule, they must pay costs. Therefore, the 127 (from the 20<sup>th</sup> to the 147<sup>th</sup> defendants) who were added as co-defendants to the suit shall bear the costs of this suit.

In conclusion, therefore this suit partly succeeds with the following orders;

1. The plaintiff is declared the lawful owner of the suit land comprised in kyadondo block 206 plot 671 subject to compensation of only 4 defendants mentioned in the judgement.
2. No order as to general and exemplary damages is granted.
3. An order directing all persons named in the judgement as persons affected by the land boundaries of the suit land, to remove there structures with in a period of 30 days from the date of judgement failure of which execution to



issue.

4. An order for permanent injunction and vacant possession is granted against 3<sup>rd</sup> to 147<sup>th</sup> defendant subject to compensation of Nansereko Mardina, Kanyike Fred, Kirabira John and Nanyanzi scovia. Vacant possession shall only be effected if the Defendants will not voluntarily leave in a period of one month.
5. The 148<sup>th</sup> defendant (KCCA) is ordered to put proper demarcations separating Kampala from Wakiso district in the area and put proper boundaries in the shortest time possible to avoid future confusions and deal with the illegal structures on the plaintiffs land.
6. Costs awarded to the plaintiff against the 20<sup>th</sup> to the 147<sup>th</sup> defendants.

Dated at Kampala this 4th day, October, 2019

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TADEO ASIIMWE

JUDGE