

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDDEN AT KAMPALA
(LAND DIVISION)
CIVIL SUIT NO 583 OF 2013

1. MOSES MUKWAYA
2. FRANK MAWEJJE
3. SAMALLIE NABWAMI
4. EDWARD NSIMBE:.....PLAINTIFFS

VERSUS

1. WILSON SEBALAMU
2. ALEXA NANTEZA
3. KEEFA NSIBIRWA
4. WILBERFORCE SERUBIRI:.....PLAINTIFFS
(Administrators of the estate of the late Disan Serwanga)

BEFORE: HON. MR. JUSTICE HENRY I. KAWESA

JUDGEMENT

The Plaintiff's case against the Defendants is for declaration that;

1. the Plaintiff is the equitable and legal owner of the suit premises **comprised in Busiro Block 209 plot 93,**
2. Compensation to the Plaintiff in form of damages against the Defendant's from trespass on the Plaintiff's land and;
3. A permanent injunction,
4. Damages,

5. Mesne profits and;

6. Costs of the suit.

The Defendants denied the claim and put up a counter claim as against the Plaintiff

The parties filed a joint scheduling memorandum and the following facts were agreed upon:

- The Plaintiffs are administrators of the estate of the late Livingstone Lwanyaga who is also the registered proprietor of the suitland.
- The late Disan Serwanga benefitted by 3.10 acres and his four siblings, M Kakembo, M. Nassozi, A. Nakatte and Dick K, Serunyigo benefitted in 11.299 acres in total from their father Makaeri Kakembo as their beneficial interest or share.
- The four siblings sold their beneficial share (*that is the suit land*) to the late Lwanyaga Livingstone who subsequently obtained Title for the same in his names.
- Before the demise of the late Kakembo, the suit land was being care taken by the late Disan Serwanga.
- The Defendants occupy a portion of the suit land.

Agreed issues

1. Whether the Defendants occupy a portion of the land in dispute

2. Whether Defendants have trespassed on any part of the suit land
3. What remedies are available to the parties.

Resolution of Issues

The hearing proceeded by way of witness statements.

The Plaintiff produced three witnesses to wit Samali Nabwami Lwanyaga (PW1).

Lutaaya Fred (PW2), Hakashimana Claire. (PW3).

The defense on the other hand called only one witness to wit Serubiri Wilberforce, (DW1). At the end of the trial the Court conducted a visit to the *locus*.

Analysis of Evidence on Record.

The Plaintiff led evidence through PW1 Lwanyaga Samali. Her testimony was by witness statement filed on 17th May 2018. The evidence contained there in 1997, the late Livingstone Lwanyaga informed her of the interest to purchase the land and they went to the suit land and inspected it afterwhich they purchased it and processed certificate of title in his names. When they wanted to develop the said land; Disan Serwanga laid a claim to the same, claiming that it was his father's land. They engaged/entered into negotiations; whereby her husband was willing to pay for the eucalyptus trees on the land, but Disan insisted on taking all the land.

That upon the death of the husband (L Lwanyaga), Disan caused her demanding for his land on basis of a document which they declined. Disan's lawyers also called her regarding the same, but she and her colleagues found out that the document was dated 18th February 2002, yet Lwanyaga had died in 2012, giving a period of 10 years since its authorizing. She doubted the authenticity of the said document and claimed it was a forgery.

During cross examination they conceded that Disan had agreed to sale to them the trees so that he leaves the land for them. Disan however asked for shs. 8,000,000/- (*eight million shillings*) above the shs. 5,000,000/- (*five million shillings*) that they had put into the purchase of the land. They therefore failed in the negotiations. She also conceded that they therefore remained on their side while he remained using his side in occupation until 2012 when Lwanyaga died. That after this they assumed administration of the estate and hence followed up this matter.

PW2; Lutaaya Fred, stated that he knew a lot about the genesis of the suit land and said that the land in dispute originally belonged to the late Makaeri Kakembo and that when he died, the Administrator General took over and distributed it to his children; M. Kakembo who got 3.10 acres, M. Nassozi 3.10 acres, A. Nakatte 3.10 acres and Dick K Serunyigo 2.00 acres.

