

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT KAMPALA  
(LAND DIVISION)  
CIVIL SUIT NO. 0482 OF 2011**

**a) PRINCE KEFFA WASSWA (SUING THROUGH  
HIS LAWFUL ATTORNEY KASUMBA GIDEON)**

**b) PRINCE PHILLIP KATEREGGA..... PLAINTIFFS  
VERSUS**

**JOSEPH KIYIMBA ..... DEFENDANT**

**RULING**

**BEFORE LADY JUSTICE EVA K. LUSWATA**

In this suit, the 1<sup>st</sup> plaintiff claims to be the lawful owner of a kibanja customary holding measuring approximately 1 acre in Bunamwaya Kikumbi Zone which he acquired from Princes Nalinya Ndagire. That he had been in occupation for 30 years and had established a permanent home and other developments on the land. That on an undisclosed date, he donated a small part of his kibanja to the 2<sup>nd</sup> plaintiff, the latter who also developed it with a permanent house and servants quarters.

The plaintiffs content that during 2005, the defendant trespassed upon the kibanja and demolished all their developments and thereafter took over possession. They contest their eviction as being illegal and the fact that as sitting tenants, they should have been given first priority to purchase the mailo interest and pray for a declaration that they are the lawful owners of the kibanja and therefore that the defendant be declared a trespasser. They further claim an order for the demolition of the defendant's structures on their kibanja, an order for vacant possession, a permanent injunction restraining the defendants from any further trespass, general special and exemplary damages for trespass with interest.

In defense to the claim, it was stated in the written statement of defense that the defendant owns land known as Block 265 Plot 451 at Bunamwaya (hereinafter called the suit land) after he secured registration on 1/9/05, and obtaining vacant possession. He denied knowledge of the plaintiffs, and argued that he is a bona fide purchaser without knowledge of any fraud. He also denied the contention that he had demolished structures belonging to the plaintiffs on the suit land.

At the hearing of 17/4/14, counsel indicated an intention to raise preliminary objections and parties were allowed to file written submissions which they did.

The defendant's objection is that the plaintiffs' suit is barred by S.176 and 187 of the (RTA). He argued that in paragraph 4 of the plaint, the plaintiffs seek the cancellation of his title which would result into their recovery of the suit land. Counsel argued that the defendant is the registered proprietor of the suit land and S.176 RTA bars any action of recovery of land against the registered proprietor, save for exceptions of fraud, a mortgage, lease, misdescription of title or where more than one certificate of title is issued in respect of the same land. In this, counsel relied on several cases, including **Western Highland Creameries Ltd & Anor Vs Stanbic (U) Ltd & Others HCCS No.462/11** and **The Executrix of the Estate of the late Christine Mary Namatovu Tebajjukira & Anor Vs Noel Grace Shalita HCCA No.2/88**. Secondly, he argued that the claim for damages in the plaint is time barred. He reasoned that the cause of action as pleaded in paragraph No. 5(h) of the plaint, arose on 5/5/2005 and time ran out against the plaintiffs on 5/5/11. That there was no plea for disability and the exceptions under S.187 RTA thereby do not apply. Relying on the authority of **Ssebiraagala Moses Vs AG & Anor HCSS No.815/03**, counsel expounded further that statutes of limitation are in their nature, strict and inflexible.

In reply, counsel for the plaintiffs argued that the interests of the parties although different, can co-exist on the same land. She conceded that S.176 RTA provides for actions of ejectment and recovery of land under the operation of the Act. She argued however that the section does not affect the plaintiffs as their claim, is not for impeachment of the certificate of title but vacant possession of their kibanja or in alternative, compensation for its loss. Further that, another claim is for demolition of the defendant's illegal structures and as such, the court cannot at this preliminary stage determine the legality of the structures on the suit land without first hearing evidence. She further argued that the claim is founded on trespass which is a continuous tort, so that, if the defendant's presence on the land has not ceased, the action cannot be time barred.

Counsel further argued that the plaintiff's peaceful possession of their kibanja was interfered with by the defendant who was not even the registered proprietor at the time of his appropriation. She reasoned that her clients' interests are protected by both the Constitution and Land Act. In particular that the Constitution which is the supreme law, protects the interests of the plaintiffs and grants them a right not to be deprived of their land without fair and adequate compensation. She reasoned therefore that S.176 RTA should be subjected to the Constitution and that since the objections being raised by the defendant do not meet the requirements of Article 26 (2)(b) of the constitution, the RTA would be inconsistent with the Constitution to that extent. Counsel discarded the *bona fides* of the defendant in that, he knew the plaintiffs but never compensated them before forcefully taking possession of their kibanja.

