

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

CIVIL SUIT NO. 660 OF 2014

SEMAKULA SIRIVEST:.....PLAINTIFF

VERSUS

JUDITH NAMAGANDA:.....DEFENDANT

Before: HON. MR. JUSTICE HENRY I. KAWESA

RULING ON PRELIMINARY OBJECTION

The mediation in the matter having been completed and having been unsuccessful, the matter was finally set down for hearing. At the hearing, Counsel Paul Baingana for the Defendant informed Court that the matter ought to have come by way of a suit property was a subject of execution in Civil Suit No. 1546 of 2007 – **Kakooza Said versus Kazibwe Fred** wherein Court ordered for its sale in execution of a decree. The sale was completed and Abdalla Bin Jaffer became the registered proprietor on the 13th day of February 2008 and took possession.

The sale was not challenged. The said Abdalla Bin Jaffer sold to the Defendant the said property. The Defendant took possession until when the Plaintiff used tricks to re-enter.

It was Counsel’s contention that the property was advertised and subsequently sold by Court order and nobody came up to claim any interest therein at all. He argues that under O.22 r55 of the Civil Procedure Rules, following the attachment, anyone who had interest in the property ought to have initiated objector proceedings.

However, no such proceedings were sought by the Plaintiff. Counsel argued that the purchase by Judith Namaganda is protected. She was a third party in the sale and was not party to the alleged interest by the Plaintiff. He argues that the Defendant’s interest is unimpeachable as execution was completed and by the time the Defendant bought the suit

land and that the Plaintiffs' claim over the kibanja had been terminated by the earlier purchase of Abdalla Bin Jaffer. He further urged that there is therefore no cause of action as against the Defendant who is a mere third party herein. He prayed that the suit be dismissed with costs.

In reply, Counsel for the Plaintiff argued that from the plaint, it is stated that the Plaintiff is a bonafide occupant and lawful owner of the suit kibanja comprised in Block 207 plot 1656 and 1657 respectively bought in 1970 from Edward Y. Sengonze. The Plaintiff stated that he was introduced to the landlord the late Juliana Nabikande Ndibarekera and began paying Busulu. 0706750644

He argued that the Plaintiff has never been part of Civil Suit 1546 of 2007; **Kakooza Sam versus Kazibwe Fred** and was not aware of any Court proceedings at Mengo Court. He argued that there were illegalities committed in the conduct of the purported sale of this land, and the land did not belong to Defendant neither was it in the possession of the Judgment debtor. He further argues that any sale was subject to the Plaintiff's equitable interest and the Plaintiff could not be evicted in the circumstances as herein.

Counsel prayed that the Defendant's preliminary objection be dismissed with costs.

In further rejoinder the defence Counsel/Applicant maintained his submissions that the Defendant is not liable for any violations of the Plaintiff's rights, since the person from who she obtained title is Abdalla Bin Jaffer.

I have carefully followed the above arguments and resolve the preliminary Objection as follows. It is argued that the plaint ought to be rejected because the matters it raises ought to have been raised under O.22 r55 of the Civil Procedure Rules as objector proceedings. To that extent, the Applicant argues that the plaint discloses no cause of action against the Defendant.

The facts reviewed above show that the Defendant is a bonafide purchaser for value. As a bonafide purchaser, who even holds a title, can he be liable for the alleged violations of the Plaintiffs Kibanja rights on the suit land?

In ***John Katarikawe versus William Katwiremu (1977) HCB 187***, the Court held *inter-alia* that a contract for sale of land is not perfect until an effective transfer of title has been made,

but failure to do so, does not affect the contract until the land is transferred to other persons. It was further held that before transfer of the land, a buyer under contract acquires only equitable interest. On the land being transferred to him, he acquires an indefeasible registered estate unless the transfer was effected through fraud.

From the pleadings as per the plaint, the Defendant is described as registered on certificate of title in Block 207 plots 1656 and 1657 (*see paragraph 2*). The WSD in paragraph 5(a) – (f) shows that the Defendant conducted due diligence, bought and got registered. The actions complained of by the Plaintiff as against the Defendant are ‘*third party actions*’ which are not her actions.

In ***Mpagazile versus Nehumsi (1992 – 93) HCB 148***; a bonafide purchaser becomes one by taking steps to inquire to know whether the land belongs to the seller or whether he has any title or Power of Attorney to sell the land.

From the pleadings, the Defendant carried out a search and even asked the local authorities of the area (paragraph 5 – WSD).

From the discourse above, the Defendant from a reading of the plaint, the Defendant appears to be a bonafide purchaser. The land was bought from Abdalla Bin Jaffer who bought from a Court bailiff following an order of Court.

I do agree with the averments that at the time of selling this property and subsequent purchase by Abdalla Bin Jaffer, if anybody objected to the sale, they were at liberty to challenge his title. No such challenge or objection was however done. Under Order 22 r55 of the Civil Procedure Rules, it is provided that;

‘where any claim is preferred to, or any objection is made to the attachment of any property attached in execution of a decree on grounds that the property is not liable to the attachment, the Court shall proceed to investigate the claim or objection.....’

The above provisions cater for scenarios as the ones being referred to by the Plaintiff, in this case as per his plaint. The suit as it stands addresses issues that the law provided for under O.22 R5 of the Civil Procedure Rules. There is therefore no way that the Plaintiff can sustain the current suit against the Defendant. The Defendant is strange to the equities claimed

against her by the Plaintiff being a bonafide purchaser for value without any notice of Plaintiffs rights thereon.

I agree with the objection raised by the defence that the plaint discloses no cause of action. A cause of action was defined in the case of Auto Garage versus Motokov CA No. 22 of 1971that;-

1. *'the Plaintiff enjoyed a right*
2. *The right was violated*
3. *The Defendant is responsible for that mischief*
4. *The defendant is liable*

From the facts and pleadings in the plaint as it is, there is no indication anywhere that the Plaintiff's right were violated by the Defendant. The plaint is therefore not disclosing a cause of action against the Defendant.

I find that the preliminary objection is proved and is hereby sustained. The suit is dismissed with costs to the Defendant.

I so order.

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Henry I. Kawesa

J U D G E

28/11/2017

28/11/2017

Kiggundu Paul for the Plaintiff

Plaintiff present.

Damutunda Fred (lawful Attorney)

Baingana Paul for Defendant

Court: Ruling delivered to the parties above.

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Henry I. Kawesa

JUDGE

28/11/2017