This was in 1996. However, D. Serunyigo who was caretaking it wanted to retain it all for himself and began disagreeing with his four siblings who wanted to sale their portions. They however sold to

Livingstone Lwanyaga at shs.5,000,00/- (*five million shillings*), but Disan continued cultivating the land. They began conflicting and negotiating a settlement, but Disan asked for shs 800,000/- (*eight hundred thousand shillings*) as compensation for his trees which consideration he; (Lwanyaga) did not accept. However, on 10th July 2001, Livingstone through his lawyers, informed Disan that that he was willing to bring a valuer at his own cost to value the tree plantations but Disan Serwanga refused to appear.

Another meeting was arranged and Disan now requested for 4.5 acres off the suit land and the titles for the same as the only solution to resolve the matter amicably, but there was no agreeable position reached and the witness advised Lwanyaga to stay calm and **see** his portion as he employed Legal solutions. Unfortunately, he died in 2012 without finalizing the issue. That after the death, Disan went to him with a document claiming that he had been given a portion by the late Lwanyaga but the document was suspected in his opinion and during cross examination, the witness revealed that it was true that there are boundary marks elected by Disan showing the portion of 4 ½ acres, which are still there.

PW3; Hakashimana Claire was a document examiner whose evidence was at first objected to by the defense on grounds of prudence. This Court ruled that her evidence would be received, but with caution in view of the objectives and concerns received by the defense. Court therefore notes the fact that the request for the expert did not come from Court but from the Plaintiffs on whose behalf she appears as

a witness. This evidence shall therefore be taken to be subject to rules that govern such ‘expert’ evidence.

According to her evidence, there is fundamental differences between the questioned signature and the sample signatures of Lwanyaga. She concluded that the writer of the sample signatures did not write the questioned signature.

It however transpired during cross examination of this witness that she was dealing with photocopied documents, which creates loopholes. She also said that in terms of controls in civil suits, their inquiry is limited to the instructions given by the forwarding letter. She confirmed that what she forwarded is an “*opinion*” based on her expertise as a document reader.

This Court notes that the opinion above was challenged by the defense who prayed for leave to subject the documents to another opinion by a different document reader which Court granted.

At the close of the defense case it was as follows;

The defense called the witness DW1; Serubiri Wilberforce who filed a witness statement, his evidence was that he is a biological son to late Disan Serwanga and grandson to late Makaeri Kakembo. He gave the details of the land transaction of his grandfather in the 1970’s and 1990’s whereby in 1997, Mustafa Kakembo and the late Dick Serunyigo, Alexa Nakate and Mangalita Nassozi contained their

shares totaling 11.2 acres. On May 27, 1997, they sold the same to Lwanyaga Livingstone at shs. 5,500,000/- (*five million, five hundred thousand only*), but he was to negotiate with Serwanga over the developments on the suit land. He answered that Lwanyaga, instead, turned against his father and took him to police. Later on 10th July 2001, through his lawyers of Mukasa and Co. Advocates wrote to Lwanyaga informing him that a valuer would carry out the valuation of the said developments on August 18, 2001 at 9:00am and on that the valuation date was done in presence of both parties.

The value was shs 80,000,000/- (*eighty million shillings only*) which Lwanyaga could not afford, but instead agreed to save off a portion of the land with development as compensation and he retains the other part. In the year 2002, Lwanyaga blamed his father; about the said portion in presence of Lwanyaga, Disan, Mr. Mawejje Frank (2nd Plaintiff), and the surveyor; (Mr. Umar who planted the *Mark Stones* and *boundary marks*: empaanyi). Further survey was to be done and then Lwanyaga would sign transfer forms for Disan to get the Title in his names.

In 2002 Lwanyaga; on 18th February 2002, the late Lwanyaga wrote to his father authorizing him to carry out the sub divisions. He annexed annex "E" as evidence of this. The surveyor Umar was engaged to resurvey and he surveyed it off as per sketch plan marked as his statement as "D"

The process of transfer however stalled as Lwanyaga failed to do his bidding, till his demise in 2012. He referred to the 3rd Plaintiff as hang pg.7 accepted to finalize this process. Upon getting letters this process upon getting letters of Administration, but his dad also penned on in 2015 before this was done. He promoted out i.e., this settlement was the reaction there was peace till 2016 when Plaintiffs again began hanging claims to the suit lands.

