

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
[LAND DIVISION]

CIVIL SUIT NO.166 OF 2018

MUKALAZI KIZITO HORMISDASC..... PLAINTIFF
(Suing Through Lawful Attorney Dennis Kizito)

VERSUS

1. ABBAS MUKIIBI
2. RESTY NAKAYENGA KIGULI.....DEFENDANTS

JUDGEMENT

Facts

The facts as per the pleadings by the Plaintiffs show that the Plaintiff is the registered proprietor and is in possession of the suit land **comprised in Kyadondo Block 111 Plot 1115 at Lubata Kabaganda**, having purchased the said land on 3rd April 1998, from Zaliika Nassuna, Masitula Luwedde, Nakalema Jamidah and Nanyonga Mariam who were the then registered proprietors for a purchase sum of Ushs. 3,970,000/= (*three million nine hundred seventy thousand only*). He took possession and started utilising the said land.

On 19th July 2017, the Defendants together with several unknown people entered unto the Plaintiff's land without his knowledge and consent and shortly thereafter they destroyed his perimeter wall. The matter was reported to police vide CRB 085/2017 and the 1st Defendant was detained and later released at the behest of the 2nd Defendant.

Further on 30th July 2017, the 1st Defendant together with a group of armed men with sticks and machetes came onto the land and beat up the workers who were on the land, destroyed the incomplete commercial building thereon and the barbed wire fencing around the land and threatened to kill anyone who stepped on the land as the 2nd Defendant had purportedly decreed that the suit land belonged to the 1st Defendant, this matter was equally reported to police vide SD Ref 31/31 07/17.

The 2nd Defendant using her political office and influence intimidated, incited and threatened violence against the Plaintiff, his family and servants and denied them access to the land.

The Plaintiff through his lawyers in a letter dated 10th August 2017, wrote to the office of the Principal Legal Secretary to the President complaining of the actions of the 2nd Defendant. On 2nd November 2017, the Office of the Principal Private Secretary of the President responded to the Plaintiff's concerns and stated the 2nd Defendant had no mandate whatsoever to handle land matters and thus her actions were illegal.

With the continued acts of trespass by the Defendants, the Plaintiff instituted the instant proceedings to avert any further acts of trespass. The Plaintiff equally instituted criminal proceedings against the 1st Defendant.

Issues for trial

The following Issues were formulated and agreed upon in Court for trial by the parties, thus;

a) Whether the Plaintiff is a bonafide purchaser of the suit land.

b) Whether the Defendants trespassed on the Plaintiff's land.

- c) Whether the Plaintiff has a cause of action against the second Defendant.
- d) Whether the 1st Defendant has got legitimate interest in the land.
- e) What are the available remedies to the parties.

I do resolve the Issues as follows

Issue 1

Whether the Plaintiff is a bonafide purchaser of the suit land

A Bonafide purchaser was defined by Bashaija J in Amratlal Purshottam Bhinji & Another Versus Gain Singh Bhambra & 3 Others Civil suit No. 239 of 2009,

“As a purchaser who buys property for value without notice of another’s claim to the property and without actual or constructive notice of any defects in or infirmities, claims or equities against the sellers’ title, one who has in good faith paid valuable consideration for property without notice of prior adverse claims. A bonafide purchaser does all that is reasonably possible and necessary in his or her power to find out about all material facts pertaining to property before he or she could commit him or herself to purchase the same, to be a bonafide purchaser one must have done due

diligence and exercised caution before entering into a transaction of the nature that would ultimately be binding upon him”

To qualify as a Bonafide purchaser, the burden lies on the purchaser to prove the following qualities as explained in **Hannington Njuki Versus William Nyanzi Civil Suit No. 434 of 1996 HC**, that hence a bonafide purchaser must prove that;

- i. He holds a certificate of title*
- ii. He purchased in good faith*
- iii. He had no knowledge of the fraud*
- iv. He purchased for valuable consideration*
- v. The vendor had an apparent valid title*
- vi. He purchased without notice of any fraud*
- vii. He was not a party to the fraud, if any*

In relation to the instant facts through evidence led by **PW1, PW2, PW4, and PW5** in chief, it was established as follows;

From the pleadings and evidence before this Honourable Court PW2, Masitula Luwedde, Nakimbugwe Sulaibat and Jamidah Nakalema it shows that they acquired their interests in the suit land as beneficiaries to the Estate of the late Ramanzani Kateregga who passed on in 1980, and that among the properties he left behind is the suit land comprised in Kyadondo Block 111 Plot 33 currently Block 1114 and 1115 for which the applied for a certificate of succession that was granted on 7th November 1991, admitted as **PEX1**

