

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)

HIGH COURT CIVIL SUIT NO.142 OF 2007

DAMALIE JUSTINE NANTEZA LUBWAMA ::::::::::: PLAINTIFF

VERSUS

1. ST. LAWRENCE LIMITED
2. LAWRENCE MUKIIBI
3. ST.LAWRENCE UNIVERSITY LIMITED
4. JULIUS FACKI OKETTA

::::::::::::: DEFENDANTS

JUDGMENT BY HON. MR. JUSTICE JOSEPH MURANGIRA

1.0: Introduction

The plaintiff through her lawyers M/s Kajeke, Maguru & Co. Advocates instituted this suit against the defendants seeking the following orders;

- (a) Permanent injunction**
- (b) Vacant possession**
- (c) Mesne profits**
- (d) General damages**
- (e) Declaration that the plaintiff is the owner of the suit premises**
- (f) Costs of the suit.**

The plaintiff's claim against the defendant is for permanent injunction, vacant possession, mesne profits, general damages, declaration that the plaintiff is the owner of the suit premises and costs of the suit. The cause of action arose as follows:

- (a) The plaintiff is the owner of the kibanja situated in Kavule Mawokota. A photocopy of the sale agreement is attached as annexure "A" and its translation as annexure "B".**

- (b) Sometime in 2007 the defendants trespassed on the plaintiff's kibanja and cut down some trees and started grading the land with a view of commencing construction work. A photocopy of the photos is attached as annexure "C"
- (c) The plaintiff has since requested the defendants to halt their activities but the defendant have refused and or failed to pay heed.

The 1st, 2nd and 3rd defendants in their written statement of defence deny the plaintiff's claims in total. In paragraph 2 (c) and (d) of **"the defence the said defendants pleaded that the defendants admit grading and carrying out construction on the suit premises but as owners and proprietors, and the defendants will prove that they bought the suit land from Julius Facki Oketta, the 4th defendant and that at the time of the purchase there were no developments on the suit land"** respectively. The 4th defendant denied the plaintiff's claims in total. However, as it will be shown herein in this judgment the 4th defendant gave evidence in favour of the plaintiff.

2. During the scheduling conference the parties agreed to the following issues:

Issue No. 1 Whether the plaintiff is the owner of the suit kibanja.

Issue No. 2 And if so whether the defendants trespassed thereon.

Issue No. 3 Remedies available to the parties.

3. Resolution of the issues by Court.

3.1 Issue No. 1; whether the plaintiff is the owner of the suit kibanja.

Counsel for the plaintiff, Mr. Kajeke Kenneth submitted that the plaintiff is the owner of the suit kibanja. He relied on a few authorities.

In reply, Counsel for the 1st, 2nd and 3rd defendants, Mr. Makeera Salim argued that the plaintiff adduced evidence claiming that she owned Kibanja on the suit land which she had developed with Eucalyptus trees. From the joint inspection report exhibit D2. Note 5, the total area of the Kibanja is 1.2 acres and in note 6 the Kibanja sits on Mawokota Block 127 Plot 8 which is the land sold by the 4th defendant to the 2nd and 3rd defendants. From that report the defendants are aware of the plaintiff's Kibanja but only are putting up a defence for

the sake of it to avoid liability. It is the argument of the 1st, 2nd and 3rd defendants that the 4th defendant should be liable to the plaintiff's prayers and claims not the 2nd and 3rd defendants.

It is the contention of the 1st, 2nd and 3rd defendants' counsel that according to the Dw1 the 1st defendant's evidence and his witness statement dated and filed in court on 28th May 2011, he sets out the following particulars;

- a. That he bought land comprised in Mawokota Block 127 Plot 8 from the 4th defendant. The sale agreement was allowed in Evidence exhibit D3. It is dated 30th October 2006.
- b. In paragraph 8 (a), (d), and (e) of the said sale agreement, the 4th defendant sold to the 2nd defendant the land with all developments thereon and undertook to compensate/ settle all 3rd party claims, if any that may arise, and assured the buyer the 2nd defendant of enjoyment of quiet possession. Basically he assured the purchaser that whatever was on the land belonged to him and was by virtue of the sale agreement transferred to the 2nd and 3rd defendants.
- c. It is established and admitted as a fact that the 2nd and 3rd defendants were not aware of the plaintiff claim at the time of purchase. The plaintiff never disclosed her interest or introduced herself to the LCs of the area. See note (1) and (2) of the joint inspection report dated 16th October 2010 and filed in court on 28th October 2010 admitted in court as exhibit D2.
- d. Note 6 in the joint inspection report exhibit D2 whose contents were signed by all the parties clearly identifies the **plaintiff's Kibanja as falling on the land sold by the 4th defendant to the 2nd and 3rd defendants.**

