

UGANDA / JUDGMENT

Barongo v Kabaruli and 2 Others (Civil Suit 125 of 2022) [2024] UGHC 1141 (20 December 2024) [2024] UGHC 1141

COURT

High Court of Uganda

BEFORE

Byaruhanga Rugyema, J

CASE / FILE NUMBER

Civil Suit 125 of 2022

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THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA HOLDEN AT HOIMA

CIVIL SUIT NO. HCT-16-LD-CS-125 OF 2022 [Formerly Masindi Civil Suit No. 0015 of 2021]

IONATHAN BARONGO:..... VERSUS

| 1. MARY KABARULI | |

|-----|-----|

| 2. RESTY NANTEEZA | ********* |

| 3. JOSEPH KUSEKA | |

BEFORE: HON. JUSTICE BYARUHANGA JESSE RUGYEMA**JUDGMENT****Background**

- §[1]§ The Plaintiff sued the Defendants for recovery of vacant possession of land measuring approx. 25 acres at Ngerebwe Village, Kabasekende Sub-County, Kibaale District (herein referred to the suit property, an eviction order, permanent injunction to restrain the Defendants by themselves or by their servants, workers, agents, successors or otherwise howsoever from trespassing on the sit land and/or interfering with the thereof. Plaintiff's and possession general use and aggravated/exemplary damages, interest thereon, and costs of the suit.

- It is the Plaintiff's case that at all time from 2009 he was the owner \$[2]\$ in possession and use of the suit land which he acquired from **Gerald Tibeita** at a consideration of Ugx. \$3,300,000/= \$.
- That on or about **July 2020**, the Defendants by themselves and \$[3]\$ their children/ grandchildren and/or servants without any colour of right wrongfully entered the Plaintiff's suit land, battered and inflicted bodily harm against the Plaintiff's servants with a threat of further violence.
- [4]. That at the time of the illegal entry complained of, the Plaintiff had planted 3 acres of beans, 5 acres of maize and 3 acres of Irish potatoes and had prepared other 14 acres for planting maize which was all left unattended for fear of violence and injury by the Defendants. The Defendants harvested the said Irish potatoes and beans and have since planted maize on the 14 acres.
- The Plaintiff contended that the Defendants' entry and possession \$[5]\$ of the suit land was at all times wrongful and illegal and that by reason of the matters aforesaid, the Plaintiff has been deprived of the use and enjoyment of the said land thus hold the Defendants liable for the suffered damage and loss of income particularized as follows:
 - Damage and loss of beans (3 acres) and lost harvest Ugx. \$1.\$ \$5,250,000/= \$
 - Damage and loss of maize (5 acres) and lost harvest Ugx. \$2.\$ \$8,000,000/= \$.
 - Damage and loss of irish potatoes Ugx. 6,750,000/= . 3.
 - Loss of subsequent season's planting/harvest i.e. lost income \$4.\$ per year - Ugx. \$40,000,000/= \$.
 - Refund of labour expenses (500,000/= per acre x 25 acres) -5. Ugx. 12.500,000/ \$=\$ per season.

Value of trees: 6.

- Oranges - 50 trees	@ 5,000/	=\$ \$
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- Eucalyptus - 1,000 trees	\$ \quad \blacksquare\$	\$500/= \$ \$ \odot\$
- Mangoes - 50 trees	\$ \overline{}\$	@ 2,500/
- Exotic trees - 300 trees	@ 2,500/	=\$ \$
Total \$1,625,000/= \$		
Grand Total - <u>Ugx. 73,125,000/= </u>		

- In their joint defences, the Defendants denied the Plaintiff's claims [6] and contended that the Plaintiff has never owned the suit property and that the Plaintiff's claims of purchase are mere fraudulent.
- Further, that Gerald Tibeita who allegedly sold the suit land to the [7] Plaintiff did not own or possess the land, that he was once allowed by Mpanuka Yosefu to utilise part of the land for cultivation in

1999 and when he left in 2000, he returned the land to its actual owner, the late **Mpanuka**, father to the [2] and [3] Defendants.

