

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
LAND DIVISION
CIVIL SUIT NO. 390 OF 2014

5 **SYLVIA NANTONGO NAZZIWA ::::::::::::::::::::::::::::::::::: PLAINTIFF**

VERSUS

MAISO JOHN ::::::::::::::::::::::::::::::::::: DEFENDANT

Before: Lady Justice Alexandra Nkonge Rugadya

JUDGMENT (EXPARTE)

10 **Introduction:**

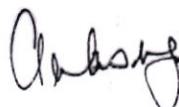
The plaintiff, Ms Sylvia Nantongo Nazziwa brought this suit seeking a declaration that she is the rightful owner of the land/ *kibanja* and developments located at Busega Kibumbiro LC1 Zone, an eviction order, a permanent injunction restraining the defendant and any other persons claiming through him from interfering with the plaintiff's suit property/*kibanja*, mesne profits, general
15 damages, interest and the costs of the suit.

Facts of the case:

The plaintiff's case is that on the 12th March 2004, the plaintiff together with her husband purchased land located at Busega Kibumbiro zone and developed the same with a residential house.

20 Sometime in October 2004 and without the consent of the plaintiff or any justification, the defendant Maiso John, forcefully entered upon the said premises and has since refused to vacate. The actions of the defendant amount to trespass and have denied the plaintiff enjoyment of her property and have occasioned to her a lot of suffering, hardship, inconvenience, mental anguish and tremor.

25 This matter was set down for hearing and suffered several adjournments as a result of the defendant's failure and/or refusal to appear. Consequently, court ordered that the plaintiff proceeds with her case.



A scheduling memorandum was filed for the plaintiff. Her evidence was led by way of witness statements and accordingly the suit was set down for formal proof of the plaintiff's case. This court also noted from the record that the suit had started with Justice Naiga who passed on before completing it.

- 5 The submissions as directed by court which were filed on 11th June, 2019 were however never brought to the attention of this court, until some several years later, which explains the delay by this court in delivering this judgment.

Representation:

10 The plaintiff was represented by *M/s Balyejusa & Co. Advocates*. The defendant was served through their counsel, *M/s Tropical Law Advocates*, with the hearing notice on 14th January, 2019.

Issues:

The following are the issues formulated for trial.

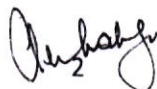
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 1. ***Whether the suit Kibanja/property belongs to the plaintiff;***
 2. ***Remedies available.***

The plaintiff led evidence of two witnesses who included the plaintiff herself (as ***Pw1*** and Edith Ssentongo as ***Pw2***).

Resolution of Issues:

Issue No.: Whether the suit kibanja/property belongs to the plaintiff;

- 20 It was the plaintiff's contention that the defendant committed acts which were unjustified, and which amounted to trespass. ***Order 8 rule 3 of the Civil Procedure Rules***, states that every allegation of fact in the plaint, if not denied specifically or by necessary implication or stated not to be admitted in the pleading of the opposite party is taken to be admitted. The defendant, Mr. Maiso John in this case filed an evasive denial; was afforded a right to be heard but the denial
- 25 he gave had no substance. It was a general denial to the allegations. He therefore also put himself out of court when he failed to lead any evidence to challenge the plaintiff's ownership of the kibanja/property.



Trespass has been defined to mean the unauthorized entry. Counsel cited the case of **Gregory Versus Piper (1890) K.B at page 9**, where it was found that any invasion, however minute and whether it causes damage or not is a trespass.

Counsel for the plaintiff referred to **Salmond & Heuston 21st Edition in their Law of Torts**, where the tort of trespass to land has been defined to mean:

"the act of (a) entering upon land in possession of the plaintiff or (b) remaining upon such land or (c) placing any material object upon it, in each case without lawful justification".

He also cited the case of **Sheik Mohammed Lubowa Versus Kitara Enterprises Ltd Civil Appeal No. 4 of 1987, also reported in (1992) V KALR 126**, it was noted that trespass to land is constituted where entry onto the land by the defendant was without the consent of the plaintiff.

The plaintiff led evidence to the effect that on the 12th March, 2004, she together with her husband the late Henry Kageni purchased the suit *kibanja* and immediately began the development of the same by the construction of a residential house.

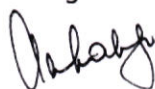
Evidence of the sale agreement was tendered in proof of this fact and exhibited as **PExh 1A/1B**, an agreement dated 12th March, 2004. It was for sale of a plot measuring 60ft x 64ft x 44ft x 37 ft.

The agreement was signed by the plaintiff and her husband Capt. Kageni as the purchasers and Richard Kalungi as the seller, witnessed by five LC 1 Executive members of Busega Kibumbiro Zone, including **Pw2**. It had the stamp of the LC 1 and that of *Mutuba 3*, Busega Kyaddondo, under the office of *Obwakabaka Bwa Buganda*.

The plaintiff further claimed that upon purchase, they began to pay for *busulu* to the Kabaka's Government. Evidence of one such receipt was presented and exhibited in court as **PExh 2(a)**. It is dated 9th April, 2004. **PExh 2 (b)** was her receipt of registration issued from the office of *Obwakabaka Bwa Buganda*, also dated 9th April, 2004 made in the joint names of the plaintiff and her late spouse.

Her evidence of such purchase was collaborated by that of **Pw2**, Edith Ssentongo, the current Local Council 1 Chairperson of Busega Kibumbiro LC1 zone. The witness confirmed that the plaintiff and her late husband did purchase a suit land at Busega Kibumbiro zone from one Kalungi Richard.

She was one of the witnesses to said agreement at the time when she was the Local Council 1 Vice Chairperson of Busega, Kibumbiro LC1 zone. She told court that she got to know the



defendant after the death of the plaintiff's husband, who from the plaintiff's evidence passed away on the 1st October 2004.

