

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
[LAND DIVISION]
CIVIL SUIT NO. 508 OF 2012

HOPE RWAGUMA:.....PLAINTIFF

(The Administrator of the Estate of the Late Dr.Rwaguma B.E)

VERSUS

JINGO LIVINGSTONE MUKASA:.....DEFENDANT

(The Administrator of the Estate of the Late Yowana Mukasa

BEFORE: HON MR. JUSTICE BASHAIJA K. ANDREW

JUDGEMENT

HOPE RWAGUMA, the Administrator of the Estate of the late Rwaguma B.E (*hereinafter referred to as the “plaintiff”*) brought this action against **JINGO LIVINGSTONE MUKASA**, the Administrator of the Estate of the Late Yowana Mukasa (*hereinafter referred to as the “defendant”*). She is seeking, inter alia, for declaration that by virtue of possession which she derives from previous occupants dating as far as 1959 without disturbance or adverse claim by any person, she acquired title by possession. She also seeks for an order directing the Commissioner Land Registration to cancel the certificate of title for land comprised Plot 31 Block 543 Busiro measuring 49.40 acres, (*hereinafter referred to as the “suit land”*) registered in the name of the defendant. In the alternative to the aforesaid, the plaintiff seeks for a declaration that she a *bona fide* occupant on suit land, general damages, and costs of the suit.

The defendant filed a counterclaim also claiming rights over the same land as the lawful owner having been registered thereon by virtue of the grant of letters of administration for the estate of his late father Yowana Mukasa, who was previously the owner having been registered on

11/08/1960. The defendant sought, inter alia, for an order of a permanent injunction restraining the plaintiff from trespassing or interfering his occupation and or possession of the suit land, and an order that the plaintiff be evicted from the suit land.

Background:

The plaintiff's late husband Dr. Rwaguma B.E bought the suit land as a *Kibanja* at Lugo/Sukka zone from one Lwanga William on 15/06/1996. He immediately took possession and constructed a homestead, planted a banana plantation and grew crops. He also grazed livestock thereon. The suit land was previously occupied and utilised by Philipo Musoke who is died around 1978. William Lwanga then took over the estate before selling the suit land to the plaintiff's late husband.

On 25/08/2008, the plaintiff obtained letters of administration for the estate of her late husband. She continued in occupation and use of the suit land without any person laying a claim on it until on 04/10/2012, when she received a notice to vacate from the defendant's lawyers. It later transpired that the suit land was first registered in the name of Yowana Mukasa on 11/08/1960 and later on 13/04/ 2012, in the name of the defendant as administrator of the estate of late Yowana Mukasa.

Upon being registered as proprietor, the defendant laid claim over the suit land as part of his late father's estate, and sought to recover it from the plaintiff who was in occupation. He issued the plaintiff with a notice to vacate. The defendant averred that the plaintiff did not own the suit land but was instead the registered owner of an adjacent piece of land comprised in Busiro Block 543 Plot 78 measuring 20.40 acres which she bought from Lwanga William. The defendant also

contended that the plaintiff is a trespasser and prayed that she should be evicted from the suit land.

At the scheduling conference, the parties agreed to the fact that the plaintiff is and had been in physical occupation of the suit land with no adverse claims until the 04/10/2012. Further, that the plaintiff is the owner and registered proprietor of the land adjacent to the suit land comprised in Plot 78 Block 543 Busiro having bought the same from Lwanga William. Furthermore, that the defendant is the registered owner of the suit land having been registered on 13/04/, 2012, under *Instrument No.KLA 54 2706* by virtue of a grant of letters of administration issued on 15 /03/2012 in respect of the estate of late Yowana Mukasa, formerly the registered owner of the suit land having been registered on 11/08/1960 under *Instrument No. KLA 28171*. Also, that the defendant realised that the plaintiff was in occupation of the suit land around the month of May, 2012. The parties agreed on the following issues for determination:

- 1. *Whether the defendant or his deceased father ever occupied/ utilised the suit land.***
- 2. *Whether the plaintiff can legally acquire legal title by adverse possession.***
- 3. *In case the 2nd issue is answered in the negative, whether the plaintiff is a bona fide occupant of the suit land.***
- 4. *What remedies are available to the parties?***

The plaintiff adduced evidence of three witnesses including herself as PW1 Hope Rwaguma, PW2 Ssali Benedicto, and PW3 Matovu Frank. The defendant adduced evidence of two witnesses including himself as DW2 Jingo Livingstone Mukasa, and DW1 William Lwanga. Court visited *locus in quo* in pursuant to ***Practice Direction No.1 of 2007*** which requires that

courts should, as far as possible, physically visit properties under dispute before pronouncing themselves on the proprietary rights of the parties.

