

UGANDA / JUDGMENT

Akiding and 3 Others v Dheyongera and Another (HCT-00-LD-CS 2243 of 2016) [2023] UGHCLD 259 (22 August 2023) [2023] UGHCLD 259

COURT

HC: Land Division (Uganda)

BEFORE

Bernard Namanya, J

CASE / FILE NUMBER

HCT-00-LD-CS 2243 of 2016

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THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT KAMPALA [LAND DIVISION] CIVIL SUIT NO. HCT-00-LD-CS-2243-2016

1. AKIDING JANE

2. ISAAC OKIA

- 3. OKIA DEBORAH
- 4. PRISCILLA NABUDDE OKIA ::::::::::::::::::::::::::::::::::

VERSUS

1. DHEYONGERA JIMMY

2. OKIA SAM ::::::::::::::::::::::::::::::::::

BEFORE: HON. JUSTICE BERNARD NAMANYA

JUDGMENT

- In this action, the plaintiffs, who are widow and children of the late Asukanazi \$1.\$ Krisositomu Okia, seek to recover an unregistered parcel of land and developments located at Swara Road, Naguru, Katale, Binyonyi Village, Nakawa Division, measuring 60 ft x 36 ft (hereinafter "the suit property") from the defendants. The plaintiffs assert that the suit property forms part of the estate of the late Asukanazi Krisositomu Okia but was unlawfully dealt with by the 2nd defendant, himself also a son of the deceased, who sold it

to the 1st defendant.

- The defendants any wrongdoing, and instead assert that the 2nd defendant \$2.\$ obtained ownership of the suit property from the late Asukanazi Krisositomu Okia, and settled on the land in 1983, and that the late Asukanazi Krisositomu Okia fully recognised the 2nd defendant's interest in the suit property until he

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died in 2008. That the 2nd defendant claims to have lawfully sold the suit property to the 1st defendant in 2011.

- \$3.\$ The plaintiff was represented by M/s Nabukenya, Mulalira & Co. Advocates. The defendants were represented by M/s Janet & Faith Advocates.
- The plaintiffs produced three witnesses to prove their case: PW1 (Okia Jane 4. Rachael), PW2 (Mirembe Debora Okia) and PW3 (Priscilla Nabudde Okia).
- \$5.\$ The plaintiffs relied on the following documents:
 - i). Exh. P1 \$-A\$ copy of the agreement of purchase of the suit property dated 19/2/1984 between Mzee Amisi Ali and A. K. Okia;
 - ii). \$Exh. P2\$ Application for town plot by Okia Asukanazi applying for a lease (undated);
 - iii). Exh. P3 Application letter dated \$4/10/1990\$;
 - iv). Exh. P4 Letter from City council of Kampala dated 23/12/1991;
 - v). Exh. P5 Letter requesting for survey dated \$24/8/1992\$;
 - vi). ExhP6 Lease offer form dated \$24^{th}\$ February 1992:
 - vii). Exh. P7(a) KCC ground rent receipt dated \$24/8/1992\$;
 - viii). Exh. P7 (b)– KCC land premium receipt dated 24/8/1992;
 - ix). Exh. P7(c) General receipt dated \$24/8/1992\$;
 - x). Exh. \$P7(d)\$ KCC land premium and ground rent provisional demand note dated 24/8/1992;
 - xi). ExhP8 Letter for permission to commence work at site dated \$25/8/1989\$;
 - xii). ExhP9 Letter for permission to repair a house at Naguru dated \$5/3/1989\$;
 - xiii). Exh. P10 Agreement for sale of land between Okia Asukanazi K. and Akena George dated 2/11/2007;
 - xiv). Exh.11 Agreement of resettlement of money dated \$3/9/2011\$;

