

THE REPUBLIC OF UGANDA

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

CIVIL SUIT NO.522 OF 2012

ISAAC MWESIGYE:.....PLAINTIFF

VERSUS

KISIRIKO NASANAYIRI:.....DEFENDANT

BEFORE: HON. MR. JUSTICE HENRY I. KAWESA

JUDGMENT

The Plaintiff's suit against the Defendants jointly and severally for;

- i) trespass onto a portion of their land situate in **Kyadondo Block 200, formerly plot 102 now plot 1798, land at Kawempe, which forms part of the estate of the late Israel Cook, who died in or about 1986 (herein after referred to as the suit property),**
- ii) General damages for trespass,
- iii) Mesne profits,
- iv) Interest of 20% and;
- v) Costs of the suit.

The Plaintiff's brief facts are as hereunder;

- a) That the Plaintiffs are the Administrators of the estate of the late Israel Cook and are the registered proprietors of the suit land as such,
- b) That the 1<sup>st</sup> Defendant dealt in the suit land without any consent and or authorisation whatsoever from the Plaintiffs and purportedly sold portions to the 2<sup>nd</sup> Defendant among others,
- c) That on numerous occasions, the Plaintiffs engaged Local Council offices to prevail over the Defendants and have amicable means of understanding, but to no avail and instead, the Defendants provocatively ignored their civil leader's efforts to resolve the dispute,
- d) That the Defendants are trespassers on the suit land,

e) That the transactions in (c) above, were after the Plaintiffs had obtained the Letters of Administration in or about,

f) That in the circumstances, it's majorly the Land Act as amended by the amendment Act (2004) and the Succession Act Cap 162 that shall majorly govern these proceedings.

It has been proved as argued by Counsel that in the instant case, there is no *scintilla* of proof that the Defendants ever paid 'busuulu' not have the Plaintiffs admitted anywhere in their pleadings nor in their evidence that they have ever received any busuulu past 1998 when they obtained a grant.

In light of the fore going, the Defendant did not own a kibanja on the suit land and as such, they could not transact in something they never owned and or at all, for transactions premised on illegalities are *void abinitio*.

I find that the purported sale and transfer of the suit kibanja between themselves was *void abinitio*, for failure to procure written permission from the registered owner as the law dictates.

ii) Whether the Defendants are trespassers on the suit land.

The Plaintiffs led evidence to prove that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants have not been sufficiently proved to have any legally recognised interest in the suit land. It would thus follow that their un authorised entry/and continued occupation upon/of the suit land constituted a tort of trespass.

### **Issue 3**

What are the remedies available to the parties

The Plaintiff prayed for the following:

- a) A declaration that the Defendants are trespassers on the suit land. This is granted.

b) A declaration that the Plaintiffs is the legitimate owner of the land situate in **Kyadondo Block 200 plot 102 at Kawempe as administrators of the estate of the late Israel Cook**. This is granted.

c) A declaration that the transactions entered into between the Defendant and in respect of the land **comprised in Kyadondo** and in respect of the land **comprised in Kyadondo block 200 plot 102 now (1798) at Kawempe** are *null and void*. This is also granted.

d) An order of vacant possession against the Defendants is granted as prayed.

e) Costs are awarded to the Plaintiff.

I so order.

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Henry I. Kawesa

**JUDGE**

17/02/2022

17/02/2022:

Takeeto Mohamood for the Plaintiffs.

Plaintiffs absent.

Defendants absent.

Court:

Judgment delivered to Counsel for the Plaintiffs.

Matter having proceeded *ex parte*.

.....

Henry I. Kawesa

**JUDGE**

17/02/2022