

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT KAMPALA  
(LAND DIVISION)  
CIVIL SUIT NO. HCT-00-LD-CS-2089-2016**

**JULIET KANYESIGYE :::PLAINTIFF**

***VERSUS***

**NAMULONDO YOSEFA :::DEFENDANT**

**BEFORE: HON. JUSTICE BERNARD NAMANYA**

**JUDGMENT**

**Introduction:**

1. This case considers the legal requirements for acquisition of a Kibanja by purchase under the Land Act (Cap 227). The land in issue is comprised in Busiro Block 403 Plot 56 Land at Buzzi, Namulanda measuring 1.5 acres (hereinafter “the suit land”).

**Background:**

2. The plaintiff brought this suit by ordinary plaint against the defendant seeking for the following reliefs: i) eviction of the defendant from the suit land; ii) a permanent injunction; iii) an order of demolition of all buildings erected by the defendant on the suit land; iv) general damages; v) interest on general damages; and vi) costs of the suit.
3. The plaintiff avers that she purchased the suit land from Mugisha Frank on the 15<sup>th</sup> February 2006. That she took immediate possession of the suit land awaiting for the certificate of title and signed transfer forms to be handed to



her by the seller. That sometime in September 2012, the defendant encroached on her land, and erected buildings.

4. The defendant filed her written statement of defence and counterclaim contending that she is a lawful owner of a Kibanja measuring 70ft x 100ft on the suit land, having purchased it from Kasozi Joseph Kiwanuka who also bought the same from Tumusiime Samson on the 5<sup>th</sup> August 2009. She further claimed that Tumusiime Samson had on the 12<sup>th</sup> November 2008 acquired the Kibanja from Nakamatte Teddy, who had previously acquired it from Eria Kirumira Nakalago on the 17<sup>th</sup> September 1995. She counterclaimed against the plaintiff for: i) a declaration that she is the lawful owner of a Kibanja on the suit land; ii) a permanent injunction; and iii) costs of the counterclaim.

**Representation:**

5. The plaintiff was represented by M/s Luhom Advocates while the defendant was represented M/s ASB Advocates.

**The plaintiff's evidence:**

6. The plaintiff produced four witnesses to prove her case. PW1 (Juliet Kanyesigye), PW2 (Wamala Edward), PW3 (Balekke Fred) and PW4 (Mugisha Frank).
7. The plaintiff adduced evidence of the following documents that were exhibited:
  - i). Exh.P1 – a copy certificate of title for Block 403 Plots 53 & 55 in the names of Frista Nakitende, Vincent Kibirige, and Eria Kirumira Nakalago;;



- ii). Exh.P2 – a copy of the sale agreement between Mugisha Frank and Juliet Kanyesigye dated 15<sup>th</sup> February 2006;
- iii). Exh.P3 – a photo of the plantation taken by the plaintiff;
- iv). Exh.P4 – a photo of the suit land;
- v). Exh.P5 – a photo of the incomplete building on the suit land;
- vi). Exh.P6 – a photo of the incomplete building on the suit land;
- vii). Exh.P7 – a copy of acknowledgement of receipt of payment of 20 million shillings by Eria Kirumira Nakalago from Mugisha Frank;
- viii). Exh.P8(i) – a copy of URA receipt dated 26<sup>th</sup> October 2006;
- ix). Exh.P8(ii) – a copy of the URA pay slip for Mugisha Frank dated 26<sup>th</sup> October 2006;
- x). Exh.P9 – a copy of the consent judgment in HCCS 325/2009 dated 2011; and
- xi). Exh.P10 – a copy of the sale agreement dated 12<sup>th</sup> November 2008 between Nakamatte Teddy and Tumusiime Samson.

