

3. The respondents, in their written statement of defence, denied all the appellants' allegations. They alleged that at all material times, the 1st respondent is the administrator of the said suit land being the son of the late Kiwanuka Hamis and the same was reserved as family land.
4. The respondents further alleged that the appellants approached the registered proprietor (Nkuubi Hannington), and negotiated with him, and bought the title interest in the land, which was not distributed to them, including the burial grounds to which they were issued a certificate of title.
5. In their counterclaim, the respondents sought a declaration that they have a right to the tenancy by occupancy (Kibanja) and prayed that the appellants be evicted from the suit land.
6. In response to the written statement of defence and counterclaim, the appellants averred that they agreed with the respondents to purchase the title interest in the land but later the respondents breached the agreement, and failed to pay the purchase price and as a result, the appellants went ahead to purchase the title interest in the land and became the registered owners of the land.
7. At scheduling in the lower court, the following issues were framed for the determination of the suit:
 - i). Whether the suit land forms part of the estate of the late Kiwanuka Hamis?
 - ii). Whether the plaintiffs' activities and occupation of the suit land are lawful?
 - iii). What are the remedies available to the parties?
 - iv). Whether the defendants have any interest in the suit property?



8. At the trial in the lower court, the appellants called 3 (three) witnesses, and the respondents called three witnesses. The appellants' witnesses were, Namata Sarah (PW1), Nakuba Sharifa (PW2), Nkuubi Hannington (PW3) and the respondents' witnesses were, Ahmed Kayanja Salongo (DW1), Damulira Edririsa (DW2), and Mugarura Godfrey (DW3).
9. The trial court carried out a locus in quo visit to the suit land on the 10th day of July 2017.

Trial court's findings:

10. The learned Trial Magistrate held that the sale of title interest in the land to the appellants did not extinguish the tenancy by occupancy (Kibanja) of the defendants, and that they are still the owners of the tenancy by occupancy (Kibanja). While relying on Section 35 (8) of the Land Act, Cap 227 (as amended), the learned Trial Magistrate held that the change in ownership of the title of the land from Hannington Nkuubi to the appellants did not in any way affect the respondents' interest as tenants by occupancy (Kibanja).

Grounds of the appeal:

11. The appellants raised 13 grounds of appeal as stated below:
 - i). The learned trial Magistrate erred in law and fact when she held that the suit land forms part of the estate of the late Kiwanuka Hamis disregarding the appellants title interest in the suit land comprised in Kyadondo Block 98 Plots 255 and 256 land at Katinvuma thus occasioning a miscarriage of justice;



- ii). That the learned trial Magistrate erred in law and fact when she held that the respondent's kibanja (equitable interest) prevailed over the appellants' title interest thus occasioning a miscarriage of justice;
- iii). That the learned trial Magistrate erred in law and fact when she held that the remedy available to the appellants is a permanent injunction;
- iv). That the learned trial Magistrate erred in law and fact when she ordered the appellants to jointly pay the respondents the sum of UGX. 8M as general damages thus occasioning a miscarriage of justice;
- v). That the learned trial Magistrate erred in law and fact when she ordered the appellants to pay the taxed costs of the suit to the respondents thus occasioning a miscarriage of justice;
- vi). That the trial Magistrate erred in law when she failed to properly conduct proceedings at the locus in quo which culminated into a wrong decision;
- vii). That the learned trial Magistrate failed to evaluate the evidence on court record and thus arrived at the wrong conclusion in determining the suit which resulted into a miscarriage of justice;
- viii). The learned trial Magistrate erred in law and fact when she ignored the ruling of Justice Masalu Musene from the High Court vide M.A 475 of 2013 regarding the parties in the same subject matter;
- ix). The learned trial Magistrate erred in law and fact when she raised wrong issues which she did not have jurisdiction to entertain;
- x). The learned trial Magistrate erred in law and fact when she abandoned the plaintiffs' cause of action and introduced a different cause of action which she did not have jurisdiction on;



- xi). The learned trial Magistrate erred in law and fact when she completely disregarded the evidence of Hannington Nkuubi, PW3 about the respondents' transactions on the suit land;
- xii). The learned trial Magistrate erred in law and fact when she ignored the fact that the respondents obtained letters of administration long after the appellants had already bought the land;
- xiii). The learned trial Magistrate erred in law and fact when she failed to consider the appellants' investment and interest in the suit land.

Representation:

- 12. At the hearing of the appeal, the appellants were represented by *M/s Songon & Co. Advocates* while the respondent was represented by *M/s Muslim Center for Justice and Law*. Both parties filed submissions which I have considered in the determination of this appeal.

Duty of the first appellate court:

- 13. The duty of the first appellate court was stated in the case of *Uganda Revenue Authority v. Rwakasaija Azarious & 2 Others, Court of Appeal Civil Appeal No. 8 of 2007* as:

“This being the first appellate court, it is the duty [of court] to re-appraise the evidence on record as a whole and come to its own conclusion bearing in mind that it has neither seen nor heard the witnesses and should make due allowance in that regard.”

- 14. I shall keep the above principle in mind while resolving the grounds of the appeal.