The plaintiff also testified that she and her late husband constructed a two bedroomed house which they completed in September, 2004. The two lived in that house until after his demise. At the burial of her husband, the plaintiff got to learn that the defendant was a nephew to her husband.

The defendant without her consent broke the locks on the house, and took possession of her residence and has since refused to vacate it. All efforts to remove him, which included seeking intervention of the local leaders proved futile, thereby leaving the plaintiff with no other option but to seek other alternative accommodation for her to rent, as well as redress from court.

Since the above allegations against the defendant had not been refuted, the plaintiff whose burden it is to prove her case, has on a balance of probabilities discharged that burden. (**Ref. section 101-103 of the Evidence Act, Cap. 6**).

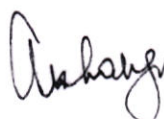
The first issue is therefore returned in favour of the plaintiff.

Issue No. 2: Remedies:

The plaintiff sought the orders/ declarations that: *she is the rightful owner of the land/kibanja and developments located at Busega Kibumbiro LC1 Zone; an eviction order; a permanent injunction restraining the defendant and any other persons claiming through him from interfering with the plaintiff's suit property/kibanja, mesne profits; general damages; interest; and the cost of suit.*

Evidence was led by the plaintiff to prove that the defendant had without any claim of right forcefully took possession of her house and removed all her belongings and other materials that they had been using for the construction works. The defendant has since that time refused to vacate the plaintiff's house or pay her any income as rent. This evidence is not rebutted by the defendant.

Pw2 in her testimony told court that efforts to ensure that the defendant vacates the plaintiff's house had been futile. Such evidence was sufficient to prove that the plaintiff never consented to the actions of the defendant in taking possession of the suit *kibanja* and the house thereon, and that the defendant's actions of refusing to vacate the premises therefore amount to continuous acts in trespass, which entitle the plaintiff to damages and other remedies sought.



General damages:

Its trite law that, that damages are direct and probable consequence of the act complained of, also noted in the case of **Kampala District Land Board and George Mitala Vs Venansio Bamweyana CA No. 2 of 2007**. Such may be loss of profit, physical inconvenience, mental distress, pain and suffering, (See also **Assit (U) Vs Italian Asphalt & Haulage & Anor HCCS No. 1291 of 1999 at page 5**).

It is also a settled position of the law that the award of general damages is in the discretion of court and is always as the law will presume to be the natural consequence of the defendant's act or omission.

- 10 The object of an award of damages is to give the plaintiff compensation for the damage, loss or injury he or she has suffered. (See: **Fredrick Nsubuga Vs Attorney General S.C.C.A. No. 8 of 1999**).

Therefore, in the circumstances of the quantum of damages courts are mainly guided by the value of the subject matter, the economic inconvenience that the party was put through at the instance of the opposite party and the nature and event of the breach.

- 15 A party is eligible for general damages where loss and inconvenience has been suffered due to the wrongful act of the defendant. He/she must be put in the position he or she would have been in had he or she not suffered the wrong; and must lead evidence or give an indication what damages should be awarded on inquiry as the quantum. (**Ongom Vs. AG (1979) HCB 267, cited by court in Kamugira Vs National Housing & Construction Co. CS.No. 127 of 2009**)

- 20 The plaintiff in this case has suffered hardship, inconvenience and mental anguish that comes as a natural consequence of the denial of the right to live in her house and to enjoy the fruits of her labor as a result of the defendant's aggression for almost 15 years. The plaintiff is a tomato seller and has been surviving on a meagre income from 2004.

- 25 She has had to toil in order to get money to pay for alternative accommodation, which entitles her to general damages. From her counsel's submission, she is entitled to substantial quantum of damages amounting to **Ugx 75,000,000/= (Uganda shillings seventy five million only)** as general damages.

- 30 I however consider that amount a bit on the higher side. An award of **Ugx 60,000,000/= (Uganda shillings sixty million)** by the discretion of this court, is therefore considered to be a fair award of general damages. The said amount also covers compensation for the materials lost when the defendant forcefully entered the premises.

Anshay

Mesne profits:

Mesne profits are payments intended to cater for the deprivation of the use of property. It is a proved fact that the defendant has been in occupation of the plaintiff's house for almost 15 years without paying rent.

- 5 The suit property which is according to the plaintiff is developed with a two bed roomed house located in the urban area is able to fetch a monthly rent in the sum of **Ugx 500,000/=** (Uganda shillings five hundred thousand only).

10 The total sum the defendant ought to have paid is therefore **Ugx 90,000,000/=** (Uganda shillings Ninety Million only) as rent for the period he has occupied the premises. This court takes into consideration the fact that the plaintiff has been forced to look for alternative accommodation. The said amount is thus a fair assessment and reflection of mesne dues, which is accordingly awarded to the plaintiff.

In the premises, the following are the orders issued against the defendant:

- 15 **1) the kibanja and residence thereon as described, situate at Busega Kibumbiro LC1 Zone belongs to the plaintiff;**
- 2) an eviction order issues against the defendant, to be effected within 60 days from the date of serving upon him of this judgment.**
- 20 **3) a permanent injunction issues against the defendant restraining him and any other persons claiming through him from interfering with the plaintiff's suit property/ kibanja;**
- 4) general damages of Ugx 60,000,000/=**(Uganda shillings sixty million only);
- 25 **5) mesne profits of Ugx 90,000,000/=** (Uganda shillings Ninety Million only); and
- 6) costs of this suit.**

30 
Alexandra Nkonge Rugadya

Judge

31st March, 2022

Received by email
Alexandra
31/3/2022.