**The defendant's evidence:**

- 8. The defendant produced 2 (two) witnesses to prove her case, that is DW1 (Christine Ndaula Namatovu) and DW2 (Namulondo Yosefa).
- 9. The defendant adduced evidence of the following documents that were exhibited:
  - i). Exh.D1 – a copy of the sale agreement between Eria Kirumira Nakalago and Nakamatte dated 17<sup>th</sup> September 1995;
  - ii). Exh.D2 – a copy of the sale agreement between Tumusiime Samson and Kasozi Joseph Kiwanuka dated 5<sup>th</sup> August 2009;



- iii). Exh.D3 – a copy of the sale agreement between Kasozi Joseph Kiwanuka and Namulondo Yosefa dated 14<sup>th</sup> March 2010; and
- iv). Exh.D4 – a copy of the receipt (Etikiti Ye Kanzu) dated 7<sup>th</sup> November 2013.

**Issues to be determined by the court:**

10. The following are the issues for determination by the court:
- i). Who is the rightful owner of the suit land?
  - ii). Whether the defendant is a trespasser on the suit land?
  - iii). Whether the transaction on the suit land between the defendant and the late Kasozi Joseph Kiwanuka was valid and legal?
  - iv). Whether the defendant has any interest on the suit land?
  - v). What remedies are available to the parties?

**Issues No. 1 to 4:**

11. Issues 1 to 4 are interrelated and shall be handled jointly.
12. The plaintiff asserts that she is the lawful owner of the suit land, and bears the burden to prove so. *See sections 101, 102, 103 & 106 of the Evidence Act (Cap 6). See also the Supreme Court of Uganda case of Senkungu & 4 Ors v. Mukasa (Civil Appeal 17 of 2014) [2017] UGSC 14.* The plaintiff adduced evidence of four witnesses to prove her case.
13. PW1(Juliet Kanyesigye) testified that the defendant is a trespasser on the suit land. That she bought the suit land from Mugisha Frank in 2006 at a consideration of 54 million shillings. That she paid the first deposit of 30 million Uganda shillings. That she agreed with Mugisha Frank that he would

hand over the title and signed transfer forms upon completion of payment of the balance. That Mugisha Frank immediately gave her vacant possession of the land. That since Mugisha Frank was a surveyor, he showed her the land boundaries. That she began utilising her land by cultivating various crops. That she interviewed the late Nakamate her being a neighbour and she confirmed that the land formerly belonged to the late Nakalago. That Nakamate gave her a go ahead to buy the land after which she showed her boundaries of the land. That she employed several caretakers on the suit land such as Katongole, Balekke Fred, Innocent Mubangizi, Leticia Tushemereirwe and Naboth. That after taking possession of the land, some of the trees which were cut down were burnt into charcoal. That she utilised the land for 6 years without any disturbance until September 2012, when she discovered that someone had begun building a foundation of a house on the land measuring approximately 36 x 94 x 61 x 94 feet. That she raised the matter with the seller, Mugisha Frank and the area LC1 Chairman, the late Kasozi Joseph Kiwanuka. That she later discovered that it was late Kasozi Joseph Kiwanuka, the Local Council I chairman who had sold the suit land to a one Namulondo Yosefa (defendant). That she reported the matter to police. That she later got an interim order from the courts of law but the defendant continued building until she was stopped by a temporary injunction issued by this court. She prayed for court to declare her the rightful owner of both title and Kibanja interest in the suit land.

14. Her evidence was corroborated by PW2 (Wamala Edward) who was was the chairperson of Buzzi LC1 until around 2008, PW3 (Balekke Fred), a worker employed by the plaintiff, and PW4 (Mugisha Frank), the seller of the suit land.