It's further established that they presented the certificate of succession to the office of titles and they subsequently became the registered proprietors as joint tenants on the 10th of March 1992 under the Instrument Number **KLA151316 admitted as PEX2.**

On 3rd April 1998, as the then registered proprietors of the suit land, the sold it to the Plaintiff, Mukalazi Kizito Hormsdac (PW1) for a valuable consideration of Ushs. 3,970,000/= (*three million nine hundred seventy thousand only*) as evidenced by their respective sale agreement admitted collectively as **PID1.**

They further testified that when PW1 paid them their full consideration, they executed transfer forms in his favour on the 14th April 1998 and handed over the certificate of title to him to concluded the transfer of the title into his name, the transfer forms and consent to the transfer are attached to the Plaintiffs trail bundle and further on 16th April 1998, through their then lawyer Messrs. Sekandi & Co. Advocates, they wrote to the Area Local Chairperson introducing PW1 as the new owner of the suit land, copy of the letter is admitted as PID2.

The Plaintiff further testified that before he purchased the suit property he undertook the requisite due diligence both at the Title office and on ground upon being satisfied that the land was free from encumbrances he went ahead and purchased it and took possession thereof.

The Plaintiff subdivided the suit property to create Plots 1114 which he sold to PW4, Dr. Benon Kanyima, who similarly undertook extensive due diligence according to his testimony before he

purchased and only did so when he confirmed that the land was unencumbered, and the Plaintiff remained on Plot 1115. Both the Plaintiff and PW4 are in possession of their respective parcels including the certificates of title thereof as evidenced by P. Ex2.

It is therefore my finding that the Plaintiff and PW4, who is counter Defendant in the Counterclaim are bonafide purchasers in accordance with the law and criteria set out in the *Hannington Njuki* case

Counsel for the Defendants had submitted that the 1st Defendant purchased the suit land from the family of the late Ramanzani Kateregga and that he was introduced to the Kibanja holders by Nakalema Jamidah. However the Plaintiff's Counsel retaliated that Nakalema Jamidah had no interest to pass on the property as the same was still registered in the names of Ramanzani Kateregga and she ought to have acquired a grant of Letters of Administration or probate or a Succession certificate but none was available which act amounts to intermeddling as defined in the case of Annet Namirimu

Ndaula versus Rev Aloni Mulondo & Anor, HCCS No. 27 of 2011,

that;

“An intermeddler is a person who assumes the authority of an executor, becomes executor de son tort. Inter meddling includes assuming authority to administer the estate of another person when a person does not have such authority. It is equally important to lay down the following principles, an administrator only becomes one on getting Letters of Administration in respect of the estate of that particular deceased person.”

Similarly Section 268 of the Succession Act Cap 162. Provides that Intermeddling,

“A person who intermeddles with the estate of the deceased or does any other act which belongs to the office of executor, while there is no rightful executor or administrator in existence, thereby makes himself or herself an executor of his or her own wrong; except that—(a)intermeddling with the goods of the deceased for the purpose of preserving them, or providing for his or her funeral, or for the immediate necessities of his or her own family or property; or(b)dealing in the ordinary course of business with goods of the deceased received from another does not make an executor of his or her own wrong.”

Therefore relying on **section 286 of the Succession Act and the case of Annet Namirimu Ndaula versus Rev. Aloni Mulondo & Anor; HCCS No. 27 of 2011**, I am in agreement with the rejoinder that the purported sale between the 1st Defendant and Nakalema Jamidah was illegal and that Nakalema Jamidah intermeddled with the estate of the late Ramanzani Kateregga, in this regard, there were no equitable rights that could have accrued to Nakalema Jamidah to either sell the land as argued by the 1st Defendant.

Issue 1

Whether the Defendants trespassed unto the Plaintiff's land

While Counsel for the Plaintiff argued that Defendant is a trespasser for reasons as in submissions, Counsel for the Defendants' submitted that being a registered proprietor on the certificate of title does not grant possession/ occupation of the suit land.

I however agree with the position articulated by Counsel for the Plaintiff's on this Issue in that trespass to land occurs when a person directly enters upon land in possession of another without

permission and remains upon the land, places or projects any object upon the land (see **Salmond and Houston on the Law of Torts, 19th edition (London: Sweet & Maxwell, (1987) 46)**). It is a possessory action where if remedies are to be awarded, the Plaintiff must prove a possessory interest in the land.

It is the right of the owner in possession to exclusive possession that is protected by an action for trespass. Such possession should be actual and this requires the Plaintiff to demonstrate his or her exclusive possession and control of the land. The entry by the Defendant onto the Plaintiff's land must be unauthorised.