Consideration and determination of the appeal:

15. The appellants raised 17 grounds of appeal, but after reading them, I find that the entire appeal rests on Ground 2 of the appeal which is to effect that the learned trial Magistrate erred in law and fact when she held that the respondents' tenancy by occupancy (Kibanja) prevailed over the appellants' title interest thus occasioning a miscarriage of justice.
16. The appellants are registered owners of land comprised in Kyadondo Block 98 Plot 255 & 256 Land at Katinvuma measuring 1.119 Hectares – approximately 2.8 acres (title interest).
17. The respondents claim that they own a tenancy by occupancy (Kibanja) measuring approximately 1 acre out of the land registered in the names of the appellants.
18. Both the appellants and the respondents are children of the late Kiwanuka Hamis, who owned a tenancy by occupancy (Kibanja) on the land.
19. It is the appellants' case that sometime in 2007 to 2009, the respondents were approached by the then registered owner of the land, a one Nkuubi Hannington, with a proposal for them to purchase the title interest in the land where the tenancy by occupancy (Kibanja) is situated. The respondents, initially accepted to purchase the title interest in the land but later failed to honour the terms of the purchase whereupon the registered owner sold the title interest in the land to the appellants.

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20. The respondents contend that it is not legally tenable for a registered owner of the land to sell a tenancy by occupancy (Kibanja) on registered land to a third party (the appellants). The registered owner can only sell the title interest in the land without any effect on the interest of a tenant by occupancy (Kibanja holder).
21. So therefore, the legal question for this court to consider and determine, is whether a registered owner of land, having approached a tenant by occupancy (Kibanja holder), with an offer to purchase the title interest in the land, and the tenant by occupancy (Kibanja holder) fails to take up the offer, and the registered owner of the land sells the title interest in the land to a third party, the tenancy by occupancy (Kibanja) is affected by the change in ownership of the title to the land?
22. The answer to this legal question can be found in section 35 (8) of the Land Act (Cap 227 as amended by the Land Amendment Act No.1 of 2010) wherein it is provided that:
- “[...] a change of ownership of title effected by the owner by sale, grant and succession or otherwise shall not in anyway affect the existing lawful interests or bona fide occupant and the new owner shall be obliged to respect the existing interest.”*
23. It is abundantly clear to me that under the law, the lawful interest of a tenant by occupancy (Kibanja holder) cannot be affected in anyway by the change in ownership of the title to the land. The title interest in the land can change multiple times from one registered owner to another but each successive registered owner is legally obliged to respect the tenancy in occupancy (Kibanja) on the land. The tenant by occupancy (Kibanja holder) has absolute protection under the provisions of section 35 (8) of the Land Act (Cap 227 as amended). That is why



there are several provisions in the Land Act governing the relationship between the registered owner and the tenant.

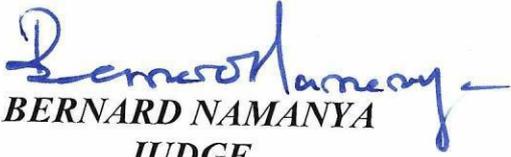
24. What happened in the case before me is that there was a change in ownership of the title of land comprised in Kyadondo Block 98 Plot 255 & 256 Land at Katinvuma from Nkuubi Hannington to Namata Sarah, Namukasa Yudaya, Nakuya Sharifah and Namazi Hadijja (the appellants).
25. In accordance with section 35 (8) of the Land Act (Cap 227 as amended), the change in ownership of title from Nkuubi Hannington to the appellants had no effect whatsoever on the tenancy by occupancy (Kibanja) of the respondents of approximately 1 acre on the registered land.
26. Although the appellants (Namata Sarah, Namukasa Yudaya, Nakuya Sharifah and Namazi Hadijja) are the registered owners of the land comprised in Kyadondo Block 98 Plot 255 & 256 Land at Katinvuma, they are legally obliged to respect the tenancy in occupancy (Kibanja) of approximately 1 acre owned by the respondents on the same land. That is the effect of the law under section 35(8) of the Land Act (as amended).
27. Therefore, it is my finding that the learned Trial Magistrate arrived at the correct conclusion that the respondents' tenancy by occupancy (Kibanja) was not in any way affected by the change in ownership of the title interest in the land.
28. Ground 2 of the appeal therefore fails.
29. Having resolved ground 2 of the appeal, I do not find it necessary to consider the merits of the remaining grounds of appeal as doing so would be redundant.



30. In conclusion, this appeal is wholly dismissed, and I issue the following orders:

- 1). The judgment and orders of the learned Trial Magistrate, Her Worship Mbabazi Edith Mary delivered on the 5th December 2017 is upheld.
- 2). The appellants shall pay the costs of this appeal.

IT IS SO ORDERED.


BERNARD NAMANYA
JUDGE
25th May 2023

25 May 2023 at 9:46am.

Nakachwa Ramlah	Counsel for the respondents
Barnabas Kokyenga holding brief for	Counsel for the appellants
Mustapha Songon	
Appellants in court	
2 nd respondent in court	
Liz Cheptoek	Court Clerk

Nakachwa Ramlah:

We are ready to receive the Judgment.

Court:

Judgment delivered in open chambers.


BERNARD NAMANYA
JUDGE
25th May 2023