15. I am satisfied by the evidence adduced by the plaintiff that she purchased the suit land from Mugisha Frank. A copy of the sale agreement between the plaintiff and Mugisha Frank dated 15<sup>th</sup> February 2006 was admitted in evidence and marked Exh.P2. Although the plaintiff is yet to obtain registration into her name as per the evidence before court, she owns an equitable interest in the suit land. See Megarry & Wade: The Law of Real Property, 9<sup>th</sup> Edition, Stuart Bridge, Elizabeth Cooke and Martin Dixon, Sweet & Maxwell, London, 2019 at paragraphs 14-051 to 14-061). See also Erina Lam Oto Omgom v. Opoka Bosco and Anor (Civil Appeal 91 of 2019) [2020] UGHC 185 (per Justice Stephen Mubiru).
16. In her defence to the suit, the defendant asserted that she is a lawful owner of a Kibanja measuring 70ft x 100ft on the suit land having purchased it from Kasozi Joseph Kiwanuka on the 14<sup>th</sup> March 2010 who also bought the same Kibanja from Tumusiime Samson in 2009.
17. In view of my finding that the plaintiff is an equitable owner of the suit land, and the defendant having set up the defence that she is a holder of a Kibanja on the suit land, the burden of proof, now shifts to the defendant, to prove her claim of being a holder of a Kibanja. According to the Supreme Court case of J.K Patel v. Spear Motors Limited, SCCA No.4 of 1991 (per the judgment of E.E Seaton, J.S.C), quoting from Phipps’s Evidence (at para .95), the burden of proof –
- “[...] rests, before evidence is gone into upon the party asserting the affirmative of the issue; and it rests, after evidence is gone into , upon the party against whom the tribunal, at the time the question rises, would give judgment if no further evidence were adduced [...]”*

18. Accordingly, pursuant to sections 101, 102, 103 & 106 of the Evidence Act (Cap 6), the defendant, having asserted ownership of a Kibanja on the suit land, she bears the burden to prove that she legally acquired the Kibanja.

19. In the case of Owembabazi Enid v. Guarantee Trust Bank Limited, High Court (Commercial Division), Civil Suit No. 63 of 2019, Justice Stephen Mubiru defined a Kibanja as follows:

*“A Kibanja is a form of land holding or tenancy that is subject to the customs and traditions of the Baganda, characterised by user rights and ownership of developments on land in perpetuity, subject to payment of an annual rent (busuulu) and correct social behaviour, distinct and separate from ownership of the land on which the developments are made and in respect of which the user and occupancy rights exist.”*

20. In the instant case, the defendant claims to have acquired a Kibanja on the 14<sup>th</sup> March 2010, and bears the burden to prove that it was acquired in accordance with the applicable law at the time. The applicable law was the Land Act (Cap 227) which provides in section 34(1), (2) & (3) as follows:

**“34. Transactions with the tenancy by occupancy**

*(1) A tenant by occupancy may, in accordance with the provisions of this section, assign, sublet or subdivide the tenancy with the consent of the land owner.*

*(2) A tenancy by occupancy may be inherited.*

*(3) Prior to undertaking any transaction to which subsection (1) refers, the tenant by occupancy shall submit an application in the*

*prescribed form to the owner of the land for his or her consent to the transaction.”*

*(4) ...*

*(5) ...*

*(6) ...*

*(7) ...*

*(8) ...*

*(9) No transaction to which this section applies shall be valid and effective to pass any interest in land if it is undertaken without a consent as provided for in this section, and the recorder shall not make any entry on the record of any such transaction in respect of which there is no consent.”*

21. For a transfer or assignment of a Kibanja from one holder to another to be valid under the law, the registered owner of the land must render his or her consent. Therefore, according to the law, the sale of a Kibanja without the consent of the registered owner of the land is null and void. This is the effect of the holding by the Court of Appeal of Uganda in the case of Jennifer Nsubuga v. Michael Mukundane & Another, Court of Appeal Civil Appeal No. 208 of 2018 (Coram: Madrama, Mulyagonja & Mugenyi, JJA), where Justice Monica K. Mugenyi, JA held that:

*“My construction of sections 34(3) and 35(1) of the Land Act is that they are couched in mandatory terms. In any case, sub-section (9) unequivocally clearly states that no transaction to which section 34 applies shall be valid to pass any interest in land if it is undertaken without a consent as provided for. In a nutshell, therefore, 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. Once the existence of such interest has been established, any assignment thereof would be subject to the consent of the mailo owner. In any event, s/he or would be entitled to the first option of assignment.”*

