

UGANDA / JUDGMENT

Kizito v Kizito Kanonya (Civil Suit No 96 of 2003) [2004] UGHC 1 (1 January 2004)

[2004] UGHC 1

COURT

High Court of Uganda

CASE / FILE NUMBER

Civil Suit No 96 of 2003

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\pararsid3806298 {\insrsid3301939\charrsid3806298 This is a prelim

inary objection raised by the defendant that the plaint does not disclose a cause of action against
him.

\par

\par I deem it better to set out brief facts as set by the plaintiff which have given raise to this
objection.

\par

\par Plaintiff claims that she has been a close

business associate of the defendant who at the same time happens to be her uterine brother. She
claims to have opened and funded several businesses over the years over which she placed
defendant as manager and later as partner. It is her case that defen

dant has now turned against her and excluded her from the said businesses now valued to over
US60,000,000/= (Sixty million).

\par

\par She claims that in one business venture they purchased land now described and known as
KYADONGO BLOCK 244 PLOT 5091 which they deve

loped by erecting thereon two storied buildings on the under standing that defendant owns one
of the buildings and she the other. Their common late mother left them with land held under
customary tenure at Katwe which again they developed together. Ther

e are 2 blocks, block '93A'94 consisting 3 shops, 2 flats and a store while Block B consists of 2
residential flats each with 2 bed-rooms. Currently she occupies Block '93B'94

. About 3 years ago, so claims plaintiff the two entered into an arrangement whereby defendant introduced her to Mr. Gadandidde \endash

Musoke to be her tenant on plot 1766 Kisugu. It was agreed that she takes the houses in KYADONDO BLOCK 244 PLOT 1766 KISUGU as well as Block \93B\94 on LVR 1451 FOLIO 9 PLOT 702 BLOCK \93B\94 KATWE. It was further agreed

that Defendant takes the storied houses on Block 244 plot 5091. Defendant, so plaintiff claims, went behind her back and registered the property in the names of his children. He did not stop there, but went a head to sell the whole of plot 1766 Kisugu.

Because of the above complaints and grievances plaintiff prayed that judgment and decree be given in her favour for:

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\insrsid3301939\charrsid3806298 A permanent injunction restraining the defendant, his agents, servants, workmen or any other person claiming to derive title through or u

nder him for trespassing on the suit premises or interfering howsoever with the suit premises and from evicting or in any way disturbing the plaintiff or her tenants from the premises described in paragraph 5 (a) herein above.

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\insrsid3301939\charrsid3806298 Subject to clause c herein below, division of assets as specified in paragraph 5 (a) herein above.

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\insrsid3301939\charrsid3806298 Transfer of one half \bd the following properties in the names of the plaintiff as per their earlier arrangement:

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\insrsid3301939\charrsid3806298 KYADONDO BLOCK 244 PLOT 1766 KISUGU

\par {\listtext\pard\plain\insrsid3301939\charrsid3806298 \hich\af0\dbch\af0\loch\f0 (ii)\tab}}LRV 1451 FOLIO 9 PLOT 702 BLOCK \93B\94 KATWE

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\insrsid3301939\charrsid3806298 General damages.

\par {\listtext\pard\plain\insrsid3301939\charrsid3806298 \hich\af0\dbch\af0\loch\f0 e)\tab}}Interest on the decretal sum at the rate of 20% p.a. computed from the date the cause of action arose until payment in full.

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\insrsid3301939\charrsid3806298 Costs of the suit.

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\par And talking of paragraph 5, that para runs as follows:

\par

\par \935.\tab PARTICULAR OF DAMAGES:

\par

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The plaintiff shares in the jointly suit houses at KYADONDO BLOCK 244 PLOT 1766 KISUGU = over shs.300,000,000= KYADONDO BLOCK 244 PLOT 5091 MUYENGA = about shs.500,000,000= and LRV 1451 FOLIO 9 PLOT 702 BLOCK B KATWE = about 50,000,000= All worth over shs

. 425,000,000=.

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\insrsid3301939\charrsid3806298 Shs.56,000,000= injected by the plaintiff purely in their joint ventures and business other than buildings.\94

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\par In answer to the above claims set out in the plaint, Defendant pleaded in paras 3 and 4 of his amended defence as follows:

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toto and plaintiff shall be put to strict proof thereof.

\par

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\insrsid3301939\charrsid3806298 The defendant shall at the hearing raise a preliminary objection that the plaint discloses no cause of action and hence the suit should be struck out.\94

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\par Defendant submits that the plaint consists of two claims. viz:

\par

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\insrsid3301939\charrsid3806298 A claim in respect of 3 pieces of land

\par {\listtext\pard\plain\insrsid3301939\charrsid3806298 \hich\af0\dbch\af0\loch\f0 b)\tab}I claim in respect of other property other than real property.

