

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA  
AT KAMPALA  
(LAND DIVISION)  
CIVIL SUIT NO. 53 OF 2011**

**EMMAUS FOUNDATION LTD**   :~::~:~::~:~::~:~::~:~::~:   **PLAINTIFF**

**VERSUS**

**ANTWANI KAWADDWA**   :~::~:~::~:~::~:~::~:   **DEFENDANT**

**JUDGMENT BY HON. MR. JUSTICE JOSEPH MURANGIRA**

**1.0: Introduction**

**1.1** The plaintiff through its lawyers M/s Katutsi & Lamunu Advocates filed this suit against the defendant. The defendant through M/s Ssekaana Associated Advocates and Consultants filed a written statement of defence with a counterclaim. The plaintiff filed in Court a reply to the written statement of defence and the counterclaim.

On 2<sup>nd</sup> May, 2011, this suit came up for scheduling conference. The entire suit was discussed inter parties and eventually the suit was scheduled interparties. Thereafter the suit was fixed for hearing. For one reason or the other, the suit could not be heard as scheduled. There were many adjournments which were occasioned at the instance of mainly the defendant. And by the order of this Court which is on the Court record this suit was ordered to proceed *exparte*. The plaintiff adduced evidence of three witnesses.

**2.0 Facts of the case**

The plaintiff filed this suit against the defendant seeking a declaration that the defendant is a trespasser on the Plaintiff’s land comprised in Kyadondo Block 243 Plot 214 at Luzira, an order of eviction against the defendant, a permanent injunction restraining the defendant and/or his agents/ workmen and all people claiming under him from further trespass and

general damages for trespass. This was after the defendant had forced his way onto the suit land in or around the month of January 2011 and hurriedly put up a semi-permanent structure thereon claiming ownership of the suit land. The defendant indeed filed a counter-claim to this effect and sought orders of eviction and cancellation of the Plaintiff's title to the suit land on account of alleged fraud.

### **3.0 Issues jointly framed by the parties for trial are; that:-**

1. Whether the defendant's entry upon the suit land and attempting to construct a house thereon without the Plaintiff's consent constituted trespass.
2. Whether the defendant has any valid claim of title in the suit land or any part thereof.
3. Whether the plaintiff is entitled to the remedies sought.

### **4.0 Resolution of the issues by Court**

#### **4.1 issue no.1: Whether the Defendant's entry upon the suit land and attempting to construct a house thereon without the Plaintiff's consent constituted trespass.**

All the Plaintiff's witnesses' evidence was unchallenged. The defendant on the other hand chose to keep himself out of the hearing and adduced no evidence to controvert that of the Plaintiff. The plaintiff's witnesses adduced evidence to show that the defendant trespassed on the suit land. The plaintiff's witnesses' evidence was not challenged by the defendant as this suit proceeded exparte. Again Counsel for the plaintiff in his submissions endeavoured to show that the defendant trespassed on the suit land. He relied on a number of authorities in support of his client's suit.

May be, it would be more important for me to pose a question at this juncture: what is trespass?

“**Trespass**” is defined in Black's Law Dictionary, 8<sup>th</sup> Edition to mean:

**“An unlawful act committed against the person or property of another; esp, wrongful entry on another’s real property”.**

The evidence on record and the pleading of the plaintiff proved that the time the defendant forced his way onto the suit land; the Plaintiff was the registered proprietor thereof. Under Section 59 Registration of Titles Act, a certificate of title is conclusive evidence of title. It provides thus:-

**“59. Certificate to be conclusive evidence of title.**

**No certificate of title issued upon an application to bring land under this Act shall be impeached or defeasible by reason or on account of any informality or irregularity in the application or in the proceedings previous to the registration of the certificate, and every certificate of title issued under this Act shall be received in all courts as evidence of the particulars set forth in the certificate and of the entry of the certificate in the Register Book, and shall be conclusive evidence that the person named in the certificate as the proprietor of or having any estate or interest in or power to appoint or dispose of the land described in the certificate is seized or possessed of that estate or interest or has that power”**, (underlining is mine for emphasis).

