

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MUBENDE
CIVIL SUIT NO.30 OF 2019

KASIBANTE DAN alias Friday

PLAINTIFF

VERSUS

REV.DR. NVIRI KAZIRO GODFREY

DEFENDANT

BEFORE HON JUSTICE MOSES KAZIBWE KAWUMI

JUDGMENT

The Plaintiff claims to be the lawful owner of a plot of land at Kiganwa Village, Taamu Division in Mityana Municipality which was trespassed on by the defendant. He filed the suit for a declaration that he owns the plot, an order of vacant possession, special damages, general damages and costs.

Background.

The Plaintiff claims to have bought the plot from a one Kasibante James for Shillings 250,000/= on 25th September 2007 and took possession by planting 600 eucalyptus trees thereon. The Plaintiff claims to have thinned the trees to 450 plants by the time the defendant unlawfully entered the plot, cut the trees and uprooted the stumps before setting up a banana plantation. The Plaintiff claims shillings 67,500,000/= as special damages for the value of the trees.

The defendant on the other hand claims to have been a friend of the Plaintiff who used to act as his agent in buying land since he stayed

outside the country. The defendant contends that the suit plot/land is his property bought on 11th April 2005 for shillings 550,000/= from James Kasibante and thus denied the alleged trespass by the Plaintiff.

The Plaintiff exhibited his purchase agreement which was admitted in evidence. The defendant's agreement was not admitted in evidence but was only admitted for identification. The description of what each party bought from James Kasibante is distinct save for the defendant's farm stated to be adjacent to the subject matter in each of the two sale agreements.

The Plaintiff denied any dealing with the defendant in respect of this particular plot of land but admitted having worked for him as a farm manager until 2012 when he left. Undisputed evidence was introduced by the defendant showing that the Plaintiff had demanded for what he claimed to be salary arrears from the defendant in 2018. The parties appear not have resolved the issue until the suit was filed.

At the scheduling stage of the trial, the following issues were framed by Counsel for the parties;

1. Whether the plaintiff is the owner of the suit land
2. Whether the defendant is a trespasser on the suit land
3. Remedies available to the parties

Representation.

Mr. Kamya Stewart appeared for the Plaintiff while Mr. Betunda Yusuf appeared for the defendant.

Witness statements were filed and the deponents cross examined by Counsel. The Plaintiff testified as PW1 and called Kasibante James (PW2), Nakimwero Gladys (PW3) and Kabigumire Arthur (PW4) as witnesses. The defendant had Nakabale Rebecca as his Attorney for purposes of the suit and Kakande Dirisa (DW2) as a witness.

Counsel for the Plaintiff filed submissions as directed by the court. The defendant neither filed submissions in reply nor attempted to exhibit the Purchase agreement for the disputed land.

Counsel consented that it was necessary to visit the locus since the trees allegedly planted by the Plaintiff on the suit land were cut and the contention was more about ownership than trespass.

Evidence.

To prove ownership of the disputed plot the Plaintiff exhibited a sale agreement executed between him and James Kasibante with PW2 as one of the witnesses. The Plaintiff stated that he planted 600 trees on the land but had reduced them to 450 through the process of thinning and each was valued at Shillings 150,000/- at the time of the trespass.

PW2 admitted that he sold the plot to the Plaintiff and denied selling any land to the defendant. It was his evidence that the defendant's farm is not adjacent to the suit land contrary to the contents of the sale agreement but admitted that the Plaintiff took possession after the transaction.

PW3 witnessed the sale transaction between the Plaintiff and James Kasibante as evidenced by her signature on the agreement and that she used the land as the Plaintiff's wife at the time. PW4 claims to have been instructed by the Plaintiff to establish the acreage of the suit land and he counted the tree stumps to arrive at the special damages of Shillings 67,500,000/= claimed by the Plaintiff.

On her part DW1 claims to have witnessed the sale agreement between the defendant and James Kasibante on 11th April 2005 subsequent to which the defendant took possession. DW1 contended that the defendant was present but later changed to state that he only signed the agreement at a later date which she did not know. DW1 further stated

that the suit land was bought by the Plaintiff for the defendant and it had never been planted with eucalyptus trees but cattle grass.

According to DW1 the agreement was written by the Local Council Chairman who came to court as DW2 and not James Kasibante (PW2) who was the vendor.

Kakande Dirisa (DW2) was the Local Council Chairman who claims to have witnessed the transaction between James Kasibante and the Defendant and affixed the Council stamp on the agreement held by the defendant. DW2 claims to have been with the defendant at the time and he saw money changing hands. Kasibante was alone without PW3 and he did not inquire about the past ownership of the suit land which was bare. DW2 did not know of the alleged sale transaction between the Plaintiff by the same vendor.

Resolution of the 1st issue.

Section 101(1) of the Evidence Act provides that whoever desires the 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 exists. The duty lies on the Plaintiff to prove that he indeed lawfully acquired the suit land on which he planted the trees destroyed by the defendant.