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\par He contends that the prayers in the plaint amount to an action of ejectment

against the defendant from the whole said pieces of land. To that end he seeks to rely squarely on the protection which his registered claim is given by section 176 which runs as here under following:

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recovery of any land shall lie or be sustained against a person registered as proprietor under this Act, except in any of the following cases:-

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\par {\listtext\pard\plain\insrsid3301939\charrsid3806298 \hich\af0\dbch\af0\loch\f0 c)\tab}The case of a person deprived of any land by fraud as against the person registered as a prop

rietor of that land through fraud or as against a person deriving otherwise than as a transferee bona fide for value or through a person registered through fraud;

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\par and in any case other than afore said the production of the re

gistered certificate of title or lease shall be held in every court to be absolute bar and estoppels to any such action against the person named in that document as the grantee, owner, proprietor or lessee of the land described in it, any rule or equity t

o the contrary notwithstanding.\94

\par

\par Defendant contends therefore that since plaintiff did not plead fraud she has no cause of action against him.

\par

\par Not so, contends plaintiff. She does not seek any ejectment or recovery of land. Her case she contends in based an agreement entered between the two for sharing their assets. Under para 3 of her plaint, it is averred that \93plaintiffs\quote

claim against the defendant is in equity, contract and in the Tort of retinue and conversion
'85\85\94

\par

\par I pose to observe here that if the case is based partly on contract, I, with respect see no contractual relationship pleaded in the plaint.

\par

\par An injunction is an equitable remedy. An injunction is an order or decree by which a party to an action is required to do, or to refrain from doi

ng a particular thing. An injunction is a remedy which the court applies under proper circumstances to enforce an objection.

\par

\par In this case plaintiff is seeking an order or decree of this court to order defendant to refrain from entering on the suit property or interfering \93howsoever\94

with the suit premises and from evicting or in any way disturbing the plaintiff or her tenants from the quiet enjoyment of the premises. She at the same time prays that half of the certain property namely:

\par

\par I.\tab KYADONGO BLOCK 244 PLOT 1766 KISUGU LRV 1451 FOLIO

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PLOT 702 BLOCK B KATWE be transferred into the names of the plaintiff. It is not in dispute, I think that defendant is the registered proprietor of the suit premises. In fact plaintiff concedes that in one of the pro

perties, namely, KYADONDO BLOCK 244 PLOT 5091 the property is not only registered in the names of the Defendant but also in the names of the defendant's children as well.

The cardinal principle enshrined in section 176 R. T. A was stated by the Privy Council

I in the case of WAIMINA SAWMILLING CO LTD V. WAIONE TIMBER CO. LTD (1926) AC 101 and I will do no more than quote what was said there:

The Cardinal Principle of the statute is that the register is everything, and that except in cases of actual fraud on

the part of the person dealing with the registered proprietor such person upon registration of the title under which he takes from the registered proprietor has an indefeasible title against the whole world.'

claim that the plaintiff seeks ejectment of the defendant is a mere inference which does not appear in the pleadings. That may as well be so. But with respect I prefer the intent to the form. What is it, which plaintiff intends to achieve by her plaintiff?

If a decree is made as sought by the plaintiff to restrain the defendant, his agents, servants workmen or any other person claiming to derive title through or under him for trespassing on the suit premises

is not such decree decreeing defendant to get off that over which he has a registered interest? If a decree be made giving half of the property in:

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\insrsid3301939\charrsid3806298 KYADONDO BLOCK 244 PLOT 1766 KISUGU

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\insrsid3301939\charrsid3806298 LRV 1451 FOLIO 9 PLOT 702 BLOCK B KATWE, will not have
plaintiff recovered half of the property registered in defendant\rsquote s names?

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\par With the greatest respect, I think it is all a matter of semantics.

\par

\par In my opinion plaintiff is precluded from recovering in this form of action unless she pleads
fraud, for that would be to commit an assault on section 176 R. T. A. For ther

e to be a cause of action plaintiff had to bring her action under the exceptions in section 176 R. T.
A. She did not.

\par

\par I now turn to the claim under movable property. O6 r1 of the Civil Procedure Rules runs as
follows:

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lin1440\itap0\pararsid3806298 {\insrsid3301939\charrsid3806298 \931.\tab Every pleading shall
contain, an

d contain only, a statement in concise form of the material facts on which the party pleading
relies for claim or defence, as the case may be, but not evidence by which they are to be proved,
and shall, when necessary, be divided into paragraphs \85\94

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\par In paragraph 4 (b) of her plaint, plaintiff pleads as follows:

\par

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The plaintiff opened and funded several businesses such as Salama Road shop, Alpha Agencies, Buwule Shop, and Nestle Distributors Ltd, over the years whereby she put the defendant as manager and

later partner but the defendant has now excluded the plaintiff from the business, which is now over she.60,000,000=.

