

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
LAND DIVISION
CIVIL SUIT NO.409 OF 2012

- 5 1. KASUMBA BENON
2. KIWENDO ALI
3. SEEZI ANATOOLI
4. BABIRYE DOROTHY MUKASA
5. SSEKANYO MINSAKI
10 6. KIGULI BUKULU VINCENT
7. NABBALAMA RESTE
8. NABAKOOBA MERIDDA
9. NAMWANDU BULWA KASIMBI
10. SEWANKAMBO EDWARD
15 11. MAYIMUNA NASSALI
12. YEKOSOFATI KKAAYA
13. SENINDE. E
14. NAGAWA BETTY
15. NAKILIJJA KEVINA
20 16. NALUKWAGO JOSEPHINE
17. KIYIMBA HENRY
18. KIGONGO
19. KASUMBA LEONARD----- PLAINTIFFS
- V
- 25 1. MUJUZI EDWIN
2. AKAMPURIRA JOHN LABAN
3. KITANDWE TOM----- DEFENDANTS

Before: Hon. Lady Justice Olive Kazaarwe Mukwaya

JUDGMENT

The Plaintiffs brought this suit against the Defendants jointly and severally seeking the remedies below:

- a) A declaration that the Plaintiffs are lawful and bonafide occupants on the suit land located in Kyasa village, Namayuba sub county, Wakiso District.
- 5 b) A declaration that the sale of the suit land was null and void.
- c) An order cancelling the certificates of title and transfers to the 2nd and 3rd Defendants.
- d) A permanent injunction restraining the Defendants and their agents from dealing and/or interfering with the Plaintiffs' quiet possession on the suit land.
- 10 e) General damages
- f) Costs of the suit.

At the commencement of the hearing, the 12th, 13th, 18th and 19th Plaintiffs withdrew their suit against the Defendants.

STATEMENT OF THE CASE

- 15 The Plaintiffs have been living and utilising the suit land measuring approximately 125 acres as bonafide and lawful occupants with each having their respective Bibanja located in Kyasa village, Namayuba sub-county, Wakiso district. Around 2004, the 1st Defendant, as the customary heir and beneficiary of the estate of the late John Chrisostom Mukasa, the former customary owner, started surveying the suit land and making attempts to evict
- 20 some of the Plaintiffs from it. The Plaintiffs sought the help of the Resident District Commissioner (RDC), LCIII Chairman and other local authorities who invited the 1st Defendant for mediation. At that meeting, he denied the intention to sell and said that his interest was registering the land. Accordingly, a register of all the occupants of the land was made by the 1st Defendant.
- 25 Without the knowledge of the Plaintiffs and with no justifiable cause, the 1st Defendant later sold the land to the 2nd and 3rd Defendants, denying the Plaintiffs first option to buy their individual interests in the suit land. They learnt about the sale when the 2nd Defendant started destroying their properties, grazing his animals on their gardens and evicting them from the homes in which some of them have lived since they were born.

For that reason and because the 1st Defendant sold the land without the participation of his 5 siblings, the co- administrators of the estate of the late John Chrisostom Mukasa, the Plaintiffs contend that the sale was illegal and fraudulent. As a result of the Defendants' actions and omissions, the Plaintiffs have been denied quiet and peaceful enjoyment of the suit land in addition to financial loss, for which they hold the Defendants jointly and severally liable.

THE DEFENCE

The Defendants denied the existence of the 15th Plaintiff on the 2nd or 3rd Defendant's land and contended that the other Defendants occupy the land that now belongs to the 3rd Defendant. And that not all of them were bonafide and lawful occupants at the time the land was purchased by the 2nd and 3rd Defendants from the 1st Defendant, Mr. Mujuzi, who denied any knowledge of any purported busulu payments by the Plaintiffs.

He asserts that before he sold the land to the 3rd Defendant, he gave the genuine occupants of the land the first option to purchase and the lawful occupants positively responded. After the purchase of the land by the 2nd Defendant, Mr. Akampurira, the 1st, 2nd and 12th Plaintiffs trespassed on it, which prompted Mr. Akampurira to sue them in the Chief Magistrates Court where he obtained remedies of vacant possession of the land which were never challenged by way of appeal or otherwise.

