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#### THE RULING OF UGANDA

# IN THE COURT OF UGANDA AT KAMPALA

## LAND DIVISION

## **CIVIL SUIT NO. 537 OF 2019**

- 1. KYAZIKE FLORENCE
- 2. MAYOMBWE JOSEPH:..... PLAINTIFFS

### **VERSUS**

Before: Lady Justice Alexandra Nkonge Rugadya

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#### RULING:

## Introduction:

The plaintiff filed this suit seeking orders that they are the rightful owners of land comprised in Bululi **Block 198, Plot No. 4** at Kisweramainda, Nakasongola district; cancellation of the dependant's names from the title comprised in the Suit land; an order for registration of the plaintiff's names on the suit title as administrators of the estate of the late Nsubuga Emmanuel; a permanent injunction to restrain the defendant and his agent from trespassing on the suit land or in any way dealing with the land; general damages and costs of the suit.

The defendant filed a defence denying the claims, having bought the land from its former owner, Mr. Micheal Jack Nsubuga of Kanyanya in Kawempe Division in December 1998. He became registered owner thereof on 22nd April 1999, and was issued with a certificate of title. He claimed to have taken possession of the same.

According to him the suit was also time barred. The matter was fixed for trial for 28/5/2021. Mr. John Kiggundu was in court, holding brief for Shamim Nalubega for the plaintiffs. The defendant and his counsel were both in court.

Counsel Kiggundu sought for an adjournment on the ground that the husband of Ms. Nalubega who had personal conduct of the case was sick. The whereabouts of the plaintiffs at that point were not known, according to him.

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5 Court on that day directed the plaintiff side to file documents. The plaintiffs were required to file the J.S.M. by 14.6.2021, together with the Trial Bundle and witness statements.

All documents were to be filed on the record by 28/6/2021. The parties were also directed to try and settle the matter and update court on 9/7/2021. However, due to the Covid endemic, the matter did not take off.

On 6<sup>th</sup> May, 2022 the next date fixed for hearing counsel Lutakome appeared in court with his client, the defendant. The 2<sup>nd</sup> plaintiff, Mayombwe Joseph also attended. But was unrepresented. The matter therefore did not take off.

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Mr. Lutakome informed this court that counsel who had personal conduct of the two plaintiffs' case was still on maternity leave and had proposed to send another counsel, but nevertheless failed to do so.

On that day, court took the trouble to remind the parties of its earlier orders made on 28<sup>th</sup> May, 2021 requiring the filing of the documents; and gave strict warning that should the parties fail to turn up and comply with its orders in order to pursue this matter to its conclusion court would be inclined to dismiss it.

The matter was adjourned to 13th May, 2022 for hearing. This court was ready to proceed. It took note that the defence side after failing to get a copy of J.S.M from the plaintiffs had initiated its own, which was also signed by counsel for the plaintiffs.

However, neither the Trial Bundle nor the witness statements were availed by the plaintiffs as court had directed. The defendant on his part filed his bundles in addition to the written statements and draft J.S.M.

Counsel Namusumba attended court, on brief for Ms. Nalubega who had personal conduct of the case for the plaintiffs. She told court however that she was not ready to proceed. The excuse she gave was that she was waiting for certified copies of the title from Land Office and had been promised to check the following week.

If she had done her home work, she would have applied for the original title itself which was in the custody of the defendant. Its photo copy had been attached to the documents of the defendant, and had been on record for 3 years, but no action in that direction was taken by the plaintiffs to obtain the same.

The excuses by the plaintiff's side had become numerous. This case having been filed in 2019, it was incumbent upon them to prosecute it. The defendant's side had been vigilant in following up this case and unlike the plaintiff's side, did not miss coming to court.

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5 The plaintiffs have not taken any step to show any seriousness in pursuing this case to its conclusion. They failed to comply with the directives of this court issued on 28/5/2022. That was sufficient proof that they had no intention of following up the case to its conclusion.

In the premises, the suit is hereby dismissed under **Section 17 (2) (a) of the Judicature Act**, **Cap 13**.

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Costs to the defendant.

Alexandra Nkonge Rugadya

JUDGE

15 17/5/2022.

Delveed via Mail Anhalge 5 17/5/2022