

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)

CIVIL SUIT NO. 747 OF 2020

MOSES KASASIRA-----PLAINTIFF

VERSUS

1. JOY NAMULINDWA

2. BETTY NAKASANJE

3. JOHN MASERUKA-----DEFENDANTS

**(The Administrators of the estate
of the late Rev. Wilson Mulindwa)**

Before: Hon. Lady Justice Olive Kazaarwe Mukwaya

JUDGMENT

The Plaintiff, Mr. Moses Kasasira filed this suit jointly and severally against the Defendants in their capacity as administrators of the estate of the late Rev. Wilson Mulindwa seeking; -

1. A declaration that the Plaintiff is the lawful owner of all land comprised in Bulemezi Block 632 Plot 80 situate at Kigombe, Luwero sub county, Luwero district (herein referred to as the suit land).
2. A declaration that the defendants have no right or interest in the suit land and that the same is not part of the estate of the late Rev. Wilson Mulindwa.
3. An order to the Defendants to execute a fresh transfer in favour of the Plaintiff.
4. An order to the Commissioner Land Registration to remove the caveat lodged by the Administrator General and the 1st Defendant on the title to the suit land.
5. Permanent injunction.
6. General damages.

7. Interest on general damages at the rate of 30% per annum from the date of filing until full payment.
8. Costs of the suit

The Defendants were duly served with summons to file a defence and hearing notices but they failed to appear in court. This matter proceeded ex parte against them.

Plaintiff's Claim

PW1, Mr. Moses Kasasira, the Plaintiff and PW2, Mulindwa Isaac Kuteesa presented the Plaintiff's claim. On the 25th September 2009, the Plaintiff bought all the land currently comprised in Bulemezi Block 632 Plot 80, formerly Plot 32, situate at Kigombe, Luwero sub-county, Luwero district, measuring 15 acres. The vendor was the late Rev. Wilson Mulindwa who agreed to an initial consideration of UGX 10,500,000/= for the land. After the purchase, the Plaintiff immediately took over full possession. A copy of the sale agreement was admitted into evidence and marked Exb.P.1.

On the 10th May 2010, the parties to the sale executed an addendum to the agreement where the consideration was revised upwards to UGX. 11,500,000/=. This was an additional payment for the vendor's eucalyptus trees. A copy of the addendum was tendered into evidence and marked Exb.P.2. The Plaintiff fully paid the vendor the balance of the consideration as per the acknowledgment dated 28th August 2010 that was admitted into evidence and marked Exb.P.3.

The late Rev. Wilson Mulindwa handed over the duplicate certificate of title and signed transfer forms in respect to the suit land. However, when the Plaintiff took the documents to the office of titles for registration, he found that a caveat had been lodged on the title by the Administrator General. And unfortunately, the late Rev. Mulindwa passed away before the transfer could be completed. A copy of the certificate of title and transfer form were admitted into evidence and marked Exb.P.4 and P.5 respectively.

Nonetheless, since the 25th June 2019, the Plaintiff has remained in full control and possession of the suit land carrying out various economic activities including cultivating crops such as maize, beans, cassava and others without any interference from any member of the deceased's family. This was because they all knew that the deceased had

lawfully sold to him the suit land and the same was indeed his property and no longer part of his estate.

The Defendants subsequently obtained letters of administration to their late father's estate, and started making false claims as beneficiaries to the land. A copy of the letters of administration was admitted into evidence and marked Exb.P.6.

In addition, the Defendants tried to forcefully grab the land which the Plaintiff vehemently opposed. Later, the Plaintiff made another search in the land registry and found that the 1st Defendant had lodged a caveat on the suit land claiming to be a purchaser of the entire suit land whereas not. She even confiscated the Plaintiff's sale agreement and reported him to Luwero Police Station on trumped up charges for criminal trespass on the suit land.

On several occasions, the Plaintiff tried to meet the Defendants to request them to execute a fresh transfer form in respect of the suit land however they insisted that they still have a beneficial interest therein whereas not. He added that he has sought the intervention of the Luwero Police to protect his interests in the suit land but this has also not deterred the Defendants from forcefully trying to grab the suit land to sell it off to his detriment.