During cross examination the witness negotiated his assertions, insisting that the valuation was done, though he did not see the valuation report. The defense closed with closed with this witness.

At Locus

Court was shown the area in dispute and the demarcations that were done by the alleged surveyor were also noticeable. The cut eucalyptus and current trees were also easily visible.

Resolution of Issues

Issue 1.

Whether the Defendants have any interests on the disputed land.

In their plaint it's pleaded by the Plaintiffs that prior to the distribution of the suit land to the beneficiaries of the late Makaeri Kakembo by the Administrator General, the late Disan Serwanga was caretaking the entire premises and had also planted trees thereon for his own benefit.

That before the sale of the said land to the late Livingstone Lwanyaga, Disan Serwanga, while in the presence of Lwanyaga and Disan's siblings, acknowledged the fact that the suit land belongs to his siblings but all he wanted was compensation in respect of his trees thereon. That on the above basis the late Lwanyaga purchased the suit land and informed the late Disan Serwanga to value his trees on the land for purposes of compensating him. That further in 2001 Lwanyaga; through his lawyers then wrote to late Disan asking him to appoint a day for the said valuation to be conducted, but he got bed ridden and died in 2012 before finalizing the said issue.

In their defense, the Defendants contented that at the time of the purchase of the said land, the late Disan Serwanga was a bonafide occupant on part of the said land on which he had developments like eucalyptus trees, banana plantations among others.

The late Disan Serwanga's developments on the said land were valued at shs. 80,000,000/- (*Uganda shillings eighty million only*). The duo however, later agreed to have the late Disan Serwanga retain part of the land which is approximately 4.40 acres and waive his claims over the remaining portion with developments to the late Lwanyaga. The land was indeed demarcated by the duo in the presence of some of their family members. In consideration therefore, the former would be given a certificate of title for the portion retained.

Unfortunately, the late Lwanyaga passed on before the process of subdivision and processing of the certificate of title were accomplished.

I have reviewed the evidence led in support by the Plaintiff. However as noted, in their counter claim the Defendants contended that at the material time before and after the death of the late Makaeri Kakembo; father to the late Disan Serwanga, the late Disan Serwanga lived with his father during his entire life on the suit land on which he had developments.

Upon the demise of the late Makaeri Kakembo the late Disan Serwanga got 3.10 acres as his beneficial share and the remaining 11.299 acres were distributed among his siblings namely A Nakatte, M Kakembo, M Nassozi and Dick Serunyigo who processed one title for the said land and subsequently sold it to the late Livingstone Lwanyaga.

Prior to the said sale, the late Disan Serwanga; while in the presence of his siblings and the late Lwanyaga, categorically demanded for compensation for his eucalyptus trees which the late Lwanyaga acknowledged and he purchased the said land subject to compensation of the adverse claims thereon.

The duo's failure to reach a monetary compensation of the developments led to a mutual agreement that the late Disan Serwanga retains part of the said (which is consideration of the Certificate of Title for the portion retained).

The late Disan continued to occupy the portion retained without any interference from the late Lwanyaga. To date, the same is in the possession of the Defendants. It was only after the late Disan's death that the Plaintiffs started antagonizing with the Defendants. The evidence in support of these averments has been reviewed above.

Accordingly, the counterclaimant/Defendants prayed for a declaration that they are lawful owners of part of the suit land measuring 4.40 acres to the counterclaimant's and in the alternative, an order resting 4.40 acres out of the suit land into the names of the Administrators of the estate of the late Disan Serwanga on the record, general damage costs of the suits and interests thereon.

