

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)
CIVIL SUIT NO. 20 OF 2019

5 **SHAKA ABRAHAM-----PLAINTIFF**

VERSUS

1.SERUWAGI MATIA

2.MUBIRU MARIA

10 **3.TIBORUHANGA MICHAEL**

4.BYEKWASO SAMUEL

5.MENYA MICHAEL-----DEFENDANT

Before: Hon. Lady Justice Olive Kazaarwe Mukwaya

15 **JUDGMENT**

The Plaintiff, Mr. Shaka Abraham brought this suit against the Defendants jointly and severally seeking the following remedies;

1. A declaration that the suit Kibanja situate at Kabulengwa hill, Kyebando L.C.1 in Wakiso District, measuring approximately 2 acres belongs to the Plaintiff.
- 20 2. A declaration that the purported agreement of purchase between the 3rd Defendant on the one part and the 4th and 5th Defendants on the other part on 10/08/2013 over the suit kibanja is null and void and without legal effect.
3. A declaration that the Defendants trespassed on the suit kibanja without the consent of the Plaintiff.
- 25 4. An order of vacant possession of the suit kibanja against the Defendants, their agents and/or servants.
5. An eviction order against the Defendants.
6. A permanent injunction restraining the Defendants, their agents and/or servants or any persons claiming under them from further laying false claims over the suit

kibanja, trespassing upon or developing the same or processing any further documents or ownership over the suit kibanja.

7. General damages for inconvenience, mental stress and embarrassment.

8. Interest on the general damages.

5 9. Costs of the suit.

In the alternative but without prejudice to the foregoing, the Plaintiff sought the following remedies;

10 1. A declaration that the Plaintiff is entitled to compensation by the 1st and 2nd Defendants being the present value of the suit kibanja and/or trespassed portion of the Kibanja.

2. An order that the 1st and 2nd Defendants pays to the Plaintiff compensation equivalent to the present value of the suit Kibanja and/or trespassed portion of the kibanja together with interest thereon, general damages and costs of the suit.

15 The Defendants did not file a defence in this suit and the matter proceeded exparte against them.

PLAINTIFF'S CLAIM

20 The Plaintiff, Mr. Shaka Abraham was the sole witness, PW1. He testified that he is the lawful owner of the suit Kibanja. He testified that the 1st Defendant, Mr. Seruwagi Matia and the 2nd Defendant, Ms. Mubiru Maria sold him the land in 2015. A copy of the agreement dated 22nd October 2015 was admitted and marked Exb. P.1. PW1 immediately took over possession and started to use the suit Kibanja by constructing a church.

25 In early 2019, the 3rd Defendant, Mr. Tiboruhanga Michael, with knowledge that the suit Kibanja belongs to the Plaintiff, purported to enter into an agreement where he sold the land to Mr. Byekwaso Samuel, the 4th Defendant, who in turn sold it to Mr. Menya Micheal the 5th Defendant.

Subsequently, the 5th Defendant entered the suit kibanja and started construction of a house without the Plaintiff's consent. On several occasions, the Plaintiff's demands that they vacate his land have gone unheeded by the Defendants.

As a result, the Plaintiff has been deprived of the use of the suit kibanja. Notice of intention to sue was communicated to the Defendants but they did not comply with it. A copy of the notice and their reply was admitted into evidence and marked Exb. P.4 and P.5 respectively.

According to the Plaintiff, he has continually suffered mental stress, embarrassment and inconvenience as a result of the Defendants' acts/or omissions and he therefore prayed that all the prayers sought under the Plaint be granted.

REPRESENTATION

Mr. Turyamusiima Geoffrey of M/S Wameli and Company Advocates represented the Plaintiff. Counsel did not file any written submissions.

The following issues were framed for Court's resolution;

ISSUES

1. Whether the Defendants trespassed on part of the Plaintiff's kibanja?
2. What are the remedies available to the parties?

RESOLUTION

Issue 1

Whether the Defendants trespassed on part of the Plaintiff's Kibanja?

Mulenga JSC, defined trespass to land in the case of **Justine E.M.N Lutaaya v Stirling Civil Engineering Company Limited SCCA 11 of 2002** as follows;

'Trespass to land occurs when a person makes an unauthorised entry upon land, and thereby interferes, or portends to interfere, 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 actual or constructive possession of the land. At common

law, the cardinal rule is that only a person in possession of the land has capacity to sue in trespass.'

Exb. P.1 is a sale agreement which demonstrates that the Plaintiff purchased the suit Kibanja from the 1st and 2nd Defendants. Exb. P.5 is a response from the 1st and 2nd Defendants in response to the Plaintiff's Notice of Intention to Sue on this complaint before the court. In that letter, dated 14th June 2018, the 1st and 2nd Defendants' advocates, M/S Kayondo, Omony and Co, Advocates, acknowledge on their behalf that the sale took place on the 22nd October 2015 and the Plaintiff took possession of the suit Kibanja. The 1st and 2nd Defendant's however, denied the allegation of trespass to the suit Kibanja. They further denied dealing with the 3rd Defendant and one Joseph Batambuze.

In his Complaint, the Plaintiff under paragraph 7(a), accused the 1st and 2nd Defendants of denying have sold the suit Kibanja to him. But by his own evidence, Exb. P.5, the 1st and 2nd Defendants acknowledge that the sale took place. There is no evidence that they entered into further dealings to deprive the Plaintiff of the suit Kibanja, actions that would amount to trespass. I find therefore, that there was no basis for this suit against the 1st and 2nd Defendants.

Turning to the 3rd-5th Defendants, the Plaintiff testified that they entered into a series of sales which resulted into the 5th Defendant's occupation/possession of the suit Kibanja. How these dealings were concluded was not indicated since there was no agreement tendered by the Plaintiff into evidence to demonstrate that these sales took place. However, the Plaintiff tendered several photographs depicting an incomplete house, not belonging to him, on the suit Kibanja. However, the photographs bore no time stamp and it was difficult to ascertain when they were taken.

I find that the burden on the Plaintiff to prove trespass is not a light one. It is incumbent that the Plaintiff proves that it is the 3rd – 5th Defendants who actually entered upon his suit Kibanja, unlawfully. Without the sale agreements pointing to the purported illegal sales and in the absence of photographs with a time stamp portraying the trespass, the 3rd -5th Defendants remained names on the Complaint and not trespassers on the Plaintiff's Kibanja.

In conclusion, I find that the Plaintiff has failed to discharge the evidential burden to prove this suit against the Defendants. This suit is hereby dismissed with no order as to costs.

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Olive Kazaarwe Mukwaya

JUDGE

4th November 2022

10 **Delivered by email to Counsel for the Plaintiff.**