

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

CIVIL SUIT NO.514 of 2019

NAMUTETE HENRY MUGWANYA:.....PLAINTIFF

VERSUS

KIZITO HENRY SSEWAVA:.....DEFENDANT

JUDGEMENT

Before: Lady Justice Alexandra Nkonge Rugadya.

Introduction:

The plaintiff's claim against the defendant is for a trespass on land comprised **Busiro Block 542 plots 24 and 25 at Bukwe Measuring approximately 8.944 hectares**; an order of vacant possession; an eviction order an order of demolition of structures; general damages for trespass, a permanent injunction against the defendant and/or his agents and his agents claiming title under him as well as mesne profits and costs of the suit.

The record shows that summons were issued on 13th June 2019. Based on an affidavit of service by a one Kojo Noah, an authorized process server of court an attempt was made to serve the defendant on 14th June 2019.

The defendant who declined to acknowledge service however retained copies of the court documents. The defendant also filed an affidavit in reply to mediation, on 11th September 2019. He did not however file a written statement of defence.

On 12th September, 2019, the plaintiff's advocates through their letter requested court to enter an interlocutory judgement against the defendant and for the suit be set down for formal proof.

However, on 26th September, 2019, the Registrar recommended that since the defendant had expressed interest in defending the suit, he should file a written statement of defence instead. There is no indication on court record that the defendant ever followed up on the matter again.

When this matter came up for mention on 21st September 2020, the defendant had not yet filed a defence and this court accordingly ordered the matter to proceed *ex parte*. Witness statements were filed and later on final submissions made by plaintiff's counsel , which this court has duly considered in addressing the issues at hand.

The following issues were framed for determination by court;

- 1. Whether the plaintiff is the rightful owner of the suit land;**
- 2. Whether the defendant is a trespasser; and**
- 3. Whether the plaintiff is entitled to the remedies sought.**



Issue No.1: Whether the plaintiff is the rightful owner of the suit land.

And

Issue No. 2: Whether the defendant is a trespasser;

I will deal with the two issues **1 and 2** jointly.

5 It is trite law that in all civil matters, the onus rests on the plaintiff who must adduce evidence to prove his or her case on the balance of probabilities if she is to obtain the relief sought. **(See: sections 101-103 of the Evidence Act, Cap.43. See also: Lord Denning in Miller versus Minister of Pensions (1947)2 ALL ER 372 at page 373).**

10 *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. **(Justine E.M Lutaaya versus Sterling Civil Engineering S.C. C.A No 11 of 2002).**

15 The plaintiff testified as **Pw1**. His contention was that in 2019, he discovered that the defendant was occupying part of the suit land measuring approximately 1 acre and that he was erecting a structure thereon, growing seasonal crops like beans yet he had on several occasions warned him to stop his acts of the alleged trespass.

In his witness statement, the plaintiff states that he knew that the suit land had some tenants, whom he negotiated with, but the defendant was not among those that were introduced to him by Mr. Wagaba Samuel, his uncle, and the vendor of the suit land..

20 That while on a routine visit to the suit land sometime in January 2019, he found that the defendant had entered onto the land and erected a two roomed structure, in addition to growing the seasonal crops. Further, that upon confronting the defendant, he presented no documentary proof of ownership, and that his claim of right could not be established.

25 George William Ssenyimba, **Pw2** confirmed that the defendant was found occupying one acre of the suit land and had not only grown seasonal crops thereon, but had also erected a structure, all done without securing authorization from the plaintiff who is the registered proprietor of the land.

Counsel for the plaintiff in his submissions pointed out that by failing to file a written statement of defence, the defendant had admitted all the plaintiff's pleadings and the prayers therein.

30 **Order 8 rule 3 of the Civil Procedure Rules** provides that every allegation of fact in the plaint, if not denied specifically, or by necessary implication, or stated not to be admitted in the pleadings of the opposite party, shall be taken to be admitted, except as against a person under disability; but the court may in its discretion require any facts so admitted to be proved otherwise than by that admission.

In the case of **Agadi Didi -Vs- James Namakaso Civil Suit No. 1230 of 1988**, where Justice **Ntabgoba (Principal Judge as he then was)** held that;

35 **"...failure to file a defence raises a presumption or constructive admission, of the claim made in plaint and the story told by the plaintiff, in the absence of a defence to contradict it, must be accepted as the truth..."**



The foregoing evidence remains unchallenged and in the absence of any evidence of any disability hindering the defendant from filing the defence, I accordingly find that the defendant had no valid claim on that land.

Section 59 of the Registration of Titles Act, Cap 230, provides that a certificate of title is conclusive evidence of ownership. For the avoidance of doubt, it reads as follows;

No certificate of title issued upon an application to bring land under this Act shall be impeached or defeasible by reason or on account of any informality or irregularity in the application or in the proceedings previous to the registration of the certificate, and every certificate of title issued under this Act shall be received in all courts as evidence of the particulars set forth in the certificate and of the entry of the certificate in the Register Book, and shall be conclusive evidence that the person named in the certificate as the proprietor of or having any estate or interest in or power to appoint or dispose of the land described in the certificate is seized or possessed of that estate or interest or has that power.