Mr. Mujurizi Julius of *M/s Tibaijuka & Co. Advocates* represented the plaintiff, while Mr. Innocent Hobumugisha of *M/s. Bashaha & Co. Advocates* represented the defendant. Both Counsel filed written submissions to argue the case, which I have taken into consideration in arriving at the decision.

Resolution of the issues:

Issue No.1: Whether the defendant or his deceased father ever occupied/ utilised the suit land.

This particular issue is purely an issue of fact. It will hence be determined solely on basis of the weight of evidence adduced by the parties and their respective witnesses.

The defendant (DW2) stated that he knew the plaintiff as a person who illegally entered and settled on his land. That he came to know of this fact in January 2012 through information from the chairman one Bongole. That it is then when he first found the plaintiff on the suit land, but that all along he knew where the suit land was located and that it was not necessary for him to have kept checking on it earlier.

The defendant further stated that his late father used to reside on the suit land and died from there at land at Bugogo, and that by that time the defendant was staying in Busuju where his father was later buried. That he used to live on the suit land with his family when was still young, but that at about the age of 18 years they all ran away during the 1978 -79 war.

For her part, the plaintiff testified that before her late husband occupied the suit land, it had previously been occupied and utilised by Philipo Musoke Kafero. PW2 Ssali Benedicto aged 67 years and the LC2 Chairperson of the area corroborated the plaintiff's evidence. He stated that he was born in the area where the suit land is located, and that Philipo Musoke Kafeero occupied and utilised the suit land since the 1960s. That others people who came after Philipo Musoke Kafeero on the suit land are late Dr. Rwaguma and the plaintiff. That when Philipo Musoke Kafeero died, one Lwanga William took over the estate and asked PW2 to be the caretaker of the suit land. That PW2 became caretaker of the suit land until 1996 when the Lwanga William sold it to Dr. Rwaguma the late husband of the plaintiff.

Other than the defendant's sole testimony on this issue, no other evidence was adduced to buttress his claim showing that either his late father or himself had ever occupied or utilised the suit land. The defendant claimed to have fled the area at the age of 18 years due to war. However, it is quite doubtful that at that age he could not even remember where their homestead was located on the suit land or who their neighbours were at the time. During the *locus in quo* visit by court, the defendant was unable to point to any part of the suit land as the location here his family used to live. He could not even mention a single childhood friend from the area. He exhibited total ignorance as to the exact location of the suit land itself or in which zone it is, or its boundaries. Apart from not being conversant with the suit land, the defendant did not know; and was also not known by any of the local authorities of the area. This rendered his version of evidence of highly doubtful authenticity.

After evaluating the evidence as a whole, I find that the defendant's version pales in comparison to that of the plaintiff on the particular fact in issue. It should also be recalled in addition to the

plaintiff's evidence above that it was the parties' agreed facts in the joint scheduling memorandum that the plaintiff was in physical occupation of the suit land which she acquired from persons who had previously occupied it since the late 1950s. That she never had any adverse claims until the 4th October, 2012. There is no evidence showing that any of the previous occupants of the suit land was known to be the defendant's late father. I find that the defendant has not put forward any credible evidence to support his claim that either himself or his deceased father has ever occupied or utilised the suit land. *Issue No.1* is answered in the negative.

Issue No.2: Whether the plaintiff can legally acquire legal title by adverse possession.

Mr. Mujurizi Julius in his submissions for the plaintiff argued that possession of land by other persons without consent of the registered owner is adverse possession and confers title to the adverse occupant/possessor if the registered owner does not enforce his right of possession, and allows the adverse possessor to continue in occupation for a period of twelve years. That the owner's remedy as well as his title to the land is thus extinguished. Counsel relied for this position on ***Sections 5, 11(1), 16, and 29 of the Limitation Act (Cap 80)***

Mr. Mujurizi further submitted that the above provisions read together with ***Section 2 (1) of the Registration of Titles Act (RTA)*** provides a foundation for dismantling the indefeasibility of the registered owner under ***Section 59 and 176 RTA***, and that ***Sections 64(2) and 78 RTA*** recognise the fact that an adverse possessor could obtain an absolute title over the registered owner on the basis of adverse possession.

