

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(LAND DIVISION)

CIVIL SUIT NO.525 OF 2015

5 **GODFREY NTAMBI MUSISI:.....PLAINTIFF**

VERSUS

10 **YUSUF WANGI:.....DEFENDANT**

Before: Lady Justice Alexandra Nkonge Rugadya.

JUDGMENT.

15 **Introduction:**

The plaintiff filed this case against the defendant seeking a declaration that the defendant is a trespasser on land comprised in **LRV 4202 Folio 6 Plot 5935 land at Kasubi Rubaga Division** (hereinafter referred to as the 'suit land'), general and special damages for trespass, an order for demolition, compensation and costs of the suit.

20 **Brief background:**

The plaintiff's claim is that he is the registered proprietor of the suit land which is adjacent to the defendant's land comprised in **LRV 1599 Folio 18 plot 1480 at Kasubi** and that sometime in 2013, the defendant developed his plot of land with a market known as WANGI MARKET but the same stretched beyond the limits of **plot 1480**, onto the plaintiff's suit land.

25 That the defendant uses the developments on the land for commercial purposes and that the structures set up by the defendant are permanent in nature. He has been benefiting from the trespass at the expense of the plaintiff who has been prevented from fully utilizing and enjoying his land for which he pays ground rent.

In his written statement of defense, the defendant denied the allegations set out against him and
30 stated that at all material times been the registered proprietor of all the land comprised in **LRV 1599, Folio 18, plot 1480 at Kasubi** and that the plaintiff has always been his neighbor.



That prior to construction of the market, he invited the plaintiff as well as the local area authorities to re-survey and ascertain the boundaries of his plot after which he commenced construction.

In addition, the defendant averred that he had never trespassed on the plaintiff's land and that the said commercial complex is solely on his own land but not on the plaintiff's land.

5 **Representation:**

The plaintiff was represented by **M/s Sseguya & Co. Advocates**, while the defendant was initially represented by **Nsibambi & Nsibambi Advooates, Legal & Corporate Consultants** through whom he filed his written statement of defence.

10 The defendant was served through his counsel. However when the matter came up for hearing on 28th March, 2019, neither the defendant nor his counsel entered appearance despite the fact that service had been duly effected. This court therefore granted the plaintiff's prayer to proceed *ex parte*.

15 Upon concluding the hearing of this matter, court directed counsel for the plaintiff to file written submissions but for over 3 years he failed to take the appropriate action as directed, or make any other follow up.

I shall therefore proceed to resolve this matter without submissions from either side.

At the scheduling the following were the agreed facts:

- 20
1. ***The plaintiff is the registered proprietor of the land situated and known as LRV 4202 Folio 6 plot 5935 at Kasubi;***
 2. ***The defendant is the registered proprietor of the land situated and known as LRV 1599 Folio 18, plot 1480, at Kasubi;***
 - 25 3. ***The above two plots as described are neighbouring /adjacent to each other;***
 4. ***The defendant has made developments (a market building) on his plot;***
 5. ***The plaintiff's plot is vacant.***

30 The disagreed facts were:

1. ***That the defendant's developments encroached on the plaintiff's plot 5935;***
2. ***That prior to his developments, the defendant invited the plaintiff and area authorities to resurvey and ascertain the boundaries of his plot;***
- 35 3. ***That the defendant trespassed onto the plaintiff's land;***
4. ***That the plaintiff is entitled to damages.***



Issues:

The following issues were agreed upon:

1. ***Whether the defendant is a trespasser on the suit land;***
2. ***What remedies are available to the parties.***

5 **Resolution of issues.**

1. ***Whether the defendant is a trespasser on the suit land.***

Section 101 of the Evidence Act provides that whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he or she asserts must prove that those facts exist and the burden of proof lies on that person.

10 **Section 103** further stipulates that:

“The burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence.”

The burden of proof therefore lies upon the person who alleges. In order to prove the alleged trespass and the fact that the suit land forms part of the estate of the late Sgt. Muhinda Samuel,
15 the burden of proof was squarely on the plaintiff. (***Sebuliba versus Co-operative Bank Ltd [1982] HCB 129***).

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

In ***Sheik Muhammed Lubowa versus Kitara Enterprises Ltd C.A No.4 of 1987, the East African Court of Appeal*** noted that in order to prove the alleged trespass, it was incumbent on the appellant to prove that the disputed land belonged to him; that the respondent had entered upon that land; and that the entry was unlawful in that it was made without his permission; or
25 that the respondent had no claim or right or interest in the land.