In **Abdul Karim –Vs- Kabarebe & Mrs. Bakitari HCCS No. 373/91**, this Honourable Court held that:-

**“A certificate of title issued under the Registration of Titles Act is conclusive evidence that the person named in such title is the registered proprietor seized with the interest in the title”.**

The evidence adduced by the plaintiff clearly shows that no consent of the Plaintiff was sought by and/or given to the defendant to enter upon the suit land. That evidence was never challenged in cross examination. I hold, therefore that, the evidence adduced by witnesses points on to the truth. I also take the plaintiff’s witnesses strong demeanour into consideration when writing this judgment.

It was pleaded by the defendant in his defence that as far as he was concerned, a portion of the suit land measuring one (1) acre belonged to him because he had never sold it to the Plaintiff’s predecessor in title or to anyone else. He maintains in his pleadings that the transfer of the entire two (2) acres was done fraudulently since he had sold only one (1) acre to the plaintiff’s predecessor in title. This is not true from the evidence on record.

The evidence on record, particularly **Exh. PE17**, shows that the suit land measuring 2.0 acres was transferred from the defendant to Parriet Preparatory School Ltd on 26<sup>th</sup> March 2004 under Instrument No. 258630. There is nothing either in his pleadings or anywhere else to suggest that the defendant, until the 10<sup>th</sup> day of January 2011 when he forced his way onto the suit land, had contested the said transfer or reported the loss or theft of “his” certificate of title, or caveated the land, or taken any step to recover “his stolen” land for almost seven years. Therefore it is very inconceivable that the defendant and indeed any other person would sit back for all the said years to take any step towards recovering “his lost” land, a very prime piece of land at that.

Counsel for the plaintiff submitted that **“at the risk of giving evidence from the bar, my Lord allow me to say that forceful entry by the defendant upon the plaintiff’s land and claiming ownership of a part thereof was a deliberate fraudulent scheme to extort money from the plaintiff company which the defendant thought would give him quick money since it is headed by a “Muzungu” who receives substantial donations from abroad.”** Though this statement is not born by evidence on record, may be counsel for the plaintiff has a point.

In any case, even if the defendant had sold only one (1) acre of the suit land, he still had no right to just enter onto the other which had since changed ownership in the Register Book, a fact which he very well knew. From the available documents on the record I am of the considered opinion that the defendant knew about the fact that the suit land had long been transferred to M/s Parriet Preparatory School Ltd by, among other notices, the advert for the sale of the same by Armstrong Auctioneers on behalf of Stanbic Bank which was published in the New Vision newspaper of Monday February 22, 2010 which was read by the “whole world”.

On the whole, and the analysis given on this issue No.1, I hold that for as long as the defendant entered upon the suit land without the consent of the registered proprietor, he became a trespasser.

In the premises, therefore, I hold that the entry by the defendant unto the suit land at the time he did constituted and continues to constitute trespass. I find issue no.1 in the affirmative.

**4.2 issue no. 2: whether the defendant has any valid claim of title in the suit land or any part thereof:**

This issue has a resemblance with issue no.1. In defence and counterclaim the defendant pleaded that he is entitled to one (1) acre out of the suit land. My findings on issue no.1 would at the very onset negative issue no.2. The aforesaid notwithstanding the evidence on record shows that the defendant was last registered as proprietor of the suit land on the 26<sup>th</sup> day of March 2004 when the same was transferred to Parriet Preparatory School Ltd vide Instrument No. 258630. It was subsequently transferred to the Plaintiff on the 17<sup>th</sup> day of June 2010, vide Instrument No. KLA458689.

Rev. Fr. John Scalabrini, a 79 year old Catholic Priest testified that the Plaintiff purchased the suit land after thorough due diligence was done and confirming that it really belonged to M's Parriet Preparatory School Ltd. In his sworn witness statement testifying as PW1 he stated thus;

“

1. *That the said couple came with a newspaper in which their school together with Agro Link S.S.S had been advertised for sale by Stanbic Bank Ltd.*
2. *That the said couple told me that they had mortgaged the school together with that of their friend Mr. Senoga known as Agri Link S.S.S to Stanbic Bank to secure a loan but that they had failed to repay and that the bank was going to sell the two (2) properties a thing which would seriously harm their relationship with Mr. Senoga who had given them Powers of Attorney to mortgage his school on their promise to redeem it.*
3. ....
4. *That they even disclosed to me the other institutions to which they owed money such as Centenary Bank, ECLOF and Kenroy Investments Ltd and they hoped to get a reasonable sum from selling the property themselves, as opposed to a sale by the bank, to enable them not only to pay the Bank loan but also to pay the other three (3) creditors.*
5. *That at subsequent meetings, they brought all the documents concerning all the debts, proof of ownership of the property and the school books of accounts for my scrutiny.*
6. ....
7. ....
8. ....