According to the submissions on record, I have noted that some facts and evidence on record has been misconstrued by Counsel as I show here below:

At page 3; paragraph 2 of the Plaintiffs' submission, Counsel alleges that the late Disan Serwanga majorly cultivated on the 3.10 acres, located on the upper side, separate and distinct from the suit land which subsequently became his beneficial share upon the distribution of the estate of the late Makaeri Kakembo by the Administrator General. This is a deviation from the pleadings and facts as reviewed showing that Serwanga was cultivating his beneficial share and the share taken over by Lwanyaga from his siblings who sold.

Furthermore, at page 4 paragraph 4 of the Plaintiffs' submission, Counsel for the Plaintiff alleges that when the chairman convened a

meeting to settle the matter between Lwanyaga and Disan, the latter claimed to be a Kibanja owner on the suit land. This is partially true in that the claim by the defence is not for a kibanja, but the fact that the claimed land is for his late father and he and Lwanyaga had agreed on him compensating for his developments therein which failed and then Lwanyaga demarcated a portion for him.

However Counsel for the Plaintiff made reference to the evidence by PW1 to argue that Disan had no right on the suit land, but was merely interested in grabbing. He argued that the land belongs to Lwanyaga who bought it as per the documentary evidence. He doubted the defence case and referred to PW3 to argue that the documents relied on by DW1 for the defence are all fraudulent and a forgery. He argued Court to find for the Plaintiffs for all reasons as set forth in his submissions.

Counsel for defence in her submission argued that according to the evidence of DW1; Wilberforce Serubiri who claimed to be the right-hand son of his father Disan Serwanga, his grandfather; the late Makaeri Kakembo had five children (*all now deceased namely Disan Serwanga witness's father*); Ssozi Abdul, Keesi, Galabuzi, Alexa Nakate and Nassozi Mangalita.

During his grandfather's life, the witness' father; Disan Serwanga used to stay with his father on the suit land on which he cultivated eucalyptus trees, banana plantations among others. Upon his grandfather's death, the beneficiaries acquired their respective

shares where upon Mustapha Kakembo together with the Late Dick Serunyigo, Alexa Nakate and Margarita Nassozi, combined their shares totaling to 11.2 acres which they later sold to the Late Livingstone Lwanyaga at a cost of 5,500,000 (Uganda shillings five million five hundred thousand only).

He further stated that at the time of the execution of the said agreement, the parties agreed that the late Lwanyaga would negotiate with the Late Serwanga over his developments on the said land.

Consequently, on July 10, 2001, the late Lwanyaga through his lawyers of Mukasa and Co Advocates wrote to the late Disan Serwanga informing him that a valuer was going to value the latter's developments on the land on 18/08/2001 at 9.00 am. The latter was attached to DW1's witness statement as Annexure "8" and also tendered in Court as the Defendants' evidence and the same was never disputed by the Defendants.

According to DW1, Disan's developments covered about ten acres of the said land and were at Ugshs.80,000.000/- (Uganda shillings eighty million only) which Lwanyaga could not afford at the time.

Consequently, it was agreed that Lwanyaga severs offers a portion of the said land in lieu of the developments thereon to the late Disan Serwanga upon which he would sign transfer and mutation forms in his favor to enable the latter transfer the same into his names. The said portion was later demarcated using live boundary marks (empaanyi) and mark stones which according to DW1, was done by

the Late Lwanyaga himself and Disan while in the presence of DW1, Mawejje Frank- second Defendant and brother to the late Lwanyaga and a one Umaru the surveyor.

He further states that the said portion was later surveyed measured 4.4 acres according to the sketch which was given to his father. The said sketch was also attached to his witness statement as Annexure “D”, accordingly exhibited 1 Court and that based on this, the Lwanyaga wrote to Disan on February 18, 2002 giving him authority to subdivide his land. The said letter was attached as Annexure “B” on DW1’s witness statement and consequently tendered 1 Court.

Indeed, while at *locus*, DW1 who witnessed the said demarcations showed Court the piece of land which was initially being utilized by the late Disan who showed Court the following;

The first point of boundary plant (oluwaanyi) from where the demarcations begun as indicated in paragraph 1, it is worth noting however, that this was the same point showed to Court by PW1; Samalie as the point separating Serwanga’s land from Lwanyaga. She however contradicted herself when she told Court that she did not know who planted it there.