Counsel argued that in the instant case time started running as against the registered proprietor, on the date of first registration, which is 11th August, 1960. That Yowana Mukasa the registered proprietor then, on 11th August, 1972, exactly upon lapse of twelve years lost the grant, and only

held the estate in trust of Philipo Musoke who was in adverse possession. That this continued to be the position until Yowana Mukasa's death on or about 1979, and that from 11th August, 1960, to around May, 2012, the suit land remained under adverse possession for about 52 years. Counsel opined that the defendant could not get a better title than his predecessor in title. To back this proposition Counsel relied on various cases including ***Perry vs. Clissold (1970) AC 73***; ***Kairu vs. Gacheru (1986-1989) EA 215 (CAK)***.

In reply, Mr. Innocent Habumugisha, submitted that the defendant as the administrator of late Yowana Mukasa's estate was registered as the owner of the suit land, and as such, he is legally presumed to have title to it, and that this title holds against everyone except a person with a better claim. To back this view, Habumugisha relied on the case of ***Asher vs. Whitlock [1865] LR 1 QB 1***; arguing that the plaintiff was therefore a trespasser on the suit land and could not have acquired any interest whether legal or otherwise. That the rights of the defendant, who was registered and got into possession on 04/04/ 2012, could therefore not be extinguished by virtue of the law of limitation.

In my view, the starting point on this issue are the provisions of ***Section 5 of the limitation Act (supra)*** which provide for limitation of actions for the recovery of land. It stipulates as follows;

“No action shall be brought by any person to recover any land after the expiration of twelve years from the date on which the right of action accrued to him or her or, if it first accrued to some person through whom he or she claims, to that person.”

Further, ***Section 11 (1) (supra)*** provides that;

“No right of action to recover land shall be deemed to accrue unless the land is in the possession of some person in whose favour the period of limitation can run (hereafter in this section referred to as “adverse possession”) and where under sections 6 to 10, any such right of action is deemed to accrue on a certain date and no person is in adverse possession on that date, the right of action shall not be deemed to accrue until adverse possession is taken of the land.”

Section 16(supra) further provides that;

“Subject to sections 8 and 29 of this Act and subject to the other provisions thereof, at the expiration of the period prescribed by this Act for any person to bring an action to recover land (including a redemption action), the title of that person to the land shall be extinguished.”

Section 29(supra) also stipulates that;

“Without prejudice to the operation of section 187 of the Registration of Titles Act, (which contains certain provisions relating to the limitation of actions), this Act shall apply to land registered under the Registration of Titles Act in the same manner and to the same extent as it applies to land not so registered, except that where, if the land were not registered, the estate of the person registered as proprietor would be extinguished, that estate shall not be extinguished but shall be deemed to be held by the person registered as proprietor for the time being in trust for the person who, by virtue of this Act, has acquired title against any person registered as proprietor, but without prejudice to the estates and interests of any other person interested in the land whose estate or interest is not extinguished by this Act.”

It is important to note that all the above provisions are specific on the issue of limitation of the time when a person is entitled to bring an action for the recovery of land. In the instant case the plaintiff brought this action seeking for declaration and orders that by virtue of her possession derived from previous occupants dating to the late 1950s without disturbance or adverse claim by any person she acquired title by possession. She further seeks for an order directing the Commissioner for Land Registration to cancel the certificate of title for Plot 31 Block 543 Busiro registered in the name of the defendant, and to issue her with a certificate of title for the suit land having acquired the same by possession. In the alternative, the plaintiff seeks for a declaration that she is a *bona fide* occupant on suit land, general damages and costs of this suit. It is quite apparent from the prayers and statement of claim that the plaintiff is not seeking for the recovery of suit land. It follows that provisions of **Sections 5, 11(1), 16, and 29 of the Limitation Act (supra)** that deal with recovery of land are not applicable to the plaintiff's claim in this case.

The defendant, on the other hand, on 16/01/2013 filed an amended defence with a counterclaim. He sought for orders of eviction against the plaintiff as a trespasser, general damages and costs of the suit. By seeking to have the plaintiff evicted, by necessary implications the defendant was seeking to recover the suit land from the plaintiff who is in occupation and use. If the eviction orders were to be granted against the plaintiff, it would automatically confer proprietary right and vacant possession of the suit land on the defendant who is the registered owner by virtue of letters of administration for his late father's estate. Given the prayers and statement of claim by the defendant in his counterclaim, it inevitably brings into play the operation of **Sections 5, 11(1), 16, and 29 of the Limitation Act (supra)** in respect of the defendant's action for the recovery of the suit land through his counterclaim suit.