22. The defendant adduced evidence of two witnesses to prove her case. DW2 (Namulondo Yosefa), who is the defendant, testified that she purchased the Kibanja on the 14<sup>th</sup> March 2010 from Kasozi Joseph Kiwanuka who also bought the same Kibanja from Tumusiime Samson in 2008 at a consideration of Uganda shillings 20,500,000. That she paid Uganda shillings 800,000 for the ekanzu for purchasing a Kibanja. Her evidence was corroborated by DW1 (Christine Ndaula Namatovu), a general secretary of the Buzzi Local Council 1 committee, and a neighbour to the suit land. The defendant adduced Exh.D3 which is a sale agreement dated 14<sup>th</sup> March 2010 evidencing purchase of a Kibanja from Kasozi Joseph Kiwanuka.
23. I have carefully evaluated the evidence adduced by the defendant but I have not seen proof that she acquired the Kibanja on the suit land with the consent of the registered owners of the land at the material time. According to Exh.P1 (certificate of title for land comprised in Block 403 Plots 53 & 55), the registered owners of the land in 2010 were Frista Nakitende, Vincent Kibirige and Eria Kirumira Nakalago who were entered as registered owners of the land in 2006 under Instrument Number KLA293897.

24. No evidence was adduced to prove that the above owners of the land consented to the acquisition of the Kibanja by the defendant.
25. Exh.D1 which the defendant sought to rely on, is sale agreement for a Kibanja between Eria Kirumira Nakalago and Nakamatte T dated 17<sup>th</sup> September 1995. It is irrelevant to the Kibanja transaction between the defendant and Kasozi Joseph Kiwanuka.
26. Exh.P10 which the defendant sought to rely on is a sale agreement of a Kibanja between Nakamatte Teddy and Tumusiime Samson dated 12<sup>th</sup> November 2008. It is not only irrelevant to the Kibanja transaction between the defendant and Kasozi Joseph Kiwanuka, but is also invalid under the law for failure to procure the consent of Frista Nakitende, Vincent Kibirige and Eria Kirumira Nakalago who were the registered owners of the land at the material time as per Exh.P1 (certificate of title).
27. Exh.D2 which the defendant sought to rely on is a sale agreement between Tumusiime Samson and Kasozi Joseph Kiwanuka dated 5<sup>th</sup> August 2009. If the defendant brought this agreement to prove that Kasozi Joseph Kiwanuka, the person who sold her the Kibanja, validly acquired the Kibanja, it does not achieve this purpose, because Exh.D2 does not have the consent of the then registered joint owners of the suit land, who were Frista Nakitende, Vincent Kibirige and Eria Kirumira Nakalago as per Exh.P1 (certificate of title). Therefore, the agreement pursuant to which Kasozi Joseph Kiwanuka acquired the Kibanja that he later sold to the defendant, is itself invalid under the law, for failing to procure the consent of the registered land owners at the material time.

28. The defendant adduced Exh.D4 (Etikiti Ye Kanzu) showing payment of Ushs 800,000 purportedly to prove that the consent of the land owner was obtained. I have analysed the said Exh.D4 and the sum of Ushs 800,000 was received by Nabunya Stella purportedly on behalf of “Nakalago”. It is not clear which “Nakalago” is referred to in the receipt, because there are several of them on Exh.P1 (certificate of title). Is it “E. Kirumira Nakalago” or “Leseni Nakalago” or “Eria Kirumira Nakalago?” Besides, no proof was adduced to show that a one “Nakalago” authorised Nabunya Stella to receive the payment on her behalf. Nabunya Stella was not called as a defence witness, and neither was “Nakalago” or her estate (if any). It is not known if the “Nakalago” that features on the receipt (Exh.D4) is related to “Eria Kirumira Nakalago” one of the current registered proprietors of the land. Exh.D4 is dated 7<sup>th</sup> November 2013, and yet the sale of the Kibanja took place on the 14<sup>th</sup> March 2010 which shows that the purported payment for ekanzu was made (if at all!) much later. All of these gaps in the defendant’s evidence cast doubt on the credibility of her evidence.
29. In any case, Regulation 64(2) of the Land Regulations (2004) requires the consent of the land owner to a sale of a Kibanja to be in the format provided by Form 40 of the First Schedule to the Regulations “*Application by Occupant for Consent to a Land Transaction*”. The defendant did not adduce evidence that the Consent Form was ever signed by the land owners – Frista Nakitende, Vincent Kibirige and Eria Kirumira Nakalago.
30. For these reasons, it is my decision that Exh.D4 (Etikiti Ye Kanzu) does not amount to a consent of a land owner to a sale of the Kibanja as required by

section 34(3) of the Land Act (Cap 227) and Regulation 64(2) of the Land Regulations (2004).

