

UGANDA / JUDGMENT

Kagumaho v Magambo and Another (Civil Suit 219 of 2022) [2023] UGHC 254 (21 December 2023)

[2023] UGHC 254

COURT

High Court of Uganda

BEFORE

Byaruhanga Rugyema, J

CASE / FILE NUMBER

Civil Suit 219 of 2022

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT HOIMA

CIVIL SUIT NO. 219 OF 2022

(Formerly MSD C. S No.05 of 2017)

KAGUMAHO JOHN :::::::::::::::::::::::::::::::

VERSUS

1. MAGAMBO FRED

2. ISINGOMA IBRAHIM ::::::::::::::::::::::: EXECUTE: DEFENDANTS

Before: Hon. Justice Byaruhanga Jesse Rugyema

JUDGMENT

- In this suit, the Plaintiff's claim against the Defendants is for a declaration $\mathbf{1}$ that the suit property situate at Mulago, Buseruka Town Council, Hoima District belongs to the Plaintiff and that the Defendants are trespassers thereon, a permanent injunction restraining the Defendants from trespassing on the land, eviction orders against the Defendants and costs of the suit.

- [2] It is the Plaintiff's case that in 1999 and 2006, he purchased portions of land from the Defendant and agreements to that effect were accordingly executed. That upon purchase of the land, the Plaintiff took possession of the land by construction of a house and planting of trees.
- Further that since 2014, the Defendants have trespassed on the suit land [3] by cutting down the trees he had planted, and later forcefully fenced off another portion of his portion that included his house. That in pursuit of grabbing his entire land, the Defendants threatened to kill him and as a result, he had to flee the suit land for his life. The Plaintiff contended that due to the Defendants' illegal actions, the Plaintiff has suffered loss, inconvenience, damages and stress for which he holds the defendant liable for damages.
- In their joint Written Statement of Defence (WSD), the Defendants denied [4] the Plaintiff's allegations and contended that the Plaintiff purchased the land but failed to clear the balance on the purchase price as agreed so that he could be shown the boundaries in the presence of the bataka and local leaders. That however, the Defendant decided to give the Plaintiff another piece of land based on his first payment of shs.500,000/ =, which land he sold a one **Mohamed Mbabazi** who has since secured a title on the land.
- [51] It is the Defendants' contention that the [1] Agreement between the parties for the sale of the suit land was vitiated by the Plaintiff's breach and that on the New Agreement that was entered into by the parties it was for a different piece of land.

Issues for determination

- From the parties' separate scheduling memorandum notes, the issues for [6] determination for this court are:
- 1. Whether the Plaintiff is the rightful owner of the suit land or whether he bought the disputed land from the [2] Defendant.
- 2. Whether the Defendants are trespassers on the suit land.
- 3. What remedies are available to the parties.

Counsel legal representations

The Plaintiff was represented by Ms. Noel Nuwa of Ojok Advocates, [7] Kampala while the Defendants were represented by Mr. Christopher Mwebaza of M/s Mwebaza & Co. Advocates, Hoima. Both counsel filed their respective submissions as directed and permitted by this court.

Burden and Standard of proof

- [8] In civil cases, it was held in **Uganda Petroleum Co. Ltd Vs Kampala City Council, HCCS No.250/2005** that the burden lies on the party who alleges to prove his or her case on the balance of probabilities. Under **S.101(1) of the Evidence Act**, whoever desires 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.
- In the instant case, the Plaintiff bear the burden to prove purchase and [9] ownership of the suit property.

Issue No.1: Whether the Plaintiff is the rightful owner of the suit land or whether he bought the disputed land from the 2nd Defendant.

