

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**[LAND DIVISION]**

**CIVIL SUIT NO. 2177 OF 2016**

**SAKU**

**LUBEGA:.....PLAINTIF**

**F**

**VERSUS**

**OKUDI**

**JOSEPH:.....DEFENDANT**

**BEFORE: HON. MR. JUSTICE HENRY I. KAWESA**

**JUDGEMENT**

**Facts.**

The detailed facts of this case are as per the pleadings on record. A summary of the facts shows that the Plaintiff sued the Defendant claiming trespass on to his **land comprised in Kyadondo Block 243 plot 2685** and that the Defendant's acquisition of the suit land is null and void having purchased the same from Namukasa Kasifa without his consent. He therefore brought this suit claiming for;

- i) declarations,

- ii) eviction,
- iii) damages and;
- iv) Costs.

The Defendant denied ever trespassing onto the Plaintiff's land and pleaded that he purchased an unregistered interest (Kibanja) from Namukasa Kasifa in 2009 who had been in occupation of the same since 1980 with developments thereon hence becoming a bonafide occupant, whereas the Plaintiff became a registered proprietor in 2011.

The Defendant raised a counterclaim and sought for a declaration that he is a lawful owner of the suit property.

**Issues:**

1. Whether the Defendant lawfully purchased the kibanja interest.
2. Whether the Defendant is a trespasser. On the suit land.
3. Remedies.

**Burden of proof.**

It is trite that the Plaintiff bears the burden of proving the case on the balance of probabilities. The standard is further beefed up by the evidential burden under section 101,102 and 103 of the Evidence Act that; whoever proposes a fact and wishes the Court to believe that fact bears the burden to prove the said fact. This position was well stated by the *Hon. J Y. Bamwine* in the *Kagga Limited versus Hidaya Nantongo (HCT-Commercial Court Division) HCT-00-CC-CS-06262 of 2004* thus:

*“In law, a fact is said to be proved when the Court is satisfied as to its truth. The general rule is that the burden of proof rests on the party who asserts the affirmative of the issue or question in dispute. When a party adduces evidence sufficient to raise a presumption that what he asserts is true, he is to shift the burden of proof: that is, his allegation is presumed to be true, unless his opponent adduces evidence to rebut the presumption”*

## **Evidence**

In order to prove his case the Plaintiff called evidence through two witnesses. PW1 Saku Lubega and PW2 Efrance Nalubega Lule, while the Defendant called four witnesses through DW1; Namukasa Kasifa; DW2; Okudi Joseph, DW3; Muwonge Abbas, and DW4; Agnes Katamba.

PW1 Saku Lubega adduced a Certificate of Title for the suit land, which he obtained on the 27<sup>th</sup> day of September 2011 that is two years after the Defendant’s acquisition of the Kibanja interest allegedly acquired on 13<sup>th</sup> October 2009.

PW2; Efrance Namutebi Lule testified in her witness statement that Namukasa Kasifa was a squatter on the suit land. In cross-examination she said that Namukasa was a tenant running a shop since 1980. In further cross-examination she conceded and tendered a statement bearing her signature where she confirmed having given Namukasa Kasifa consent to sale the suit Kibanja to Okudi Joseph in her capacity as an agent of Mr Lule Asaph the former landlord. This statement was received in Court as ‘DEX1’

DW1 Namukasa Kasifa gave evidence that she was residing on that Kibanja since 1980. She said she lived on the Kibanja with her deceased husband; a one Nanseera

Bukenya. She said the Kibanja had been given to them by Muwonge Abbas her brother in law and also the biological father of the Plaintiff. She said she lived on this land unchallenged by anybody until when she decided to sell it to the Defendant in 2009. At the *locus*, she showed Court the alleged house where she used to reside before selling the same to the Defendant.

DW2; Okudi Joseph testified that he legally acquired the unregistered interest from Namukasa Kasifa on 13<sup>th</sup> October 2009 before the Plaintiff became the registered owner of the suit land. He relied on the sale agreement, which he attached to his witness statement.