Lastly, it is the Defendants' case that the rest of the Plaintiffs have never been bonafide occupants and have never utilised the Mr. Mujuzi's land and are therefore not entitled to priority of purchase. Finally, the 3rd Defendant, Mr. Kitandwe Tom maintains that he has never threatened any of the lawful occupants with eviction. On the contrary, he paid compensation to some of those who approached him. For these reasons, the Defendants' sought dismissal of the suit.

EVIDENCE

Plaintiffs' Evidence

PW1, Mr. Kasumba Benon, the 1st Plaintiff, testified that he came to know the 1st Defendant, Mr. Mujuzi as the heir to the estate of Dr. Mukasa John and the holder of the certificate of title of the land which is occupied by himself and other Plaintiffs. The 2nd Defendant, Mr. Akampurira, is the person who, accompanied by the 3rd Defendant, Mr.

Kitandwe John, brought them letters to vacate their Bibanja, sometime in 2004 or 2005. The suit land measures 10 hectares, and Mr. Mujuzi wanted to sell it to the 2nd Defendant. When Mr. Kasumba received the letter from Mr. Mujuzi, he went to the Resident District Commissioner (RDC)'s office who wrote to Mr. Mujuzi inviting him for a meeting.

- 5 During the meeting, it was agreed that Mr. Mujuzi identifies each of their respective Bibanja, so that he does not sell land which is occupied. To that end, a register of all the people in occupation of the land was made. But in 2005, Mr. Kasumba got another letter from Mr. Akampurira stating that it was the last notice for him to vacate the land. Two years later, in 2007, he got papers from the Court at Entebbe showing that Mr. Akampurira
- 10 had filed a suit against him and two others for trespass to his land.

While the case was still on going and having failed to secure a temporary injunction, Mr. Akampurira, using forceful means, destroyed Mr. Kasumba's crops which included a 4-acre banana plantation, 2 acres of maize and cassava plus 2 acres of bananas and coffee. He also cleared 2 acres of land which he used for grazing cows.

- 15 Mr. Kasumba later discovered that Mr. Mujuzi had sold the other 2 pieces of his Kibanja measuring 6 acres and a quarter to Mr. Kitandwe, the 3rd Defendant, who also informed him that he wanted him to vacate the Kibanja. Mr. Kitandwe also suggested that he buys their interests in the land. He refused to receive their *Busulu* because all he wanted was their interests in the suit land.
- 20 To explain how he acquired his portion of the suit land, Mr. Kasumba stated that it belonged to his grandfather Kaloli Migi who lived there from 1930 until the time he died in 1976. At the time of his death, Mr. Kasumba and his father Elizali Mukasa were in occupation of it. They used the Kibanja for cultivation of food crops such as bananas, potatoes, ground nuts and maize until his father's death during the war around 1983. After
- 25 the war, Mr. Kasumba returned to their Kibanja and continued using it. He was therefore surprised to receive notices to vacate the Kibanja because it had been sold without him being compensated or being given first priority to purchase his interests in the land.

Ms. Nakilijja Kevina, PW15, testified that her late mother Zabeeri Tusaba came to the suit land in 1953. She purchased her Kibanja measuring 5 acres from a one Joseph Buyondo

who was a resident in the area at the time. Ms. Nakilijja has lived there on the land and even got married there. It was about 2002 when Mr. Akampurira came in claiming that he had bought the land from Mr. Mujuzi. For 8 years after that, between 2002 to 2010, Mr. Akampurira interrupted the peaceful livelihood they had on the land by using forceful means to destroy their crops and other property. Her land was encroached upon and the plantations on it were cleared around the month of February 2010 by Mr. Akampurira. As a result, Ms. Nakirijja lost two banana plantations, two cassava gardens and one sweet potato garden at the hands of unidentified persons brought by Mr. Akampurira. To date, Mr. Akampurira has never showed her any proof of payment to support his claim of ownership for the land. And Mr. Mujuzi has never showed up to verify the various claims of ownership by the 2nd and 3rd Defendants.