- [10] Counsel for the Plaintiff submitted that the Plaintiff is the owner of the unregistered land that he bought from the 2nd Defendant as per the purchase agreement dated 10/11/1999 at a consideration of Ugx \$1,150,000/= of which he first deposited Ugx 500,000/= and then concluded by payment of \$Ugx 650,000/\$ =, the balance as per P. Exh.1.
- [11] Lastly on \$30/10/2006\$, the Plaintiff bought another piece of land from the 2nd Defendant measuring 2¹/₂ acres at Ushs. 500,000/=. In 2012, the Plaintiff sold the said 2¹/₂ acres to a one **Mohamed Mbabazi** as per the sale Agreement (D. Exh.2).
- [12] Lastly, that in 2014, the Defendants trespassed on the suit land by fencing part of it, establishing a kraal, a house and a garden thereon. That the land in dispute therefore, is that chunk of land the Plaintiff bought from the 2nd Defendant on \$10/11/1999\$ and completed payment by the Agreement dated \$3/2/2000\$ (P. Exh.1). The 2¹/₂ acres the Plaintiff bought from the 2nd Defendant on 30/10/2006 is not subject of this dispute since the Plaintiff already sold it to a one Mohamed Mbabazi.
- [13] The Defendants do not dispute the above facts save that according to them the 2¹/₂ -acre piece of land bought by the Plaintiff was a replacement of the land he had purchased earlier on 10/11/1999 and deposited Ugx. 500,000/=. That upon his failure to pay the balance of the purchase price, he was given the 2¹/₂ acres of land worth the deposited sum of Ugx 500,000/= which he later sold to **Mohamed Mbabazi**.
- [14] Counsel for the Defendants on the other hand submitted that the 2nd Defendant sold land to the Plaintiff and the Plaintiff breached the agreement by failing to pay the balance of the consideration price as undertaken and that it was agreed to give the Plaintiff a smaller portion equivalent to his first payment of \$Ugx\$ 500,000/= which piece the Plaintiff sold to a one Mohamed Mbabazi. That the Plaintiff forged the purported final agreement on which he claims he paid the balance of \$Ugx. 650,000/\$.

- [15] In the instant case, I find that it is not in dispute that on \$10/11/1999\$, the Plaintiff purchased land from the 2nd Defendant at a total consideration of Ugx 1,150,000/=. That at the execution of the agreement, the Plaintiff paid Ugx 500,000/= leaving the balance of Ugx 650,000/=. It is however, the contention of the Plaintiff that he paid the balance of the purchase price amounting to Ugx 650,000/= as per the final Agreement dated \$3/2/2000\$ (P. Exh.1). The Defendants contest this agreement, they label it a forgery. During cross examination, the Plaintiff insisted that the agreement of payment of the balance was not a forgery though he had not attached it to the pleadings.
- [16] In my view, the failure by the Plaintiff to attach to his pleadings the final agreement where he claim to had paid the balance of the purchase price did not render it inadmissible during trial since he generally pleaded purchase of the land, a fact that is not denied by the Defendants. It is implied in the pleadings that he purchased the suit land by full payment of the whole purchase price.
- [17] In evidence, the Plaintiff having presented evidence of the final purchase Agreement (P. Exh.1) where he asserts that he paid the balance of the suit land purchase price, it was sufficient presumption that what he alleged

was true. The burden shifted to the Defendants to counter allege and produce evidence to rebut the presumption, see *Kyotera Victoria Fishnets Ltd Vs The Commissioner General URA, HCCS No.224 of 2014* [2018] UG COMM 12.

- [18] The Defendants in this case assert that the final Agreement (P. Exh.1) where the Plaintiff claim to had paid the balance of the purchase is a forgery. The burden of proof shifted to the Defendants to prove the forgery which they asserted as the truth of the issue in dispute. It is not enough to simply state that the Agreement is a forgery.
- [19] Counsel for the Defendants submitted that the people who signed the impugned final Agreement which the Plaintiff claim that he paid the balance of the purchase price are different from the ones who witnessed the first one.
- [20] I find this argument flawed. The people who signed the first agreement need not be the same who sign the final agreement in order to make the 2nd \$ /final agreement valid. It all depends on the people that are present at the material time to witness the agreement. In this case, the Chairman (PW3), Baguma Sowedi (PW2), Posta George and Mustafa Abdallah (PW3) witnessed both agreements. The claim that the 2nd \$ /final Agreement did not show boundaries and neighbours does not render it invalid since the boundaries by neighbours were clearly highlighted in the first Agreement.
- [?] The claim that the Area L. C1 Chairman Irumba Zubairi (DW3) denied knowledge of the 2nd \$ /final Agreement does not in the circumstances of this case render the agreement invalid or a forgery.