Mr. Mulindwa Isaac Kuteesa, PW2, who is also the biological son to the late Rev. Mulindwa Wilson, and a brother to the Defendants corroborated the testimony of PW1 in all material particulars. He testified that the deceased instructed him and the Defendants to look for potential buyers for the suit land which he personally looked for. When PW2 presented his potential buyer to his father, he said that the 1st Defendant had brought the Plaintiff who had actually paid part of the purchase price for the suit land. He further showed him the sale agreement which was executed on the 28th August 2010 and confirmed that the 1st Defendant had signed the agreement as a witness. A copy was admitted and marked Exb.P.7.

Later, the late Rev. Mulindwa Wilson, introduced the Plaintiff as the new owner of the suit land which he had taken possession of. And when PW2 inquired from his siblings, the Defendants, they all confirmed that the Plaintiff had acquired the land. Soon thereafter,

the Plaintiff appointed PW2 as the caretaker of the suit land, a position he willingly accepted.

The locus visit was conducted on 7th September 2022. During this visit, two more additional witnesses were heard; Mr. Ntege Michael, LC 1 Chairperson, Kigombe village and Mr. Mohammed Sengozi.

Representation

The Plaintiff was represented by Mr. Magellan Kazibwe of M/s Magellan Kazibwe and Co. Advocates.

Counsel for the Plaintiff filed final submissions which I have considered. He formulated the following issues for Court's consideration.

Issues

1. Whether the Plaintiff lawfully purchased the suit land from the late Rev. Wilson Mulindwa?
2. Whether the Defendants have any right or interest in the suit land?
3. What remedies are available to the parties?

In my view, Issue 1, ought to be aligned to the claim in the Plaint as follows;

‘Whether the Plaintiff is the lawful owner of all the land comprised in Bulemezi Block 632 Plot 80 situate at Kigombe, Luwero sub county, Luwero district?’

RESOLUTION

Issue 1

Whether the Plaintiff is the lawful owner of all the land comprised in Bulemezi Block 632 Plot 80 situate at Kigombe, Luwero sub county, Luwero district?’

The starting point for the evaluation of evidence under this issue is the Plaintiff's mode of acquisition of the suit land comprised in Bulemezi Block 632 Plot 80 situate at Kigombe, Luwero sub county, Luwero district. Exb. P.1, the sale agreement is dated 25th June 2009. The vendor is Rev. Wilson Mulindwa of Kigombe Luwero and the buyer is Kasasira Moses of Kasana, Kawuki Luwero. The subject matter is described as ‘Bulemezi Block

632 **Plot 32** land at Kigombe sells(sic) 15 acres'. Under the terms of the agreement, the purchase price was agreed at UGX 10,500,00/=. And a sum of UGX 1,000,000/= was deposited by the buyer upon the execution of the agreement. It was also agreed that the vendor duly execute transfer forms in favour of the buyer upon payment of the balance of

5 UGX 9,500,000/=. Besides the parties, four witnesses annexed their signatures to the agreement; Musiitwa John, Rasite Mulindwa, Asaph Tumubwine(Advocate), Byakatonda James and Nkurunziza.

Exb. P.2 is an addendum to Exb. P.1. It was drawn on the 10th May 2010. The addendum introduced some changes. The purchase price was revised upwards to UGX

10 11,500,000/=. And the buyer made a payment of UGX 5,000,000/= bringing the total deposit to UGX 6,000,000/=. It was agreed that the payment of the balance of UGX 5,500,000/= was to be made by January 2011. The buyer was granted leave to take vacant possession of the land before paying the purchase price balance with the understanding that if the buyer failed to give vacant possession, the buyer would receive

15 a refund of monies paid. Both buyer and seller affixed their signatures in the presence of the witnesses of their agreement, Exb. P.1, less Musiitwa John and Rasite Mulindwa.

Evidence of further payment was adduced by way of Exb. P.3, a document dated 28th August 2010. The buyer paid UGX 4,500,000/= leaving a balance of UGX 1,000,000/=. Witnesses to this acknowledgment document were the 1st Defendant, Rose Mary Nakasi,

20 Mwesigye Bashir, Byakatonda James and Tumubwine Asaph(Advocate). Exb. P.3 noted after the witnesses appended their signatures, that the vendor executed Transfer in favour of the purchaser and retained the original copy of the title pending payment of the balance.