With respect to the objection that the claim is time bad, counsel argued that the claim is based on trespass which is a common law doctrine and not a creature of statute and therefore, her clients' claim does not fall under S.176 RTA. That S.187 (1) RTA should be read together with S.178 RTA which provides for damages for a party deprived of land. That in any case, the plaintiffs only became aware of the defendants' registration as proprietor in January 2012 by seeing the title in respect of the suit land that was attached to his written statement of defence. She argued in conclusion that an action for damages brought under statute (for which S.187 RTA would be applicable) is different from an action for damages and compensation brought under the common law tort of trespass.

Section 176 RTA of the Act provides as follows:

*No action of ejectment or other action for the recovery of any land shall lie or be sustained against the person registered as proprietor under this Act, except in any of the following cases;*

- 1. The case of a mortgagee as against a mortgagor in default;*
- 2. The case of a lessor as against a lessee in default;*
- 3. The case of any person deprived of any land by fraud as against the person registered as proprietor of that land through fraud or as against a person deriving otherwise than as a transferee bona fide for value from or through a person so registered through fraud;*
- 4. The case of a person deprived of or claiming any land included in any certificate of title of other land by misdescription of the other land or of its boundaries as against the*

*registered proprietor of that other land not being a transferee of the land bona fide for value;*

5. *The case of a registered proprietor claiming under a certificate of title prior in date of registration under this Act in any case in which two or more certificates of title may be registered under this Act in respect of the same land;*

*And in any case other than as aforesaid, the production of the registered certificate of title or lease shall be held in every court to be an absolute bar and estoppel to any such action against the person named in that document as the grantee, owner, proprietor or lessee of the land described in it, any rule of law or equity to the contrary notwithstanding (emphasis mine);*

With respect to limitation of actions for damages against a registered proprietor, section 187 of the Act provides as follows;

*No action for recovery of damages sustained through deprivation of land or of any estate or interest in land shall lie or be sustained against the government or against the person upon whose application the land was brought under the operation of the Act or against the person who applied to be registered as proprietor in respect of the land unless the action is commenced within six years from the date of deprivation; except that any person being under disability of coverture (except in the case of a married woman entitled to bring the action), infancy, lunacy or unsoundness of mind, may bring the action is brought within thirty years next after the date of deprivation.*

There appears to be no contest by the plaintiffs of the fact that at the time they filed the suit, the defendant was and still is the registered proprietor of the suit land and owns the developments there. Their contention is that he refused or neglected to recognize their unregistered interests and had them unlawfully evicted for which they feel entitled to damages, to check his contested adverse possession and atone for their loss.

I have seen the authorities relied on by both counsel in which our courts have previously attempted to interpret the provisions of Section 176 RTA and indeed they are very instructive. Also I find as useful, the opinion of John Tamukedde in his book "Principles of Land Law in Uganda" where he summed up the principle under that section as follows;

*"Under the Registration of Titles Act, the remedy of ejectment is limited by the principle of indefeasibility of title. Consistent with this principle, section 184 (now 176) of the RTA*

*protects the registered proprietor against any action of ejectment except in circumstances stated in the section. ... apart from these situations, section 184 (now 176) states that the production of a certificate of title shall be held in every court to be an absolute bar and estoppels to any action of ejectment...”*

Therefore the objection raises two important questions;

1. Does the claim in the plaint fall within the exceptions provided for under S.176 RTA?
2. Would the prayers in the plaint be interpreted to mean or result into an order of ejectment of the defendant (as registered proprietor) from the suit land?

Both counsel appear to appreciate the provisions of section 176 RTA and counsel for the plaintiffs did agree that the claim does not fall under any of the exceptions under that section. I will therefore not labour that point and find that none of the exceptions under S.176 RTA apply to the present claim. Counsel for the plaintiffs argues that the claim is not one of ejectment or impeachment of title but a claim under the common law tort of trespass and that remedies are available to the plaintiffs in both the Constitution and Land Act. I respectfully do not agree. In the plaint, the plaintiffs pray for judgment *inter alia*, for a declaration that the defendant is a trespasser on their kibanja, call for the demolition of his structures, and vacant possession against him. They also seek a permanent injunction against any further trespass by the defendant or his laying false claims or interfering with their occupation and quiet enjoyment of the suit kibanja.

It was never in contest that at the time of filing the suit, the defendant was in active possession. Therefore, in my view, the prayer for vacant possession and permanent injunction to restrain the defendant from use of the suit land would reasonably result into their ejectment in favour of the plaintiffs. Going by the finding of the Supreme Court in ***Executrix of the estate of the late Christine Mary Namatovu Tebajjukira & Another*** (supra) since the plaintiffs’ facts do not fall under any one of the exceptions given under the S.176 RTA the defendant who is the registered proprietor of the suit land is strictly protected against ejectment.