To the contrary and surprisingly though, the 4th defendant has admitted in his submissions selling land to the 2nd and 3rd defendants but **claims the trespass was committed by the 2nd and 3rd defendants.** Exhibit D2 which is the joint inspection report signed by all parties note 6 thereof clearly shows that the plaintiff's Kibanja is part of the land sold by the 4th defendant to the 2nd – 3rd defendants. This land was sold free of incumbrances. Annexure C to the 4th defendant's Written Statement of Defence also alluded to in paragraph 21 of the 4th defendant witness statements filed in court by the 4th defendant dated 28th May 2012 indicates the

bibanja owners he compensated and the plaintiff is not one of them. The 4th defendant was already in possession of the land both physically and by virtue of being the registered proprietor thereof before he sold and transferred it to the 2nd- 3rd defendants as bonafide purchasers.

For the 4th defendant, Mr. Gabriel Kamugisha Byamugisha, his Counsel argued that the 4th defendant does not contest the fact that the plaintiff has a kibanja but as shown in the joint inspection report the plaintiff was not one of the squatters introduced to the 4th defendant by Angello Kiwanuka and according to the 4th defendant's evidence, he never trespassed on her kibanja. He **compensated all the squatters and they left and she was not one of them**. As far as he is concerned, the plaintiff's tress neighbored his land on the Southern side. Paragraphs 8 and 9 of the witness statements of the plaintiff and John Tibenkana PW2, clearly state the complaint and does not constitute a cause of action against the 4th defendant . The 4th defendant and his Counsel emphasized that **it is the other defendants who cut the plaintiff's trees, developed a road through her Kibanja and a foot ball pitch**. That both these were features that never existed during the 4th defendant's tenure and were developed by the 1st -3rd defendants. That therefore the 4th defendant is not liable for the trespass.

The plaintiff who was PW1 told Court that she is the owner of the suit kibanja situated in Kazinga Mawokota having acquired the same on the 6/8/1989 from the Late Tereza Nalwadda. The Sale Agreement was admitted as exhibit P1. The Statement of Lawrence Mukiibi which was admitted as DW1 paragraph 9 thereof admits the fact that the suit kibanja is part of the third defendants Schools and the same is estimated to be 1.2 Acres. The Statement of Hon. Julius Facki Oketta which was admitted as DW2 in paragraph 3 recognizes the fact that the plaintiff's land is adjacent to the land which he sold to the first and second defendants. In paragraph 7 of the Statement of Hon. Julius Oketta, it is clear that the plaintiff had a kibanja which was neighbouring the land which DW2 Purchased.

DW2 told Court that when he was clearing the bibanja holders on his land the seller Angello Kiwanuka informed him that the Eucalyptus trees neighbouring DW2's land belonged to a lady who works in Kampala.

Consequent to the above, I analysed the written submissions of all the defendants and it is clear from the submissions of the defendants as filed on the court record that the plaintiff owns a kibanja which is situated on the land comprised in Mawokota Block No. 127 plot No.8 Land at Bugombe and Kazinga. It is also not in dispute that the 3rd defendant is the registered proprietor of the said land having acquired the same from the 2nd defendant who in turn acquired the same from the 4th defendant. It is also clear from the evidence on the Court record that since 2007 the plaintiff has not harvested her Eucalyptus trees and the plaintiff's kibanja is in possession of the 1st, 2nd and 3rd defendants.

It has been argued for the 1st -3rd defendants that they are bonafide purchasers for value without notice of the plaintiff's claim. The 1st -3rd defendants' claim of bonafide purchasers cannot stand. The evidence of DW2 Hon. Julius Facki Oketta clearly point to the fact that the plaintiff owned the kibanja upon which she grew the Eucalyptus trees. Angello Kiwanuka who sold the land to DW2 informed him that the Eucalyptus trees belonged to a lady who works in Kampala. The evidence of PW1 and PW2 coupled with that of DW2 shows that the plaintiff and DW2 co-existed peacefully and DW2 used to purchase trees from the plaintiff. DW2 never trespassed on the plaintiff's kibanja and the trespass occurred in 2007 long after DW2 used to purchase trees from the plaintiff. DW2 never trespassed on the plaintiff's kibanja and the trespass occurred in 2007 long after DW2 herein. It is clear that the first to third defendants knew or ought to have known about the plaintiff interest in the suit kibanja.