Ms. Namwandu Bulwa Kasimbi, PW9, testified that she knows the 1st Defendant, Mr. Mujuzi, as the son to the late John Mukasa Balidekawa and he is the heir to his late father's estate. She added that the father of her children, the late Bulwa Kasimbi, bought a Kibanja measuring approximately 1 acre on the suit land and after his death she continued staying on the Kibanja with their eight children. But Mr. Mujuzi sold her land to Mr. Akampurira and her crops like banana, cassava and coffee plantations were destroyed by him. Around 2013, the RDC asked them to re-acquire the Kibanja interests. Instead, Mr. Akampurira evicted them from the Kibanja.

PW7, Mr. Kiyimba Henry testified that he is a Kibanja holder on the suit land which he inherited in 1991 from his late grandfather, Petero Kimera who passed away in 1982. His land measures approximately 4 acres and before his grandfather's death, the Kibanja was being utilised by his father Joseph Suuna. At the same time his late grandfather had his house on the Kibanja and had lived on it since the 1920s. The house which he built in 1954 is still on the Kibanja where his grave is also situated. When PW7 started occupying the Kibanja, he knew the 1st Defendant as the landlord, however, later in about 2004, he allegedly sold the land to the 2nd and 3rd Defendants.

Mr. Kiyimba filed this suit against the Defendants because they transacted in the land without considering his Kibanja interest. He stated that Mr. Mujuzi knew that he was a Kibanja holder and in full occupation but went ahead and sold the land to Mr. Akampurira

and Mr. Kitandwe without consulting him or giving him first option to purchase his Kibanja interest. He also added that the 2nd and 3rd Defendants refused to receive *Busulu* as the new landlords and the 2nd Defendant is constantly threatening him with eviction without any compensation while the 3rd Defendant is not willing to negotiate with him so that they
5 can reach a settlement to purchase his interest. Mr. Kiyimba also testified that the 2nd Defendant has uprooted the boundary marks of his Kibanja, slashed his crops such as matooke, cassava, maize and coffee and stopped him from utilising his Kibanja. He also explained that Mr. Akampurira is currently using his part of the Kibanja which measures approximately 1.745 acres.

10 PW11, Ms. Nassali Mayimuna testified that her late father, Sowedi Luboyera Mugerwa bought the suit Kibanja on which she lives. It measures 10 acres and 20 decimals and it was acquired from the late Omulangira Kabuga in 1920 for 12 shillings. After the passing of Omulangira Kabuga, he was succeeded by the late Kiboneka. In about 1977, Ms Nassali learnt that the late Kiboneka had sold the land to a one Dr. Mukasa John Mujuzi
15 who did not evict anyone from their land and after his passing, he was succeeded by his son the 1st Defendant. Ms. Nassali came back to Kibanja sometime in 1985, during the bush war period, and lived on the land until 2004 when the Defendants started laying claim to it.

Sometime in 2005, PW11 and several Bibanja holders attended at a meeting where those
20 who could buy their Bibanja interests. They were asked to register themselves. The meeting was attended by various residents, Local Council Officials, Mr. Mujuzi, the 1st Defendant, and the RDC. Later on, surveyors were brought who measured the Kibanja and it was ascertained that it measured 10 acres and 20 decimals which was confirmed by the 1st Defendant in the presence of the Chairman. Thereafter, PW11 asked the 1st
25 Defendant about payment terms and the amount of money they were to pay for each acre but he said that he would get back to them which he never did.

In 2006, land wrangles began during which PW11's land, where her farm is situated, was cleared along with the food grown on it. They were later informed that Mr. Akampurira had bought it. Consequently, she reported her complaints to the LC1 Chairman who
30 forwarded her to Namayuba Police post which in turn referred her to Kakiri Police post.

Following these reports, the authorities arrested Mr. Akampurira's men. Nonetheless, in 2007, the 2nd Defendant cleared the other half of her land measuring 2 acres and on reporting the said matter to the police, the men were arrested again. PW11 was further informed by Mr. Akampurira that clearing was being carried out along with the 3rd Defendant, Mr. Kitandwe, which information she reported to the RDC who promised to give necessary assistance. She further testified that Mr. Akampurira keeps clearing and spraying her crops which were on her land and by 2016, everything had been cleared on the land except her house. Due to the Defendant's actions, she has not been able to have peaceful and quiet possession of her land for all this time.