According to the authority of **Justine E.M.N. Lutaaya versus Starling Civil Engineering Co. SCCA No.11 of 2002,**

“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. Thus, the owner of an unencumbered land has such capacity to sue.”

The proprietary interests of the Plaintiff are not denied as he is the registered proprietor of the suit land as submitted earlier. He has been in possession of the suit land since 1998 when he purchased it. Therefore I agree with Counsels observation that the 1st Defendant’s attempts to alter the *status quo* was thwarted when the Plaintiff applied for and was granted a temporary injunction by this honourable Court vide ***HCMA 802 of 2018***. This position is further enhanced by the evidence on record as reviewed above and here below in that PW1 testified that on 19th July 2017 he received a phone call from Sensaalo Abdul Mustafa PW6, that the 1st Defendant together with other unknown men at about 10:00 am came to the suit land, and that they carried pangs, axes and stick, they started knocking down the perimeter wall until it was brought down.

PW1 reported to Kiteezi Police Station Vide CRB 085/2017 and that the 1st Defendant was detained and later released at the behest of the 2nd Defendant, he further testified that on July 30, 2017, further the Defendants trespassed again on the suit land with a group of people armed with sticks and machetes, they beat up his workers, destroyed the incomplete commercial building thereon and the barbed wire fencing around the land and threatened to kill anyone who stepped on the land, this matter was equally reported to police vide SD Ref 31/31/07/71.

PW6 testified that on 19/07/2017 at about 10:00am the 1st Defendant with 15 men carrying pangas, axes and sticks, trespassed unto the suit land and knocked down the perimeter wall, and that the 1st Defendant started shouting on the top of his voice that the Plaintiff will never take the suit land.

The extent of the trespass and the damage was detailed in the Photos (P.ID3) and the Valuation Report (P.Ex5) that was compiled by Bold Capital Limited which was placed at a value of Ushs.13,162,500/=

(*thirteen million, one hundred sixty two thousand, five hundred shillings only*) resulting from the trespass and damage occasioned by the Defendant to the Plaintiff's Perimeter Wall and incomplete commercial building.

The extensive damage was further confirmed by the *locus* visit conducted by the Court on 9th September 2021. This was consistent with the testimony of the Plaintiff and the exhibits; **PID3** and **P.Ex5**.

Similarly, the 1st Defendant, in relation to the acts of trespass and malicious damage occasioned to the suit land, on the 2nd December 2020 was convicted of Criminal trespass c/s 302 (a) and Malicious damage to property contrary to 335 (1) of the Penal Code Act vide; **NAB-CO-026/2019** by His Worship Achok Abrahams Moding, the learned Magistrate of Nabweru Chief Magistrate's Court. We implore this honourable Court to take judicial notice of the said decision as it relates to the instant case.

It is my finding of fact that the 1st Defendant together with the aid of the 2nd Defendant unlawfully entered unto the Plaintiff's land without his permission, remained upon the land and destroyed his perimeter wall and his incomplete building.

The evidence shows that the proprietary interests of the Plaintiff are not denied as he is the registered proprietor of the suit land wherefore, he possesses a legitimate interest in the suit land, since after his purchase on 3rd April 1998, the vendors to wit the lawful administrators and beneficiaries to the estate of the late Ramanzani Kateregga signed a transfer instrument for the suit land in his favor.

I am therefore in agreement with Counsel for the Plaintiff's argument that the transfer was viable as required by section 147 (1) (a) of the Registration of Titles Act.

This section provides for attestation of instruments. The same was duly registered under section 54 of the Registration of Titles Act, and upon registration of the transfer and issuing of the Certificate of title for the suit property, the Plaintiff became the absolute owner of the

suit land as provided for by sections 59, 64 (1), 92 (2) 136 and 176 of the Registration of Titles Act and in section 59 of the Registration of Titles Act which provides that:

“No Certificate of title Issued upon an application to bring land under this Act shall be impeached or defeasible by reason or on account of any informality or irregularity in the application or in the proceedings previous to the registration of the Certificate, and every Certificate of title Issued under this Act shall be received in all Courts as evidence of the particulars set forth in the Certificate and of the entry of the Certificate in the Register Book, and shall be conclusive evidence that the person name in the Certificate as the proprietor of or having any estate or interest in or power to appoint or dispose of the land described in the certificate is seized or possessed of that estate or interest or has that power”

This Court was further referred to Section 176 (c) of the Registration of titles Act, Cap 230 which protects a registered proprietor of land against ejectment except on ground of fraud.

