

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)
CIVIL SUIT NO. 22 OF 2019

5 **DDUMBA ABDU-----PLAINTIFF**
VERSUS
THE REGISTERED TRUSTEES OF CHURCH OF UGANDA-----DEFENDANT

Before: Hon. Lady Justice Olive Kazaarwe Mukwaya

10 **JUDGMENT**

The Plaintiff, Mr. Ddumba Abdu brought this suit in his capacity as a son, heir and beneficiary of the estate of the Sentamu Zaidi. His claim against the Defendant is for the following remedies;

- 15 1. A declaration that the suit Kibanja situate on Block 232 Plot 492 Kyadondo, land at Banda, Nakawa-Division measuring approximately 130ft by 104ft is part and parcel of the estate of the late Sentamu Zaidi.
2. A permanent injunction restraining the Defendant from acts of denying the beneficiaries of the estate of the late Sentamu Zaidi from occupying the suit premises.
- 20 3. A declaration that the deceased's certificate of title in the possession of the Plaintiff is the right certificate of title for the suit land.
4. Special damages of UGX. 54,800,000/=.
5. General damages.
6. Exemplary damages.
- 25 7. Costs of the suit.

PLAINTIFF'S CLAIM

Mr. Ddumba, PW1, testified that his late father, Mr. Zaidi Sentamu (herein referred to as the deceased), owned the suit kibanja before he passed away on the 1st January 1986. He had acquired it in the 1950s from the former owner, the late Paulo Kisonsonkole. At
5 all times, the deceased had been in physical possession with a 3 roomed house and a brick laying business. It is on this same land that PW1 and his 10 siblings were born and on which they carried out numerous activities. The suit Kibanja had as its neighbours; the late Semakula Paul on the right, the late Nkoba on the left and a tarmac main road at the front. It extended beyond the suit land where the deceased had
10 another house on the upper part.

The deceased had busuulu disagreement issues with the Kisonsonkole family in the 1970s which issue went to Court and was handled by M/S Ayigihugu & Co. Advocates. A copy of that letter was admitted into evidence as Exb.P.1. After their father's death in 1986, the family continued staying on the suit Kibanja uninterrupted and carrying out
15 various activities. Around 1993, the Kisonsonkole family donated the suit land to the Defendant who got registered on the title.

In 1998, the Defendant, through their agent Banda Martyrs Church, attempted to stop the Plaintiff from carrying out further renovations on his late father's house which is situate on the suit Kibanja. Through their lay leader, they also wrote a letter stopping
20 him from further construction. A copy of the letter was admitted and marked Exb.P.2. The Defendant proceeded to file a case with the LC.1 Chairman of Banda Zone B-11 complaining about the Plaintiff's trespassing on the land.

Following the filing of the case, Mr. Ddumba was summoned to the hearing on the 14th day of March 1999. On the 25th day of July 1999, the then Chairman, Mr. Richard
25 Musisi, PW2, made a ruling which confirmed that the late Zaidi Sentamu's family owned the suit Kibanja. A copy of the ruling was tendered into evidence and marked Exb.P.6. In that same ruling, the Defendant was directed to compensate the deceased's family if they were to take it from them.

Consequently, the Defendant, through its agent Banda Martyrs Church, wrote to the Plaintiff inviting him for a meeting on 14th January 2001 to discuss the compensation. A copy of the letter was admitted and marked Exb.P.3.

At the meeting, the parties disagreed on the quantum of compensation and Mr. Ddumba
5 requested the Defendant, through the church leadership to appoint a valuer. In 2003, he was invited for a valuation exercise of his Kibanja and other Bibanja holders of the Defendant. However, he insisted on the Government valuer, a neutral person, instead of the private one that had been availed by the Defendant. For that reason, his Kibanja was not valued while the other Bibanja holders were paid and left their bibanja. His
10 family therefore stayed and continued occupying the suit Kibanja.

In 2011, the Defendant instituted a suit against the Plaintiff in Nakawa Chief Magistrates Court vide Civil Suit 101 of 2011 claiming that he was trespassing on the suit land. A copy of the pleadings was admitted and marked Exb.P.4. The suit was dismissed by the Court on the 29th April 2013. That same evening, the Defendant's church leaders
15 headed by a one Ms. Lule Teopista, the then head of the estate Department of Banda Martyrs Church, together with Ms. Mukasa, the treasurer in the company of about 50 people invaded the suit Kibanja. They proceeded to demolish the Plaintiff's late father's house, cut down all plantations and threatened anyone who would come near them. Copies of the photographs showing the incident were admitted into evidence and
20 collectively marked Exb. P.5.