To prove ownership, the plaintiff testifying as **Pw1** tendered into court a copy of the certificate of title which was admitted as **PExh.1**. The certificate of title indicates that the plaintiff is the registered proprietor of the **plot No. 5935, block 253**, having been registered thereon on 4th March, 2011 at 3:34pm, under instrument number **KLA 490387**.

30 Under **Section 59 Registration of Titles Act**, possession of a certificate of title by a registered person is conclusive evidence of ownership of the land described therein. In the circumstances, this court is satisfied that the plaintiff is indeed the rightful owner of the suit land.

Secondly, to prove the unlawful entry, it was the plaintiff’s testimony that while the defendant’s land borders his, sometime between 2013 and 2015, the defendant commenced construction of



a permanent shopping center/ market which is now complete on his plot but the defendant's development stretched out of his plot and into the plaintiff's plot thereby encroaching on his land.

The plaintiff also tendered in evidence a copy of a survey/boundary opening report in respect of land comprised in **plot 5935, Block 203 Kasubi** dated 27th April, 2015 and the same was
5 admitted in evidence as **PExh.2**.

According to the report, there were encroachments onto the plot from the commercial storey block by approximately 13.36sqm, a pit latrine and a residential house. The working diagram attached to the report clearly indicates that the commercial building on **plot 1480** which is the defendant's plot, was built outside the boundaries of the defendant's land onto part of **plot 5935**, which
10 belongs to the plaintiff.

The plaintiff also formally communicated the said trespass to the defendant by a letter dated 18th August, 2015 wherein he informed the defendant that he had encroached on the suit land and advised him to either remove his structure or compensate the plaintiff. (**Refer to PExh.3**).

There is however nothing on record to show that the defendant made any response to the said
15 demands. The defendant in failing to turn up in court failed to prove that prior to his developments on that land, he had invited the plaintiff and area authorities to resurvey and ascertain the boundaries of his plot. He did not attach any such report or evidence of such meeting.

The summary of evidence by the defendant and memorandum of joint scheduling notes listed a number of documents: a certificate of title, a survey report; building plans; and pictures of the market, none of which were however availed to court.
20

This is evidence that he had no defence. He therefore entered the suit land belonging to the plaintiff without his permission as the registered owner. The plaintiff tried to resist the act by opening boundaries and notifying the defendant of the findings hence this suit. As per the letter, **PExh 3** he had also given him the chance to handle this matter out of court, which opportunity he did not
25 take up.

The evidence available on record proves on the balance of probabilities that the defendant trespassed on the plaintiff's land. **Issue No. 1** is therefore answered in the affirmative.

Issue No. 3: What remedies are available to the parties.

The plaintiff prayed for general and special damages; an order of demolition and in the alternative; compensation; and costs of the suit.
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According to the case of **Uganda Petroleum Co. Ltd vs. Kampala City Council HCCS No. 250 of 2005** it was held that damages are the direct probable consequences of the act complained of

In **Takya Kushwahiri & Another versus Kajonyu Denis CACA 85 of 2011** it was held that general damages should be compensatory in nature in that they should restore some satisfaction
35 as far as money can do it to the injured plaintiff while in the case of **Uganda Commercial Bank**

versus Kigozi [2002]1 EA 35, the court gave guidance on how to assess the quantum of damages that;

"the consideration should mainly be the value of the subject matter, the economic inconvenience that a party may have been put through and the nature and extent of the breach or injury suffered".

The plaintiff in the instant case has proved that owing to the defendant's unauthorized entry onto the suit land, he has been deprived of the opportunity to freely enjoy and utilize his land over the years while the defendant continues to reap from the same.

He has also suffered inconvenience, spent time and money trying to reclaim the land which he values (without giving proof), at about **Ug.x 300,000,000/= (Uganda Shillings three hundred million only)**.

Accordingly, the plaintiff is granted the following prayers:

- a. The defendant is a trespasser on the suit land comprised in LRV 4202 Folio 6 Plot 5935 land at Kasubi Rubaga Division belonging to Godfrey Ntambi Musisi;**
- b. An order of compensation issues for the portion of land trespassed at the current market price which is reflected in the survey report as 13.36sqm;**
- c. The total value of the area of encroachment is to be ascertained by an independent valuer to be agreed upon by both parties;**
- d. General damages of Uganda Shillings 50,000,000/= (Uganda Shillings fifty million only) awarded to Godfrey Ntambi Musisi;**
- e. Interest of 15% p.a is awarded in respect of against the defendant in respect of general damages, payable from the date of delivery of this judgement until payment is made in full;**
- f. The plaintiff is also awarded costs of the suit.**

I so order.

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Alexandra Nkonge Rugadya

Judge

14th June, 2022

Delivered email
Alexandra
14/6/2022