PW8, Ms. Nantongo Benareta, one of the administrators of the estate and daughter of the late Nabakooba Meridda, the 8th Plaintiff, testified that before her mother passed away she owned a Kibanja measuring approximately 10 hectares and 11 decimals. This Kibanja had been occupied by her together with her late husband since 1940. It is situated in Kyasa village, Namayuba subcounty, Wakiso district. At the time of her mother's death, she had been evicted by the Defendants off her Kibanja on which her mother is buried, their family grave yard. By the time of her passing, her mother had not been compensated for her land.

DEFENDANTS' EVIDENCE

DW1, Mr. Mujuzi Edwin, the 1st Defendant testified that at the time he sold land to the 2nd and 3rd Defendants, the Plaintiffs were not bonafide occupants of the land. He denied any knowledge of the *Busulu* tickets attached to their documents. And testified that before he sold the land to the 3rd Defendant, he gave the 1st option to the lawful occupants of buying their respective Bibanja which was positively responded to by some of them. Mr. Mujuzi stated that Mr. Kasumba, the 1st Plaintiff, was not an occupant of the land which he sold to the 2nd Defendant and has never been the customary heir or beneficiary to the estate of the late Mukasa who has never occupied the land.

As far as Mr. Mujuzi knew, the 2nd Plaintiff, Mr. Kiwendo Ali's father, Sowedi Luboyera Mugerwa, never owned a Kibanja on the suit land and that is why Mr. Akampurira, the 2nd Defendant, sued him successfully. And the 4th Plaintiff, Ms. Babirye Mukasa, has no claim since her husband Mukasa John was a trespasser on the 2nd Defendant's land. When he

was ordered to vacate by Court, he chose to settle on the 3rd Defendant, Mr. Kiyimba's land. With regard to the 8th Plaintiff, Ms. Meridda Kiyimba, Mr. Mujuzi testified that she is the mother of Kasajja Henry who was ordered to vacate Mr. Akampurira's land. He also stated that he is not aware of the purported purchase of a Kibanja by her husband.

5 Mr. Mujuzi told the Court that when he sold the land to Mr. Akampurira, he was not aware that the 3rd Plaintiff, Mr. Seezi Anatoli had crops on his land. As for the 10th Plaintiff, Mr. Sewankambo Edward, the 11th Plaintiff, Ms. Mayimuna Nassali, the 15th Plaintiff, Ms. Nakilijja Kevina, the 16th Plaintiff, Ms. Nalukwago Josephine and the 17th Plaintiff, Mr. Kiyimba Henry did not have Bibanja interests on his land. They have never paid him any
10 busuulu and neither are they genuine lawful occupants on his land. He added that he is the customary heir of the late John Chrystestom Mukasa. And before the letters of administration were revoked, he administered the deceased's estate with Ignatius Kakande, Cissy Nantale Mukasa, John Mary Mpagi, Dr. George W. Ssamula and Mathias Bukkudaala Kabuye who granted powers of Attorney to him to sell and transfer the land
15 comprised in Block 57 Plots 74, 78 and 79 among others as per Exb. D.14. Consequently, he transferred Plot 74 to Mr. Akampurira and Plots 78 and 70 to Mr. Kitandwe.

Mr. Akampurira John Laban, DW2, the 2nd Defendant, testified that on 15th October 2004 he purchased the land comprised in Block 57 Plot 74 at Kyasa, Namayuba from Mr. Mujuzi as per a copy of the agreement and title marked Exb. D.1 and D.2. When he
20 purchased the land, the part that was mutated for him by Mr. Mujuzi was not occupied by anyone except one Sande who later left the land. Soon after the purchase and enclosure of it, the 1st and 2nd Plaintiffs, Mr. Kasumba and Mr. Kiwendo trespassed on it for which they were warned as per Exb. D.3. While the rest stopped their acts of trespass, Mr. Kasumba went on with it, which prompted Mr. Akampurira to write to him to stop further
25 acts of trespass as seen in Exb. D.4. He briefly stopped his trespass only to resume it in 2007 together with the 2nd Plaintiff, and Mawejje Panya. In response, Mr. Akampurira filed Civil Suit No. 0012 of 2007 against them in the Chief Magistrates Court of Entebbe. It case was stayed pending completion of the instant matter. Copies of the Complaint, Written Statement of Defence and proceedings in that matter were admitted and marked Exb.