The clear position put across by all the parties is that the suit kibanja is on the land that belongs to the 3rd defendant as the current registered proprietor. The parties also agree that the suit kibanja belongs to the plaintiff. I can safely therefore say that the ownership of the suit kibanja was conceded to by the all defendants. The problem I could see in the evidence adduced by the defendants is that the 1st, 2nd and 3rd defendants are pointing a finger at the 4th defendant and vice versa as to who should compensate the plaintiff. Otherwise the issue of the suit kibanja is settled.

In the premises, therefore, I hold that the plaintiff is the owner of the suit Kibanja. And I answer the issue no. 1 in the affirmative.

3.2 Issue No. 2; And if so whether the defendants trespassed thereon.

It is the argument of the plaintiff's counsel that the defendants are trespasser on the suit kibanja.

In reply counsel for the 1st, 2nd and 3rd defendants submitted that the question of trespass by the 1st, 2nd and 3rd defendants does not arise at all. That they bought the land from the 4th defendant with all the developments thereon as per exhibit D3. That the plaintiff's interest was not disclosed to them. Trespass as already alluded to herein above is unlawful entry on land without any colour or claim of right. That because the 2nd and 3rd defendants bought the suit land lawfully. That they had a claim of right as purchasers/ registered owners without notice of the plaintiff's claim or interest and cannot be said to be trespassers. This argument by Counsel for the 1st, 2nd and 3rd defendants is a bit confusing. In evidence on record, the defendants admit that the suit land/kibanja belongs to the plaintiff and that it is now being utilized by the 1st, 2nd and 3rd defendants; and the 3rd defendant being the registered proprietor of the suit land. The plaintiff was denied access to her kibanja by the 1st, 2nd and 3rd defendants. The plaintiff's rights are protected under the Constitution of the Republic of Uganda and Section 29 of the Land Act, Cap 227 as amended. Accordingly, therefore, I make a finding that Counsel for the 1st, 2nd and 3rd defendants' arguments in that regard do not hold any water at all.

The 4th defendant has admitted in his submissions selling land to the 2nd and 3rd defendants but claims the trespass was committed by the 2nd and 3rd defendants. Exhibit D2 which is the joint inspection report signed by all parties note 6 thereof clearly shows that the plaintiff's Kibanja is part of the land sold by the 4th defendant to the 2nd – 3rd defendants.

Counsel for the 4th defendant submitted that trespass is a physical act and its occurrence is emphasized by the plaintiff and conceded by Prof. Lawrence Mukiibi, the 2nd defendant on behalf of the 1st -3rd defendants. It is clear in both the plaint and the plaintiff's witness statements that the trespass started in 2007, long after the 4th defendant ceased to have any

landed interest in that area. Mr. Lawrence Kiwanuka admits the kibanja to be in the land belonging to his school- the 3rd defendant. He claims that its part of the land he purchased from Oketa, the 4th defendant. But the 4th defendant denies this. He states that the trees were in land adjacent to his land. Therefore since the trespass commenced after he had sold his land to the other defendants, the trespass was committed by those defendants who are in actual possession and should compensate the plaintiff.

The plaintiff in her statement in paragraph 8 stated that the first, second and third defendants trespassed on her kibanja and took some of the cut trees and started grading her kibanja with a view of commencing construction work which is reflected in the photos which are attached to the statement of the plaintiff. In Justine E.M.N Lutaya Versus Stirling Civil Engineering Company Limited Civil Appeal No. 11 of 2012 it was held that: **Trespass to land occurs when a person makes an unauthorized entry upon land and thereby interferes or portends to interfere with another person's lawful possession of that land.**

From the evidence of PW1 and PW2 the Defendants trespassed on the plaintiff's kibanja and cut down her Eucalyptus trees they also put a football pitch on her kibanja and constructed a Road through her Kibanja. It is, therefore, clear that the acts of the defendants as stated above were unlawful and constituted trespass on the suit kibanja.

In the result, I find that the 1st, 2nd and 3rd defendants trespassed on the suit kibanja that belongs to the plaintiff . The evidence on record exonerates the 4th defendant from the acts of trespass on the suit kibanja. The 4th defendant ceased having interest in the suit registered land at the time he sold it to the 2nd and 3rd defendants in 2006. Yet, the acts of the trespass complained of by the plaintiff arose in 2007.

In the premises, I answer issue no.2 in the affirmative.

3.3 Issue No. 3: Remedies available to the parties.

The plaintiff in her evidence stated that she is entitled to remedies prayed for in the plaint. Counsel for the 1st, 2nd and 3rd defendants submitted that the remedies claimed by the plaintiff against the 1st-3rd defendants are not available to her for the reasons, they advanced in evidence and their written submissions. However, they argued that any claims must be addressed to the 4th defendant who sold the land to the 1st – 3rd defendants.

