

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

[LAND DIVISION]

HCCS. NO. 002 OF 2019

DR. PETER MUSOKE GUKIINA.....

PLAINTIFF

V

1. SUDHIR RUPARELIA

2. ERIEZA LUBOJJE KAGGWA

3. EPHRAIM NTAGANDA

4. SPEKE HOTEL 1996 LTD

5. THE COMMISSIONER FOR LAND REGISTRATION .....

DEFENDANTS

BEFORE: - HON. LADY JUSTICE P. BASAZA - WASSWA

R U L I N G

[ON OBJECTIONS TO ADMISSIBILITY OF A VIDEO RECORDING]

Representation:

Mr. Kadu John for the Plaintiff.

Mr. Walusimbi Nelson for the 1<sup>st</sup> & 4<sup>th</sup> Defendants.

Mr. Kirumira Adam for the 3<sup>rd</sup> Defendant.

Mr. Ssekabira Moses for the 5<sup>th</sup> Defendant; (the CLR).

Introduction:

[1] The Plaintiff brought the present suit against the defendants for *inter alia*; alleged trespass, alleged unlawful eviction, alleged unlawful transfer of interests in land, and

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alleged destruction of property, trees and developments. He contends in his plaint, *inter alia* that he is the registered proprietor of land comprised in **Busiro Block 443 Plot 50 at Kongero in Wakiso District** (hereinafter referred to as '**Plot 50**'), and that he is a lawful / *bona fide* owner of a kibanja holding that measures approximately 1. 287 acres on part of the land described as **Busiro Block 443 Plots 49, 52, 74, 75 & 76 at Kongero, Wakiso District** (hereinafter referred to as '**the five plots**').

- [2] He (the Plaintiff) seeks *inter alia* a number of declarations, an eviction order, a permanent injunction and special, punitive and general damages against the defendants, in respect of Plot 50, and of the five Plots.
- [3] In answer, in their respective written statements of defence, the Defendants each denied the allegations in the plaint and contend *inter alia* that the Plaintiff has no Kibanja interest in the five plots.

Preliminary Objections:

- [4] In the course of hearing the Plaintiff's witness No 3 (PW3), learned Counsel for the 1<sup>st</sup> and 4<sup>th</sup>, for the 3<sup>rd</sup> and for the 5<sup>th</sup> Defendants; Mr. Walusimbi, Mr. Kirumira and Mr. Ssekabira, respectively, raised two (2) objections to the admissibility of a video recording, to which Mr. Kaddu; learned Counsel for the Plaintiff, replied.
- [5] The said objections were determined by this court earlier today, with a promise to deliver its full Ruling shortly, and hence this Ruling. The objections were to the effect:
- i) That the intended video recording lacked authenticity and was not being tendered in by the person who did the recording.

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ii) That the intended video recording is edited and not authentic.

- [6] On the first objection, the Defendants' learned Counsel argued that PW3 has not laid a proper foundation to make the intended video recording evidence reliable. That he (PW3) does not detail the foundations required under **Sec. 8 (5) of the Electronic Transactions Act, 2011 (the ETA)** and that neither does he provide evidence of the said standards required by the law. Learned Counsel relied, for their proposition, on the case; **Amongin Jane Francis v Lucy Okello**<sup>1</sup>
- [7] On the second objection, the Defendants' learned Counsel argued that the video recording was edited. They cited paragraph 11 of the witness statement of PW3 in which PW3 stated that *'with his cameraman; Mr. Fred Lutakome and with Mr. Hassan Bahemuka, he worked with them to edit and produce the show "Vumbula ne Drake Sekeba" that was aired on April 4, 2013 on WBS Television'*.
- [8] Learned Counsel also cited **sec. 7 (2) of the ETA** and argued that one cannot delete any part of the recording, that it must remain complete.
- [9] In reply, learned Counsel for the Plaintiff argued that the issue of authenticity is secondary. That it can only be proved after deducing evidence. That it would occasion a miscarriage of justice to the Plaintiff to deny his witness an opportunity to be heard. He relied on **sec. 8 (1) of the ETA**, and also argued that the **Amongin case** cited by the Defendants' learned Counsel addresses issues of reliability of electronic or digital evidence, and not its admissibility.