D.5, D.5A and D.5B. After that however, Maweje Panya and Gabriel ran away from the land.

Around 2011, the 12th Plaintiff, Yekosofati Kkaaya trespassed on Mr. Akampurira's land by chasing away his workers on the land in issue. So Mr. Akampurira sued him as well and judgment was delivered against him as per Exb. D.6. Since then, he has never utilised the land in issue. Currently, the 1st, 2nd, 3rd, and 10th Plaintiffs; Mr. Kasumba, Mr. Kiwendo, Mr. Seezi Anatoli, and Mr. Sewankambo Edward, are not on his land but on the 3rd Defendant, Mr. Kitandwe's land. From time to time, however, Mr. Kiwendo trespasses on his land and that of other residents' land in the village like Mr. Obed Mwebesa.

10 Further, the 4th Plaintiff, Ms. Babirye Dorothy Mukasa, who now occupies the 3rd Defendant's land, is the wife of Mr. Mukasa John who Mr. Akampurira evicted from the land using a Court order in Civil Suit No.54 of 2009. In that suit court had found that he was a trespasser. Mr. Akampurira explained that he and the 6th Plaintiff, Mr. Kigulu Bululu Vincent, arrived at a settlement and he moved to a nearby village, where he died. And
15 the 7th Plaintiff, Ms. Nabbalama Reste, who is the wife to the 2nd Plaintiff is settled on the 3rd Defendant's land after vacating his land due to a Court order that was never challenged.

Mr. Akampurira added that the 8th Plaintiff, the late Nabakooba Meridda was the mother of one Kasujja Henry that no longer stays on his land since he vacated it pursuant to a
20 Court order in Civil Suit No.72 of 2010 as per Exb. D.8, D.9 and D.10. He further insisted that he has never bought anything of his or destroyed anything of hers as alleged.

Turning to the 9th Plaintiff, the widow of the late Bulwa Kasimbi, Mr. Akampurira obtained a Court order against her and the 11th Plaintiff, Ms. Mayimuna Nassali, stopping them from entering his land. A copy of the order was admitted and marked Ex. D.11. He further
25 denied destroying any of their property. DW2 further testified that the 12th, 13th, 14th, 15th and 16th Plaintiffs are not on his land and therefore he has no qualms with them nor with the 19th Plaintiff who withdrew his case against them. He added that he sued the 17th Plaintiff for trespassing on his land. The court order requiring him to vacate, was in the name of Mr. Kimera Henry. Since then, he changed the name to Kiyimba Henry. A copy
30 of the Court order is marked D.12. Mr. Akampurira denied ever grazing his animals on or

destroying any person's property. He asserted that the Plaintiffs were encouraged by the then RDC of Wakiso to enter his land. And upon being sued, he admitted liability and opted to settle as per Exb. D.13.

DW3, Mr. Tom Kitandwe, the 3rd Defendant, testified that he is aware that his land at Kyasa is occupied by among others the 2nd, 3rd, 4th, 7th, 9th, 10th, 11th, 14th, 16th and 17th Plaintiffs who were on the land when he purchased it from the 1st Defendant. It is his evidence that he has never threatened or evicted any of them.

Before the purchase, they were given various options by the 1st Defendant in relation to land including; purchasing their portions, selling their portions to him or surrendering part of the land to get titles for the remaining portions. But they rejected all the above. Still, Mr. Kitandwe has been peacefully negotiating and paying compensation to the lawful occupants on the land without threatening anyone. He paid the 13th and 18th Plaintiff who is now deceased and they peacefully quit his land. Additionally, he denied the allegation that the Plaintiffs or persons occupying the suit land have ever offered to pay him *Busulu*.

A locus visit was conducted on the 17th day of July 2023.

REPRESENTATION

The Plaintiffs were represented by Mr. Asasira Bosco and Ms. Nambuya Zabina from the ULS Legal Aid Clinic; the 1st and 3rd Defendants were represented by Mr. Obed Mwebesa from M/S Obed Mwebesa & Associated Advocates and the 2nd Defendant by Mr. Shwekyerera Philemon from M/S Shwekyerera Advocates & Solicitors.