- Lastly, that the said **Mpanuka** died testate in 2009 bequeathing the [8] suit land/kibanja to his girl child and was buried on the same suit kibanja where his father the late **Yosefu Mayanja** was also buried. That it is around 2018 when part of the suit land was identified by road construction company to extract murram that the Plaintiff began laying claims of ownership.
- In their joint scheduling memorandum, the parties formulated the [9] following issues for determination of this suit.
- Whether the Plaintiff is the lawful owner of the suit land. 1.
- If so, whether the Defendants have any legal right of claim. 2.
- Whether the Defendants are liable for damages in trespass as $\frac{Z}{}$ claimed.
- [4] What relief is available to the parties in the suit.

Counsel legal representation

[10] The Plaintiff was represented by **Mr. Tony Arinaitwe** of **Arinaitwe** Law Advocates, Kampala, while the Defendants were represented by Mr. Farouk Sentongo of M/s B. Edward & Co. Advocates, Both Counsel filed their respective submissions for Kampala. consideration in the determination of this suit.

Burden and standard of proof

- [11] Under Ss. 101(1), 102 & 106 of the Evidence Act, the burden of proof in Civil matters lies on the Plaintiff and the standard of proof is on the balance of probabilities, see **Ssebuliba vs Cooperative Bank Ltd** [1982] HCB 130.
- [12] In the instant case, the burden of proof is on the Plaintiff to prove his case on the balance of probabilities that he has a better claim to the suit land/kibanja than the one made by the Defendants.

[1] & [2] Issue:

- Whether the Plaintiff is the lawful owner of the (a) suit land.

- If so, whether the Defendants have any legal right \$(b)\$ of claim over the suit land.
- [13] Counsel for the Plaintiff submitted that the Plaintiff is the lawful owner of the suit property as per the **sale agreement** (P. Exh.1) executed between him and Gerald Tibeita witnessed by the L. C. I Chairman of the area a one Josephat Kikomeko (PW4) and Matia Tiberindwa (PW3), a neighbour.
- [14] That the above witnesses are well grounded who each has firm knowledge of the suit land and the parties. That each of them confirmed the purchase of the suit land from Gerald Tibeita (PW2), who in turn gave a detailed account of how he acquired the suit land pursuant to a government public call. That they confirmed the boundaries and the Plaintiff's unfettered possession and use of the suit land until the Defendants' trespass in July 2020.
- [15] Lastly, Counsel submitted that besides the sale agreement, the Plaintiff tendered in evidence the judgment of the L. C. III Court of Kabasenkende sub-county dated 18/2/2020 (P. Exh.2) vide a dispute between Sanyu Vicent (DW3) and the Plaintiff, and his duly land filled Form 4 - an application for conversion from customary tenure to freehold tenure which was duly endorsed by Kuseka John (3rd Defendant) and Tusiime Joseph, both children of the late **Mpanuka** - the alleged owner of the suit land.
- [16] Counsel for the Defendants on the other hand submitted that the Defendants are the lawful owners of the suit property which was bequeathed to them by their late father and husband to DW1, a one Mpanuka Joseph who had also inherited the same from his late father, Mayanja Joseph alias Horongo. That as further proof that the Defendants are the lawful owners of the suit land, in 2018, they were compensated by a China Construction Company for extraction of murram from the hill of the suit land.
- [17] Counsel submitted further that **Gerald Tibeita** (PW2) was merely on the suit land with the permission of the owner, the late Mpanuka Joseph until 2000 and therefore, that PW2 could not have sold to the Plaintiff the suit land he never owned. That besides, the Plaintiff's purchase agreement is null and void for reason that the neighbours to the suit land who are the family of the Defendants, none of them endorsed on the sale agreement (P. Exh.1) to confirm the purchase.
- [18] As regards the Plaintiff's exhibit of the L. C. III Court Judgment of Kabasekende sub-county (P. Exh.2), Counsel submitted that the case was between **Barongo Jonathan** (Plaintiff) and **Sanyu Vicent** (DW3), a neighbour where the Defendants were not parties and therefore they could not defend themselves against the judgment.
- [19] Upon consideration of the parties' pleadings and their evidence on record, this court finds that the Plaintiff adduced evidence that in 2009, he bought from **Tibeita Gerald** the suit land which borders with **Kuseka John** (3rd Defendant), **Tiberindwa Matia** (PW3) and the late **Asiimwe** at a consideration of \$3,300,000/= as per the **purchase agreement** dated 5/10/2009\$ (P. Exh.1). The suit land sale transaction was endorsed by the area L. C. I and L. C. II Chairpersons, Kikomeko Josephat (PW4) and Byamukama Peter respectively.