On the other hand, counsel for the 4th defendant submitted that as shown in the joint inspection report and conceded by the plaintiff that the land in issue is not 4.5 acres as alleged in the valuation report but 2 acres as claimed by the plaintiff and 1.2 acres as shown in the joint inspection report. That therefore, the claimed of Shs 64,810,000/= as compensation is grossly exaggerated. That the claimed compensation should be based on the agreed area of 1.2 acres. The 4th defendant in his arguments and evidence admits that the plaintiff is entitled to compensation for her suit kibanja and the trees that were cut down by the 1st, 2nd and 3rd defendants. The statements and evidence of the 1st, 2nd and 3rd defendants and that of the 4th defendant do conflict. And in my considered view, the 4th defendant is more inclined to justice to be seen being done. The 1st, 2nd and 3rd defendant admit that the suit kibanja is on their registered land; and they do not want the plaintiff to regain possession of the suit kibanja. And yet they deny compensation to the plaintiff.

The plaintiff prayed for various remedies as contained in the plaint. The plaintiff later commissioned a valuation report which was admitted as exhibit D1. The said report has a value of Ug. Shs 64,810,000/= (Sixty four millions eight hundred and ten thousands) only. The said report was made on the 23/6/2008. PW1 in cross- examination informed Court that the figure of Ug. Shs 34,400,000/= stated as the value of land and other developments in the valuation report could be a bit high as the valuer considered 4 (four) Acres instead of 2 (Two) Acres. The valuer was not called by any party with a view to contradicting the figures stated in the valuation report. The size of the plaintiff's kibanja was not measured by anybody but was estimated by the parties. However, the Court can comfortably hold that the suit kibanja is more than 1 ½ (one and half) acres. Thus, the plaintiff is entitled to compensation for 1 ½ acres of the suit kibanja.

The plaintiff told court that she had planted 10,000 (Ten thousands) Eucalyptus trees and this fact was corroborated by PW2. The plaintiff in answering a question put to her by Court informed Court that the value of an acre in the area is about 23,000,000/= (Twenty three millions) only and that she last accessed her kibanja in 2006 and since then she has been deprived of the same. I could find that the figure of Ug. Shs 34,000,000/= (thirty four million shillings) only is reasonable compensation for the plaintiffs kibanja interest and her trees which were cut down. The plaintiff told Court how she was deprived of the use of the kibanja from 2006 up to date. The actions of the defendants deprived the plaintiff of her right to own her property. Certainly, she suffered damages. The plaintiff therefore is awarded General Damages of Ug. Shs 20,000,000/= (Twenty million shillings) only. I also award the plaintiff Shs 10,000,000/= (ten million shillings) as mesne profits.

The 4th defendant submitted that the 1st to 3rd defendants should be held answerable to the plaintiff. The 1st to 3rd defendants have in turn prayed that the plaintiff's claims be directed to fourth defendant. Under Order 1 rule 3 of Civil Procedure Rules all person may be joined as defendants against whom any right to relief in respect of or arising out of the same act or transaction or series of acts on transactions is alleged to exist whether jointly or severally. Hence all the defendants were properly sued. However the 4th defendants as is hereinabove found not to have committed any acts of trespass on the suit land and has no interests in the suit kibanja and the entire registered land, the 1st, 2nd and 3rd defendants are the ones liable to pay the remedies available to the plaintiff.

In premises, I hold that the plaintiff is entitled to remedies in this suit.

4 Conclusion

In the result and for the reasons given hereinabove in this judgment, I give judgment in favour of the plaintiff against all the defendants in the following orders:-

- (a) The plaintiff is the owner of the suit kibanja.
- (b) The 1st, 2nd and 3rd defendants trespassed on the suit kibanja. And that they dispossessed of the plaintiff the said suit land. The plaintiff is entitled to compensation of her suit kibanja and 10,000 trees that were on the suit kibanja.

- (c) The plaintiff is awarded Shs 34,000,000/= (thirty four million shillings) only as compensation for her suit kibanja and the 10,000 trees that were on that suit kibanja.
- (d) The plaintiff is awarded Shs 20,000,000/= (twenty million shillings only) as general damages.
- (e) The plaintiff is awarded Shs 10,000,000/= (ten million shillings) only as mesne profits.
- (f) The awards in (c), (d) and (e) above shall be paid by the 1st, 2nd and 3rd defendants as parties that are found to have trespassed on the suit kibanja in 2007 within (30) thirty days from the date of this judgment.
- (g) Interest at Court rate is awarded on (c) , (d) and (e) above from the date of this judgment till payment in full.
- (h) Costs of this suit are awarded to the plaintiff as against all defendants.

Dated at Kampala this 18th day of April, 2013.

sgd

MURANGIRA JOSEPH

JUDGE