

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)
CIVIL SUIT NO. HCT-00-LD-CS-0506-2019**

ASULE EMMANUEL ::: PLAINTIFF

VERSUS

1. TURINENSI ZEDEKA

2. LUBEGA HARUNA ::: DEFENDANTS

BEFORE: HON. JUSTICE BERNARD NAMANYA

JUDGMENT

Introduction:

1. This case considers whether it was legally tenable for a person to acquire a Kibanja interest in mailo land in 1972 by way of purchase.

Background:

2. The facts of the case are that the plaintiff asserted that his father, the late Godwin Sule acquired a Kibanja measuring 9 acres on the suit land by purchase from Mr. Ramathan Kadara in 1972. The plaintiff claims that he is in possession of the Kibanja, and utilises it as farmland, and also as burial grounds for deceased family members. The plaintiff claims that his landlord, Chris Mubiru Kisingiri agreed to sell the mailo title interest to him and his family, and part payments were made. That sometime in May 2019, the defendants trespassed on his Kibanja, and destroyed 8 acres of coffee plantation and other crops.
3. In their defence, the defendants deny being trespassers on the plaintiff's Kibanja but rather state that the 2nd defendant, Lubega Haruna is the registered



proprietor. The 2nd defendant claims to have sold part of the land to the 1st defendant, Turinensi Zedeka.

Representation:

4. The plaintiff was represented by Mr. Ahmed Kassim of M/s Waymo and Co. Advocates while the defendants were represented by Mr. Mutyaba Joseph Geoffrey of M/s Ssekaana and Associated Advocates & Consultants. Counsel for both parties filed written submissions which I have considered in the determination of the matter.

The plaintiff's evidence:

5. The plaintiff led evidence of two witnesses, the plaintiff, Asule Emmanuel as PW1 and Lule Ivan as PW2.
6. The plaintiff adduced the following documents that were admitted in evidence as Exhibits:
 - i). Exh.P1 – a copy of a Receipt issued by Chris Mubiru Kisingiri dated the 10th April 2004;
 - ii). Exh.P2 – a copy of a Receipt issued by Chris Mubiru Kisingiri dated the 30th March 2007;
 - iii). Exh.P3 – a copy of a letter dated the 12th April 2016 by Banenya – Mugalu & Kakona Advocates;
 - iv). Exh.P4 – a copy of the letter from Waymo Advocates dated the 15th May 2016; and
 - v). Exh.P5 – report and valuation for land at Buyego, Bombo, Luwero district dated May 2019.



The defendants' evidence:

7. The defence led evidence of the 1st defendant, Turinensi Zedeka as DW1 and the 2nd defendant Lubega Haruna as DW2.
8. The defendants adduced the following documents that were admitted in evidence as Exhibits:
 - i). Exh.D1 – a copy of certificate of title for land comprised in Bulemezi Block 1026 Plot 647 Land at Namaiiga;
 - ii). Exh.D2 – a copy of memorandum of understanding with Mrs. Nayiga Amina dated the 30th January 2019;
 - iii). Exh.D3 – a copy of the agreement to compensate food crops for Mr. Asuman dated the 1st May 2019;
 - iv). Exh.D4 – a copy of the agreement with the landlord dated the 1st February 2019;
 - v). Exh.D5 – a copy of the letter by the RDC Luwero dated the 16th May 2019;
 - vi). Exh.D7 – Bombo Police reference number.
 - vii). Exh.D9 – Survey report dated 10 December 2017 by Aerial Environ Consults

Locus in quo visit:

9. On the 27th of May 2022, court conducted a locus in quo visit to the suit property. Those present included the plaintiff, Asule Emmanuel, PW2, Lule Ivan, both the 1st and 2nd defendants, counsel for the plaintiff, and counsel for the defendants. Others that attended were local council officials and neighbours.



10. The plaintiff, PW2 Lule Ivan, and both defendants gave evidence during the locus visit and were cross-examined by either counsel. They all confirmed their earlier evidence before court during the hearing of the case, and gave further evidence at the locus in quo visit.

Issues to be determined by the court:

11. The following are the issues for determination by the court:
- i). Whether the defendants trespassed on the suit land.
 - ii). What remedies are available to the parties?

