

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA
(LAND DIVISION)
CIVIL SUIT NO.480 OF 2012**

RUTH LUNKUSE ----- PLAINTIFF

VERSUS

1.HENRY SSALI TAMALE

2.POST BANK UGANDA LIMITED ----- DEFENDANTS

BEFORE HON. LADY JUSTICE KANYANGE SUSAN

JUDGMENT

The plaintiff's claim against the defendants jointly is the;

- a. A declaration that the dealings of the defendants jointly and or severally in respect of land comprised in Kyaggwe Block 110 plot 1869 at Seeta without the consent of the plaintiff are illegal, null and void.

- b. An order to vacate the encumbrance noted as a mortgage on Kyaggwe Block 110 plot 1869 at Seeta

- c. A permanent injunction restraining the defendants or their agents, assignees or legal representatives from any further dealings on the suit land without the consent of the plaintiff

- d. Costs of the suit



Background

The plaintiff Ruth Lunkuse is customarily married to the 1st defendant Henry Ssali Tamale. That they acquired suit land comprised in Kyaggwe Block 110 plot 1869 at Seeta together but in completing the process of mutation and transfer the 1st defendant registered it in only his names. They built there six apartments and also lived there sometime. They derive their sustenance from there and it is a family land.

The 1st defendant dealt with the suit land and obtained a loan of Shs.90,000,000/= from the 2nd defendant Post Bank without her consent. That the 2nd defendant connived with the 1st defendant and failed to carryout due diligence as she was residing on the suit land and it was known to neighbours old Local Council Authorities. The 2nd defendant has fore closed and advertised the suit land for sale and threatens to evict the plaintiff and family.

The 1st defendant averred that though the suit property was jointly acquired, he was the registered proprietor and had authority to deal with the same. He failed to pay the loan because of business losses and the 2nd defendant refused to restructure his loan to enable him to pay.

The 2nd defendant Post Bank averred that it carried out due diligence and the 1st defendant mortgaged the suit property after getting spousal consent from his wife Nalunjogi Salima and thus it is a bonafide mortgagee of the suit property

Representation

Lin Advocates represented the plaintiff, **Stanley Omony** represented the 2nd defendant. The 1st defendant and plaintiff entered into a consent judgment in the matter.

Issues

1. Whether the suit land is a family property
2. Whether spousal consent was obtained prior to mortgaging the suit land if so, whether it was obtained from the right person
3. Whether the dealing of the defendants jointly and or severally in respect of the suit land are illegal, null and void
4. Whether the plaintiff is entitled to the remedies sought

Resolution

1. Whether the suit land is a family land

Family land under S.38 A (4) (S.39) of the Land Act is defined as land.

- a. On which is situate the ordinary residence of a family and from which the family derives sustenance
- b. On which is situate the ordinary residence of the family and from which the family derives sustenance
- c. On which the family freely and voluntarily agrees shall be treated to qualify under paragraph (a) or b or