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<sup>1</sup> HC EP No. 1 Of 2014



- [10] Learned Counsel for the Plaintiff further argued that the standards laid out under **sec. 8 (6) of the ETA** are not mandatory and that the witness; PW3 who is adducing the evidence was the producer of the *Vumbula ne Drake Sekeba* Television Programme, and is not a stranger to the video. That the video recording was edited for purposes of airing the Television program but not to alter its content. He cited **Sec. 7 (2) of the ETA** and argued that, that section permits addition of endorsement and changes which arise in the normal course of communication, storage and display.

Decision of Court:

- [11] It is trite law that there is need for the person seeking to introduce a data message or an electronic record, to prove its authenticity, as being what the person claims it to be. i.e. the burden of proof of the authenticity of an electronic record is on the person seeking to rely on it. Underlining added for emphasis. (See section 8 (2) of the ETA).
- [12] Learned Counsel for the Plaintiff is wrong to argue that the issue of authenticity is secondary. No, it is of paramount importance for the admissibility of any data message or electronic record, that it is proved to be authentic.
- [13] The witness statement of PW3 only identifies the person, the camera man, who recorded the video, but falls far short of explaining how the video recording was taken, stored and broadcast or displayed, and whether its integrity remained intact.
- [14] To this end, I agreed with the Defendants' learned Counsel that to be admissible in evidence, proof of the authenticity of the electronic record must first be laid out.

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[15] In these circumstances, I therefore did not admit the video recording in evidence, but only allowed it for purposes of identification, pending such proof of its authenticity by the person who recorded, managed and stored the video recording.

[16] With respect to the second Objection, to wit the objection on editing, **section 8 (1) (c) of the ETA** expressly forbids the denial of admissibility of an electronic recording merely on the ground that it is not in its original form.

Similarly; **section 7 (1) & (2) of the ETA** refer to a final form of a data message, allowing for addition of an endorsement and any change arising in the normal course of communication, storage and display.

[17] I took cognizance that the video recording intended to be relied on by the Plaintiff is said to have been aired on television<sup>2</sup>. That being the case, changes are expected to be done in the normal course of programming and production, for the purpose of airing a video recording on television.

[18] In **Kakonge Umar v Uganda**<sup>3</sup>, in which the admissibility and authenticity of an audio recording was in issue, the learned Justices of the Court of Appeal held that '**where the information passes the authenticity assessment laid down under sec. 7 (2) of the ETA, it may be relied on by a Court. They stated that the assessment is made against the following criteria; Firstly, whether the information has remained complete and unaltered, except for the addition of an endorsement or any other change which may arise in the normal course of communication in light of the purpose for which the**

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<sup>2</sup> Refer again to paragraph 11 of the witness statement of PW3.

<sup>3</sup> CA / CrI. Appeal No. 0099 of 2018

information was generated. Secondly, the authenticity of the information is assessed having regard to all other relevant circumstances...'

[19] Guided by the above authority, I held that the second objection that was sheerly based on the editing mentioned in paragraph 11 of the witness statement of PW3, was without merit. I accordingly overruled that objection pursuant to sections 7 (1) & (2) and 8 (1) (c) of the ETA.

[20] For these reasons, I allowed the first preliminary objection only in part, while I overruled the second objection entirely. I allowed the witness; PW3 to proceed with his testimony after the video, that was taken as P.ID 1, for identification purposely only, was played in court.

I so ordered,

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**P. BASAZA - WASSWA  
JUDGE**

January 19, 2023

Ruling delivered via email to the parties and uploaded on the ECCMIS system.