He went ahead to show the second, boundary mark (Luwaanyi) as indicated in photograph 2; the barbed wire and other live fences of jirikiti tree which he stated were planted by Mawejje in the presence of the parties.

The stalks of the eucalyptus trees (photography No3 and 4) which were in the part retained by Lwanyaga but were cut down by the family of the late Lwanyaga together with a Mutuba tree (photograph No5) planted by the late Disan on the suit land, part of the plantation of the eucalyptus trees which was planted by the late Disan now the Defendant's land which is separated by a swamp belonging to the late Lwanyaga part (*photographs 6 and 7*).

The mark stone separating Disan's land from Lwanyaga which though covered by water, would be felt as indicated in paragraph8. All this was not disputed by the Defendants while at *locus* as they kept on following DW1 as he showed these developments on the land. Counsel argued that the balance of probability tilts in favor of the Defendants in that there is evidence to show that the Defendants own the piece measuring 4.4 acres, which was severed off by the late Lwanyaga and in which they are currently in possession.

My assessment of all the evidence on record shows that the Plaintiff's evidence as contained in PW1's evidence shows that the late Lwanyaga throughout his life time, was in negotiations with Serwanga regarding the portion of land he had allegedly forcefully occupied and planted on eucalyptus trees. Evidence shows that it began as a compensation affair but later on according to the defence the duo agreed to have the land demarcated. This is where the contention is.

Having regard to all the evidence on record, I do wish to point out that the facts of this case bring into issue the question of adverse

possession of land. This is important in that both PW1, PW2 and DW1; all show that the late Disan was on this land by 1997 when Lwanyaga bought it. In her evidence in chief at page 2, she revealed that....” ...it is from this time that we tasted the wrath of the late Disan Serwanga who had substantively and extensively began cultivating a large portion of the suit land.... we were told that that the late Disan Serwanga wasn’t willing to cooperate with any authorities and all he wanted was land as opposed to a few eucalyptus trees that my husband was willing to... pay”. Also, at the next paragraph it’s stated that my husband died in 2012, but for all that time since 1997, a huge chunk of land has been to date cultivated by Disan and his family...”

This same evidence is repeated by PW2 who stated at page 4 paragraph 2 from top he states that... ..”*In the meeting the late Disan said he was now claiming for registered land and so he demanded that he be subdivided off a portion of about 4.5 acres off the Suitland, gets title for the same and if he failed, he said he was not willing to vacate the suit land because it was his father’s land and he had a duty to protect it.*”

On his part DW1; Serubiri Wilberforce at page 2 of his statement, that on the 27th day of May 1997, they sold the same to Lwanyaga Livingstone, at the time of execution of the agreement, it was agreed that “*the late Lwanyaga was to negotiate with the late Serwanga over his said developments on the suit land...*”

The import of all the above admissions is that this is a transaction which began to run in 1997, by the time Lwanyaga came on the scene, he was aware that Disan was involved in a disagreement with his siblings and had refused to vacate the land. The facts show that the said Lwanyaga was aware of Disan's adverse behavior on his land and also acquiesced with it in the words as evidenced by all witnesses herein. This fact though not addressed by both Counsel as it was not pleaded never the less operates as a legal principle against the Plaintiff's disclaimer of the Defendant's title to the occupied portion of the suit land.

What is adverse possession in law?

Hon Andrew Bashaija, in the case of *Hope Rwaguma V Jingo Livingstone Mukasa (Cs No 508 of 2012)* considered this principle at length and I will borrow his postulations therein for purposes of defining this principle where he stated that;

'Adverse possession is basically possession of land by other persons without consent of the registered owner if the registered owner does not enforce his right of possession and allows the adverse possessor to continue in occupation for a period of twelve years'.

In the case above the Court found that on the strength of various authorities, well as a registered proprietor of land is protected and his/her title is in absence of fraud and other infirmities indefeasible under section 59 and 176(2) Registration of Titles Act, under section 78, thereof adverse possession is recognized as a basis on which a

person in use and occupation of land can claim title to the land of the owner.

