

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(LAND DIVISION)

CIVIL SUIT NO.0204 OF 2014

ALLAN NKINZEHKI:.....PLAINTIFF

V E R S U S

BIRIMUMASO NANDAWULA:.....DEFENDANT

BEFORE: HON. MR. JUSTICE HENRY I. KAWESA

JUDGMENT

The brief facts in this case is as follows:

The Plaintiff's cause of action is that according to paragraph 4 of the plaint, he bought the suit land **comprised in Kyadondo Block 211 Plot 719 at Kikaya** from M/S Corridor Agencies; the Bailiffs of Court.

The land was sold following an execution of a Court decree vide **Civil Suit No. 145 of 2002; George Ntibankure versus Birimumaso Nandawula**. The Plaintiff got registered thereon and took possession. The Defendant however forcefully and entered on the suitland on October 22,2012 and commenced construction thereon of as illegal structure; hence this suit.

In paragraph 7 and 8 of the plaint, it is pleaded that following a legal execution process conducted by Court, the Defendant lost

ownership of the suitland and the Plaintiff is a bonafide purchaser of that same land. He further contends in paragraph 9 that Defendants' forceful entry on the land constitute3s trespass and the Defendant is liable in damage.

In defence, the Defendant filed written statement of defence and denied the claim. The Defendant sold some portion of her land to a one; George Ntibarikire and that later she refunded the money in the Nakawa Chief Magistrates Civil Suit No.145 of 2002 and that there was no need to auction the suit property.

Under (d), the Defendant pleaded that when the Plaintiff went to inspect the land, she warned him not to purchase the land because she had got the owner's duplicate Certificate of Title.

The issues were;

- 1. Whether the Plaintiff is the owner of the suitland.**
- 2. Whether the Defendant is a trespasser on the suitland.**
- 3. What are the remedies available to the parties.**

Evidence:

The Plaintiff called two witnesses. PW1; Allan Nkizehiki and PW2; Senyonga Livingstone. The Plaintiff relied on several exhibits listed as PEX<sub>1</sub> – PEX<sub>8</sub>.

The Defendant relied on the evidence of DW1; Nandawula Birimumaso and DW2; Murumba Jackson.

The respective lawyers filed submissions, which I will rely on as I resolve the issues.

Resolution of issues:

**Issue No. 1.**

Whether the Plaintiff is the owner of the suitland.

The Plaintiff has evidence on record through PW1 and PW2 and PEX<sub>1</sub> – PEX<sub>8</sub> to show that he purchased the suit property, following a public auction. On record is P<sub>1</sub>D<sub>2</sub> showing that it was a judicial sale, Advertisement (PEX<sub>2</sub>), proof of payment (PEX<sub>3</sub>), order of delivery (PEX<sub>4</sub>), Notice of issue of Special Title (PEX<sub>5</sub>) and Certificate of title (PEX<sub>1</sub>). These transactions were official. It is not denied by the Defendant who simply pleaded in the written statement of defence that the sale ought not to have happened.

PW1 and PW2 confirmed the above, while DW1; Nandawula stated that there was no need for the auction and when the Plaintiff visited the land before purchase, she warned him not to buy it, because he had cleared the debt with George Ntibarikire. All the evidence above does not in any way rebutt the fact that there is a valid Court order, which led to the execution process.

A purchaser of land from a public auction follows a legal process of advertisement and public notice, which once correctly done, presumes acquisition of good title. The definitions cited of a bonafide purchaser as per **Bugoba versus Kigozi and M Mbabali; HCCS No.054 of 2004**, is that;

*“It refers to one without notice of fraud and without intent to wrongly acquire title”.*

Also ***Black’s Law Dictionary; 8<sup>th</sup> Edn page 1291*** states that;

*“A bonafide purchaser is one who buys something for value without notice of another claim to the property and whether the actual or constructive notice of another claim to the property and whether actual or constructive notice of any defect or informality claims or equities against the seller’s title or one who was in good faith, pending valuable consideration for property without notice of prior adverse claims”.*

These definitions indicate the position that the Plaintiff indeed found himself. He responded to an invitation, took steps to buy.

When this is looked at in lieu of Section 59 of the Registration of Titles Act, a Certificate of Title is conclusive evidence of ownership.

I do agree that the facts and the law above indicate and prove that the Plaintiff is a bonafide purchaser for value, has legal title to the land and therefore is the lawful owner of the suitland.

The Defendant did not counterclaim, did not plead fraud against the Plaintiff’s title, but only claimed that the auction ought not to have occurred.

Her pleadings show a direct disrespect of Court orders and there is no evidence of any of the averments in her statements that she warned the Plaintiff not purchase the land because she paid off the debt. This, even if it was so, is an illegality since Court orders are not issued in vain and she ought to have obeyed the Court order to bring her certificate to Court.

In view of the above, the defence fails and the Plaintiff's claim on this limb is proved on the balance of probabilities.

This finding answers issue No.2 and since the Plaintiff is a lawful owner of the suitland, the evidence by the Plaintiff and admissions by the Defendant show that she acted in trespass and even illegally constructed a house on the land.

At the *locus*, this Court was shown this house. The Court noted that though the Defendant claimed that it was an old building, the building was newly constructed, unplastered and with fresh bricks.

The Defendant was panicky and while at *locus*, she was very unwilling to answer questions. Her behaviour was a clear culmination of contempt for Court proceedings.

I do agree with the Plaintiff that her demeanour and conduct showed that she was being untruthful.

I do find that the Defendant is in trespass to the Plaintiff's land.

Issue No.2 is found in the affirmative.

### **Issue No.3**

The Plaintiff prayed for damages, declarations, costs and interest.

In the result, as per the findings of this Court, I award the Plaintiff a declaration that **Kyadondo Block 211 Plot 719 at Kikaya** exclusively belongs to the Plaintiff.

An order of eviction against the Defendant, punitive damages of shs. 1,000,000/- (*one million shillings*) per year for 8 years of pain

and suffering since 2012 when the Defendant illegally entered on the land, totalling to shs. 8,000,000/- (*eight million shillings*).

Costs of the suit.

I so order.

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Henry I. Kawesa

**JUDGE**

20/05/2021

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Daniel Byaruhanga for the Defendant.

Defendant present.

Diana Achom for the Plaintiff.

Plaintiff present.

Court:

Matter for Judgment.

Judgment delivered in the presence of the parties above.

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Henry I. Kawesa

**JUDGE**

20/05/2021