\par }\pard \qj \li0\ri0\sl360\slmult1\widctlpar\asppalpha\asppnum\faauto\adjustright\rin0\lin0\itap0\pararsid3806298 {\insrsid3301939\charrsid3806298

\par Then under paragraph 5 (b) she pleads as follows:

\par

\par \tab '935.\tab PARTICULARS OF DAMAGES.

\par {\listtext\pard\plain\insrsid3301939\charrsid3806298 \hich\af0\dbch\af0\loch\f0 b.\tab}}\pard \qj \fi-645\li1440\ri0\sl360\slmult1\widctlpar\jclisttab\tx1440\asppalpha\asppnum\faauto\ls7\adjustright\rin0\lin1440\itap0\pararsid3806298 {

\insrsid3301939\charrsid3806298 Shs.56,000,000/= injected by plaintiff purely in their joint ventures and business other than buildings.\'94

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\par Then in paragraph 8 (b) of her plaint she makes the following prayer

\par

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Subject to clause c. herein below, division of assets as specified in paragraph 5 (a) here in above. \'94

\par }\pard \qj \li0\ri0\sl360\slmult1\widctlpar\asppalpha\asppnum\faauto\adjustright\rin0\lin0\itap0\pararsid3806298 {\insrsid3301939\charrsid3806298

\par Under clause C. she pleads as follows:

\par

\par {\listtext\pard\plain\insrsid3301939\charrsid3806298 \hich\af0\dbch\af0\loch\f0 c.\tab}}\pard \qj \fi-645\li1440\ri0\sl360\slmult1\widctlpar\jclisttab\tx1440\asppalpha\asppnum\faauto\ls7\adjustright\rin0\lin1440\itap0\pararsid3806298 {

\insrsid3301939\charrsid3806298 Transfer of one half \bd the following properties in the names of the plaintiff as per their earlier provisional arrangement:

\par {\listtext\pard\plain\insrsid3301939\charrsid3806298 \hich\af0\dbch\af0\loch\f0 1.\tab}}\pard \qj \fi-645\li2160\ri0\sl360\slmult1\widctlpar\jclisttab\tx2160\aspalpha\aspnum\faauto\ls7\ilvl1\adjustright\rin0\lin2160\itap0\pararsid3806298 {

\insrsid3301939\charrsid3806298 KYADONDO BLOCK 244 PLOT 1766 KISUGU \93LRV 1451 FOLIO 9 PLOT 702 BLOCK B KATWE.\94

\par }\pard \qj \li0\ri0\sl360\slmult1\widctlpar\aspalpha\aspnum\faauto\adjustright\rin0\lin0\itap0\pararsid3806298 {\insrsid3301939\charrsid3806298

\par And lastly in paragraph 5 (a) she pleads as follows:

\par }\pard \qj \fi-720\li720\ri0\sl360\slmult1\widctlpar\aspalpha\aspnum\faauto\adjustright\rin0\lin720\itap0\pararsid3806298 {\insrsid3301939\charrsid3806298

\par (a).\tab The plaintiff shares in the jointly built houses at KYADONDO BLOCK 244 PLOT 1766 KISUGU = over 300,000,000/=.

\par }\pard \qj \li0\ri0\sl360\slmult1\widctlpar\aspalpha\aspnum\faauto\adjustright\rin0\lin0\itap0\pararsid3806298 {\insrsid3301939\charrsid3806298

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KYADONGO BLOCK 244 PLOT 5091 MUYENGA = about shs. 500,000,000/= and LRU 1451 FOLIO 9 PLOT 702 BLOCK B KATWE = about shs. 50,000,000/= All worth over shs. 425,000,000/=.

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\par With the greatest respect the whole thing appear not to make sense. The more one reads through, the more the brains feel addled.

\par

\par I agree with the defendant that plaintiff does not make clear what she is claiming. The above paragraphs on movable property do not disclose a cause of action.

\par

\par All in all I am of the humble view that the preliminary point of objection ought to succeed and it accordingly succeeds with costs to the defendant.

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\par

\par J. B. A. Katutsi

\par }\pard\plain \s4\qj \li0\ri0\sl360\slmult1\keepn\widctlpar\aspalpha\aspnum\faauto\outlinelevel3\adjustright\rin0\lin0\itap0\pararsid3806298
\b\fs28\ul\lang1033\langfe1033\cgrid\langnp1033\langfenp1033
\fs24\insrsid3301939\charrsid3806298 JUDGE

\par }\pard\plain \qj \li1440\ri0\sl360\slmult1\widctlpar\aspalpha\aspnum\faauto\adjustright\rin0\lin1440\itap0\pararsid3806298 \fs24\lang1033\langfe1033\cgrid\langnp1033\langfenp1033
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Prepared on 13 October 2026 · Esheria