- [22] The evidence on record instead revealed that the L. C1 Chairman (DW3) was a dishonest man and a self-seeker as explained by PW2 Baguma Sowedi alias Rwasowedi (the name he adopted from his grandfather), which name he used while endorsing both the Defendants' uncontested sale Agreement dated 10/11/99 (D. Exh.1) and the impugned agreement. During cross examination, \$PW2\$, who is a son to the 2nd Defendant (the vendor), confirmed that the final Agreement between the Plaintiff and the 2nd Defendant where the balance of the purchase price was paid, was witnessed among others, by the L. C1 Chairman (DW3) and himself. That his father, the 2nd Defendant (vendor) endorsed the agreement upon receiving the balance of the purchase price. He attributed the confusion surrounding the transaction to the \$1^{st}\$ Defendant Magambo Fred (DW1). That when he became the L. CIII Chairperson, DW1 developed interest in the suit land claiming that the \$2^{nd}\$ Defendant sold it cheaply. It is therefore as if the L. C1 Chairman's conduct of denying knowledge of the final Agreement which bear his endorsement and stamp was intended to serve the interests of the L. CIII Chairman, the 1st Defendant.

- [22] Further evidence that the L. C1 Chairperson (DW3) is a dishonest leader, during cross examination, he denied witnessing and endorsing both the Defendants' uncontested agreement (D. Exh.1) and the impugned one (P. Exh.1). When asked about the L. C official stamp embossed on the impugned agreement, he claimed that the \$2^{nd}\$ Defendant's son **Baguma Sowedi** (PW2) stole his stamp and embossed it on the agreement.
 - [23] However, a perusal of the Defendants' uncontested Agreement (D. Exh.1) which the chairman (DW3) first supported in his evidence and the impugned final Agreement (P. Exh.1) where the Plaintiff paid the balance of the purchase price, his, the chairman's signatures are similar, he signed by writing his names. There is no evidence that was adduced by the Defendants to show that the chairman at the time used to endorse by signature as per his specimen provided to court (Court Exh.1). Surely, the chairman's evidence is found extremely un reliable.
- [24] In the twist of events where the chairman (DW3) also denied knowledge and witnessing both the uncontested agreement being relied on by the Defendants (D. Exh.1), Mukwo Frank (DW5), the L. C1 General Secretary settled the issue regarding the chairman **Irumba Frank's** signature thus:

"Initially, the chairman used not to sign but to write his names.

It is recent that he started signing."

This evidence supports the Plaintiff's case that indeed the L. C1 chairman endorsed the impugned Final Agreement of the suit land where the Plaintiff paid the balance of the purchase price. The L. C1 Chairman's turn around was merely to extend favour to his boss, the \$1^{st}\$ Defendant.

- [25] Lastly, the chairman conceded that when they drafted the sale agreement where the Defendant sold $2\frac{1}{2}$ acres of land to the Plaintiff which land was sold to a one Mohamed Mbabazi, it was not reflected that the land was a replacement of the one earlier sold to the Plaintiff. Indeed, I find no evidence to support the Defendant's view that the $2\frac{1}{2}$ acre piece of land was a replacement of the suit land that was sold to the Plaintiff.
- [26] The available overwhelming evidence on record is to the effect that the Plaintiff purchased the suit land and first paid \$Ugx\$ 500,000/= as per **D. Exh.1** and later cleared the balance of \$Ugx 650,000/= as final payment reflected in the final Agreement (P. Exh.1). The evidence of both the chairman (DW3) and his General Secretary (DW5) discredited the Defendants' case as misleading, bogus and fraudulent in as far as the defence was intended to unlawfully deprive the Plaintiff his rightful interest in the suit land.
- [27] There is no evidence that the 2^{nd} /final impugned purchase agreement (P. Exh.1) is a forgery. It conferred the Plaintiff rights over the suit land he purchased. The 1^{st} issue is in the premises found in the affirmative. The Plaintiff is the rightful owner of the suit land having lawfully purchased it from the 2^{nd} Defendant.

I we No.2: Whether the Defendants are trespassers on the suit land.