Making reference to Indian Supreme Court jurisprudence, it is stated that the rationale for the above principle regarding the exception above is in the presumption that the owner has abandoned the property to the adverse possessor or on acquiescence of the owner to the hostile acts and claims of the person in possession. "In other words, the law regards the owner of land to be under duty to protect his or her interest in the land and is not expected to just look on when his or her rights are infringed or threatened by third parties such as squatters or trespassers occupying his or her land. (See *PT Munichikkanna Reddy and Ors versus Revamma and or* (2007) AIR (SC)1753P.T

It is trite law that a claim by adverse possession has two elements

- (1) The possession of the Defendant should become adverse to the Plaintiff and
- (2) The Defendant must continue to remain in possession for a period of 12 years thereafter. *Animus possidendi* as is well known is a requisite ingredient of adverse possession.

It is now settled principle of law that mere possession of land would not ripen into possessory title for the said purpose. Possessor must have *animus possidendi* and hold the land adverse to the title of the true owner. For the same purpose not only not only *animus possidendi* must be shown to exist at the commencement of the possession. He

must continue in the said capacity for the prescribed period under the Limitation Act. Mere long possession for a period of more than 12 years without anything more do not ripen into a title.

This principle is further expounded in the following cases;

Trueman and 5 Ors versus Kilama and Another; Civil Appeal No. 24 of 2017 CA 24/2017 where *J Mubiru* held that:

“Possession does not become adverse until the intention to hold adversely is manifested”

“A person holding land by way or adverse possession must publish his or her intention to deny the right of the real owner. The intention of the adverse possessor must be with notices or knowledge of the real owner. Unless employment of the land is accompanied by adverse animus, mere possession for a long period, is not sufficient to mature the title to the land by adverse possession”.

See also

- ***Onugha Bhakat V Agrasiel Dakati CA/5/210***
- ***Perry V clissold (1970) AC 73***
- ***Rwafima V Jingo Mukasa HCB 588/2012***
- ***Mulik Rebecca (1992-93) HCB 177***
- ***Kintu Nambala V Efulaim Kiwanuka 1975 (HCB)***

All the above cases recognize the limitation of actions based on the notion of adverse possession and the legal bar to the effect that no

action for recovery of land can accrue after 12 years of adverse possession,

From that statement of the law, it is not debatable that the possession of Disan ran from 1997 till his demise in 2015 which is a period of 18 years of adverse possession.

That being the position therefore I do not agree with Counsel for the Plaintiff's submission that by Lwanyaga agreeing to merely compensate Disan for his few trees on the Suitland, Disan did not acquire any equitable or legal interest on the land. The principle of adverse possession discussed above created an adverse legal interest which the Defendants acquired by virtue of adverse possession.

The finding above would terminate this issue without requiring Court to consider other arguments herein. However, to extinguish the benefit of doubt I will consider the other arguments raised herein. The argument of fraudulent conduct by Defendants was raised. PW3 was called and she offered an expert opinion to the effect that there was forgery of the sampled signature which appeared on some of the defence documents exhibited.

I noted earlier that PW3 was objected to by the defence Counsel though Court allowed her to testify. This means that I do need a keen look at this evidence. It lacked adequate controls since the pleading already contains an averment regarding the fact that the document is forged. It is however the same firm that sent the said documents for examination without taking care to ensure that there were adequate controls regarding authenticity, and genuineness. When

PW3 was cross examined on the above she conceded that there was no Court order, that it was the firm of the Plaintiff's that applied for the expert opinion. This evidence is therefore basically opinion and in view of loopholes pointed out by the defence I am unable to hold that the said document is a forgery. This leaves there a possibility that perhaps the said Lwanyaga authored the same. This finding when considered with the finding that the said Disan was in adverse possession of the suit land lends credence to the finding that the Defendants have an interest in the suit land. This issue is therefore found in the positive.