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- xv). Exh. P12 Memorandum of compensation (undated);
- xvi). Exh. P13 \$-Letter with names of the witnesses (undated);
- xvii). Exh. P14 Consent letter signed in the presence of the chairman (date not visible);
- xviii). Exh. P15 Letter from Ruyoka Uganda Ltd dated 9/12/2005;
- xix). Exh. P16 Letter from the office of the chairman dated \$23/7/2015\$;
- xx). Exh. P17 A letter requesting to convene a family meeting dated \$22/7/2015\$;
- xxi). \$Exh. P18 A\$ letter to the widows and all the deceased's children dated \$13/8/2015\$;
- xxii). Exh. P19 A copy of the minutes dated \$16/10/2014\$;
- xxiii). Exh. P20 A copy of the Certificate of no objection dated \$23/8/2016\$;
- xxiv). Exh. P21 Letter from Nabukenya, Mulira & Co. Advocates to the 1st defendant dated \$4/6/2015\$;
- xxv). Exh. P22 Letter from Kibeedi & Co. Advocates to Nabukenya, Mulira & Co. Advocates dated \$4/6/2015\$;
- xxvi). Exh. P23 Letters of administration to Alice Okia dated \$11/5/2009\$;
- xxvii). Exh. P24 Marriage identity card of PW3; and
- xxviii). Exh. P25 – Local council recommendation.
- The defendants produced two witnesses to prove their case: DW1 (Dheyongera 6. Jimmy) and DW2 (Okia Sam).
- \$7.\$ The defendants relied on the following documents:
- i). Exh. D1 Letters of administration dated \$11/5/2009\$;
- ii). \$Exh. D2(a)\$ Application for letters of administration by Alice Okia dated \$25/3/2009\$;

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- iii). Exh. D2(b) Declaration by Alice Okia dated \$25/3/2009\$;
- iv). Exh. D2(c) Copy of LC identification card for Alice Okia certified on \$15/3/2016\$;
- v). Exh. D2(d) Letter from the office of the chairman to Mrs Alice Okia dated \$3/9/2008\$;
- vi). Exh. D2(e) Notice of application dated \$31/3/2009\$;

- vii). Exh. D2(f) Letter to the Administrator General dated 21/2/2012;
- viii). Exh. D2(g) –Newspaper advert dated April 2009;
- ix). Exh. D3 KCCA letter of demand to Asukanazi Okia dated 19/5/2015;
- x). Exh. D4 Property rates and ground rent demand note dated \$19/5/2015\$;
- xi). Exh. D5 Demand letter from Ruyoka Uganda Ltd dated 9/12/2005;
- xii). Exh. D6 Property rates demand note to Okia Sam dated \$6/12/2005\$;
- xiii). \$Exh. D7 A\$ copy of the agreement of sale between Dheyongera Jimmy and Okia Sam dated \$18/3/2011\$:
- xiv). Exh. D8 Special Power of Attorney from Alice Okia to Okia Sam dated \$10/2/2011;\$
- xv). Exh. D9 Letter to the secretary district land board dated \$3/1/2011\$;
- xvi). Exh. D10 Letter from Nabukenya, Mulira & Co. Advocates dated \$21/5/2015;\$
- xvii). Exh. D11 KCCA letter to manager, revenue collection dated \$23/10/2015\$;
- xviii). ExhD12 Complaint letter to the land protection unit dated \$9/12/2019\$; and
- xix). ExhD13 Consent order dated \$7/6/2016\$.

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- 8. On the 12 th May 2023, court carried out a locus in quo visit to the suit property in the presence of counsel for the plaintiffs, and for the defendants. The 1 ", 3rd and 4 th plaintiffs; and both defendants were present.
- 9. Ms. Rachael Okia was sworn in, gave evidence and was cross examined by counsel Waiswa Salim and re-examined by counsel Nakajubi Justine. On the side of the defendants, Mr. Okia Sam took the oath, gave evidence and cross examined by counsel Nakajubi Justine and re-examined by counsel Waiswa Salim.
- 10. Court observed that whereas the suit property claimed by the defendants measures 60 ft x 36 ft as per Exh. D7 (sale agreement dated 18 March 2011), on the ground, the property occupied and claimed by the defendants is slightly more than the above measurements.
- 11. The following are the issues for court's determination:
 - i). Whether the suit property forms part of the estate of the late Asukanazi Krisositomu Okia?
 - ii). Whether the transaction of sale of the suit property between the defendants was lawful?
 - iii). Whether the 1 " defendant is a bona fide purchaser of the suit property?

- iv). What remedies are available to the parties?

