

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)
CIVIL SUIT NO. 930 OF 2018

5 1. KALULE KASULE
2. KIZZA KASULE
3. KAWOOYA DAVID
4. NANFUKA SARAH-----PLAINTIFF

V

10 BETTY NAMBOGA ALIAS SARAH KAWOOYA-----DEFENDANT

Before: Hon. Lady Justice Olive Kazaarwe Mukwaya

JUDGMENT

15 The Plaintiffs brought this suit against the Defendant seeking the remedies below:

- a) A declaration that the Plaintiffs are the lawful/rightful owners of the suit land comprised in Kyadondo Block No.262 Plot 293 LRV 4618 Folio 15 Land at Makindye.
- b) A permanent injunction.
- 20 c) Vacant possession.
- d) General damages for trespass to land.
- e) Mesne profits.
- f) Costs of the suit.

The Defendant was duly served with summons to file a defence and hearing but she failed
25 to appear in court. This matter proceeded ex parte against her.

PLAINTIFF'S CLAIM

The Plaintiffs are sons and daughter of the late Moses Kawooya and administrators to his estate since the 1st December 2014 vide Administration Cause No. 704 of 2013. On the 18th May 2018, they were registered as proprietors to the suit land comprised in Kyadondo Block No.262 Plot 293 LRV 4618 Folio 15 Land at Makindye.

According to the Plaintiffs, the Defendant came to the suit premises as a tenant of the late Moses Kawooya. After his death, the Plaintiffs requested her to vacate the suit land but she refused to do so and has since falsely claimed that she was a spouse of the deceased, which the Plaintiffs dispute. They contend that their late father lived in Kenya during the NRA Liberation War with a one Hassy Namukyala Kawooya and that the Defendant has no interest in the suit land and her refusal to vacate the suit land has greatly inconvenienced the Plaintiffs and other lawful beneficiaries to the estate of the late Kawooya.

Therefore, the Plaintiffs maintain that the Defendant's continued occupation of the suit land is fraudulent, unlawful and constitutes trespass since the lawful beneficiaries of the estate of the late Kawooya have never consented to the Defendant's occupation on the land. She and her agents are threatening to alienate and/or dispose of the suit land, hence the Plaintiffs' prayer for a permanent injunction and the other remedies sought in this suit

REPRESENTATION

The Plaintiffs were represented by Mr. Kenneth Kajeke of M/S Kajeke, Maguru and Co. Advocates.

Counsel for the Plaintiff filed final submissions which I have considered. He formulated the following issues for Court's consideration;

ISSUES

1. Whether the Defendant's occupation of the suit land is unlawful?
2. Whether the suit land was distributed by the Administrator General to the Defendant?

3. What remedies are available to the Plaintiffs?

RESOLUTION

Issue 1

Whether the Defendant's occupation of the suit land is unlawful?

5 Under section **101(1) of the Evidence Act Cap 6**, he who alleges must prove. The Plaintiffs assert that the Defendant was their late father's tenant on the suit land and that is the capacity in which she occupied it. The burden lay on the Plaintiffs to prove that the Defendant was a tenant and not a wife of their late father, Moses Kawooya. The Merriam Webster Dictionary defines a tenant as;

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'one who has the occupation or temporary possession of lands or tenements of another and specifically: one who rents or leases a dwelling (such as a house) from a landlord'

The Plaintiffs adduced no evidence to demonstrate that the tenancy existed. When did it
15 commence? For what duration was it due to run? What rent was payable under the tenancy? Without answers to these questions this court is not satisfied that the Plaintiffs have proved that the Defendant was their late father's tenant.

Counsel for the Plaintiffs spent a considerable amount of time disputing the Defendant's
20 claim that she and the late Moses Kawooya were married to each other. He submitted that her Written Statement of Defence had no annexures pointing to proof of customary marriage. I find that this a secondary issue, especially since this matter proceeded ex parte and the Defendant did not present her evidence to this court.

25 The Plaintiffs' facts reveal that the Defendant is in occupation of the suit land as a result of a relationship she had with the late Moses Kawooya. A relationship the Plaintiffs have failed to prove was a landlord- tenant one. During the late Moses Kawooya's lifetime, the Defendant must have enjoyed quiet possession of the suit land. There is no evidence of land law suits between the two of them to suggest otherwise.

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Additionally, the Plaintiffs do not indicate when exactly their late father died, although Counsel for the Plaintiffs in his submissions, hinted that it was before 2002. If that is accurate, the Defendant had been resident on the suit land for at least 12 years, **after** the death of the late Moses Kawooya, before the Plaintiffs obtained letters of administration to his estate on the 1st December 2014 and filed this suit for the recovery of the suit land against her.

It is my finding that the Plaintiffs have failed to prove that the Defendant's occupation of the suit land is unlawful. Instead, the evidence strongly points a legitimate occupation of the suit land which was duly recognised by the late Moses Kawooya.

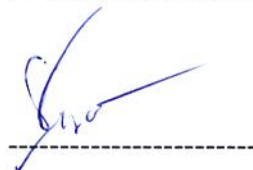
Issue 1 is resolved in the negative.

Issue 2

Whether the suit land was distributed by the Administrator General to the Defendant?

Given my finding on **Issue 1**, I find this issue moot. The question of whether the late Moses Kawooya's estate was distributed by the Administrator General is matter of fact that is easily established by a search at the Office of the Administrator General. It is not a matter that ought to be an issue before this court.

In conclusion, this suit is dismissed with no order as to costs.



Olive Kazaarwe Mukwaya

JUDGE

28th April 2023

Delivered by email to Counsel for the Plaintiff.