9. *That the Board, particularly Hon. Justice Kasule, advised that if the Plaintiff could secure funding from its usual donors from Italy it would be a good idea to acquire the suit property but after ascertaining its liability/ indebtedness, since it seemed to have been either mortgaged or pledged to various creditors.*
10. *That Hon. Justice Kasule also advised that we do thorough due diligence about the status of the land to ensure that there were no incumbrances forbidding the transfer of the same to the Plaintiff.*
11. *That after securing the consent of the Board, we embarked upon the verification process whereby we had meetings with Paul and Harriet Kyambadde to get the full inventory of the assets and liabilities of the school, and we also had the boundaries of the suit land opened and the status of the Parriet Preparatory School Ltd ascertained from the Companies Registry.*
12. *That in addition to the suit land, the company (Parriet Preparatory School Ltd) also owned two (2) adjoining pieces of land on Kibanja basis and these two (2) were to be sold alongside the suit land so they had to furnish us with the purchase agreements for them and we also ascertained from the neighbours and local authorities their ownership of the same.*
13. *That after ascertaining all the above, we asked Parriet Preparatory School Ltd now to introduce us to Stanbic Bank to ascertain the debt and possibly negotiate some discount since our interest was not only to acquire the property but most importantly to ensure that Paul and Harriet remained with some money to start a new life after loosing their seemingly hard earned property.*
14. *That in fact we decided that much as we were going to pay a lot of money for the property, we would give Mr. Senoga (Agro Link S.S.S) back his title deed in order that the Kyambadde's may not loose face before him and we also decided that if we managed to negotiate a reduction in the debt to Stanbic Bank, after paying all the other debts of Parriet Preparatory School Ltd, whatever money would remain of the Shs. 720,000,000/= (Seven Hundred Twenty Million Shillings) purchase price we would give to Paul and Harriet.*
15. *That we also decided that in order to minimize their sense of loss, we would employ Paul and Harriet to continue running/ managing the school.*
16. *That indeed Stanbic Bank, after a series of meetings with us, agreed to reduce the debt to Shs. 475,000,000/= (Four Hundred seventy five Million Shillings) and allowed Parriet Preparatory School Ltd to go ahead and conclude an agreement of sale with us promising that upon confirming the said sum on the account, it would execute a release of mortgage and hand it over to the Plaintiff together with the certificates of title of the mortgaged properties.*
17. *That our donors were kind enough and availed the funds, so we paid off Stanbic Bank and the other three (3) creditors details of whose credit were set out in the agreement between us and Parriet Preparatory School Ltd, and the balance of about*

*Shs. 15,000,000/= (Fifteen Million Uganda Shillings) was indeed paid to the Parriet Preparatory School Ltd.*

- 18. That the Plaintiff also employed Paul and Harriet to manage the school at a generous salary of Shs. 1,500,000/= (One Million Five Hundred Thousand Shillings) each per month and also started paying school fees and providing all scholastic materials for their two (2) children in Bishop Ciprian Kihingire .S.S.S.*
- 19. That shortly after concluding with Stanbic Bank and obtaining the release of mortgage from it, we found that M/s Kenroy Investments Limited had caveated the suit property claiming an equitable mortgage over it.*
- 20. That after a Court case that ended in a consent settlement, the said caveat was removed and there was no incumbrance at all so the transfer of the suit property to the Plaintiff was then registered.*
- 21. That during the discussions with Parriet Preparatory School Ltd, it was never mentioned at all that the Defendant claimed part of the suit property. We even never got to hear about him at all save that the certificate of title showed that he was the predecessor of Parriet Preparatory School Ltd in title to the suit land.*
- 22. ....*
- 23. That there was no and there had never been any caveat on the suit property by the Defendant or anyone claiming under him until after the transfer to the Plaintiff.*
- 24. That even on the occasion the suit land was advertised for sale, the Defendant never came up to oppose the sale or transfer much as the whole world was duly notified through the press and indeed those with claims, like Kenroy Investments Limited, came up.*
- 25. That the suit property had earlier been mortgaged to Centenary Bank by Parriet Preparatory School Ltd which was itself registered as proprietor thereof way back in March 2004 but all this time no one ever claimed that Parriet Preparatory School Ltd was not the owner and/or had no authority to mortgage it or be on the register as owner.*
- 26. That it was only sometime in November 2010, almost a year after the Plaintiff had been in occupation of the suit land, that the Defendant led a team of people, entered upon part of the suit land and started to put up a hurried structure without introducing themselves to the Plaintiff or even disclosing what interest they had in the suit property.*
- 27. ....”*