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Issue No. I: Whether the suit property forms part of the estate of the late Asukanazi Krisositomu Okia?

Arguments for the plaintiffs:

- 12. It was argued for the plaintiffs that the suit property forms part of the estate of the late Asukanazi Krisositomu Okia. That during the process for application of letters of administration of the deceased, the suit property was listed among the properties left behind by the deceased (Exh. D2(a)). That court granted letters of administration to the widow, Alice Okia (Exh. P23). That before the grant of letters of administration, there was an inquiry about the various properties left behind by the deceased. Counsel for the plaintiffs referred to a meeting convened by the Administrator General which was attended by the 2nd defendant (see Exh. P19 - Minutes of the meeting at the Administrator General's office), which prove that the 2nd defendant attended the said meeting. That at page 30 of Exh. P19, the Administrator General conducted an inquiry on the properties left behind by the deceased, and whether any property was given out by the deceased while he was still alive. That according to Exh. P19, it was only land at Kabek Village in Kakoro Sub County that was given out to some of his children. Counsel argued that the 2nd defendant ought to have informed the family during the meeting held at the Administrator General's office how he acquired the suit property.
- 13. PW3 (Priscilla Nabude Okia) testified that she is one of the widows of the late Asukanazi Krisositomu Okia, and that she is the one that paid the purchase price for the suit property in 1984 (she referred to Exh. P1, agreement dated 19 February 1984). According to the plaintiffs, the 2nd defendant was allowed to temporarily stay on the suit property as he sorted out his financial issues, but

Page 6 o/12 that he does not own the suit property. That the 2nd defendant concedes that he does not own the suit property and that, that is why he had to obtain a special power of attorney from the administrator of the estate of the deceased, to enable him to sell the suit property to the 1st defendant (Exh. D8, special power of attorney dated 10th February 2011). That the 2nd defendant has no document showing that he acquired the suit property from his father in 1983, and that all the documents in his possession were created after the death of his father.

Arguments for the defendants:

- 14. The gist of the defendants' arguments is that the suit property was given to him by his father, the late Asukanazi Krisositomu Okia, while he was still alive. That the suit property does not form part of the estate of the deceased person, and is therefore not subject to

administration by the administrator of the deceased person. Counsel relied on the testimony of DW2 (Okia Sam), who claims to have occupied the suit property since 1983 without any challenge from his father, who was in occupation of the adjacent plot of land. That even if it is proven that the late Asukanazi Krisositomu Okia did not gift him the suit property as claimed by the plaintiffs, he is a bona fide occupant as dictated by the law.

- 15. It was further argued for the defendants, that there are two distinct properties, even recognised by City Council authorities, one that was occupied by the late Asukanazi Krisositomu Okia (Property No. K5/1700), and the other previously occupied by the 2nd defendant (Property No. K5/1696). Counsel referred to Exh. D3 and D4 dated the 19th May 2015; and Exh. D5, demand note for property rates addressed to the 2nd defendant dated 9th December 2005 and KCCA receipts.

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Decision of the court:

- 16. I have carefully evaluated the evidence adduced by both parties. Whereas the plaintiffs assert that the suit property was never gifted to the 2nd defendant by the late Asukanazi Krisositomu Okia, the 2nd defendant insists that the late Asukanazi Krisositomu Okia gifted him the suit property when he was still alive.
- 17. Both parties agree that the estate of the late Asukanazi Krisositomu Okia is administered by the Alice Okia, widow, having been granted such powers by Justice Margaret Oguli Oumo, Judge of the High Court on the 11th May 2009 (High Court of Uganda at Kampala, HCT-00-FD-AC-505-2009).
- 18. The law vests property of the deceased in the administrator of the deceased person, and to this effect sections 25 & 180 of the Succession Act (Cap 162) provide that:

"25. Devolution of property of a deceased dying intestate All property in an intestate estate devolves upon the personal representative of the deceased upon trust for those persons entitled to the property under this Act.

