

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
LAND DIVISION
CIVIL SUIT NO. 528 OF 2014

5 1) SOLOMON LUWALALA
 2) DAVID MUYISE
 3) APOLLO WASSWA BASUDDE.....PLAINTIFFS

VERSUS

10 UGANDA LAND COMMISSION.....DEFENDANT

JUDGMENT:

Introduction:

- 15 The plaintiffs filed this case against the Uganda Land Commission (ULC), seeking orders/declarations, among others: that the property formerly comprised in **FC 17703 MRV 243 Folio 23 (now Block 255 plot 98 and 97 Kyadondo)** (suit land) is the property of the estate of the late Sir Apollo Kaggwa; cancellation of all the transfers and plots subdivided out of the said land; cancellation of all
- 20 titles created out of the said land by the defendant; reinstatement of the said land into the names of Sir Apollo Kaggwa Gulemye; a permanent injunction restraining the defendant, his agents, servants, employees or anyone claiming under him from disposing of, alienating or any further trespass on the plaintiffs land.
- 25 They further sought general damages for trespass and *mesne* profits from all the income derived by the defendant from the said land; and costs of the suit.

Facts of the case:

The plaintiffs are beneficiaries of the estate of the late Sir Apolo Kaggwa who passed away some time in 1927. The deceased owned several properties and it is the plaintiffs' claim that among these properties were the suit land.

- 5 That by 5th July, 2013, the suit land was still in the proprietorship of the deceased, according to the micro film report from the Ministry of Lands Housing and Urban Development, but only to discover later that it was converted from **MRV 243 Folio 23** and subdivided into **plots 97 and 98 of Block 255 Kyadondo** and then registered in the defendant's names.
- 10 That the Administrator General took out letters of administration over the estate on 28th May, 2012. On 21st May, 2014, powers of attorney were granted to the plaintiffs.

Based on those powers, they filed this suit in which they seek to challenge the defendant's alleged fraudulent acts of subdividing the suit, and illegally
15 registering itself thereon as proprietor.

In its defence, ULC claimed however that the plaintiffs had no cause of action against it, having lawfully obtained registration of the suit property. That in any case several transactions had since been carried out in respect of the suit land which were not shown by the micro film report relied on by the plaintiffs.

20 **Representation:** t

The plaintiffs were represented by **M/s J. M Musisi Advocates & Legal Consultants**. The WSD was filed by the Attorney General's Chambers on behalf of the defendant.

It sought in its defence to have the suit dismissed but did not turn up at the
25 hearing to present it, and at the close of the hearing parties were directed to file written submissions. However, it was only the plaintiffs who filed the submissions.

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As per order of court dated 5th February, 2016, the defendant was directed to file its statements by 15th February, 2016 which was never done. The defendant was however duly represented during the scheduling.

5 **Issues:**

1) ***Whether the suit property belongs to the estate of the late Sir Apollo Kaggwa.***

10 2) ***Whether the transactions carried out on the suit property were illegal.***

3) ***Whether the defendant is a trespasser.***

4) ***Whether the plaintiffs are entitled to the remedies sought.***

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Issue No. 1: Whether the suit property belongs to the estate of the late Sir Apollo Kaggwa:

And

Issue No 3. Whether the defendant is a trespasser.

20 I will consider both issues jointly.

Section 101 of the Evidence Act, Cap. 6 provides that whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he or she asserts must prove that those facts exist.

25 **Section 103** further stipulates that the burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence. (***Sebuliba versus Co-operative Bank Ltd [1982] HCB 129***).



Furthermore, in ***Sheik Muhammed Lubowa versus Kitara Enterprises Ltd C.A No.4 of 1987, the East African Court of Appeal*** the court noted that in order to prove the alleged trespass, it was incumbent on the party to prove that the disputed land belonged to him; that the defendant had entered upon that land; and that the entry was unlawful in that it was made without his permission; or that the defendant had no claim or right or interest in the land. (Ref also: ***H.C.C.S No. 118 of 2012, Tayebwa Geoffrey and Anor Vs Kagimu Ngudde Mustafa; Justine E.M.N. Lutaaya Vs Sterling Civil Engineering Co, SCCA No. 11 of 2002***).

10 **Analysis of the evidence:**

The plaintiffs relied on the evidence of the 1st plaintiff, ***Pw1***, Mr. Solomon Luwalala who testified as a single witness on behalf of all the plaintiffs. ***Pw1*** presented letters of administration, ***PExh 2***, proof that the Administrator General had been granted the authority by this court vide: ***AC No. 1205 of 2009*** to administer the estate of the late Sir Apollo Kaggwa. The said grant was issued on 28th May, 2012.

PExh 4 was the power of attorney which the office of the Administrator General granted on 21st May, 2014 to the three plaintiffs to recover whatever was due to the estate.

20 The said witness ***Pw1*** referred to a report from the Ministry of Lands, Housing and Urban Development which is dated 5th July, 2013. It was addressed to ***M/s Kasana, Mpungu & Co. Advocates*** (former counsel for the plaintiffs).

The report was titled: *Report on Kyadondo Block 255, plots 97 and 98 at Munyonyo Kampala* was the plaintiffs' evidence that a search had been made on cadastral 'cartridge' map sheet, Cadastral, Topographical Maps, Images and Microfilm records on ***Kyadondo Block 255 under FC 17703 Plots 97 and 98 and FC 17704*** at Munyonyo. It clearly indicated that the late Sir Apollo Kaggwa had been owner thereof since 1921.

The author of that report could not however guarantee that the owner of the suit land was still the same following several transactions thereafter. A recommendation was made requiring the plaintiffs to continue the search in the register for details on ownership. (Refer: **PExh 1**).