This evidence was restated and/or corroborated by that of PW2, a 65 year old Catholic Priest and PW3, the 29 year old General Manager of the Plaintiff. All this evidence, as earlier mentioned, was not in any way controverted. The documentary evidence shows that the suit

land had for long left the ownership of the defendant, it had been mortgaged at least twice and had actually been advertised for sale by Stanbic Bank when the Plaintiff bought it. The Plaintiff never heard or knew the defendant and / or his alleged interest in the suit land. The plaintiff acquired a good and an unimpeachable title from its predecessor in title. Even if the transfer to the predecessor in title had been fraudulent, which in this case is not, as the defendant now claims because such fraud, if any was never in anyway brought to the attention of the Plaintiff and the Plaintiff was never in any way party to it. The Plaintiff was for all purposes and intents a bona fide purchaser of the suit land for value without notice of fraud.

The Common Law doctrine of bonafide purchaser is provided for under Section 181 of Registration of Titles Act. This section does not define who a bonafide purchaser is but merely provides for his protection. It provides thus;

**“181. Purchasers protected.**

**Nothing in this Act shall be so interpreted as to leave subject to an action of ejectment or to an action for recovery of damages as aforesaid or for deprivation of the estate or interest in respect to which he or she is registered as proprietor any purchaser bona fide for valuable consideration of land under the operation of this Act, on the ground that the proprietor through or under whom he or she claims was registered as proprietor through fraud or error or has derived from or through a person registered as proprietor through fraud or error; and this applies whether the fraud or error consists in wrong description of the boundaries or of the parcels of any land or otherwise howsoever”.**

There is, however, a wealth of authorities that define who a bonafide purchaser is. In one such case, **Robert A. Lusweswe –Vs- G.W. Kasule & Anor Civil Suit No. 1010 of 1983** (unreported) but cited by **Wambuzi C. J**, as he then was in **David Sejjaka Nalima –Vs Rebecca Musoke SCCA 12/85 reported in [1992] V KALR 132**, he said:-

**“The effect of this section (S. 181 R.T.A) is that once a registered proprietor has purchased the property in good faith, his title cannot be impeached on account of the fraud of previous registered proprietor. A bona fide purchaser therefore obtains a good title even if he purchases from a proprietor who previously obtained it by fraud”.**

In **Simon Kato Bugoba –Vs- Samuel Kigozi & Muyanja Mbabali HCCS No. 534/ 2004**, the Court held that:-



**“In law, a bonafide purchaser is one without notice of fraud and without intent to wrongfully acquire property. A bonafide purchaser acquires good title irrespective of the Vendor’s defective title”.**

In **Makerere University –Vs- St. Mark Education Centre & Anor HCCS No. 378/90** it was held that;

**“Fraud committed by the predecessor in title of the defendants could not be visited on the defendant as there was no evidence to suggest that the defendants were party or knew about the fraud”.**

From the above authorities I make a finding that even if the Plaintiff’s predecessor in title had acquired the suit land or a part thereof through fraud, for as long as the Plaintiff had no notice, constructive or actual, of it and was never party to it, it acquired good title and upon its registration as proprietor, the defendant’s or indeed any other person’s claimed interest in the suit land was extinguished. Moreso, the evidence on record from the credible witnesses clearly shows that the plaintiff holds a clean title over the suit land.

