

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
LAND DIVISION
CIVIL SUIT NO. 312 OF 2013

5 **DR. PAUL BUSINGE.....PLAINTIFF**

(suing through his duly appointed attorney Gladys Rwamwamba)

VERSUS

SSAKA KADDU.....DEFENDANT

10

Before: Lady Justice Alexandra Nkonge Rugadya

JUDGMENT

Introduction:

15 The plaintiff Dr. Paul Businge through Gladys Rwamwamba his lawful attorney instituted this suit claiming to be the rightful owner of the land comprised in **LRV 2709 Folio 6**, known as **plot 2847 block 203 at Namungoona Kigobe** Kampala (suit property) which the defendant is currently occupying.

20 The plaintiff contended that he had purchased the land on 28th June, 2006 from National Housing and Construction Corporation Ltd, (NHCC) and at the time it was free from all encumbrances.

In April, 2011 he obtained a certificate of title to the suit land. However that in March, 2012 the defendant made attempt to sell the suit land and later constructed structures thereon.



The defendant filed a defence however denying the plaintiff's claims of ownership of the land which according to him originally belonged to Prince Kimera Ssemakokiro having inherited it from his grandmother, as per her will.

5 That he had bought the land as a *kibanja* from one Salongo Semanda Gerald who had acquired the same from Sebadduka in 1994. The ownership by Salongo Semanda was duly recognized by the beneficiaries of the estate of the rightful owners.

10 Initially the hearing of this suit proceeded *ex parte* against the defendant and this court presided over by J. E. K Kabanda on 18th October, 2013 in a default judgment ruled in favour of the plaintiff and made several orders against the defendant.

On 29th April, 2016 the said judgment was however set aside and the matter proceeded inter partes.

Representation:

15 The plaintiff was represented by ***M/s A. Murangira Advocates***. The defendant was represented by ***M/s Kangaho & Co. Advocates***.

Issues for determination:

1. ***Whether the plaintiff is the registered proprietor of the suit land;***
- 20 2. ***Whether the defendant owns a kibanja/ customary interest over the suit property;***
3. ***Whether the defendant is a trespasser over the suit property.***

25 I will consider both the issues jointly since they are all interrelated.



Analysis of the law:

By virtue of **section 101 (1) of Evidence Act, Cap. 6**, whoever desires court to give judgment to any legal right or liability depending on the existence of any facts he/she asserts must prove that those facts exist. **(George William Kakoma v Attorney General [2010] HCB 1 at page 78).**

The burden of proof lies therefore with the plaintiff who has the duty to furnish evidence whose level of probity is such that a reasonable man, might hold more probable the conclusion which the plaintiff contends, on a balance of probabilities. **(Sebuliba vs Cooperative Bank Ltd. [1982] HCB 130; Oketha vs Attorney General Civil Suit No. 0069 of 2004).**

In this instance, the plaintiff had the burden to prove that trespass had been committed by the defendant.

In the case of: **Justin Lutaya v Stirling Civil Engineering Company, Supreme Court Civil Appeal No. 11 of 2002, the Supreme Court** trespass was defined as an unauthorized entry upon land that interferes with another person's lawful possession.

A tort of trespass to land is committed, not against the land, but against the person who is in actual possession of the land. Such possession may be physical or constructive.

In order to prove trespass, it is the party alleging so to prove that the disputed land indeed belonged to him; that the other party had entered upon that land; and that the entry was unlawful in that it was made without his permission or had no claim or right or interest in the land. **(Sheikh Mohammed Lubowa vs Kitara Enterprises Ltd SCCA No. 04 of 1987).**