Issue 1: Whether the defendants trespassed on the suit land

Parties' submissions:

12. Counsel for the plaintiff submitted that common law and statute law protects the possessory rights of a land owner against unauthorized entry onto it through an action of trespass. He added that in proving trespass, the plaintiff is not required to prove material loss resulting from the trespass, that the mere entry onto the land by an intruder is sufficient cause for an action. He relied on the case of *Ashby v. White* [1703] 2 Ld Raym for his submissions. Counsel submitted that the defendants' conduct of entering onto the plaintiff's Kibanja consisted of voluntary and affirmative acts. He referred to the evidence on record which shows that the defendants entered onto the plaintiff's Kibanja with a grader, and ordered their workers to grade the land, and cut down trees, banana plants, and other crops.
13. In response, counsel for the defendants relying on section 59 of the Registration of Titles Act (Cap 230) submitted that a certificate of title is conclusive evidence that the person named in the certificate is the proprietor of the land. He



submitted that the 2nd defendant bought the suit land, and got registered as the registered proprietor and the defendants are as such, not trespassers as alleged by the plaintiff but lawful owners of the suit land. In respect to the plaintiff's interest in the suit land, he submitted that the plaintiff did not adduce sufficient evidence in support of his case. He singled out the failure by the plaintiff to caveat the land as proof that the plaintiff did not protect his interest if any. Counsel submitted that the plaintiff's alleged landlord, Chris Mubiru Kisingiri ought to have compensated him before selling the land to subsequent proprietors.

Burden of proof:

14. According to the *Supreme Court of Uganda* in the case of *Justine E. M. N. Lutaya v. Stirling Civil Engineering Company Ltd, Civil Appeal No. 11 of 2002 (per Mulenga, J.SC)*:

"Trespass to land occurs when a person makes an unauthorised entry upon land, and thereby interferes, or portends to interfere, with another person's lawful possession of that land. [...] the tort of trespass to land is committed, [...] 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 capacity to sue in trespass [...] For purposes of the rule, however, possession does not mean physical occupation. The slightest amount of possession suffices [...]"

15. According to paragraph 5 of the plaint and the evidence, the plaintiff's case is that he owns a Kibanja measuring 9 acres on the suit land. He contends that



sometime in May 2019, the defendants trespassed on his Kibanja and destroyed 8 acres of coffee plantation and other crops.

16. Sections 101, 102, 103 & 106 of the Evidence Act (Cap 6) provide that:

“101. Burden of proof

(1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he or she asserts must prove that those facts exist.

(2) When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

102. On whom burden of proof lies

The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

103. Burden of proof as to particular fact

The burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

106. Burden of proving, in civil proceedings, fact especially within knowledge *In civil proceedings, when any fact is especially within the knowledge of any person, the burden of proving that fact is upon that person.”*

17. The Supreme Court of Uganda in the case of Senkungu & 4 Ors v. Mukasa (Civil Appeal 17 of 2014) [2017] UGSC 14 (per Augustine S. Nshimye, J.S.C) held that:



"In civil trials, the burden of proof is the obligation to present evidence on the subject of the law suit; that is, to prove or disprove a disputed fact."

18. Accordingly, the plaintiff has a burden of proof to adduce evidence on the balance of probabilities, that the defendants are trespassers on the suit land.

Evidence adduced by the parties:

19. PW1 (Asule Emmanuel) in his evidence stated that his parents, the late Godwin and Cecilia Sule, purchased the Kibanja in 1972 from a one Ramathan Kadara which land they occupied and used as farmland, and also as burial grounds for some of their family members. The plaintiff led evidence that in 2004 the previous landlord, Chris Mubiru Kisingiri gave them the offer to purchase the mailo title, to which they agreed and started payments in instalments with the first instalment of Ushs 1,064,000 paid on the 10th April 2004 by his late mother Cecilia Sule (Exh.P1) and another of 500 dollars paid on the 30th March 2007 (Exh.P2). That when they tried to make further payments they were informed by a sister to Chris Mubiru Kisingiri, one Cissy Nabitaka that Chris Mubiru Kisingiri was out of the country. The plaintiff referred to the letter that the 2nd defendant's lawyers wrote to him on the 12th April 2016 asking him to purchase the mailo interest in his Kibanja at Ushs 26,000,000 per acre (Exh.P3) which offer he declined, and opted to keep the Kibanja interest. That the 2nd defendant, Lubega Haruna later sold the mailo title to the 1st defendant, Turinensi Zedeka. He testified that in May 2019, the defendants trespassed on the suit land despite his protests, and destroyed his crops and trees which has caused him great loss and inconvenience. During his cross-examination, he stated that the payment his mother made to Chris Mubiru Kisingiri was for them to buy the mailo title



interest. That they occupy the land but have no title, and were given a chance to pay and get the title which money they paid to the landlord Chris Mubiru Kisingiri. He stated that he made further payments but did not have the receipts. The plaintiff testified that the landlord gave them an offer to purchase the mailo title interest at Ushs 1 million per acre, and that they were meant to pay 18 million shillings.