Mr. Ddumba immediately reported the case of trespass and malicious damage to property to Jinja road Police station vide SD Ref:87/2/9/13. He contended that the people who came to the suit Kibanja and destroyed numerous items were the Defendant's officials acting under its authority for which they are liable in special
25 damages. He added that his family was rendered homeless as a result of the destruction of their house and property where they also gained income. He therefore prayed that the Court find the Defendant liable to pay punitive and exemplary damages.

PW2, Mr. Musisi Muhammad Rashid, the former LC.1 Chairman Banda Zone B-11 who was formerly called Richard Musisi corroborated the testimony of PW1 in all material
30 particulars. A copy of his deed poll, the advert and National ID were admitted into

evidence and marked Exb. P.7, P.8 and P.9 respectively. He added that sometime in 2013, he was shocked to come back to the village to find the Plaintiff's family house which has belonged to them for many decades together with their crops, trees and plantations had been totally destroyed.

5 PW3, Lugonvu Kizza Dan, a resident of Banda B-11 and a son of the late Paul Semakula, who had his home neighbouring the suit Kibanja confirmed that since the 1970s, the late Zaida Sentamu was the owner of the suit Kibanja where he had a 3 roomed house, trees and a plantation on which he stayed with the Plaintiff and other family members.

10 Finally, PW4, Nantume Hasifa, a sister to the Plaintiff, corroborated his testimony.

The Plaintiff implored this court to grant the prayers sought.

DEFENCE

The Defendant denied all the Plaintiff's claims in its written statement of defence.

Ms. Teopista Lule, DW1, one of the residents of Banda B-11, Nakawa Division and a
15 congregant of Banda Martyrs Church of Uganda, testified that sometime in the year 1992, the late Pumla Allen Kisosonkole donated the suit land comprised in Kyadondo Block 232 Plot 492 at Kireka, Banda as a gift to the Defendant.

Prior to the said donation, the said Kisosonkole invited all occupants of his land in the area to come with evidence of ownership and agree on how to either be compensated
20 for their respective pieces of land or to surrender back part of the land that they were occupying. Therefore, by the time the suit land was donated to the Defendant to construct a school, it was vacant and free of any occupants. A copy of the title was admitted into evidence and marked Exb. D.1.

At the time of the donation, the Church did not immediately utilise its land. During this
25 time, those to whom the said Kisosonkole had given titles to their respective homesteads sold to 3rd parties leaving them with no land to carry out subsistence farming. As a result, some of the occupants who had sold their land tried to use the Church land to grow seasonal crops which the Church resisted.

After the Defendant had stopped all other users of its land, the Plaintiff forcefully entered the Defendant's land and planted bananas thereon. The Defendant through its congregants at Banda immediately protested the said action which temporarily stopped the Plaintiff's trespass on the Defendant's land though he resumed the same in 2000 by making bricks thereon and was once again stopped.

Sometime in 2011, the Defendant proceeded to complain to the Resident City Commissioner's (RCC's) office about the Plaintiff's persistent trespass and the Plaintiff was immediately stopped from carrying out any further activities. A copy of the said letter was admitted and marked Exb. D.2. When the Plaintiff further persisted with the trespass, the Defendant instructed a valuer to value the Plaintiff's developments with a view of compensating him however he disputed the valuation and declined the money offered. A copy of the valuation report was tendered into evidence and marked Exb. D.3.

Despite several interventions at different levels, the Defendant took possession and continues to be in possession to date. Ms. Lule asserted that as a registered proprietor of the suit land, all developments belonged to the Defendant and not the Plaintiff and she prayed for dismissal of this suit.

REPRESENTATION

Mr. Serunjogi Brian Alfred of M/S Serunjogi & Partners Advocates represented the Plaintiff while Mr. Richard Kiboneka of M/S Nyanzi, Kiboneka & Mbabazi Advocates represented the Defendant.

Both Counsel filed final written submissions which I have considered.

During scheduling, the following issues were formulated for Court's resolution;

ISSUES

1. Whether the estate of the late Sentamu Zaidi had a kibanja on the suit land?
2. Whether there was any destruction of the Plaintiff's property on the suit kibanja?

3. Whether the Defendant was liable for the destruction of the items in issue (2) above?
4. Remedies available.

5 **RESOLUTION**

Issue 1

Whether the estate of the late Sentamu Zaidi had a Kibanja on the suit land?