The effect of the law of limitation on the defendant's claim for the recovery of the suit land must therefore be viewed in the light of the plaintiff's concurrent claim of title over the same land by adverse possession. This raises the issue of whether it is possible for a person to claim and obtain title to land as against the registered owner by adverse possession.

A wealth of authorities seems to suggest that it is possible. Whereas a registered proprietor of land is protected and his or her title is in absence of fraud and other infirmities indefeasible under **Section 59 and 176(2) RTA**, adverse possession appears to provide the exception to the general principle of indefeasibility of the title. The **RTA** under **Section 78** thereof recognises adverse possession as a basis on which a person in use and occupation of land can claim title to the land of the registered owner. For ease of reference I cite the section fully below;

“A person who claims that he or she has acquired a title by possession to land registered under this Act may apply to the registrar for an order vesting the land in him or her for an estate in fee simple or the other estate claimed.”

According to decided cases of persuasive authority by the Supreme Court of India on the same issue, the rationale of the exception of adverse possession to general principle of the indefeasibility of title is premised on the theory or presumption that the owner has abandoned the property to the adverse possessor or on acquiescence of the owner to the hostile acts and claims of the person in possession. In other words, the law regards the owner of land to be under duty to protect his or her interests in the land and is not expected to just look on when his or her rights are either infringed or threatened by third parties such as squatters and trespassers occupying his or her land. See also: ***P.T. Munichikkanna Reddy & O'rs vs. Revamma & O'rs, (2007) AIR (SC) 1753 P.T.***

At this stage it is worth considering what constitutes “adverse possession”; In the case of **Jandu vs. Kirpal & A’nor [1975] EA 225 at 323**, in which the court relied on the definition adopted in the case of **Bejoy Chundra vs. Kally Posonno [1878] 4 Cal.327 at p. 329**; it was held that;

“By adverse possession I understand to be meant possession by a person holding the land on his own behalf,[or on behalf] of some person other than the true owner, the true owner having immediate possession. If by this adverse possession the statute is set running, and it continues to run for twelve years, then the title of the owner is extinguished and the person in possession becomes the owner.”

The spirit of the definition above is similarly captured in provisions of **Section 16 of the Limitation Act (supra)** to the effect that **at the** expiration of the period of twelve years prescribed under **Section 5(supra)** for any person to bring an action to recover land the title of that person to the land shall be extinguished.

In **AIR 2008 SC 346 Annakili vs. A. Vedanayagam & Ors**, the Supreme Court of India gave the essential elements of adverse possession which were considered in light of the Limitation Act of India with provisions similar to the Uganda **Limitation Act (Cap 80)**. It was held that;

“Claim by adverse possession has two elements: (1) the possession of the defendant should become adverse to the plaintiff; and (2) the defendant must continue to remain in possession for a period of 12 years thereafter. Animus possidendi as is well known is a requisite ingredient of adverse possession. It is now settled principle of law that that mere possession of land would not ripen into possessory title for the said purpose. Possessor must have animus possidendi and hold the land adverse to the title of the true owner. For the said purpose, not only animus possidendi must be shown to exist, but the same must be shown to exist at the commencement of the possession. He must

continue in the said capacity for the prescribed period under the Limitation Act. Mere long possession for a period of more than 12 years without anything more do not ripen into a title.”

Again the principles stated in the above holding are also encapsulated in the local legislations under **Section 5 and 16 of the Limitation Act (supra)**. The direct import of these two provisions is, firstly; that a person dispossessed of land cannot bring an action to recover land after the expiration of twelve years from the date on which the right of action accrued; which is the date of dispossession. Secondly; after the expiration of the said twelve years the title of the registered owner shall be extinguished. Thirdly; the person in adverse possession is entitled to a title by possession. **Section 29 (supra)**, crowns it all by providing that the registered owner ceases to hold the title to land in his own right but in trust of one in adverse possession.

As against the defendant the registered owner, in the context of adverse possession, in the instant case there evolved a set of competing rights in favor of the plaintiff who had, for a long period of time, cared for the suit land, developed it, as against the defendant who had abandoned it. Therefore, provisions of **Section 5 of Limitation Act (supra)** operate, as a rule, not only to cut off the defendant’s right to bring an action for the recovery of the suit land that has been in adverse possession of the plaintiff for over twelve years, but also under **Section 16 (supra)** entitles the plaintiff as the possessor to be vested with title.