Counsel for the parties all filed final submissions which I have considered.

During scheduling, the following issues were formulated for Court's consideration;

ISSUES

1. Whether all the Plaintiffs as listed in the Complaint have a cause of action against the Defendants?
2. Whether the Plaintiffs are lawful occupants of the 2nd and 3rd Defendant's land?

3. Whether the 3rd Defendant has ever evicted or threatened any lawful occupants on his land with eviction?

4. What remedies are available to the parties?

RESOLUTION

5 Issue 1

Whether all the Plaintiffs as listed in the Plaint have a cause of action against the Defendants?

Under **O7 r 11(a) of the Civil Procedure Rules**, a plaint may be rejected by the court if it does not disclose a cause of action. The Court of Appeal in **Kapeka Coffee Works Ltd V NPART CACA No.3/ 2000** held that in determining whether a plaint discloses a cause of action, the court must look only at the plaint and its annexures if any and nowhere else.

The Plaint in this suit was filed on the 4th September 2012. All 19 Plaintiffs brought the suit against the 3 Defendants, jointly and severally, seeking a declaration that the Plaintiffs are lawful and bonafide occupants of the suit land, a declaration that the sale of the suit land by the 1st Defendant to the other Defendants was null and void, cancellation of the certificates of titles and transfers to the 2nd and 3rd Defendants, general damages, a permanent injunction and costs.

20 Paragraph 4 of the Plaint contains 6 clauses explaining how the cause of action arose.

The Plaintiffs claim that they have been living on the suit land located in Kyasa village, Namayumba subcounty, Wakiso District. They undertook to furnish evidence of their interests at the trial. Some of them annexed Busulu receipts paid to Mr. Kiboneka Gad, one of the first owners of the suit land. The Plaintiffs attached Annexures A1, A2 and A3, which letters they received from the 1st Defendant in 2004. These were threatening them with eviction from the land. Annexure 1 clearly indicates it was written by M/S Niwagaba, Mwebesa & Co. Advocates on the 7th December 2004. The letter, was a notice to vacate, written on the 1st Defendant's behalf to the 2nd Plaintiff, Mr. Kiwendo Ali, a Mr. Mawejeje Panyu, a Mr. Katugwensi, a Mr. Misumba Minani and the 1st Plaintiff, Mr. Benon

Kasumba. These were reminded in the letter that the 1st Defendant, Mr. Mujuzi had divested his interest in the suit land to Mr. John Laban Akampurira but they had continued to commit acts of trespass. The letter warned of court action if they did not heed the warning to desist. In the second letter, A2, 1st Defendant wrote personally inviting the 5 for a meeting scheduled for the 21st January 2005. And in the last communication, A3, dated 11th February 2005, the 1st Plaintiff was addressed personally by the named law firm, which on this occasion, was acting on the 2nd Defendant's behalf. Mr. Kasumba was given a Final Notice or face legal action.

10 According to Paragraph 4(c) of the Plaint, the Plaintiffs responded to these threats of eviction by reporting to the RDC, LCIII Chairman and other local authorities who summoned the 1st Defendant for mediation. The result of the meeting was a compilation of a register, Annexure B. Apparently, the list was made to identify the lawful occupants on the land so that their interests could be taken care of by way of compensation. A
 15 perusal of the list indicates almost 200 persons. For all on the list, the column of the name was filled, and for the majority, an acreage of their Kibanja was specified, what was missing was the information on; value (of the Kibanja); negotiated value; terms of settlement; review date and notes. The Plaintiffs averred that they are all on the list and that the process for the compensation, through commenced by the 1st Defendant, was
 20 never concluded. Instead, they continued to be harassed with accusations of trespass and threats of eviction.

I am persuaded by the averments in the Plaint and its annexures, that the Plaint discloses a cause of action. On the face of it, the Plaintiffs enjoyed a right as Kibanja holders/lawful
 25 occupants on the suit land and their rights were violated by the Defendants' actions which prevented them from enjoying quiet possession on the suit land. A situation which resulted in the meeting that generated the list, Annexure, B.