DW3 Muwonge Abbas who said that he is the biological father of the Plaintiff, gave the historical background to this conflict stating that he was the first owner of the suit Kibanja and he is the one who divided the same into two and gave a portion to his son Saku Lubega and another portion to Namukasa Kasifa and her husband Nanseera Bukenya, where she has been staying since 1980.

DW4 Nalweyiso Agnese Katamba said she was the LC1 Chairperson of Mutungo Zone where the suit land is situated. She confirmed Namukasa Kasifa's sale of her Kibanja to Okudi Joseph in 2009

## **Resolution of issues.**

### **Issue I**

#### Whether the Defendant lawfully purchased the Kibanja interest

Arising from the evidence on record as reviewed above, it is clear that the Defendant bought a Kibanja interest on the land comprised in Kyadondo Block 243, Plot 2685

from Ms. Namukasa Kasifa on 13<sup>th</sup> October 2009, before the Plaintiff became a registered owner thereof. The Plaintiff is therefore caught up by the legal equities he found on the land. This legal position was articulated in **Prof. Gordon Wavamuno versus Sekyanzi Sempijja; CA NO.27/2010.**

Section 29(5) of the Land Act, as amended recognises the rights of a bonafide purchaser of land. This section, when read together with Section 35(8) of the Land Amendment Act No.1 of 2010 which stipulates that:

*“Subject this section, a change of ownership of a Title effected by the owner by sale, grant and succession or otherwise shall not in any way affect the existing lawful interests or bonafide occupant and any new owner shall be obliged to respect the existing interest”*

In addition, section 31 of the Land Act recognises Tenants by occupancy that are defined in section 1(d) to include bonafide and lawful occupants on such registered land.

Therefore, in view of the law, facts and evidence above, I agree with the arguments articulated by the Defendant’s Counsel in submissions that the Defendant/Counter Claimant lawfully and legally acquired the Kibanja interest in the suit land. I am convinced to reach this conclusion *inter alia* because the evidence presented by the Plaintiff was contradictory evasive, and unreliable as shown here under:

The Plaintiff PW1 in his witness statement at page 2 under paragraph 3 stated that he had approached Namukasa Kasifa to purchase her Kibanja and even engaged the services of valuers. However, during the hearing and during cross-examination, PW1 denied knowing her and denied that he had never approached her and that she

has never been his neighbour. At the *locus*, he was evasive and reluctantly admitted that the small house on the suit land was Kasifa's former residence.

PW2 similarly in her statement claimed that Kasifa was a squatter on the suit land, but in cross-examination changed to say that she was a tenant of a shop house on the Kibanja.

I agree with Counsel for the Defendants that the contradictions above were grave and not explained, thereby rendering the evidence untruthful and unreliable.

## **Issue 2**

Whether the Defendant is a trespasser on the suit land.

The above findings resolve this issue as well in the negative. **Remedies.**

The suit fails and is dismissed with costs to the Defendant.

## **Counter claim**

The same issues were raised and the same evidence were relied on.

I find that the counter claim is proved in that;

- i) The Defendant lawfully purchased the Kibanja.
- ii) The Defendant is not a trespasser.

## **Remedies.**

- a) Declarations under (a) is granted to the effect that the Defendant is a lawful owner of the Kibanja and is not a trespasser.
- b) A Permanent injunction is granted as prayed.

- c) General damages of shs.4,500,000/- (*four million hundred thousand shillings*) calculated at an approximated loss allowed at shs.500, 000/- (*five hundred thousand shillings*) per year for the 9 years (2011 – 2020).
- d) Costs granted to the counter claimant.

I so order.

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Henry I. Kawesa

**JUDGE**

25/2/2021

25/2/2021:

Namuganza for Plaintiff.

Plaintiff present.

Kiiza Moses for the Defendant.

Defendant absent. - Represented by Kerejiki Godfrey.

Court: Matter is for Judgment.

Judgment read out to the parties above.

Court: Right of Appeal explained.

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Henry I. Kawesa

**JUDGE**

25/2/2021