In **Kasifa Namusisi and others vs Francis M.K NTABAAZI S.C.C.A No. 4 of 2004 Odoki CJ** further had this to say:

“The cardinal principle of registration of title is that a certificate of title is conclusive evidence of title. It is also well settled that a certificate of title is only indefeasible in a few instances which are listed in section 176 of the Registration of Titles Act. The section protects a registered proprietor against ejectment except in cases of fraud, among others”

The plaintiff relied on **PExh1** a certificate of title, documentary proof that he is the registered owner of the land comprised in **Busiro Block 542 plot 24 & 25**, which he claimed he had bought from his uncle Mr. Wagaba Samuel in 2016, with the transfer effected in on 15th February, 2017, vide **Instrument No.WAK00115809**.

This court was also drawn to the attention of a judgment filed by the plaintiff: **Namutete Henry Mugwanya vs Kbuuka HCCS No. 263 of 2019**, that relates to the same piece of land.

The court which delivered the judgment on 23rd July, 2019 conferred the ownership of that same piece of land to the plaintiff, declaring the defendant as the trespasser. The issue of ownership of that land had therefore been concluded and as duly noted by this court, that decision was never challenged nor set aside.

In the final result, sufficient proof has been provided in confirmation that the plaintiff held a valid legal interest in the land, and therefore the rightful owner thereof. Further that the defendant had taken occupation of the suit land without the permission of the registered proprietor thereof and was therefore a trespasser.

Issue No:3 Whether the plaintiff is entitled to the remedies sought.

The plaintiff sought an order of vacant possession, an eviction order an order of demolition of structures and a permanent injunction against the defendant and/or his agents and his agents claiming title under him; and general damages.

From the evidence as led, the plaintiff has proved to the required standard and to the satisfaction of this court that he is entitled to some of the reliefs sought.

General damages:

5 The position of the law is that the award of general damages is in the discretion of court, and the law will presume it to be the natural consequence of the defendant's act or omission. (**See: James Fredrick Nsubuga v. Attorney General, H.C.C.S No. 13 of 1993. It was also held in Robert Cuossens v. Attorney General, S.C.C.A. No. 08 of 1999** that;

"The object of the award of damages is to give the plaintiff compensation for the damage, loss or injury he or she has suffered...."

10 A plaintiff who suffers damage due to the wrongful act of the defendant must be put in the position he or she would have been in had she or he not suffered the wrong. **See: Charles Acire v. Myaana Engola, H.C.C.S No. 143 of 1993; Kibimba Rice Ltd. v. Umar Salim, S.C.C.A. No.17 of 1992.**

He came up with a suggested quantum of general damages of **Ugx.30,000,000/=**, which I however find to be on the higher side.

15 The plaintiff has been and continues to be in occupation of the suit land and has not lost the same except for the inconvenience caused by the defendant's unauthorized actions. I would instead award him the amount of **Ugx. 20,000,000/=**.

Mesne profits:

20 The plaintiff further claimed for *mesne* profits. Such claims are premised on the definition thereof in **section 2 of the Civil Procedure Act (CPA)** wherein they are defined as:

those profits which the person in wrongful possession of the property actually received or might with ordinary diligence have received from it, together with interest on those profits, but shall not include profits due to improvements made by the person in wrongful possession.'

25 I have carefully considered the plaintiff's evidence but I find no basis upon which to rely on to grant him any such relief.

Costs:

30 Costs follow the event, unless for some reasons court directs otherwise, (**section 27 (2) of the Civil Procedure Act**). In other words, a successful party can only be denied costs if it proved that but for his or her conduct, the litigation could have been avoided.

Costs follow the event only where the party succeeds in the main suit. (**See Jennifer Rwanyindo Aurelia & A'nor v. School Outfitters (U) Ltd., C.A.CA No.53 of 1999**)

In the present, the plaintiff is the successful party and I find no reason deny him costs of the suit which I accordingly award.

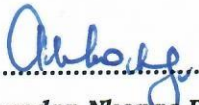
35 In the final result, judgment is entered against the defendant under the following terms:

- 1. The plaintiff is the lawful owner of the suit land.**



2. *The defendant is a trespasser on the suit land.*
3. *An order of vacant occupation doth issue in favor of the plaintiff.*
4. *An order of eviction doth issue against the defendant.*
5. *A permanent injunction doth issue restraining the defendant or any one claiming under him from further disturbing the plaintiffs' quiet enjoyment, from dealing with or trespassing on the suit land.*
6. *General damages of Ugx. 20,000,000/= and costs of this suit are awarded to the plaintiff.*

10 I so order.


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Alexandra Nkonge Rugadya
Judge.
23rd August 2021.

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*Delivered by email
Ashog S.
24/8/2021*