Issue 1 is resolved in the affirmative.

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Issue 2 &3

Whether the Plaintiffs are lawful occupants of the 2nd and 3rd Defendant's land and Whether the 3rd Defendant has ever evicted or threatened any lawful occupants on his land with eviction?

By way of reminder, the suit land measures 125 acres. And from the time of filing this suit to the date of this judgment was a painful period of almost 12 years. It is fact that when the 2nd Defendant became registered proprietor, he brought suits against a number of Plaintiffs as follows;

- a. Exb. D.5: Civil Suit No. 0012 of 2007 in the Chief Magistrates' Court at Entebbe, against the 1st Plaintiff, Mr. Kasumba Benon, the 2nd Plaintiff, Mr. Kiwendo Ali and one other seeking an eviction order against them. Exb. D.5A is their written statement of defence where the two aver that they are bonafide/ lawful occupants on the suit land comprised in Busiro Block 57 Plot 74.
- b. Exb. D.6: Civil Suit No. 0069 of 2010 at the Chief Magistrate's Court at Mpigi where Mr. Akampurira obtained a permanent injunction against Mr. Kaye Yekosofati, the 11th Plaintiff, restraining him from trespass on the suit land.
- c. Exb. D.7: Land Matter No. 054 of 2009, the Magistrate's Grade 1 Court of Mpigi, an ex parte judgment against the 4th Plaintiff's husband. The decree Exb. D.8 is for vacant possession of an unspecified part of the suit land.
- d. Exb. D.11: Land Matter 50 of 2013 at the Chief Magistrates' Court of Mpigi where Mr. Akampurira sued Ms. Maria Goretti Nabukenya and Ms. Mayimuna Nassali and obtained a decree dated 24th January 2014, for their eviction from the suit land among other orders.
- e. Exb. D.12: MA 046 of 2013 arising from MA 30 of 2013 arising from Civil Suit No. 34 of 2013 where the 2nd Plaintiff and a Mr. Henry Kimera were found in contempt and stopped from cultivation on the suit land.

Counsel for the 2nd Defendant therefore contends that this suit is res judicata as against the aforementioned Plaintiffs, since the courts have already pronounced themselves on the rights of the parties.

Section 7 of the Civil Procedure Act Cap 71 provides;

7. Res judicata

No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try the subsequent suit or the suit in which the issue has been

5 *subsequently raised, and has been heard and finally decided by that court.*

The courts where the suits were filed were the Magistrate Grade 1 and Chief Magistrate Courts of Mpigi and Entebbe. Jurisdiction of Magistrates' Courts is both geographical and pecuniary under **sections 12, 13, & 14 of the Civil Procedure Act, Cap 71 and sections**

10 **212 & 215 of the Magistrates Courts Act, Cap 16.** This court visited the suit land and it is vast. Counsel for the 2nd Defendant submitted that both courts were possessed with both the pecuniary and geographical jurisdiction to handle the respective suits.

I find that the filing of the suits at two different courts and in both the Chief Magistrate and

15 Magistrate Grade 1 Courts cast uncertainty as to which of the Magistrates' Courts had the geographical jurisdiction to hear the matters filed by the 2nd Defendant against the named Plaintiffs. In my view, the action of the 2nd Defendant, of failing to maintain one Magistrate Court; for all his suits raised doubt as to which of them was the competent court clothed with the jurisdiction to hear the matters. His pendulum approach to choosing

20 which court and which grade of Magistrate to file his claim over the same subject matter pointed to his own uncertainty about the location of the suit land. In my view, a competent court envisaged under section 7 of the Act is a singular previous court as described by both its pecuniary and geographical jurisdiction. What the 2nd Defendant presented were multiple courts of different jurisdictions, over the subject matter now before this Court.

25 Secondly, I reiterate that when the Plaintiffs filed this suit, they did so jointly and severally over a claim that they are the lawful occupants of land measuring 125 acres. It is a fact that there is no survey report on the Court record that makes the suit land upon which the 2nd Defendant is registered as proprietor distinct from the land upon which the 3rd Defendant claims ownership. The evidence of the Plaintiffs is that before their individual

30 interests were ascertained by the 1st Defendant, the land was sold to the 2nd Defendant

and the 3rd Defendant. And it is for these reasons that I do not agree with Counsel for the 2nd Defendant that the suit was res judicata.