- [20] It is the further evidence of the Plaintiff (PW1) that in 2012, he started the process to acquire a certificate of title by making an application to convert the land from customary tenure to freehold. **Kuseka John** (3rd Defendant) and **Tusiime Joseph**, both members of **Mpanuka** family as children of the 1st Defendant, wife to **Mpanuka** and **Ssanyu V. (DW3)** endorsed on the application as neighbours (P. Exh.3). That his use and possession of the suit land remained uninterrupted until 2017 when a one **Kyamanywa Edward** brought Chinese on part of the suit land and part of **Kuseka's** land (which is adjacent to the suit land) where he claimed he possessed a certificate of title. Faced with **Kyamanywa's claim**, the **Mpanuka** family led by **John Kuseka** teamed up with the
- Plaintiff to jointly contest against **Kyamanywa's** certificate of title and they filed a suit vide H. C. C. S. No. 7 of 2018, Masindi against the said **Kyamanywa** by seeking cancellation of his title. It was now in July 2020 that the family of late **Mpanuka** also turned against the Plaintiff and beat up his workers on the suit land, forcefully took over possession and harvested his crops - maize, ground nuts, beans, irish potatoes, tree etc. claiming that the suit land was not his. They uprooted the barbed wire fence of the suit land and carried them away.
- [21] The Defendants who are mother, daughter and son respectively of the **Mpanuka** family on the other hand adduced evidence that the suit property belonged to **Mpanuka Joseph** who in turn had inherited it from his late father **Yosefati Mayanja alias Horongo**.
- [22] The 1st Defendant, **Mary Kabaruli (DW1)**, testified that the suit land formed part of her matrimonial home with a house until when she and her husband, **Mpanuka** shifted to another part of the land and that upon **Mpanuka's** death in 2009, he bequeathed the land to her and the girl children.
- [23] Lastly, **DW1** testified that **Gerald Tibeita (PW2)** who allegedly sold the suit land to the Plaintiff, in 1999 utilised the land with the permission of her late husband **Mpanuka** until in 2000 when he left and the land returned to **Mpanuka** as its owner.
- [24] From the above totality of evidence as adduced by the parties, it is not in dispute that **Tibeita (PW2)** settled on the suit land with an iron roofed house. The Defendants claim that he was on the land with the permission of the 1st Defendant's husband and father of the 2nd & 3rd Defendants a one **Mpanuka Joseph**. There is however no evidence that was adduced by the Defendants to support their claim that **Tibeita Gerald**, the vendor of the suit land to the Plaintiff was in utilisation and occupation of the suit land under the permission of **Mpanuka Joseph** from whom the Defendants claim their interests.
- [25] During cross-examination, **Tibeita Gerald (PW2)** stated thus:

"I acquired this land settlement in 1991 and started developments on the land in 1992. The authorities there permitted this kind of settlement and acquisition of land. It was called "Okukwata Ebibanja". "There was no documentation of the exercise. Birisho, a mukiga is the one who was first settled on this land under a Government settlement scheme of Bakiga in 1974. This Birisho later abandoned the land until when I came and settled thereon for it was empty, bush and public".