[28] In this suit, the Plaintiff established that the suit land belonged to him. At locus, it was established that the Defendants have gardens, then a house and a kraal on the suit land. The Defendants claimed ownership of the same. The entry of the Defendants on the suit land was without permission of the Plaintiff, the rightful owner of the land. The Defendants have no claim of right or interest in the suit land. They forcefully blocked the Plaintiff from accessing his lawfully acquired land where he had housed

his 2 wives. The Defendants' actions amounted to trespass within the meaning in **Salmonds Law of Torts** 9^{th} Edn at p.207 where it is defined as follows:

"1. The wrong of trespass to land consists in the act of

- (a) entering upon land in the possession of the plaintiff or
- (b) remaining upon such land or
- (c) placing any material object upon it in each case without lawful justification.
- 2. Trespass, by wrongful entry. The commonest form of trespass consists in a personal entry by the Defendant, or by some other person through his procurement into land or building occupied by the plaintiff."

See also Justine EMN Lutaaya Vs Sterling Civil Engineering Co. Ltd, SCCA No. 11 of 2002

[29] As a result, I find the 2^{nd} issue in the affirmative. The Defendants are found to be trespassers on the land.

Issue No.3: What remedies are available to the parties

- [30] The Plaintiff having proved on the balance of probabilities that he is the rightful owner of the suit land situate at Mulago, Buseruka Trading Centre **Hoima District**, Judgment is entered in his favour. He is in the premises entitled to the following:
- 1. Ownership of the suit land
- A declaration that the suit land belongs to the plaintiff accordingly issue.
- 2. Defendants are trespassers

A declaration that the defendants are trespassers on the plaintiff's land accordingly issues and, he is therefore entitled to vacant possession of the land. An eviction order against the defendants from the suit land as described in the sale Agreement marked **D. Exh.1** also accordingly issues.

3. A permanent injunction

A permanent injunction issues restraining the defendants from further trespass onto the Plaintiff's land.

4. Mesne profits:

Section 2(m) defines them as those profits which the person in wrongful possession of the property actually received or might with ordinary diligence have received from it, together with interest on those profits, but shall not include profits due to improvements made by the person in wrongful possession not proved.

See also *Busiro Coffee Farmers & Dealers Ltd Vs Tom Kayongo & 2 Ors*, HCCS No.532 of 1992. In the instant case, the Plaintiff did not adduce any evidence in support of this claim i.e. evidence of the profits which the defendants while in wrongful possession of the land have actually received. Mesne profit are therefore in the premises not granted.

5. General damages

These are awarded at the discretion of court, and are always as the law will presume to be the natural consequences of the defendant's action or omission. In the assessment of the quantum of damages, courts are guided mainly inter alia by the value of the subject matter, the economic inconvenience that a party may have been put through and the nature and extent of the breach, See *Katakanya & Ors Vs Raphael Bikongoro*, HCCA No.12 of 2010 [2013] UGHCCD 61. The Plaintiff did not adduce evidence regarding the size of the suit land/kibanja save for it being referred to as big chunk of land. The Plaintiff must have however since 2014 suffered great economic inconvenience, stress and embarrassment upon being chased from land he lawful purchased. The suit property is now located in a rapidly developing trading centre of Buseruka. Considering all the above, I consider an award of \$Ugx\$ 20,000,000/= appropriate. The general damages shall carry an interest at 26% p.a from the date of judgment till full payment.

6. Costs

As the successful litigant, the Plaintiff is granted costs of the suit (S.27) CPA).

- [31] In conclusion, judgment is given in favour of the plaintiff with the following orders.
- 1) The Plaintiff is the rightful owner of the suit land.
- 2) The Defendants are trespassers on the Plaintiff's land.
- 3) A permanent injunction restraining the Defendants from further trespass onto the Plaintiff's land issues.
- 4) The Plaintiff is entitled to vacant possession of the suit land and or eviction of the Defendants in case of the Defendant's default to vacate.
- 5) General damages of Ugx 20,000,000/=.
- 6) Interest of 26% p.a on general damage from the date of judgment till full payment.
- 7) Costs of the suit in favour of the Plaintiff.

Dated at Hoima this 21st day of December, 2023.

Byaruhanga Jesse Rugyema JUDGE.

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