Therefore, as regards the facts and evidence before me in this case, once the Plaintiff got registered on the Certificates of title in respect of the suit land that he obtained a registerable interest on the land which is conclusive evidence of ownership, unless otherwise the contrary is proved. In the result I find that the Plaintiff has a possessory and legitimate interest in the suit property.

This Court also takes judicial notice of the facts surrounding the Defendant's conviction, on 2nd December 2020 of Criminal trespass c/s 302 (a) and Malicious damage to property c/s 335 (1) of the Penal Code Act Vide NAB-OC-026/2019 by His Worship Achok Abrahams Moding, the learned Magistrate of Nabweru Chief Magistrate's Court.

In view of the above facts I am convinced that the 1st Defendant with the aid of the 2nd Defendant unlawfully entered unto the Plaintiff's land without his permission, remained upon the suit land and destroyed his perimeter wall and his incomplete building. I therefore terminate the Issue in the affirmative.

Issue 3

Whether the Plaintiff has a cause of action against the 2nd Defendant

A cause of action was defined in the oft-cited case of *Auto Garage Versus Motokov (1971) E.A 514* to the effect that a cause of action accrues when the Plaintiff enjoyed a right, that right was violated and that the Defendant is responsible, its trite law that to ascertain whether the action discloses a cause of action Court only looks at the pleadings.

I have followed this case closely and on the strength of evidences on record, i agree with the position articulated by the Plaintiff herein submissions that it's important to note that

The Plaintiff's claim against the 2nd Defendant relates to use of her political office in order to grab the Plaintiff's land. The evidence shows that, the Plaintiff prior to instituting the instant proceedings complained about the manner in which the 2nd Defendant was hell bent on depriving the Plaintiff of his land for instance on 10th August 2017, the Plaintiff wrote to the Principal Private Secretary seeking clarification on the role of the 2nd Defendant in land matters. On 2nd

November 2017, the Office of the Principal Private Secretary indeed clarified in a letter admitted as **P. Ex4** that the 2nd Defendant was merely a Special Presidential Assistant for the Underprivileged, Aged and Youth at State House but without legal mandate to handle land matters.

Even with the afore going guidance from her own, the 2nd Defendant continued with the subversive activities, which she admitted to during her testimony before Court, which prompted the Plaintiff to institute the instant proceedings against both Defendants.

During her cross examination, she admitted that she had appeared before the *Commission of Inquiry in Land Matters led by Justice Catherine Bamugemereire* as a result of a complaint that she is one of the architects of land grabbing in Uganda. We therefore implore Court to take into account her previous conduct which includes multitudes of complaints against her in relation to land grabbing.

It is also a finding of this Court that there continues to be several other complaints against the 2nd Defendant regarding the use of her

office to perpetuate land fraud and land grabbing in the country, as submitted by Counsel. This includes allegations which led to her being summoned by the Commission of Inquiry in land matters, and the

Charges levied against her before the Anti-Corruption Court with Abuse of Office and this was attributed to land fraud and grabbing.

It is therefore not in doubt as argued by Counsel for the Plaintiff that “the conduct of the 2nd Defendant is not one of an innocent third party but one of a person hell bent who used her office to grab the Plaintiff’s land under the guise of her administrative mechanisms where she has no authority to handle land matters as showcased by the letter by the PPS which was clear that she has no mandate in land matters. Therefore the Plaintiff’s claim against her was properly brought before Court”.

It is therefore my finding in agreement with Counsel that the Plaintiff has a cause of action against the 2nd Defendant as she acted in concert with the 1st Defendant in order to deprive the Plaintiff of his land.

Issue 4

Whether the 1st Defendant has a legitimate interest in the land

Black's Law Dictionary 9th Edition, defines an interest in land to mean a legal share in something or part of a legal or equitable claim to or right in property.

In *Mash Investment Ltd versus Kachra Investment Co. ltd and Ors Civil Suit No. 8 of 2012* Musota J explained that;

“According to Osborne’s Concise Law Dictionary a person has an interest in land when he has rights, titles, advantage and liabilities connected with the land whether it be present, future, ascertained or potential provided they are not remote, an Interest in land must be one capable of surviving the parties and must be recognisable to the world.”

The 1st Defendant claims in his pleadings that he purchased the suit land from Jamidah Nakalema purportedly witnessed by Mrs. Kateregga in the year 1982

Plaintiffs argue that the 1st Defendant did not acquire any interests in the suit property for the following reasons; First and foremost, he

claims to have acquired the land in 1982, the registered owner on the title then was Ramathan Kateregga who had passed on in 1980. Therefore, no interest would have been acquired in the absence of a certificate of succession according to the Land Succession Law of the Kingdom of Buganda of 31st October 1912.