I do agree with counsel for the plaintiff that owners of unregistered interests in land are protected by both the Constitution and Land Act. However, even such claimants would not succeed in an action of ejectment against a registered proprietor because their claims would be restricted by the provision in S.176 RTA which provides that a certificate of title is an absolute bar “*any rule of*

*law or equity to the contrary notwithstanding.*” It is the same principle that Justice Wambuzi (CJ) (as he then was) used to isolate a plaintiff who in the case of Tebajjukira (supra) sought to claim relief against forfeiture where the registered proprietor had already achieved re-entry. That case has been keenly followed by other Justices (e.g. **Jayantlal Papal Karia Vs Rebecca Musoke**HCCS 62/1997 and **CTM (U) Ltd Vs Kasedde Mukasa (HCCS 355/10)**).

I have no reason to depart from it. The arguments that the action is one based on trespass is also not tenable. As I have already stated, S.176 RTA shields a registered proprietor against any actions even those of alleged trespass. It is inconceivable that a registered owner can be said to be in trespass of what he/she owns. There is a wealth of authority supporting the argument that trespass to land is committed not against the land but against the person who is in possession of the land and that a certificate of title is indicative of the owner being in legal possession (see for example **Justine E.M.N. Lutaya Vs Stirling Civil Engineering Co. Ltd Appeal No.11/2002**). Moreover, it is already an agreed fact that it is the defendant and not the plaintiffs in possession of the suit land.

The above notwithstanding, I would agree with counsel for the plaintiff that an owner of an unregistered interest is protected by both the Constitution and Land Act . I do opine, still that, such a claimant would not succeed to eject a registered owner, but instead could succeed on a declaration of such an interest and where already dispossessed (as is the case here) for compensation by way of damages. Therefore, the first objection succeeds in so far as the plaintiff sought for orders to have the defendant declared a trespasser and ejected from the suit land. This would thus account for prayers number(s) (d), (c), (d) and (e) in the plaint.

With regard to the second objection, it is argued for the defendant that the claim for damages in trespass and destruction of the plaintiffs’ properties on their kibanja is time barred as S.187 RTA only permits such actions to be commenced within six years of the date of deprivation. In reply, counsel for the plaintiff argues that Section 178 RTA and S.187 (1) RTA are to be read together and that the plaintiffs’ prayer for damages is brought under common law and not statute (i.e. S.178 RTA). In this they relied on the judgment in **Western Highland CreameriesLtd & AnorVs Stanbic Bank & Ors (supra)**and the opinion of J.T. Mugambwa (supra) at pg 87 that;

*“an action for damages or compensation based on Section 186 (now 178) RTA whose limitation period is found in S.187 RTA, is a separate action, distinct and different from an action the victim may have at common law. “*

I do agree with counsel for the defendant that S.187 RTA does pause a limitation period of 6 years to bring certain actions. However I disagree that the claim here falls under that section. Conversely, I do agree with counsel for the plaintiff and the opinion of Mugambwa (supra), that S.187 RTA only limits actions of those who are entitled to claim recovery of land under S.178 RTA. I have already found that this claim cannot succeed under S.178 RTA, and would therefore fall under claims in land protected by other statutes and common law. Ordinarily under our law the limitation period for actions in land proceedings is 12 years.

In their plaint, both plaintiffs’ claim to be *bona fide* and lawful occupants of their kibanja. I have already found that the plaintiffs do have certain guarantees under Article 26 of the Constitution with regard to their interests. Such protections are further amplified in the Land Act. In fact, it is a cardinal principle of our land laws that no person shall obtain title to defeat the claims of an unregistered interest(s). I hasten to add that such claimants would of course still first be required to prove their unregistered claims and compensation if any, had they been deprived of such interest. I accordingly find that nothing in the RTA deprives an owner of an alleged unregistered interest to sue a registered owner for declarations to confirm their interest and claim compensation for unlawful deprivation of that interest. I hold therefore that the prayers sought in paragraphs (c), and the alternative prayers for compensation for interfering with the plaintiffs’ enjoyment of their suit kibanja, damages for destruction of their property, with interest are tenable, and hearing of the suit will continue with respect to those claims only. The second objection accordingly fails.

Therefore, since the defendant has succeeded on only one ground, they are entitled to only one half of the costs of their preliminary objections.

I so order.

**EVA K. LUSWATA**  
**JUDGE**  
**7<sup>th</sup> November 2014**