20. PW2 (Lule Ivan) a field inspector with CM Chatham, a survey and valuation firm, testified that on the 16th May 2019, he received instructions from the plaintiff's lawyers to inspect crops and property destroyed on the suit Kibanja which they carried out on the 17th May 2019 in the presence of the plaintiff. On the land, they found developments such as graves and damaged crops. He made reference to the valuation report (Exh.P5), and stated that the affected land measures approximately 4.905 hectares. He further testified that he applied the Luwero District rates for the year 2017/2018 which provides a rate per plant based on age. That the crop assessment was done by counting the visibly damaged stems that were still standing, and as of the 17th May 2019, the open market value of the subject matter was Ushs 25,454,000.
21. DW1 (Turinensi Zedeka) testified that in March 2019 he purchased 8 plots of land from Lubega Haruna who was the registered proprietor of land comprised in Block 1026 Plot 647, and immediately occupied the same. He stated that he started planting food crops on his said land but around August 2019 the plaintiff brought cows onto his land, a matter that he reported to police. During his cross-examination, he testified that he inspected the land and it was plain. That although he did not speak to the neighbours he spoke to the LC1 chairman, who



told him the land belonged to Lubega Haruna. That the LC1 chairman and Lubega Haruna did not mention any Kibanja holder.

22. DW2 (Lubega Haruna) gave evidence that on the 10th March 2009, he bought land at Namaigga described as Block 1026 Plot 647 measuring approximately 3.8 hectares from a one Bukenya Ali Kasozi. That on 9th October 2014 he got registered as the registered proprietor of the suit land, and is the 3rd buyer in succession of the said land title. He stated that on getting registered onto the title he started looking for all persons who had an equitable interest in his land with a view of offering them a chance to acquire legal interest by purchase and issue them a certificate of title. That he carried out a survey on his land and even paid off those who had grown crops on his land in bid to stop them from further occupation. He stated that at the start of February 2019, he fenced off all his land but the fence was destroyed to which he filed a criminal case with the local police. That sometime in October 2018 he subdivided and sold off some plots to interested persons like the 1st defendant. That the plaintiff filed a complaint against him for alleged trespass with the RDC's office and they were all invited for a meeting where it was resolved that the complaint had no basis, and that the plaintiff should have been compensated by Chris Mubiru Kisingiri before he sold off the land. During his cross-examination, he stated that before he purchased the suit land he inspected the land, and found that it was a bush. He talked to the neighbours around who did not object to his purchase, and that the LC 1 chairperson revealed to him that the land belonged to the Kisingiri estate. That he contacted Kisingiri who told him that the plaintiff had only 3 acres which is why he wrote to the plaintiff to buy his legal interest (Exh.P3). That since Asule never responded to his letter, he proceeded with his work. That at the time he bought there were no graves on the land and that he first



saw graves on the land in 2016. That when he sold the land to the 1st defendant he did not tell him about the plaintiff.

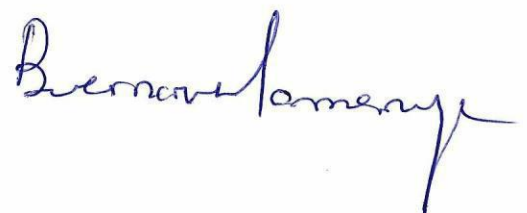
Analysis by the court:

23. I shall begin my analysis of the law and evaluation of the evidence by setting out the legal requirements that a person must comply with in order to own a Kibanja interest. Although a Kibanja is not specifically defined under the law, it generally refers to an interest in land held by virtue of the Busuulu and Envujjo Law of 1928 (see *section 29(1)(a) of the Land Act (Cap 227)*). Under the law, a Kibanja holder is a lawful occupant. A Kibanja holder must prove that he or she occupied mailo land in accordance with the applicable law at the material time. See the case of *Jennifer Nsubuga v. Michael Mukundane & Another, Court of Appeal Civil Appeal No. 208 of 2018 (Coram: Madrama, Mulyagonja & Mugenyi, JJA) (per the Judgment of Justice Monica K. Mugenyi, JA, at page 24, paras 72 & 73)*.
24. *Clause 2 of Practice Direction No.1 of 2007* on the issue of orders relating to registered land which affect or impact on the tenants by occupancy provides that:
- “Where you have to determine whether a tenant is a “lawful” of “bona fide” occupant evaluate the evidence carefully, and establish the origin, succession to or acquisition of the tenancy (Kibanja) by the tenant by occupancy, and take into consideration the various laws, such as the Busuulu and Envujjo Law 1928, the Ankole Landlord and Tenant Law 1937, or the Toro Landlord and Tenant Law 1937, the Land Reform Decree, 1975 and the Land Act, depending on the*



assertions of either party as to his/her rights.” underlining is mine for emphasis.

25. In the instant case, the plaintiff asserted that his father, the late Godwin Sule acquired the Kibanja by purchase from Mr. Ramathan Kadara in 1972.
26. In paragraph 4 of the plaint, the plaintiff asserted that:
- “4. [...] The late Godwin Sule acquired the Kibanja holding covering eighteen acres located at Buyego village, Katikamu South County – Luwero District in the 1970s where his family has since cultivated crops and buried deceased family members to date.”*
27. In paragraphs 4, 5 & 6 of his witness statement, PW1 (Asule Emmanuel) testified that:
- “4. That I am one of the beneficiaries of the estate of the late Godwin Sule previously the owner of the suit kibanja.*
- 5. That my late father acquired the said kibanja located in Buyego village measuring approximately 18 acres by purchase from Mr. Ramathan Kadara in 1972.*
- 6. That in the 1970s my family took possession of the said kibanja and we have since utilized it to date for farming and it also acts as our burial ground.”*
28. In cross examination, PW1 (Asule Emmanuel) clarified that whereas the Kibanja measures 18 acres in total, it is spread over 2 plots of land, Plots 647 and 648 owned by Lubega Haruna and Tabula Ismail, and on each plot, he claims a Kibanja of 9 acres.



29. The plaintiff asserts that the Kibanja interest was acquired in 1972. The plaintiff has the burden to prove that such a Kibanja interest was acquired in accordance with the applicable law at the time. The applicable law in 1972 was the Busuulu and Envujjo Law 1928 which remained in force until 1975 when it was repealed by the Land Reform Decree, 1975. Section 8(1) & (2) of the Busuulu and Envujjo Law 1928 provided that:

“(1) Nothing in this law shall give any person the right to reside upon the land of a mailo owner without first obtaining the consent of the mailo owner except –

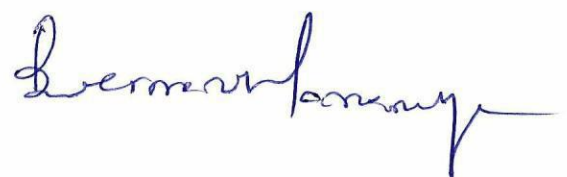
(a) The wife or child of the holder of a Kibanja; or

(b) A person who succeeds to a Kibanja in accordance with native custom upon the death of the holder thereof.

(2) Nothing in this law shall give the holder of a Kibanja the right to transfer or sublet his Kibanja to any other person.”

30. According to the Busuulu and Envujjo Law 1928, there were only three ways recognised by the law in which a holder of a Kibanja could settle on mailo land. First, a Kibanja holder could settle on mailo land with the consent of the mailo land owner. Second, the wife or child of a Kibanja holder could settle on the land without the consent of the mailo land owner. Third, upon the death of a Kibanja holder, the successor of the deceased in accordance with the native custom could settle on mailo land without the consent of the mailo land owner.

31. Under the Busuulu and Envujjo Law 1928, which was the applicable law in 1972 when the plaintiff claims that his father purchased the Kibanja, it was not legally possible for a Kibanja holder to transfer or sell his Kibanja to any other person except in the case of a wife or child or successor in title. The law was



clear in section 8(2), that “Nothing in this law shall give the holder of a Kibanja the right to transfer or sublet his Kibanja to any other person.” Accordingly, it was expressly forbidden under the law for the holder of a Kibanja to transfer his or her interest to any other person other than a wife, child or successor in title except with the consent of a mailo landowner.