- [26] There is no other evidence that was adduced by the Defendants to challenge the above evidence of PW2. It was not even put to him during cross-examination that PW2 utilised and occupied the suit land with the permission of **Mpanuka**, the 1^{st} Defendant's husband and father to the 1^{st} & 2^{nd} Defendants. There is no evidence that was adduced by the Defendants to prove that the said PW2 ever left the suit land in favour of its alleged owner, **Mpanuka**.
- [27] Counsel for the Defendants submitted that the sale agreement executed by PW2 and the Plaintiff for the purchase of the suit land (P. Exh.1) is null and void. There is however no evidence that was adduced by the Defendants to support such a contention. Whereas it is true that none of **Mpanuka's** family members who are neighbours to the suit land witnessed the sale by endorsing on the sale agreement, as explained by **Tiberindwa Matia** (PW3), a neighbour to the suit land who witnessed the sale of the suit land to the Plaintiff, during the transaction, the Defendants were around but refused to endorse the agreement because they wanted money to do so. The Plaintiff himself also testified so at page 4 of the proceedings that one of the neighbours, Kuseka John, asked a lot of money in order for him to sign on the agreement. So in my view, in the circumstances of this case, the failure by the neighbours to the land to sign the sale agreement executed between PW2 and the Plaintiff cannot be found as a basis to nullify or discredit the agreement because reasons have been given as to why the neighbours never signed.
- [28] The claim that witnesses to the sale agreement (P. Exh.1), were from outside Ngerebwe village where the suit land is located is not correct because PW2 is the vendor of the land, PW3 is a neighbour to the land and a resident of Ngerebwe village, while **PW4** is the L. C. I Chairperson of the area.
- [29] Nonetheless, when the Plaintiff applied to convert the land/kibanja into freehold (P. Exh.3), Sanyu Vicent (DW3), Kuseka John (3rd Defendant) and his brother Tusiime Joseph, as neighbours endorsed his application. Both Kuseka and Tusiime who are children of the 1st Defendant, and the late Mpanuka never testified in court to deny their endorsement on the Plaintiff's application for conversion of the land to freehold. Apart from merely denying knowledge of John Kuseka and Tusiime Joseph, DW3 never denied his endorsement on the application (P. Exh.3).

- [30] With the above evidence, I find that the sale agreement executed between Gerald Tibeita and the Plaintiff for the purchase of the suit land is valid and therefore it rightly and lawfully conferred upon the Plaintiff lawful interest in the suit land/kibanja.
- [31] This conclusion is supported by the findings at locus. Whereas the Defendants claimed that the late Mpanuka and his father Mayanja **Horongo** were buried on the suit land, no grave was found to exist on the suit land. Indeed, Nantezi Resty (DW2) revealed at locus that the grave of her father Mpanuka was on Kwesekesa alias Kuseka's land. The implication of this is that the grave is on Mpanuka's original land inherited by his son Kuseka. The land of **Kuseka** as per the locus findings is that uncontested land adjacent to the suit land, also stretching from the hill downwards. In my view, this is the land that is described in Mpanuka's WILL (D. Exh.1) that was bequeathed to his children and not the suit land.
- [32] Besides, it is apparently clear from the judgment of the L. C. III Kabasekende sub-county (P. Exh.2) that the suit land was decreed to the Plaintiff. **Sanyu Vincent** (DW3) forcefully interfered with the demarcations of the boundary with the Plaintiff. The Defendants did not challenge the Plaintiff's cogent evidence that he indeed vide Masindi H. C. C. S. No. 7 of 2018 together with Kuseka John, (3rd Defendant) challenged the Certificate of title of
- a one **Kyamanywa Edward** when he claimed to own the upper portion of the suit land across the road and that of the Defendants' family, the adjacent land thus, the 3rd Defendant and his family cannot now turn around to claim the Plaintiff's portion of the suit land.
- [33] All in all, I find that DW3's evidence corroborated that of the Plaintiff when he stated that the suit land was at one time utilised by a Mukiga man Murisho who abandoned it because of "Énkerembe", monkeys in favour of Tibeita (PW2) who later sold it to the Plaintiff during the leadership of **Josephat Kikomeko** (PW4) as the L. C. I Chairperson who accordingly witnessed the sale. In the premises, I find the 1st issue in favour of the Plaintiff. The Plaintiff is the rightful owner of the suit land. The Defendants do not have any legal right of claim over the suit land.