- 180. Character and property of executor or administrator The executor or administrator, as the case may be, of a deceased person is his or her legal representative for all purposes, and all the property of the deceased person vests in him or her as such."
- 19. The point of contention between the parties can be resolved by examining Exh. D8, special power of attorney dated 10th February 2011 signed by Alice Okia, administrator of the estate of the deceased person, who confirms that the

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suit property was indeed gifted to the 2nd defendant by the late Asukanazi Krisositomu Okia before his death. She stated the following in the said power of attorney:

"To take possession of part of the plot of the described leasehold at Binyonyi Village given to him by [the] deceased when still alive and has his seven room[ed] permanent house, KCC Property *No. KS/1696* [...] To do anything as may be necessary and maintaining or expedient for carrying out powers given and for protecting part of the plot given to him by the deceased from waste damage and trespass."

20. With this in mind, it is my decision that the suit property does not form part of the estate of the late Asukanazi Krisositomu Okia, and is accordingly, not available for distribution by the administrator of the estate of the deceased to other family members.

Issues No.2 & 3: $\mathcal{L}$

- 21. Issues No.2 & 3 shall be handled together.
- On the 18th March 2011, the 1st defendant purchased the suit property measuring 60 ft x 36 ft from the 2nd defendant (see Exh. D7, sale agreement).
- 23. It was observed during the locus in quo visit that whereas the suit property claimed by the 1st defendant measures 60 ft x 36 ft, on the ground measurements slightly differ from the Annex to Exh. D7.

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- 24. Having held that the suit property was lawfully acquired by the 2nd defendant, he acted within his rights when he decided to sell the suit property to the 1st defendant. Accordingly, it is my decision that the suit property was lawfully acquired by the 1st defendant.
- 25. There is only one point of contention that I have to resolve the issue of differing measurements (i.e., on the ground measurements vis-a-vis measurements in the Annex to the sale agreement (Exh. D7).
- 26. The 2nd defendant acquired land measuring 60 ft x 36 ft that he sold to the 1st defendant. The evidence gathered at the locus in quo visit indicates that the defendants claim land beyond the 60 ft x 36 ft plot of land.
- 27. On this issue, the decision of this court is that any land beyond 60 feet from Swara Road (taking into account the road reserve) belongs to the plaintiffs. It is not owned by the defendants. The defendants shall hand over the excess land to the plaintiffs.

- 28. Considering that the plaintiffs' suit has only partially succeeded, the plaintiffs are not entitled to general and aggravated damages as claimed. I have considered, that except for the I" defendant, the rest of the parties to the suit are members of the same family, and for this reason, each party shall bear its own costs of the suit.

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

- 29. In the result, I grant the following declarations and orders:
- i). That the plaintiffs are the lawful owners of the excess land currently occupied by the defendants beyond land measuring 60 ft x 36 ft in respect

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of land located at Swara Road, Naguru, Katale, Binyonyi Village, Nakawa Division.

- ii). That the defendants shall vacate the land referred to in (i) above, and remove any buildings they have on the land within 3 (three) months from the date of this judgment, in default of which, they shall be evicted, and any illegal buildings demolished in accordance with The Constitution *(Land Evictions) (Practice) Directions, 2021:*
- iii). That a permanent injunction issues restraining the defendants, their agents, servants, workmen and all those claiming under them and/or deriving authority from them from trespassing, encroaching, interfering and/or in any way dealing with the land referred to in (i) above.
- iv). That the \$1^{st}\$ defendant is the lawful owner of land measuring 60 ft x 36 ft in respect of land located at Swara Road, Naguru, Katale, Binyonyi Village, Nakawa Division.
- v). That each party shall bear its own costs of the suit.

IT IS SO ORDERED.

BERNARD NAMANYA JUDGE 25 August 2023

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| Attendance | | |-----|-----| | 25 August
2023 at 11:54am | | Musoke Arafat | Counsel for the plaintiff | | Waiswa Salim | Counsel for the
defendant | | The \$1^{st}\$, \$2^{nd}\$, and \$4^{th}\$ plaintiffs are | | present | | The \$1^{st}\$
defendant is in court | | Allena Kanyakire | Court Clerk | | | Court: | | Judgment delivered in
open chambers. | | Lemann ameny | | BERNARD NAMANYA | |

BERNARD NAMANYA \$\overline{\text{JUDGE}}\$ 22 August 2023

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