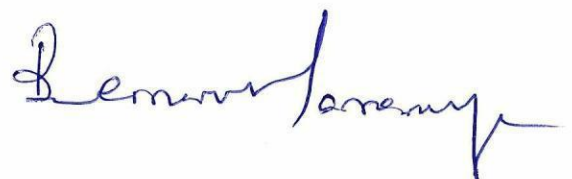
32. This very question was considered by the Supreme Court of Uganda in the case of Muluta Joseph v. Katama Sylvano, Civil Appeal No. 11 of 1999 (Coram: Oder, Karokora, Mulenga, Kanyeihamba and Mukasa-Kikonyogo J.J.S.C). The brief facts of the case were that the appellant who was the plaintiff in the High Court, claimed that by an agreement dated the 10th October 1969, he purchased from a one Batulumayo Balatulwango a customary Kibanja situated on the mailo land owned by one Kisosonkole in accordance with the Busulwa and Envujjo law, which was the law applicable at the time. The appellant claimed that, between 1969 and 1971, he held and developed the Kibanja, measuring two and half acres, with three buildings, which he rented out to tenants. The mailo title interest in the land changed to a new landlord, the respondent, Sylvano Katama, who in 1992 gave the appellant an option to purchase the mailo interest in the Kibanja. The two parties agreed on purchase terms but later failed to implement the agreement. In May 1995, all the appellant’s buildings on the Kibanja were demolished by court bailiffs on the instructions of the respondent. The appellant filed a suit in the High Court claiming general damages for trespass and breach of contract, and asked for an order of specific performance of the contract, special damages, interest and costs of the suit. The learned trial judge held that the appellant was a customary tenant on the land, and therefore the respondent committed trespass when he caused the appellant’s buildings to be demolished illegally. The respondent



appealed to the Court of Appeal, which allowed the appeal, and set aside the judgment and orders of the High Court. On the issue as to whether or not the appellant was a legitimate Kibanja holder, the Court of Appeal held that Batulumayo had no power to transfer or sell the Kibanja interest without the consent of the mailo land owner. On appeal to the Supreme Court, the judgment of the Court of Appeal of Uganda was upheld, and Justice A.N. Karokora held that:

“From the evidence on record, there is no doubt that the manner in which the appellant allegedly acquired the land in question did not conform with Section 8 of the Busuulu and Envujjo law of 1928 [...] In view of the above law which was in existence in 1969 when the appellant claimed to have acquired the Kibanja from Batulumayo, I think Batulumayo, who was not the mailo owner, had no powers to transfer the kibanja through sale or otherwise without the consent of the mailo owner. [...] So, what Batulumayo did to transfer his Kibanja to the appellant contravened subsection 2 of Section 8 of the Busuulu and Envujjo Law of 1928, because a customary tenant had no powers to transfer his Kibanja except in circumstances as provided in subsection 1(a) and (b) of Section 8 of the Busulu and Envujjo Law (supra). Therefore, the appellant’s occupation of the mailo land in question was null and void ab initio when he purchased Kibanja from Batulumayo without the consent of the mailo owner.”

33. The issue of the consent of a mailo landowner to a sale or transfer of a Kibanja was recently considered by the Court of Appeal of Uganda in the case of Jennifer Nsubuga v. Michael Mukundane (supra), and Justice Monica K. Mugenyi, JA held that:



“Consequently, I find that in so far as kibanja holders historically occupied mailo land by virtue of the Busuulu and Envujjo Law, that law provides the parameters under which a kibanja holding is created. Given the express provisions of section 8(1) of that law, I am satisfied that a kibanja holding on mailo land is demonstrated by proof of consent by the landlord or mailo owner for the occupation of his/ her land, or proof of succession to the kibanja holding in accordance with applicable customary practices, which would in itself require proof of the envisaged customary practices. In the instant case, as quite rightly held by the appellate judge, there is no evidence of any proof of consent by the mailo owner to Ms. Idrisa's kibanja interest on its land. To the extent that under section 3(4)(c) of the Land Act a mailo owner enjoys his/ her land subject to the customary and statutory rights of a pre-existing kibanja holder on the land, it follows that the subsequent creation or acquisition of a kibanja interest on mailo land depends for its validity on the consent of a pre-existing mailo owner. With the greatest respect, therefore, I find that the learned first appellate judge erred in law when he held that failure to register with the landlord would not invalidate the purchase of a kibanja.”