Turning to the question as to whether the Plaintiffs were lawful occupants on the 2nd and 3rd Defendant's land, a visit to the locus visit, albeit 11 years after this suit was filed, indicated long term presence on the land by a number of the Plaintiffs as the evidence reflects. There is evidence that the 2nd Defendant is in possession of part of the land and that neither the 1st Defendant nor his co-administrators took possession at all. As to the question of which Plaintiff was on whose land between the 2nd and 3rd Defendant, was one to which only oral evidence was given.

Section 29 of the Land Act Cap 227 provides for a lawful tenant as follows;

29. Meaning of "lawful occupant" and "bona fide occupant"

(1) "Lawful occupant" means—

(a) a person occupying land by virtue of the repealed —

(i) *Busuulu and Envujjo Law of 1928;*

(ii) *Toro Landlord and Tenant Law of 1937;*

(iii) *Ankole Landlord and Tenant Law of 1937;*

(b) a person who entered the land with the consent of the registered owner, and includes a purchaser; or

(c) a person who had occupied land as a customary tenant but whose tenancy was not disclosed or compensated for by the registered owner at the time of acquiring the leasehold certificate of title.

In the instant suit, the 1st Defendant and his Co-administrators to the estate of the late John Christestom Mukasa were registered on the suit land on the 12th October 2005. Eight days later, on the 20th October 2005, the land was transferred into the 2nd Defendant's name. The sale agreement upon which the 2nd Defendant acquired the land, is dated 15th October 2004. Under cross-examination, the 1st Defendant stated that; 'the lawful occupants are those who his late father left on the land'. And these excluded the

Plaintiffs. It is fact that the 1st Defendant has never been resident on the suit land and it is his hasty sale of the suit land to the 2nd and 3rd Defendant which triggered the events leading to this suit.

5 During the locus visit, 58 persons were present, including the parties and their Counsel. There were crops and houses on the suit land. I find that all the Plaintiffs present during the locus visit ably defended their interests and occupation of their different portions of the suit land. This, in my view, was evidence of lawful occupancy. And I find that there could be no expectation of payment of ground rent by the Plaintiffs, when the 1st Defendant and his co-administrators were only proprietors for 8 days and the 2nd Defendant upon being registered on the land, resorted to aggressive litigation instead of amicable settlement with the Plaintiffs as envisaged under the law. I find that the approach taken by the 3rd Defendant was much better, if not yet complete. Having taken this position, with regard to **Issue 3**, I could find no cogent evidence on the court record to point to threats of eviction by the 3rd Defendant to any of the Plaintiffs.

Issue 2 & 3 are resolved in the affirmative and negative respectively.

Issue 4

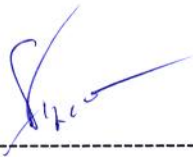
20 **What remedies are available to the parties?**

I am satisfied that the Plaintiffs are entitled to the remedies sought, apart from the order for cancellation of titles. In my view, no sufficient evidence has been adduced to justify impeachment of the 2nd and 3rd Defendants' Titles under the provisions of **section 59 of the Registration of Titles Act**. I also award general damages of UGX 80,000,000/= to be paid by the 1st and 2nd Defendants to the Plaintiffs for causing grave inconveniences to them for several years.

In conclusion, I enter judgment for the Plaintiffs and order as follows;

- a) It is declared that the Plaintiffs are lawful occupants on the suit land located in Kyasa village, Namayuba sub county, Wakiso District.

- b) A joint survey to be carried out to ascertain the interests of the Plaintiffs as envisaged under section 36 of the Land Act Cap 227.
- c) A permanent injunction restraining the Defendants and their agents from dealing and/or interfering with the Plaintiffs' quiet possession on the suit land.
- 5 d) General damages of UGX 80,000,000/= payable by the 1st and 2nd Defendants.
- e) Costs of the suit.



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Olive Kazaarwe Mukwaya

JUDGE

29th February 2024

Delivered by email to Counsel for the Parties.