

anybody until May 2012, when the defendant issued her with a notice to vacate the suit land. It follows that even without taking into account the period of her predecessors in title on the suit land, the plaintiff was in open and continuous possession of the suit land and remained in that capacity unchallenged by the registered owner far beyond the statutory period of twelve years. She therefore meets all the considerations of an adverse possessor of the suit land. I am acutely alive that mere long possession for a period of more than twelve years without anything more does not ripen into a title. In the instant case, besides the period of twelve years, I have taken into account the fact that the plaintiff satisfactorily showed her hostile intention to take over, occupy and use the suit land. The plaintiff's animus possidendi was open and manifested to exist at the inception of the occupation by acts such as construction of permanent residential houses, cultivation of land with permanent crops such as banana plantation, and rearing of livestock on the suit land to the exclusion of the registered owner..."

40. In the textbook by Megarry & Wade (*supra*) at paragraphs 7-007; 7-014; 7-029 to 7-110), the learned authors provide more clarity on the operation of the law of adverse possession:

"...Possession is a legal concept which depends on the performance of overt acts, and not on intention. It requires an appropriate degree of physical control of the land and it must be a single and exclusive possession...it is in the public interest that a person who has long been in undisputed possession should be able to deal with the land as owner. It is more important that an established and peaceful possession should be protected than that

42. In the case of *J A Pye (Oxford) Ltd and Others v. Graham and Another* [2002] 3 All ER 865; [2003] 1 AC 419; [2002] UKHL 30, the brief facts of the case were that the defendants, as personal representatives of the late Michael John Graham, sought to establish a possessory title to 25 hectares of agricultural land. At all material times the paper title to that land had been vested in the first plaintiff, J A Pye (Oxford) Land Ltd and its predecessor in title in the same group, JA Pye (Oxford) Ltd ("Pye") as registered proprietors of the land. At the trial, Neuberger J ([2000] Ch 676) held that the defendants had established title by possession but his decision was reversed by the Court of Appeal [2001] Ch 804 (Mummery, Keene LJJ and Sir Martin Nourse). The defendants appealed to the House of Lords, who allowed the appeal, and restored the judgment of the trial judge. Lord Browne-Wilkinson held that:

"...there are two elements necessary for legal possession: 1. a sufficient degree of physical custody and control ("factual possession"); 2. an intention to exercise such custody and control on one's own behalf and for one's own benefit ("intention to possess") ..."

43. The position of the law may be summarised as follows: under limited and exceptional cases, a registered owner of land may lose ownership of registered land if it is proved that a person has been in factual occupation of the land for a period of 12 years or more without being challenged by the registered owner. To prove factual possession, a person must show that he or she had an appropriate degree of physical control of the land; that her possession was a single possession and not of several persons; that her possession was to the exclusion of the dispossessed registered owner; and that he or she dealt with the land as an occupying owner might have been expected to deal with it. See *Megarry & Wade (supra)* at paragraph 7-030.

illegal occupant, is for all intents and purposes, the undisputed owner of the land.


48. Therefore, it is my decision that the appellant is an adverse possessor because she succeeded in establishing effective physical control and occupation of the land for a period of more than 12 years. As a result, the respondents' registered title or that of her predecessors in title over the land under occupation by the appellant was extinguished, and the appellant is entitled to have the land registered into her name by virtue of the law of adverse possession. Accordingly, with respect to the *portion of the land* comprised in Block 401 Plot 843 and Plot 844, that has been *under the effective physical control and occupation* of the appellant since the 27 June 1997, by virtue of the law of adverse possession, this court declares that the respondents' registered title in the land was extinguished, and the appellant is the lawful owner of the land and property that is in her possession.
49. I am fortified in this conclusion by the earlier persuasive decisions of Justice Bashaija K. Andrew and Justice Stephen Mubiru in the cases of *Rwaguma v. Jingo Mukasa (supra)* and *Nebbi v. Ajoba (supra)*; and also, by the textbook *Megarry & Wade (supra)* at paragraphs 7-001 to 7-110.

Did the appellant prove trespass against the respondents?

50. In order for the appellant to establish the case of trespass against the respondents, she was required to prove that the respondents made an unauthorised entry upon her land, and interfered with her lawful possession. See the case of *Justine E. M. N. Lutaya v. Stirling Civil Engineering Company Ltd, Civil Appeal No. 11 of 2002 (per Mulenga, J.SC)*. PW2 (Nsigalira Apophia Nabunnya) testified that on the 17 June 2012, she found Kasifa Nambi (2nd respondent) digging a foundation near the appellant's house, and told her to stop but she did not oblige. Having regard to the

- iv). That the Registrar of this court shall appoint a surveyor who is duly registered by the Surveyors Registration Board under The Surveyors Registration Act (Cap 275), to undertake a survey, and determine the exact measurements of the land that has been under the appellant's physical control and possession since 27 June 1997.
- v). That basing on the findings of the survey report, the Commissioner for Land Registration is ordered to process a certificate of title of the land occupied by the appellant, and register a separate certificate of title in the name of the appellant, independent of the respondents' certificate of title.
- vi). That a permanent injunction issues restraining the respondents, their agents, servants, workmen and all those claiming under them and/or deriving authority from them from trespassing, encroaching, interfering and/or in any way dealing with the appellant's land and developments thereon.
- vii). That the respondents shall pay general damages of Uganda shillings 11,000,000 (eleven million) to the appellant.
- viii). That the respondents shall pay interest of 20% per annum on general damages from the date of judgment until payment in full.
- ix). That the respondents shall pay the costs of this appeal, and in Civil Suit No. 0026 of 2013, Chief Magistrate's Court of Entebbe at Entebbe.

IT IS SO ORDERED.



BERNARD NAMANYA
JUDGE
6 March 2024

6 March 2024 at 11:49am

Attendance for delivery of the Judgment

Mr. Betunda Yusuf

Counsel for the appellant

Ms. Nanfuma Annet

Counsel for the respondents

Both respondents are in court

The appellant is absent

Allena Kanyakire

Court Clerk

Betunda Yusuf:

I am ready receive the judgment.

Nanfuma Annet:

I am ready to receive the judgment.

Court:

Judgment delivered in open chambers.



BERNARD NAMANYA

JUDGE

6 March 2024