34. It has been held in a number of other decided cases that a holder of a Kibanja cannot transfer his Kibanja interest by sale without the consent of the mailo landowner. These cases include George Kasedde Mukasa v. Emmanuel Wambedde, High Court Kampala Civil Suit No. 459 of 1998 (per Justice Moses Mukiibi) and River Oli Division Local Government v. Sakaram Abdalla Okoya, High Court Gulu Civil Appeal No. 18 of 2013 (per Justice Stephen Mubiru).



35. Accordingly, in the instant case, it was not possible under the law, for the plaintiff's father, the late Godwin Sule to have acquired the Kibanja by purchase from Mr. Ramathan Kadara in 1972 without the consent of a mailo landowner.
36. There are several glaring gaps in the testimony of the plaintiff. First, the plaintiff did not adduce evidence of the purchase agreement by which his father, the late Godwin Sule acquired the Kibanja by purchase from Mr. Ramathan Kadara in 1972. But even if the plaintiff had adduced the purchase agreement, it would be of no evidential value in view of the position of law set out above, unless it showed consent of the mailo landowner. Second, the plaintiff did not adduce evidence of the identity of the mailo landowner, because, this being a Kibanja, it must have been situated on registered land which would have a mailo landowner. Third, the plaintiff did not adduce other forms of evidence to prove that he or his predecessors in title occupied the land with the consent of the mailo landowner. This could have been in the form of evidence of payment of Busuulu to the mailo landowner or fulfilment of other customs such as the traditional kanzu. See the case of Jane Magango & 2 Others v. Wamala Kalibala William, Court of Appeal Civil Appeal No. 11 of 2019 (Coram: Madrama, Mulyagonja & Mugenyi, JJA; per the Judgment of Irene Mulyagonja, JA). The only evidence led by the plaintiff was in respect of the alleged payments towards acquisition of a mailo interest in the land. In this regard, the plaintiff testified that in 2004 the previous landlord, Chris Mubiru Kisingiri gave his family the offer to purchase the mailo title, and Ushs 1,064,000 was paid on the 10th April 2004 by his late mother Cecilia Sule (Exh.P1) and another of 500 dollars was paid on the 30th March 2007 (Exh.P2). These payments are of no evidential value because they do not relate to



Busuulu. These payments were made recently in 2004 and 2007 for allegedly a different purpose altogether, namely, the acquisition of a mailo title interest in the suit land from a one Chris Mubiru Kisingiri. It is apparent from the evidence before court that this very transaction was not even completed.

37. The other issue that casts doubt on the credibility of the plaintiff's testimony is his assertion that the mailo landowner is Chris Mubiru Kisingiri. According to the certificate of title for the suit land (Exh.D1) the history of ownership of the mailo title interest is as follows: Chris Mubiru Kisingiri (date of registration, 19th August 2004); Lubega Dauda Sseguya (date of registration, 19th August 2004); Bukenya Ali Kasozi (date of registration, 10th March 2009); and Lubega Haruna (date of registration, 14th October 2014). Was Chris Mubiru Kisingiri the mailo landowner in 1972, when the plaintiff's father is alleged to have purchased the Kibanja interest? There is no such evidence to prove that Chris Mubiru Kisingiri was the mailo landowner in 1972. It could not have been Chris Mubiru Kisingiri, who according to certificate of title for the suit land (Exh.D1), was first registered as proprietor of the suit land on the 19th August 2004 under instrument number, BUK.58740. If there was any sub-division and mutation of the original chunk of land leading to the current plot number of 647, it was incumbent on the plaintiff to adduce such evidence, and none was adduced. As per the evidence before court, it is not known how ownership of the mailo title interest evolved from 1972 to 2004. The onus of proof was on the plaintiff to adduce this evidence but he failed to discharge the burden.
38. There are other aspects that cast doubt on the credibility of the plaintiff's evidence. The plaintiff testified that his siblings include Jennifer Kengere, Kezia Irene, Samuel Sule, Lillian Sule, and Gloria Sule. None of these persons



were called as witnesses to give evidence in support his case. It was his evidence that when his father died in 1979, he was buried in the Military Cemetery in Bombo, and his mother was buried in Atyaka Amuru in 2014. Whereas the plaintiff alleged that the suit land has always been used as family burial grounds, no evidence was adduced to prove that the suit land was utilised for that purpose in the period 1972 to 2013.

