

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL SUIT NO. 159 OF 1993

CHRISTOPER NARIMANYA :::PLAINTIFF

VERSUS

1. ABDU KASULE

2.SEMPA

I

3.BADRU SESSOLO :::DEFENDANT

Before-: The Hon. Lady Justice H. Kireju

Judgement

The plaintiff in this case Christopher Narimanya brought action against the three defendants namely Abdu Kasule, Sempa and Badru sssolo for trespass on his land comprised in Leasehold Register Volume 1698 folio 1 buddu, Block 98 Plot at Katovu Bulimbale malongo, Masaka District. The defendants were served with summons but did not enter appearance they were also served with the hearing notice but failed to show up at the hearing. The plaintiff applied and was granted leave to proceed under Order 9 r. 8 of Civil Procedure Rules.

Mr. John Matovu learned counsel of m/S Sebalu and Lu1e Advocates and legal Consultants represented the plaintiff. The plaintiff PW1 testified that in 1993 he decided to buy land at Bulimbale village, Bukoto, Buddu, Masaka District. He bought the piece f land which is about 250 acres from Kajarasi. The land did not have a title for 5 years but in 1988 he got a Certificate of Title Lease Register Vol 1698 Folio 13, buddu Block 983 at Katovu Bulimbale, it was

tendered in court as Exh. P.1. The land is used for agriculture he growing maize and the rest is used for grazing. In August, 1992 he received reports from his shepherd Muhwezi, PW2 that whenever he wanted to move the animals to other areas he would be questioned by the 3 defendants, whether he had any right to graze on the land. After receiving this report he went to Masaka land office and requested the surveyors to go to reopen the boundaries .hre got a letter from the land office which he took to the RC it was handed to sempa, the second defendant who is also an RC official.sempa agreed to take the surveyors around the land. sempa invited one of the neighbours abdul kasule 1st defendant to be present and other people present and othr people gathered.the witness tried to explain to the people what the surveyors were going to do but before the surveyors could embark on their work the crowd became unruly.the defendant badru ssesolo threatened to fight them alleging that the plaintiff had illegally acquired land.the plaintiff showed the RC'S his land title but the crowd continued to become rowdy and he decided to stop the whole exercise. The plaintiff reported the matter to the RC 3 chairman one sekatawa he also reported to his lawyers mulindwa and co.advocates. The lawyers wrote to the three defendants giving them notice to stop trespassing on the plaintiffs land. These notices to stop tresppasiing on the plaintiffs land. These notices were exhibited in court as exhibit P2,P3 and P4.the notices were written early 1993 but there was no expense from the defendants they continued planting maize ground nuts potatoes and eucalyptus tress and bananas on the plaintiffs land. the plaintiff further testified that the activities by the activities by the defendants now cover about 20 acres and they have started offering the part land to their friends.abdul kasule used some of the land to bury his worker when he bought land the defendants were not cultivating on it. the temporary injunction granted by this court was not honored by the defendants. he further testified that he visits his farm twice a month and every time he goes he spends about 50,000/= this was from June 1993.he admitted that he goes to attend the land problem but for also other reasons he said that his animals have been restricted to smaller area and he has had to reduce the number he wants court to order the defendants to keep away from his land.

The second plaintiff witness was PW2 bonaface muhwezi a hards man working for the plaintiff at katovu for the last 10 years. he said that he knew the defendants they cultivated in the plaintiffs land by planting eucalyptus trees, bananas and they have also dug up the paths. When the plaintiff's cattle trespass on their crops they try to spear and sometimes they have to be

compensated for their destroyed crops. When the plaintiff settled on the land, the defendants had not started cultivating the land. In August, 1992 when the plaintiff brought surveyors they were chased away by the defendants.

At the close of the plaintiff's case Mr. Matovu made a brief submission and contended that the plaintiff has proved trespass by the defendants on his land. He prayed that the plaintiff be granted vacant possession or eviction order. He also submitted that the defendants have been on the property for a period of 2 years and he prayed for general damages for trespass of shs 2-5 million, a permanent injunction and costs of the suit.

The issues for consideration by this court are:-

- (1) Whether the land in dispute belong to the plaintiff.
- (2) (Whether the defendants trespassed on the suit lands
- (3) Whether the plaintiff has suffered any damage.
- (4) What remedies are available to the plaintiff if any.

On the first issue the plaintiff told court that he bought the land in dispute from kajarasi but did not get title until 1988 when the Land was registered in his names as per Exb.. P.1. The land is situated at Katovu, Bulimbale, Masaka District. He uses the land for agriculture and grazing. P.W.2 also testified that the plaintiff owned land at Katovu and used it for grazing animals. I have looked at the land title the plaintiff was given a lease of 49 years starting from 1st December, 1987 registered on 2/9/88. There are no incumbrances on the Certificate of Title. The title is in the names of the plaintiff. The land was to be used for mixed farming. In the absence of any evidence to the contrary I find that the land described in exh. P.1 belong to the plaintiff, as a Certificate of Title is conclusive evidence of title, Section 56 of Registration of Titles Act refer.

The next issue is whether the defendants trespassed on the plaintiffs land.pw1 testified that the defendants entered on his land and started cultivating there. The plaintiff reported the matter to

his lawyers who sent notice to the defendant but defendants continued to grow crops on his lands. the defendants trespassed on more than 20 acres of his land. PW2 also testified that the defendants cultivating it from the evidence narrated I am convinced that the defendants have been trespassing on the plaintiffs land and continue to do so they are still jointly and severally liable.

The third issue is whether the plaintiff has suffered any damage as a result of the trespass. the plaintiff testified that because of the trespass by the defendants he has been forced to reduce his animals as the land is not enough he said that he has had to travel Kampala to Katovu twice a month to check on the problem with the defendants, spending 50,000/= per trip he however attended to other matters. PW2 testified that when the cattle trespassed on the defendants crops they have to be compensated and sometime they threaten to spear them from the evidence of the 2 witnesses the plaintiff has suffered damages by being forced to decrease his animals and having to compensate the defendants when they are the ones trespassing on his land. he has also incurred expenses travelling to his land trying to solve the dispute. I have therefore found that the plaintiff has proved on balance of probability that he has suffered damage and has been greatly inconvenienced as a result of acts of trespass.

The last issue is what remedies are available to the plaintiff. I agree with counsel for the plaintiff that the plaintiff is entitled to vacant possession of the suit property. the plaintiff has also suffered damage and is entitled to general damages as he cannot develop his land and put it to full use. He spent money trying to solve the dispute. The defendants have been trespassing on the said land for a period of about 1Y2 years starting from August, 1992. Counsel suggested that the plaintiff be awarded general damage of between shs. 2—3 million but he did not assist court with any authorities to support his submission. After considering all the damages suffered by the plaintiff as testified to above I would award the plaintiff general damages of shs. 900,000/= In conclusion the plaintiff is awarded the following remedies against the defendants jointly, and severally which were pleaded and proved on balance of probabilities:

(i) The defendants are ordered to vacate the suit property within 14 days hereof. The eviction order shall issue forthwith.

(2) General damages of shs. 900,000/= for trespass with interest at court rate from the date hereof

until payment in full.

(2) The defendants to pay the costs of this suit.

M. Kireju

2/3/94