Secondly, the suit land was beneficially owned by all the beneficiaries of the Late Ramathan Kateregga, however, for some strange reason the 1st Defendant claims to have bought the land from Jamidah Nakalema and only purportedly witnessed by the widow (*whom he could not identify by name*) by placing her thumbprint. When this is *juxtaposed* with the agreement executed by the Plaintiff, all the owners of the land signed and executed the transfer forms. Therefore, it is our finding of this Court that no interest was acquired in the suit land by 1st Defendant as he did not enter any agreement with the rightful owners.

Similarly, no Powers of Attorney were tendered in Court as evidence to support the 1st Defendant's averment that Nakalema Jamidah was

acting on behalf of the other family members this is contrary to the provisions of S.146 of the Registration of Titles Act Cap 230.

Further, the 1st Defendant by his own account both in his pleadings and testimony before the Court, he has never been in possession of the suit land and this explains why during the *locus visit* he was unable to identify some mark stones. He further admitted that this Honourable Court had issued a temporary injunction against him and the 2nd Defendant from further acts of trespass on the suit land.

From the foregoing, the 1st Defendant does not have either equitable or legal interests in the suit land.

Issue 5

What remedies are available to the parties

- i. The Plaintiff prayed for a permanent injunction restraining the Defendants whether by themselves, their agents, servants or otherwise from further acts of trespass unto the Plaintiff's land. Having succeeded on all grounds, the Plaintiff is granted the said injunction against the Defendants as prayed

ii. Special_damages

In **Luzinda Marion Babirye versus Sekamatte & 4 Ors Civil Suit No. 366 of 2017**, Justice Ssekaana held that;

“Special damages must not only be specifically pleaded but they must also be strictly proved (See Borham- Carter versus Hyde Park Hotel [1948] 64 TLR”.

In the instant facts, the Plaintiff’s special damages which were pleaded and proved through the valuation report marked as PEX5 are as follows;

a) Incomplete Commercial building - 5,355,000/=

b) Perimeter wall fence - 4,770,000/=

c) Disturbance allowance - 3,037,000/=

Total..... 13,162,500/=

It’s argued by the Plaintiff’s Counsel in his submission that this Honourable Court exercises its discretion to award the Plaintiff the above special damages. I have looked at the facts and that evidence

and do find the amount of 13,162,500/= (*thirteen million, one hundred sixty two thousand, five hundred shillings only*) reasonable.

I do award the same as prayed.

Aggravated /exemplary damages

In Matovu Margret versus Tom Kaaya & Another Civil Suit No. 432 of 2005 HC, Mugenyi J referred to Obongo versus Kisumu Council (1997) EA 91 to 96 as cited with approval in Zaabwe versus Orient Bank & 5 Others CA 4/2006 that;

“It’s well established that when damages are at large and a Court is making a general award, it may take into account factors such as malice or arrogance on the part of the Defendant and this injury suffered by the Plaintiff, as for example by causing him humiliation or distress. Damages enhanced on account of such aggravation are regarded as still being essentially compensatory in nature”

As prayed by Counsel for the Plaintiffs, it’s true that the Defendants caused the Plaintiff a lot of suffering and injury by demolishing his perimeter wall and unfinished structure. They prayed for an award

of aggravated/exemplary damages of Ushs. 20,000,000/= (*twenty million shillings only*). However, this is on the high side, given all the circumstances of this case I do award Ushs. 5,000,000= (*five million shillings only*) to carter for the pain and suffering suffice.

General damages for trespass

The Plaintiffs prayed for general damages of Ushs. 5,000,000/- (*five million shillings only*) which is granted.

Costs of the suit are granted to the Plaintiff.

Interest:

Interest on (i), (iii) and (iv) at the rate of 8% from the date of Judgment till payment in full.

The Plaintiff prayed for interest as per Section 26(1) of the Civil Procedure Act Cap 71 which provides that;

“Where an agreement for payment of interest is sought to be enforced by the legal process, the Court may give judgment for the payment of

interest at such rate as it may think just. Where and insofar as a decree is for the payment of money, the Court may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged from the date of the suit to the date of the decree”.

In view of the law above, the Plaintiff is awarded interest on Court rate of 6%. In view of the law above, the Plaintiff is awarded interest on Court rate of 6%.

Judgment is accordingly entered for the Plaintiff in the terms above.

I so order.

Henry I. Kawesa

JUDGE

18/2/2022

18/2/2022:

Albert Mukasa for the Plaintiff.

Plaintiff present.

Defendants absent.

Legal representative absent.

Court:

Judgment delivered in the presence of the parties above.

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Henry I. Kawesa

JUDGE

18/2/2022.