39. Consequently, it is my decision that the plaintiff has failed to prove that his father, the late Godwin Sule acquired the Kibanja by purchase from Mr. Ramathan Kadara in 1972. The plaintiff is therefore, not a lawful occupant within the meaning of section 29(1)(a) of the Land Act (Cap 227). Accordingly, the plaintiff has no security of occupancy under the provisions of section 31 of the Land Act (Cap 227). The plaintiff has illegally occupied and developed the suit land.
40. On the other hand, the evidence of DW2 (Lubega Haruna) proves that he purchased land at Namaiiga described as Block 1026 Plot 647 measuring approximately 3.8 hectares from a one Bukenya Ali Kasozi. That he became a registered proprietor of the suit land on the 14th October 2014 under Instrument Number BUK.120510 (see the certificate of title as Exh.D2). That he carried out a survey on his land (Exh.D9 – survey report dated the 10 December 2017 by Aerial Environ Consults) and even compensated persons that had grown crops on the suit land (see Exh.D2, D3&D4 being compensation agreements). It was his evidence that around October 2018 he subdivided, and sold off some plots to interested persons including the 1st defendant. The 1st defendant testified that he bought part of the suit land from Haruna Lubega the registered proprietor. The 1st defendant accordingly holds an equitable interest in the suit

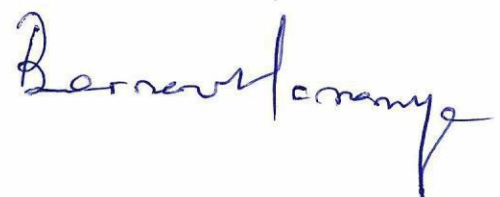


land. Both defendants led evidence that they accessed the suit land. The 1st defendant stated that he found the land cleared and proceeded to plant crops like potatoes and bananas which were destroyed by the plaintiff's cows. The 2nd defendant testified that he entered onto the suit land and erected a fence which was allegedly cut down by the plaintiff. The 2nd defendant had the right to enter onto the suit land being the registered proprietor. Similarly, the 1st defendant, being an equitable owner of part of the suit land had a right to enter onto the suit land. The 1st defendant stated in his evidence that by the time he entered the land, it had already been graded.

41. I am satisfied that the 2nd defendant holds a certificate of title for the suit land, and according to section 59 of the Registration of Titles Act (Cap 230), a certificate of title is conclusive evidence that the person named in the certificate is the proprietor of the land. I am also satisfied that the 1st defendant is an equitable owner of part of the suit land having purchased 8 plots of land from the 2nd defendant.
42. In conclusion, the plaintiff having failed to prove a lawful interest in the suit land, and the evidence having proved that the plaintiff is in unlawful occupation of the suit land, he cannot maintain an action of trespass to land. The defendants are therefore, not trespassers on the suit land. Issue No. 1 is therefore answered in the negative.

Issue 2: What remedies are available to the parties?

43. The plaintiff asked the court for a declaration that the defendant's respective entries and occupation of the suit land amounts to trespass. He also asked to be awarded special damages and general damages, interest, and costs of the suit.




Counsel for the plaintiff prayed for the award of special damages of 25,454,000 being costs of destroyed plants and property, 2,000,000 being costs of the valuation report, general damages of 15,000,000/= with interest at courts rate, permanent injunction, and costs of the suit.

44. In light of my holding that the plaintiff is in illegal occupation of the suit land, it is my decision that the plaintiff is not entitled to any of the reliefs sought. The defendants were right to demolish any of his illegal developments on the suit land, and they are not liable for the damage that the plaintiff may have suffered.
45. According to section 27 (2) of The Civil Procedure Act, costs of any action follow the event unless Court for good cause orders otherwise. The defendants being the successful parties in this case are therefore entitled to costs of the suit.

Final order of the court:

46. I enter judgment in favour of the defendants and order as follows:
- i). The plaintiff's suit is dismissed.
 - ii). The plaintiff shall pay the costs of the suit to the defendants.

IT IS SO ORDERED.


BERNARD NAMANYA
JUDGE
28 July 2023

28 July 2023 at 11:47am

Ahmed Kassim

Counsel for the plaintiff

Counsel for the defendants is absent

Both parties are absent

Allena Kire

Court Clerk

Court:

Judgment delivered in open chambers.

A handwritten signature in blue ink, appearing to read 'Bernard Namanya', with a stylized flourish at the end.

BERNARD NAMANYA

JUDGE

28 July 2023