In the result and from uncontroverted evidence adduced by the plaintiff and the law cited hereinabove, I hold that the defendant has no claim in the suit land. He is a trespasser on the suit land. Again, considering the evidence on record and the aforesaid authorities, the counterclaim by the defendant has no merit. It is accordingly dismissed with costs.

#### **4.3 Issue No. 3: Remedies**

From my findings on issues 1 and 2 above, I hold that the Plaintiff is entitled to the reliefs sought in the plaint. The plaintiff’s prayers on the reliefs sought in the plaint were never challenged by the defendant.

Counsel for the defendant submitted that since the defendant is no longer on the suit land and his structure thereon is no more, he abandoned the prayer for an order of eviction. So be it.

Concerning the prayer for general damages, PW1 in his sworn witness statement testified thus:

“

40. That as a result of the defendant's actions and all the confusion they have caused, the Plaintiff's donors have since withheld funding to the Plaintiff for activities aimed at improving the school on the suit land and this has caused great loss, inconvenience and embarrassment to the Plaintiff and its management".
41. That sometime in May 2011, the defendant sought to tarnish my image and that of the Plaintiff and took press/media people to the suit land and they later broadcast/ telecast stories on the popular and most watched TV programme "AGATALIKKO NFUUFU" which stories painted me as a thief, fraudster and a father of some children and I have since sued the TV station for defamation and the case is pending in this court.
42. That it is my humble prayer that the Defendant be declared a trespasser to the Plaintiff's suit land, restrained from further trespass thereon and be ordered to pay general damages in compensation to the Plaintiff for the loss and damage suffered and costs."

As a result of the defendant's blatant trespass therefore, the Plaintiff has suffered untold damage. This is a church organization that is doing all it can to better the lives of the disadvantaged through charitable programs and it relies entirely on the goodwill of donors to finance its projects. The damage caused by the defendant to its image cannot be described by words. Donors withheld funding, the public began looking at the Plaintiff as a land grabber. The utterances and statements by the defendant to the least were defamatory of the plaintiff's Directors and the priests who are the direct agents of the plaintiff

The Plaintiff has applied for funding from its donors for funds to construct a classroom block and a double storied hostel for the pupils on the suit land. The funding was suspended and the project crippled.

Trespass is actionable per se without proof of damages. See, **Abram Kitumba –Vs- Uganda Telecommunication Corporation HCCS No. 395/ 91; Foods & Beverages Ltd – Vs- Israel Musisi Opoya SCCA No. 32/92.**

Counsel for the plaintiff in his submissions proposed a sum of Shs. 200,000,000/= as reasonable award to the Plaintiff for the damage suffered. However, considering the evidence on record and the extent of trespass and damage caused to the plaintiff and its Directors or/and workers and considering the status of people who were defamed by the defendant I do

award the plaintiff Shs 100,000,000/= (one hundred million shillings) only as general damages. The other reliefs have been proved by the plaintiff hereinabove in this judgment.

Accordingly, therefore, I hold that the plaintiff is entitled to reliefs being sought in the plaint. Issue no. 3 is thus answered in the affirmative.

## **5.0 Conclusion**

Having found issues 1, 2 and 3 in favour of the plaintiff, certainly the plaintiff is entitled to judgment. Wherefore, judgment is entered in favour of the plaintiff in the following orders; that:-

- (a) The plaintiff is the rightful owner of the suit land.
- (b) The defendant is a trespasser on the plaintiff's suit land comprised in Block 243 plot 214 at Kyadondo County Mengo District. The plaintiff shall enjoy quiet possession of the suit land.
- (c) An order of eviction against the defendant was abandoned by the plaintiff in its written submissions.
- (d) A permanent injunction restraining the defendant, his relatives, family members, workers/or agents and any persons claiming title to the suit land from him from claiming, doing any act and further entering the suit property is granted to the plaintiff.
- (e) Ug. Shs 100,000,000/= is awarded to the plaintiff as general damages.
- (f) Interest at Court rate per annum is awarded on (e) above from the date of this judgment till payment in full.
- (g) Costs of this suit and the counterclaim are awarded to the plaintiff.

Dated at Kampala this 14<sup>th</sup> day of May, 2013.

**sgd**  
**MURANGIRA JOSEPH**  
**JUDGE**