31. In view of the lack of consent of the registered owner of the land to the transaction, it my decision that the defendant did not legally acquire the Kibanja on the suit land from the late Kasozi Joseph Kiwanuka. Consequently, the defendant is not a lawful occupant within the meaning of section 29(1)(a) of the Land Act (Cap 227). Accordingly, the defendant has no security of occupancy under the provisions of section 31 of the Land Act (Cap 227). The defendant illegally occupied and developed the suit land, and should be evicted from the suit land as per my final orders.
32. To conclude on Issues No.1 to No.4, it is my decision that the plaintiff, Juliet Kanyesigye, is the lawful owner of the suit land. The transaction for purchase of a Kibanja between the defendant, Namulondo Yosefa and the late Kasozi Joseph Kiwanuka is null and void for lack of consent from the registered owner of the land. The defendant is accordingly, a trespasser on the suit land.

**Issue 5: What remedies are available to the parties?**

33. The defendant filed a counterclaim against the plaintiff for several reliefs but in view of my finding that the transaction for purchase of a Kibanja between the defendant, Namulondo Yosefa and the late Kasozi Joseph Kiwanuka is null and void for lack of consent from the registered owner of the land, and that the defendant is a trespasser on the suit land, the said counterclaim is dismissed with costs to the plaintiff.

34. The plaintiff prayed for the following reliefs against the defendant: an order of eviction of the defendant from the suit land; a permanent injunction; an order of demolition of any buildings erected by the defendant on the suit land; general damages; interest on general damages from the date of cause of action until payment in full; and costs of the suit.
35. The plaintiff is the lawful owner of the suit land, and is entitled to an order of vacant possession.
36. I grant a permanent injunction restraining the defendant, her agents, servants, workmen, and all those claiming under her and/or deriving authority from her, from trespassing, encroaching, interfering and/or in any way dealing with the suit land.
37. The plaintiff proved that her ownership and quiet possession of the suit land was interfered with from September 2012 to date. I grant her an award of general damages of Ushs. 15,000,000. Costs of the suit are awarded to the plaintiff.

**Final order of the court:**

38. In the result, I enter judgment in favour of the plaintiff, and order as follows:
  - i). That the plaintiff, Juliet Kanyesigye, is the lawful owner of land comprised in Busiro Block 403 Plot 56 Land at Buzzi, Namulanda measuring 1.5 acres;
  - ii). That the defendant, Namulondo Yosefa, shall vacate the suit land, and remove any buildings or developments she has erected on the land within 6 (six) months from the date of this judgment, in default of

which, she shall be evicted, and any illegal buildings demolished in accordance with *The Constitution (Land Evictions) (Practice) Directions, 2021*;

- iii). That a permanent injunction issues restraining the defendant, her agents, servants, workmen and all those claiming under her and/or deriving authority from her from trespassing, encroaching, interfering and/or in any way dealing with the suit land;
- iv). That the defendant shall pay general damages of Ushs 15,000,000 (Uganda shillings fifteen million) to the plaintiff;
- v). That the counterclaim by the defendant is dismissed with costs; and
- vi). That the defendant shall pay costs of the suit to the plaintiff.

**IT IS SO ORDERED.**



**BERNARD NAMANYA**  
**JUDGE**  
**4 August 2023**

**Attendance**

4<sup>th</sup> August 2023 at 10:23am

Jimmy Lubaale of M/s Luhom                      Counsel for the plaintiff  
Advocates

Seguya Paul of M/s ASB Advocates              Counsel for the defendant

Allena Kire    Court Clerk

**Court:**

Judgment delivered in open chambers.



**BERNARD NAMANYA**

**JUDGE**

**4 August 2023**