Article 237(8) & (9) of the Constitution of the Republic of Uganda 1995 provides;

10 *Upon the coming into force of this Constitution and until Parliament enacts an appropriate law under clause (9) of this article, the lawful and bonafide occupants of mailo land, freehold or leasehold land shall enjoy security of occupancy on the land.*

(9) Within two years after the first sitting of Parliament elected under this Constitution, Parliament shall enact a law-

15 *(a) regulating the relationship between the lawful or bona fide occupants of land referred to in clause (8) of this article and the registered owners of that land;*

(b) providing for the acquisition of registrable interest in the land by the occupant.

In accordance with this provision, the **Land Act Cap 227** was enacted in **1998** to provide for lawful and bonafide occupants of land.

20 **Section 29** provides for the meaning of 'lawful occupant' and 'bonafide occupant' as follows;

(1) 'Lawful occupant' means;

(a) A person occupying land by virtue of the repealed-

- 25 *i) Busuulu and Envujjo Law of 1928;*
- ii) Toro Landlord and Tenant Law of 1937;*
- iii) Ankole Landlord and Tenant Law of 1937;*

(b) a person who entered the land with the consent of the registered proprietor and includes a purchaser; or

(c) a person who had occupied land as a customary tenant but whose tenancy was not disclosed or compensated for by the registered owner at the time of acquiring the leasehold certificate of title.

(2) 'Bona fide occupant' means a person who before the coming in force of the Constitution-

(a) had occupied and utilised or developed any land unchallenged by the registered owner or agent of the registered owner for twelve years or more;

(b) –

(3) –

(4) –

(5) –

15 In **Ponsiano Katamba V Cotilda Nakirijja Civil Appeal 169 of 2017**, Christopher Madrama, JA, considered the definition of a Kibanja extensively. He held that;

'A Kibanja holding does not fall under the tenure system known as 'customary' under Article 237 (3) (a) of the Constitution but fall under article 237 (3) (c) that recognises mailo tenure. It is a special form of tenure known as a Kibanja that is recognised within another tenure of a registered owner known as mailo owner. A Kibanja is by definition under the Land Act Cap 227 a lawful occupancy falling within registered land particularly described as Mailo land...'

The Plaintiff from the onset, claimed that he was the son and heir of his late father Sentamu Zaidi who owned a Kibanja on the suit land. He brought this suit in that capacity to preserve and protect the estate. His evidence and that of his 3 witnesses painted a picture of occupation and utilisation of the suit Kibanja by the Plaintiff's family from the 1950's to date. Counsel for the Plaintiffs submitted that the Plaintiff's family are bonafide occupants under **section 29 of the Land Act 1998**.

As stated by the Plaintiff, Exb. P.1 was evidence that his late father Sentamu Zaidi used to pay busuulu to the Kisosonkole who is the Defendant's predecessor in title. And the

deceased's occupancy on the suit Kibanja commenced in the 1950's. These admissions by the Plaintiff indicate that both landlord(Kisosonkole) and Kibanja holder (Sentamu) were known to each other and the late Sentamu paid busuulu to Kisosonkole. There is no evidence on court to suggest that landlord-kibanja holder relationship between these two men changed during their lifetime. This fact is important because the Plaintiff does not bring this claim in his individual right but as a son and heir to the late Sentamu and beneficiary to his estate.

Exb. P.6, are minutes of a meeting held on the 25th July 1999. During that meeting, the Plaintiff and his late mother Nakulima Sofia were recognised by the Defendant's representatives as having a Kibanja on the suit land. To be precise, the Defendant's witness, DW1, Ms. Lule, who was in attendance at the meeting along with the Plaintiff and his witness PW2, referred to them as 'squatters'. At the time this meeting was held, four years had passed since the promulgation of the 1995 Constitution of Uganda.

Therefore, in my view, the acknowledgement by DW1, of the Plaintiff's family occupancy, immediately put them in the category of both lawful and bonafide occupants on the suit land as defined under section 29 of the Land Act 1998. This is because upon being registered as proprietors on the certificate of title on the 27th January 1997 (Exb. D.1), the Defendant's representative acknowledged the Plaintiff's family's interest thereon during the meeting whose minutes were captured by Exb.6. And secondly, as Counsel for the Plaintiff rightly pointed out in his submissions, there was no evidence that the late Kisosonkole, the Defendant's predecessor in title, disputed the Plaintiff's father's occupation of the suit land in the 12 -year period between 1995 and 1983. In my view, this made them bona fide occupants.

It is true that DW1 expressed her dissatisfaction with the Plaintiff's activities of brick burning and baking on the land which she said were destructive. But in my view this complaint did not amount to a denial of the Plaintiff's right to occupy the land. When she testified before this court, however, DW1 changed her tune. She stated that the Plaintiff was a persistent trespasser on the church land whose actions forced the Defendant to instruct a valuer in 2003 to value the Plaintiff's developments with a view of compensating him. A valuation, the Plaintiff subsequently rejected. According to the

Plaintiff, his desire was to have the valuation done by an independent entity- the Chief Government Valuer. At that point the compensation conversation was terminated.