Issues 3 & 4:

- Whether the Defendants are liable for damages in trespass. \$(a)\$
- What remedies are available to the parties \$(b)\$
- [34] This court having found that the Plaintiff is the lawful owner of the suit land, the acts of the Defendants which they have not denied. to wit, the uprooting of the Plaintiff's barbed wire fence, forceful takeover of his crops and beating up of his workers on the suit land amounted to trespass within the meaning of **Sheikh Mohammed Lubowa vs Kitara Enterprises** C. A. C. A. No. 4 of 1987, where it was held thus:

"...in order to prove the alleged trespass, it was incumbent to the Appellant to prove that the disputed land indeed belonged to him, that the Respondent had entered upon the land and that the entry was unlawful in that it was made without his permission or that the Respondent had no claim and interest in the land".

In Justine Lutaya vs Sterling Civil Engineering Co. Ltd S. C. C. A. No. 11 of 2002, Mulenga J. S. C. held:

> "trespass to land occurs when a person makes unauthorised entry upon land and thereby interferes or portends to

interfere with another person's lawful possession of that land".

[35] In the circumstances of this case, I find the Defendants to be trespassers on the Plaintiff's suit land. A trespasser gives the aggrieved party the right to bring an action and is entitled to damages as compensation for interference and for any harm suffered, Placid Weli vs Hippo Tours & Travel Ltd & Ors H. C. C. S. No.939 of 1996.

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According to Halsbury's Laws of England, 3rd Ed. Vol.38 at para.1222.

"In an action of trespass, the plaintiff if he proves the trespass." is entitled to recover damages even though he has not suffered actual loss. If the trespass is accompanied by the aggravating circumstances, the plaintiff may be awarded exemplary If the trespass has caused the plaintiff actual damages. damage, the plaintiff is entitled to receive such an amount as will compensate him for his loss. Where the defendant has made use of the plaintiff's land, the plaintiff is entitled to receive by way of damages such a sum as should reasonably be paid for the use (mesne profit)".

- [36] In the instant case, the Defendants unlawfully forcefully entered the Plaintiff's suit land without any colour of right and deprived him use and enjoyment of the suit land and as a result, he suffered damages as accordingly particularised in the plaint. The Plaintiff however did not adduce evidence to prove the particulars and the costing he put to each item. As the Plaintiff conceded in crossexamination, no professional assessment of the damage was conducted. Again no evidence was adduced by the Plaintiff to prove the mesne profits allegedly accrued to or by the Defendants.
- [37] The evidence on locus however clearly showed that it was the Defendants who were in utilisation of the suit land against the Plaintiff's will. They are deriving both food and income from the suit land at the expense of the Plaintiff. No doubt, the land was for both cash and food crop growing and since **July 2020** when the
- Defendants trespassed onto the suit land, the Plaintiff has suffered damage and loss of income.

- [38] In the premises, I find that the Plaintiff has not proved the alleged special damages which by law are to be strictly proved, Makubuya vs Umeme (U) Ltd S. C. C. A No. 1 of 2019, [2027] UGSC 61, but find that he has suffered general damages which I assess at Ugx. \$150,000,000/= and award him the sum accordingly.
- [39] In conclusion, judgment is entered in favour of the Plaintiff with the following orders
- The Plaintiff is the lawful owner of the suit land measuring \$(a)\$ approx. 25 acres at Ngerebwe village, Kabasekende subcounty, Kibaale District.
- An order for vacant possession of the suit land and or an order \$(b)\$ for eviction of the Defendants, their servants, agents and successors accordingly issues in the event of the Defendants' default to vacate.
- An order for permanent injunction issues to restrain the \$(c)\$ Defendants by themselves or by their servants, workers, agents, successors or otherwise howsoever from trespassing on the suit land and/or interfering with the Plaintiff's use and possession thereof.
- An order for general damages of Ugx. 150,000,000/= from the \$(d)\$ date of judgment till payment in full.
- The general damages to carry an interest of 18% p.a. from the \$(e)\$ date of judgment until payment in full.
- The Plaintiff as the successful party is granted costs of this \$(f)\$ suit, S.27 (2) CPA.

day of December, 2024. Dated at Hoima this \$20th\$

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