Issue 2

Whether the Defendants have trespassed on any part of the suit land

The tort of trespass was defined in the case of **Justine E M N Lutaaya versus Stirling Civil Engineering CO. Ltd SCCA No.11/2002** which was rightly cited at pg. 14 of the Plaintiff submissions. In that case, it was held that;-

“Trespass of land occurs when a person makes an authorized entry upon land and there by interferes or portends to interfere with another person's lawful possession of that land. It was further held that the tort of trespass to land committed not 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 the capacity to sue in trespass.

This Court has already determined that the Defendants are in adverse possession of the suit land. The evidence actually shows that the Defendant now lays claim to the demarcated part measuring about 4.4 acres. On the *locus* the Defendants showed Court the demarcated part, they showed the areas where the boundary marks (Mpanyi) were put and the areas where survey stones had been erected. In his submissions Counsel for Plaintiff says these were done exclusively by the Defendants alone. Technically speaking the Plaintiff's evidence shows that Plaintiff acquiesced to the action of trespass and since the trespass was a kind of hostile behavior by the Defendants against the Plaintiff and it created title by adverse possession.

At common law the adverse possessor of land can apply for a vesting order for such land to be registered in their names. This is the scenario revealed by the facts and evidence before me. This position is found in the evidence led by both the Plaintiff and the Defendants. In particular I find collaboration in the evidence of PW1 and DW1 where they testify that the late Livingstone Lwanyaga died in 2012 and that about three years later in 2015, Disan Serwanga also passed on. It was also the evidence of DW1 that the alleged subdivision was done by Lwanyaga in the presence of Disan Serwanga, Mawejje, DW1 himself and the surveyor, (Mr. Umaru). The Plaintiffs however fault the subdivision because it was purportedly done in the absence of the LC1 chairperson. That it was later established through the survey process that Disan's portion was 4.4 acres while Lwanyaga retained

the rest as per the said sketch map upon which it was agreed that Disan would be given transfer the said land into his names.

He further stated that after the said settlement neither Lwanyaga nor any of his family members ever challenged his father's stay and utilization of the said land during his father's lifetime and that the said boundaries as demarcated by the late Lwanyaga and Serwanga are still intact with each family utilizing its respective portion.

It is further his evidence that this was the status by 2016 upon the death of their father Disan when the Plaintiffs without any color right threatened to evict the family of the Late Disan Serwanga from the said land.

It was also evident at locus that the Defendants restricted their usage on the demarcated part and the Plaintiffs restricted themselves to the remaining other side. Technically speaking therefore Defendants are using the part that Disan demarcated and occupied for over 12 years making him an adverse possessor. For that reason, it is the finding of this Court that the Defendants have not in any way trespassed on the Plaintiffs' land.

For the reasons shown above the issue terminates in the negative.

Issue3

What remedies are available to the parties

The Plaintiff has failed to prove the plaint therefore the Plaintiff is not entitled to any of the reliefs sought. The plaint is accordingly dismissed with costs to the Defendants.

Counterclaim

The Defendants/Counter claimant's claim in counter claim has succeeded as per findings discussed above. In the result the Defendant is entitled to the following remedies as against the Plaintiff/counter Defendant.

In their Written Statement of defense and counterclaim as well as well as the DW1's witness statement. The Defendants pay for;

- a) A declaration that they are the lawful owner of the part measuring 4.40 acres
- b) An order compelling the counter Defendants to handover the certificate of the title in respect of the 4.40 acres to the counterclaimant's together with duly signed transfer and mutation forms to enable them register the said land in their names as administrators of the late Disan Serwanga
- c) In the alternative, an order vesting the 4.40 acres out of the suit land into the names of Disan Serwanga or the names of the Administrators of the estate of the late Disan Serwanga.
- d) General damages for the inconvenience caused

e) Costs of the suit

f) Interests and (d) and (e) above

Given the circumstances of this case, the Court finds that the prayers in the alternative in the counterclaim will suffice to redress the claim herein since the counterclaimant is in possession of that portion of the suit land. This Court grants the counterclaimant a vesting order in terms as prayed for the registration of the suit property in the names of the late Disan or the legal Administrators of his Estate.

No damages have been proved and none are granted.

Costs are allowed to the counter claimant.

I so order.

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Henry I. Kawesa

JUDGE

24/02/2022