The standard of proof is on a balance of probabilities which has been interpreted to mean that the claimant/Plaintiff must prove that it is more likely than not that his version of the facts is right. The Plaintiff presented and exhibited a sale agreement for the purchase of the suit land from James Kasibante which was not contested by the defendant. PW2 who sold the land confirmed the transaction and asserted that he never sold any land to the defendant. PW3 witnessed the agreement.



The defendant relied on an agreement of sale the original copy of which was not produced for admission on the court record as evidence. A copy was only availed for identification purposes but not exhibited. It is settled law that a document tendered only for identification is of no evidential value.

Bazirake Yeremiya V Mutaba Barisa Kweterana Ltd. HCCA No.41/ 2008.

It therefore follows that the defendant did not produce documentary evidence to prove his purchase of land from James Kasibante. The oral evidence of DW2 and DW3 in the absence of an exhibited agreement carries little or no weight and is further weakened by the contradicting evidence about the presence or absence of the defendant at the time the agreement was allegedly made.

Contradictions between DW1 and DW2 as to who authored the agreement admitted for identification for the defence further create doubt about the transaction the defendant's claim is hinged. Whereas DW1 was emphatic that DW2 authored the agreement it was the evidence of DW2 that the agreement was authored by Kasibante James.

DW2 's evidence to the effect that the suit land was bought by the Plaintiff acting for the defendant was also not supported by the sale agreement much as it was not exhibited as evidence. It also defeats DW2's own evidence to the effect that the defendant was present when purchasing the suit land.

The Plaintiff proved on a balance of probabilities that he bought the suit land on 25th September 2007.

I thus hold that the Plaintiff is the lawful owner of the suit land.



Resolution of the 2nd issue.

What amounts to trespass to land has been canvassed in a number of authorities. Trespass occurs when a person makes an unauthorized entry upon land, and thereby interferes with another person's lawful possession of that land. The tort is committed not against the land, but against the person who is in actual or constructive possession of the land and only the person in possession has capacity to sue in trespass.

Justine. E. M. N. Lutaya V Stirling Civil Engineering Company Ltd. SCCA No.11 of 2002; Sheikh Muhamad Lubowa V Kitara Enterprises Ltd. (1992)V KALR 126.

The Plaintiff, PW2 and PW3 testified to the occupation of the suit land subsequent to the execution of the 25th September 2007 agreement and that trees were planted soon thereafter. The Plaintiff stated that he relocated to Kampala around 2011/12 but used to visit the land until 2017 and the trespass commenced in 2018. Pictures of a banana plantation alleged to be on the suit land were exhibited as PE2.

DW2 denied the trespass allegations claiming that the Plaintiff had never used the suit land which was used for growing cattle grass. It is only the Plaintiff who led evidence of the existence of trees on the land before the alleged trespass by the defendant.

It was his evidence that " *the defendant or his agents further uprooted the eucalyptus stumps and planted bananas*". On the contrary PW4 stated in his evidence in chief that he " *visited the land on 28th February 2019 and found that the trees had been cut because there were visible tree stumps*". How could PW4 have seen uprooted tree stumps?

I find the contradiction in the evidence of PW1 and PW4 rather grave and raising doubt as to whether the two were testifying about the same piece of land which had been populated with trees as alleged. If trees had been

planted and uprooted by the defendant including the stumps, then PW4 could not have seen and counted any stumps. The aspect of the alleged trespass by destruction of trees on the suit land was not proved by the Plaintiff

Evidence of those who cared for the trees or any village mate who could have known of the existence of the trees on the land before the banana plantation was established on the same would have sufficed to prove the alleged trespass.

On a balance of probabilities, the Plaintiff failed to prove the destruction of any trees on the suit land but proved that there exists a banana plantation established by the defendant as at the time the suit was filed.

Remedies available to the parties.

It is the finding of the court that the Plaintiff lawfully owns the suit land he bought from James Kasibante as described in the sale agreement admitted in evidence. The defendant's act of establishing a banana plantation on it amounts to trespass which qualifies the Plaintiff for an award of general damages.

Special damages are ascertainable and quantifiable losses which must be pleaded and proved. The Plaintiff pleaded the loss of 450 trees valued at shillings 15,000/- each. It was only the Plaintiff who knew about the planting of 600 trees and no other witness saw them.

PW4 who was commissioned to value the loss allegedly occasioned to the Plaintiff did not state the acreage of the land he inspected, did not carry out the thinning of the trees from 600 to 450 but relied on what he was told by the Plaintiff. PW4 claimed to have counted tree stumps which according to the Plaintiff had been uprooted by the defendant and even the photographs taken by PW4 do not show a single tree stump.

I failed to find proof of the alleged loss of 450 trees from the evidence of both the Plaintiff and PW4 yet special damages must strictly be proved. This aspect of the Plaintiff's claim was not proved.

The Plaintiff's suit succeeds in part. It is ordered that the defendant removes the banana plantation on the suit land within six months from the date of this judgment failure of which he will be evicted from it. The Plaintiff shall be paid Shillings 5,000,000/- as general damages and also costs of the suit.



Moses Kazibwe Kawumi

Judge

18th September 2023