It need emphasis that adverse possession is a right which comes into play not just because someone loses high right to reclaim the land out of continuous and willful neglect but also on account of possessor’s positive intent to dispossess. It is thus important for this court, before stripping the defendant of his lawful title, to take into account whether the plaintiff is an adverse

possessor worthy and exhibiting more urgent and genuine desire to dispossess and step into the shoes of the defendant the registered owner of the suit land. Once again, the efficacy of adverse possession by the plaintiff would much depend on the provisions of the ***Limitation Act (Cap. 80)***; by operation of which right of the defendant to access the court expired through effluxion of time.

There is yet another hurdle for the plaintiff to succeed in her claim of title to the suit land through adverse possession. She has to show on what date she came into possession; what was the nature of her possession; whether the factum of her possession was known to the other party; how long her possession has continued; and whether her possession was open and undisturbed. See also: ***Karnataka Board of Wakf vs. Government of India & Ors [(2004) 10 SCC 779]***.

On facts of the instant case, the plaintiff showed that she came into actual physical possession of the suit land through her late husband on 15/06/1996. Proof is *Exhibit P6 (a) and (b)* the sale agreement between Lwanga Willian as vendor and the plaintiff's late husband as purchaser. The plaintiff showed that she continued to remain in possession for a period of twelve years thereafter. She showed that her occupation and use of the suit land was open, exclusive and continuous undisturbed by 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 the 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. The defendant in his evidence seemed to buttress the plaintiff's *animus possidendi* when he stated that he all along knew where his land was, but that it was not necessary for him to keep checking on it or claiming it earlier. Issue No. 2 is answered in the affirmative.

Issue No.3: In case the 2nd issue is answered in the negative, whether the plaintiff is a bona fide occupant of the suit land.

This issue was framed in the alternative just in case Issue No.2 above was answered in the negative. It is, however, worth determining whether the plaintiff is as well a *bona fide* occupant on the suit land. ***Section 29 (2) (a) of the Land Act(supra)*** defines a *bona fide* occupant as follows;

“(2). “Bona fide occupant” means a person who before the coming into force of the Constitution –

(a) had occupied and utilised or developed any land unchallenged by the registered owner or agent of the registered owner for twelve years or more;
or

(b) had been settled on land by the Government or an agent of the Government, which may include a local authority.

Subsection (5) (supra) provides that;

“Any person who has purchased or otherwise acquired the interest of the person qualified to be a bona fide occupant under this section shall be taken to be a bona fide occupant for the purposes of this Act.”

While considering the above provisions, the Supreme Court in **Kampala District Land Board & Chemical Distributors vs. National Housing & Construction Corporation, SCCA No. 2 of 2004**, held that for a person to successfully claim to be a *bona fide* occupant, he must have been in occupation or possession of the suit land for more than twelve years at the time of coming into force of the 1995 Constitution without any challenge from the registered owner.

Mr. Mujurizi submitted that a person qualifies to be a *bona fide* occupant if he purchases or otherwise acquires interest of the person qualified to be a *bona fide* occupant. Counsel relied on **Section 29 (5) of Land Act (supra) as to** who qualifies to be a *bona fide* occupant. He argued that since his registration in 1961, Yowana Mukasa has never utilised or settled on the suit land. That instead it was Philipo Mukasa who was in occupation of the suit land, and that at his demise William Lwanga took over and later sold the same to late Dr. Rwaguma through whom the plaintiff derives her claim. Mr. Mujurizi maintained that by virtue of **Section 29(2) (a) and (5) (supra)** the plaintiff is a *bona fide* occupant though her predecessors in title.

Mr Habumugisha countered arguing that the totality of the evidence adduced by the plaintiff shows that the suit land was bought by the late Dr. Rwaguma in 1996, but that the alleged seller, Lwanga William, denied ever owning or selling the same to the plaintiff’s late husband. That as such there is no interest disclosed by the plaintiff in regard to the suit land. Mr. Habumugisha further argued that the suit land was never under the ownership of Philipo Musoke, nor was it

sold to the plaintiff's late husband by Lwanga William, and that none of them was a *bona fide* occupant. Mr. Habumugisha maintained that neither Philipo Musoke nor Lwanga William had any interest; hence the plaintiff could not claim to have acquired interest as a *bona fide* occupant from persons who did not have the same in the first place. That the plaintiff could not claim to have purchased or otherwise acquired interest of a *bona fide* occupant within the meaning of **Section 29 (5) of the Land Act (supra)**.