A copy of the certificate of title to the suit land was admitted into evidence as Exb. P.4.

25 The land is described as Block 632 **Plot 80** and it indicates that the vendor, Mulindwa Wilson was registered on the 15th July 2010. The Transfer for, Exb. P.5 describes the land as Block 632 Plot 80. I notice however, that to my naked eye, there appears to have been an apparent alteration to the Plot number from 32 to 80.

As stated earlier, this court visited the locus in quo. The suit land was described by the

30 Plaintiff. There were various crops on it which the Plaintiff stated did not belong to him. It

then transpired that actually, the Plaintiff has never been in physical possession of the suit land. It is being utilised by various occupants including Mr. Ntege Michael, LC 1 Chairperson, Kigombe village. He told this court that he has been in physical possession of part of the suit land since the 1991, as a Kibanja purchaser. His portion measured 1 and a half acres. He told this court that he met Wilson Mulindwa who informed him the land belonged to his mother Salamie Mboijana. After a while, one Masembe came and said that he had bought the land from Wilson Mulindwa. He inspected the land, found occupants and he did not utilise it. Later, the Plaintiff came and said he bought the land. Mr. Ntege did not ask whom he bought the land from. He too, left Mr. Ntege and others to utilise the land. During the COVID 19 lockdown, the Plaintiff appeared with one Medi who said that he had bought the land from Kusasira. Then the 1st Defendant came and said she had bought the land from Masembe. According to Mr. Ntege, there are about 60 Bibanja holders on the suit land.

The second court witness was Mr. Mohammed Sengozi. He testified that the Plaintiff sold him the suit land at UGX 120,000,000/= during the COVID 19 lockdown. Mr. Sengozi made a deposit of UGX 50,000,000/= and it was agreed the balance would be paid after a survey had been done. Unfortunately, this agreement was never reduced in writing and Mr. Sengozi has never utilised the suit land.

By the Plaintiff's own admission payment in respect to the suit land was never completed. Secondly, the description of the suit land in the sale agreement, addendum and acknowledgement of payment differs from the land as described in the certificate of title to the suit land. The agreement speaks of Plot 32 and the certificate of title reads Plot 80. Relatedly, the caveats referred to by the Plaintiff, lodged by the Administrator General and the 1st Defendant as purchaser, were also never presented to the Court. I

And that the time of writing this judgment, there is convincing evidence that the Plaintiff no longer has any interest in the suit land, after he sold it to Mr. Sengozi also known as 'Medi'. This is not surprising since the suit land is fully occupied by Bibanja holders. Meanwhile, there is also evidence that one Masembe at one time claimed an interest in the suit land, the same person who supposedly sold to the 1st Defendant cum Administrator of the estate of the late Rev. Wilson Mulindwa.

It is my finding that the premise of the Plaintiff's suit is based on a sale agreement containing a description of land that is at odds with the copy of the certificate of title in his possession. As Administrators to the Vendor's estate, the Defendants were based placed to assist conclude the transaction. But in view of the Administrator General's caveat, and
 5 the 1st Defendant's purported interest in the suit land as purchaser, this eventuality was highly unlikely. Finally, Mr. Sengozi categorically testified that he made part payment towards the purchase of the suit land to the Plaintiff, when this matter was pending before this court and that the land was his. This evidence in itself suggests that the Plaintiff has no cause of action as defined in the case of **Auto Garage v Motokov (1971) EA 314.**

10 According to that case, the three essentials to support and sustain a cause of action are; the plaintiff enjoyed a right, the right has been violated and the defendant is liable. Any right the Plaintiff may have had was apparently passed on to Mr. Sengozi, rendering the plaint a nullity that ought to have been struck off. Unfortunately, this information only came to light during the locus visit.

15 **In conclusion, Issue 1 is resolved in the negative. The Plaintiff's transaction with the late Rev. Wilson Mulindwa remained incomplete. Since then there have been subsequent transactions on the suit land which brought into question the Plaintiff's locus standi to seek any redress from this court.**

This suit is therefore dismissed with no order as to costs.

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Olive Kazaarwe Mukwaya

JUDGE

15th November 2022

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