Exb. P.4, is a copy of a plaint in Civil Suit No. 101 of 2011 at the Nakawa Chief Magistrate court. The Defendant who was the plaintiff in that suit was unsuccessful in bringing a complaint of trespass against the Plaintiff who was the defendant. PW1 testified that the suit was eventually dismissed. Counsel for the Defendant acknowledged the existence of that lawsuit but instead maintained that it demonstrated that the Defendant resisted the Plaintiff's occupation of the suit land prior to filing this suit. The details of how the suit was concluded were not shared with this court. No ruling or judgment was attached to the Plaint. However, if the Defendant was convinced that the Plaintiff was a trespasser, they ought to have filed a counterclaim on that basis upon being sued in this matter. They did not do so.

In light of the overwhelming evidence led by the Plaintiff of the existence of Kibanja as defined in the **Ponsiano case**, supra, I resolve Issue 1 in the affirmative. I find that the estate of Sentamu Zaidi, the Plaintiff's father had a Kibanja on the suit land.

Issue 2 and Issue 3

Whether there was any destruction of the Plaintiff's property on the suit kibanja and if yes, whether the Defendant was responsible?

Section 101 of the Evidence Act provides as follows;

20 *"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."*
(emphasis mine)

The principle of law is that "special damages must be specifically pleaded and proved, but that strictly proving does not mean that proof must always be documentary evidence. Special damages can also be proved by direct evidence; for example, by evidence of a person who received or paid or testimonies of experts conversant with the matters". See Gapco (U) Ltd Vs A.S. Transporters (U) Ltd CACA No. 18/2004 and Haji Asuman Mutekanga Vs Equator Growers (U) Ltd, SCCA No.7/1995.

Exb. P.5 comprised 5 undated photographs which depict a pile of unburnt bricks and some trees that have been cut. The trees are not more than 3 in number. According to
5 the Plaintiff and his witnesses, the destruction complained of was a forest of about 100 eucalyptus trees that were cut down, a house that was razed and a considerable number of crops that were destroyed. In my view, Exb. P.5 was a feeble attempt by the Plaintiff to support this complaint. If 100 trees had been cut down, photographs of the incident are able to tell their story. No such story was told by Exb. P.5. Similarly, if a
10 whole house had been razed, the ruins would be easily visible.

The Plaintiff quoted a police reference number to prove that he reported a case of malicious damage after the incident. The number does not indicate against whom the complaint was made. The Defendant was not placed at the scene of the incident. It appears investigations were not completed nor charges preferred against the culprits
15 otherwise the Plaintiff's evidence would have established this.

I agree with Counsel for the Defendant that the oral testimonies of the Plaintiff witnesses, assigning blame to DW1 and other representatives of the Defendant, were not sufficient to prove that the destruction had taken place and had occurred on the scale complained of.

20 It is my finding that the evidence to support the claim of special damages as against the Defendant fails and I resolve both Issue 2 and Issue 3 in the negative.

Issue 4

What remedies are available to the parties?

This Court has found that a Kibanja on the suit land formed part of the estate of the
25 Plaintiff's father. However, the current size of the Kibanja was unascertained.

The Plaintiff assigned measurements to the suit Kibanja but admitted that he arrived at the measurements using his lay man knowledge. A joint survey exercise is therefore necessary to establish the actual size of the suit Kibanja. Additionally, since the matter

of compensation was explored earlier, the parties may consider this option, by mutual understanding basing on valuation of the ascertained Kibanja by the Chief Government Valuer.

In conclusion, since this suit partially succeeds, I enter judgment for the Plaintiff and order as follows;

1. An unascertained kibanja situate on Block 232 Plot 492 Kyadondo, land at Banda, Nakawa-Division is part and parcel of the estate of the late Sentamu Zaidi.
2. The parties shall carry out a joint survey to establish the size of the unascertained Kibanja within 90 days of this judgment.
3. Valuation of the ascertained Kibanja shall be conducted by the Chief Government Valuer within 60 days of completion of the joint survey.
4. A permanent injunction restraining the Defendant from acts of denying the beneficiaries of the estate of the late Sentamu Zaidi from occupying the unascertained Kibanja is granted.
5. 50% costs of the suit are awarded to the Plaintiff.

Olive Kazaarwe Mukwaya

JUDGE

9th September 2022

Delivered by email to Counsel for the Parties.