According to *Exhibit P6 (a) and (b)*, the sale agreement, the plaintiff's late husband bought the suit land from Lwanga William at Ug. Shs.2, 500,000/= on 15/06/1996, and took possession and utilised the land for the various activities already mentioned. Ssali Ben (PW2) who testified for the plaintiff stated that he was at that time the caretaker of the suit land, and that the plaintiff's occupation and use was preceded by that of Philipo Musoke who lived on the suit for about 52 years without any adverse claim against him. The plaintiff further stated that William Lwanga who previously sold the suit land to her late husband later sold to her another piece of land comprised in Plot 78 Block 543544 Busiro measuring 20 acres also previously owned by Phillip Musoke and William Lwanga. PW3 Matovu Frank, who though not sure of his age, also corroborated the fact that the plaintiff's late husband bought the suit land from Lwanga William. It is crucial to note that all the plaintiff's witnesses who are long time residents of the area had never heard of or seen the defendant or his late father before or in connection with the suit land.

DW1 William Lwanga, who testified for the defendant stated that the plaintiff's husband bought land from him measuring 20 acres at Ug. Shs. 2,500,000/=. That after two years the plaintiff went to him to sign the transfer forms but that by that time her husband died, and the transfer forms were not yet signed. DW1 also stated that he had never owned any other land in the area

measuring 49 acres, and insisted that he sold titled land and not a *kibanja* to Dr. Rwaguma and entered into a sale agreement with him.

Section 101 and 102 of the Evidence Act (Cap.06) is to the effect that he who alleges must prove. In ***Sebuliba vs. Co-Operative Bank (1982) HCB 129***, it was held that the burden of proof in civil proceedings lies upon the person who asserts or alleges. In the instant case the plaintiff alleges that she is a *bona fide* occupant by virtue of the purchase of the suit land from a *bona fide* occupant. She adduced evidence of the sale agreement, *Exhibit P6*, which has both the signatures of the seller as Lwanga William, and the purchaser as Dr. Rwaguma. The agreement also bears a consideration of Ug. Shs. 2,500,000/=, which is the same amount the DW1 Lwanga William the seller confirmed to have received as the purchase price for the land he sold land to Dr Rwaguma. The evidence in this regard was corroborated by other plaintiff's witnesses. However, Lwanga William for some unknown and quite strange reasons denied having sold the suit land to the plaintiff's husband.

It is noted that apart from Lwanga's denials, the defendant did not adduce any evidence contesting his signature on the sale agreement, by for instance, subjecting it to forensic or a hand writing experts for expert opinion. In yet another strange turn of events, the defendant denied having knowledge of Lwanga William his defence witness, and wondered why Lwanga was in court to court at all. **Section 103 of the Evidence Act (supra)** puts the burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person. The defendant who wanted court to believe that Lwanga William did not sell the suit land to the plaintiff's husband failed to prove that fact, in as much as he failed to effectively impeach the plaintiff as a

bona fide occupant by virtue of having purchased an interest in the suit land from a *bona fide* occupant. The defendant's counterclaim thus fails and it is dismissed with costs. Issue No.3 is answered in the affirmative.

Issue No.4: What are the remedies available to parties?

Having found that the plaintiff is in adverse possession of the suit land, and at the same time a *bona fide* occupant on the suit land, it is declared and ordered that;

- (1) The plaintiff is entitled to issuance of a certificate of title in her own name in respect of land comprised in Busiro Block 534 Plot 31, the suit land, having been in occupation of the same unchallenged by the registered owner for over twelve years.***
- (2) The defendant's certificate of title lapsed by effluxion of time and the Commissioner for Land Registration is directed to cancel the same.***
- (3) The Commissioner for Land Registration is directed to issue a certificate of tile in the name of the plaintiff for land comprised in in Busiro Block 534 Plot 31.***
- (4) A permanent injunction doth issue restraining the defendant from further interference with the plaintiff's quiet possession and occupation of the suit land.***
- (5) The defendant's counterclaim is dismissed with costs to the plaintiff.***
- (6) The plaintiff is awarded costs of the suit.***

BASHAIJA K. ANDREW

JUDGE

23/06/2015

Mr. Mujurizi Julius Counsel for the plaintiff - present.

Mr. Hobumigisha Innocent Counsel for the defendant – present.

Plaintiff – present.

Defendant – absent.

Mr. Godfrey Tumwikirize Court Clerk – present.

Ms. Hasipher Nansera Transcriber – present.

Court: Judgment read in open court.

BASHAIJA K. ANDREW

JUDGE

23/06/2015