5 The certificate of title availed to court indicated that the land was initially registered under the names of the Buganda Land Board under **article 113 of the Constitution** before it was transferred to ULC under **article 108 of the Constitution**. The year in which the transfers were made however were not indicated.

10 A request was subsequently made to the office of the Commissioner Surveys and Mapping to furnish the office of the Chief Government Valuer with a boundary opening report for the suit land.

As per the report, the Solicitor General was responding to an order of this court dated 19th February, 2020. A boundary opening survey was then carried out and
15 a report was filed on the ownership of both **plots 97 and 98** dated 8th July, 2020. The area covered by **plot 97** was 1.619 ha (4 acres), fully developed with a church: Munyonyo Martyrs Shrine.

Plot 98 on the other hand was developed and occupied by private developers. It has the Entebbe Express way/road utilizing approximately 1.3Ha of 4.172 Ha,
20 leaving only 2. 872 Ha. The names of the occupants and the developers were not provided. They were not made parties to the suit.

Both plots according to that report covered a total area of 5.791 ha. (14.31 acres) which size tallies with what appears in the report entitled: *Report on Kyadondo Block 255, plots 97 and 98 at Munyonyo (PExh 1)*.

25 It was confirmation that ULC was the registered owner thereof. ULC had leased land to the Registered Trustees of Kampala as confirmed by the certificates of title attached to the survey report for **MRV 243 Folio 23 from FC 17703**.

The title was created in 2015 in respect of a lease for **plot 97** for a term of 99 years, w.e.f 1st January, 2014. The lessee was however not made party to this suit.

5 From the above findings as indeed submitted by counsel for the plaintiffs, the said land originally belonged to the late Sir Apolo Kaggwa. It is not clear how the titles were subdivided and converted to **plots 97 and 98**.

As indicated in his letter to the Solicitor General dated 29th September, 2014, the Secretary of ULC Mr. Baker Mugaino stated that the plots were both (at that time) registered in the names of ULC but that no written evidence could be found
10 to establish how ULC had acquired it. This was admission of the irregularity.

Article 26 of the Constitution protects a person's right to own property either individually or in association with others. Under **article 26 (2)** thereof, before the taking possession or acquisition of the land from its owner, prompt, fair and adequate compensation must be paid to that owner.

15 The defendant in this case acted beyond its duty as the trustee of the land acquired by Government under **article 239 of the Constitution**, to compulsorily acquire land which belonged to an individual estate; and without compensating the owners thereof.

20 The Secretary of the ULC whose evidence was so crucial to the defence was lined up as a witness but never came turned in court to explain why further investigations were never carried out to establish the truth, before transfer of **plot 97** was made to the Registered Trustees of Kampala.

In response to **Issues No. 1 and 3** therefore, the suit property belongs to the estate of the late Sir Apollo Kaggwa, which clearly made the defendant a
25 trespasser to that land.

Accordingly, all transactions thereon were illegal. That also therefore disposes of **issues No. 2 and 3**.

Remedies:

The plaintiffs seek the following remedies:

1. *that the property of the estate of the late Sir Apollo Kaggwa;*
2. *cancellation of all the transfers and plots subdivided out of the said land;*
- 5 3. *cancellation of all titles created out of the said land by the defendant;*
reinstatement of the said land into the names of the late Sir Apollo Kaggwa
Gulemye;
- 10 4. *a permanent injunction restraining the defendant, his agents, servants,*
employees or anyone claiming under him from disposing of, alienating or
any further trespass on the plaintiffs' land.

They further sought general damages for trespass and *mesne* profits from all the income derived by the defendant from the said land; and costs of the suit.

General damages:

15 The plaintiffs in their submissions sought to be granted an award of **Ugx 300,000,000/=** as would place them in a position they would have been if they had not suffered the wrong.

20 It was argued that they had been denied access to the land which is of high value and could not utilize it for any development. That the land has also been traversed by Entebbe expressway, as seen from the survey report produced in court.

25 Its trite law that, that damages are direct and probable consequence of the act complained of, also noted in the case of **Kampala District Land Board and George Mitala Vs Venansio Bamweyana CA No. 2 of 2007**. Such may be loss of profit, physical inconvenience, mental distress, pain and suffering, (**See also Assit (U) Vs Italian Asphalt & Haulage & Anor HCCS No. 1291 of 1999 at page 5**).

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It is also a settled position of the law that the award of general damages is in the discretion of court and is always as the law will presume to be the natural consequence of the defendant's act or omission.

5 The object of an award of damages is to give the plaintiff compensation for the damage, loss or injury he or she has suffered. (**See: Fredrick Nsubuga Vs Attorney General S.C.C.A. No. 8 of 1999**).

10 Therefore, in the circumstances of the quantum of damages courts are mainly guided by the value of the subject matter, the economic inconvenience that the party was put through at the instance of the opposite party and the nature and event of the breach.

A plaintiff who suffers damage due to the wrongful act of the defendant must be put in the position he or she would have been in had he or she not suffered the wrong.

15 He or she ought to lead evidence or give an indication what damages should be awarded on inquiry as the quantum. (**Ongom Vs. AG (1979) HCB 267, cited by court in Kamugira Vs National Housing & Construction Co. CS.No. 127 of 2009**).

20 The plaintiffs succeeded in proving their case against the defendant. However, since the third parties were not made parties to the suit or invited to testify as witnesses, it would be contrary to the rules of natural justice to have their titles cancelled. I would however allow the prayer for compensation of the suit land.

The value of the amount payable as compensation shall be assessed by the Chief Government Valuer, and shall be paid within sixty days following the report on the assessment.

25 Costs awarded to the plaintiffs.





Alexandra Nkonge Rugadya

Judge

3rd November, 2023

Delivered by email


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