

UGANDA / JUDGMENT

Kyeyune v Administrator General (Civil Suit No. 1287 of 2000) [2010] UGHCFD 7 (27 July 2010) [2010] UGHCFD 7

COURT

HC: Family Division (Uganda)

BEFORE

C A Okello, J

CASE / FILE NUMBER

Civil Suit No. 1287 of 2000

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THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA FAMILY DIVISION CIVIL SUIT NO. 1287 OF 2000

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JOHN KYEYUNE..... PLAINTIFF

VERSUS

ADMINISTRATOR GENERAL.....

BEFORE HON. LADY JUSTICE C. A. OKELLO JUDGMENT

The plaintiff John Kyeyune, filed this suit for the recovery of land comprised in Block 375 Plot 17 which he claims was fraudulently registered in the name of the Administrator General the defendant. The plaintiff also asked for an order for the delivery of the certificate of title to him, he prayed for general and punitive damages for fraud and costs of the suit.

According to the amended complaint, the plaintiff was the registered owner of $\sim \sqrt{5}$ land comprised in Busiro Block 375 Plot 17 until 2/9/1998 when he was forced and coerced into transferring it to the defendant. He pleaded further that his subsequent efforts to recover the said land came to naught hence this suit. In its amended written statement of defence (Amended WSD), the defendant pleaded that it administered the estate of the plaintiff's father one Luquza \$

\mathcal{L}\$ Bugaga who died testate in 1986. At the completion of administration, the land in dispute was given to a sibling of the plaintiff Jane Nanyonjo while the plaintiff's share was ten acres of land comprised in Block 375 Plot. 8. In the

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course of administering the estate of Jane Nanyonjo, the defendant discovered that the plaintiff registered himself as proprietor of part of Jane > Nanyonjo's land. The plaintiff transferred it to the defendant the part of Nanyonjo's land comprised in Block 375 Plot 17. The transfer was voluntary, his suit should therefore be dismissed with costs.

Although the defendant filed a defence and participated in part of the scheduling conference, it did not cross-examine the plaintiff on his evidence, nor did the defendant adduce evidence in its defence. I must therefore ' digress a little to say what led to this state of affair.

The suit went through a substantial part of scheduling conference on the 16th day of November 2009 at which all the parties participated. The remaining portion of the scheduling was to be conducted on the 25/11/2009 when it was ; expected that the defendant would tender its documentary evidence to be followed by viva voice evidence for the plaintiff. However, on the date to which the suit had been adjourned counsel for the defendant did not attend court. All the same court proceeded to received evidence of the plaintiff who was the only witness in his case.

/• Before judgment was delivered, the defendant filed Miscellaneous Application No. 258/2009 for an order recalling the plaintiff for cross-examination. I dismissed the application of the 24/5/2010 for reasons contained in the Ruling.

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I do not propose to reproduce the reasons here. Suffice it to mention that the defendant immediately applied for leave to appeal against the Ruling. Leave to appeal was granted, but subsequently no application to stay this proceeding or delivery of judgment was ever made. There is thus no reason to stay delivery of the judgment or the proceeding.

\$\boldsymbol{I}\$ turn to the facts agreed upon during the scheduling conference as well as the issues framed for determination.

The agreed facts were:

- 1. The plaintiff's late father died testate.
- The estate of the plaintiff's father was administered by the \$\neg \mathbb{R}\$ \$ \$\overline{2}\$ \$. defendant.

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- The deceased (father of the plaintiff) was survived by four children.
- Kyeyune John.
- Sulaiman Mutume.
- Fausta Nanyonjo.
- Mary Nanyonga.
- The deceased left land comprised in:-
 - (i) Block 106 Plot 4 at Lumanyo Gomba, the area is 10 acres.
 - (ii) Ten acres of land comprised in Busiro Block 375 Plot 17 at Nakigalala.
 - (iii) 11.5 acres of land comprised in Busiro Block 375 Plot 8 at Nakigalala.

Block 106 Plot 4 at Lumanyo Gomba.

- 7. The defendant's name was entered on the certificate of title of Block 375 Plot 17.
- 8. as owner - The plaintiff got registered as the proprietor of Block 106 Plot 4 Lumanyo Gomba on the 15/10/1987. He also got registered of Block 375 Plot 17 Busiro Nakigalala on the 15/10/1987.

Four issues were framed for determination

- 1. Whether Block 375 Plot 17 Nakigalala is the property of the plaintiff.
- 2. If so, whether the transfer of the said property to the defendant was fraudulently obtained.

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- 3. Whether Busiro Block 375 Plots 17 and 8 are on the same certificate of title.
- 4. Remedies available to the parties.

I turn to evidence and determination of the issues starting with the first and second issues since they are inter twined.

In regard to these issues, the plaintiff testified that he inherited land comprised in Block 375 Plot 17 at Nakigalala from his late father Luguza Bugaga who died testate on the 25/7/1986. The estate of the late Luguza Bugaga was in fact, administered by the defendant: who completed distribution of the estate (Agreed exh. 2). On getting his devise from the defendant, he entered his name on the certificate of title as the owner thereof in October 1987 (Agreed exh. 4), but his name was canceled from the said

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certificate on the 2/9/1998 and that of the defendant entered thereon as registered owner.

The plaintiff explained the circumstances under which he lost the land. He was arrested by policemen from his home on the orders of one Mitanda, an official in the office of the defendant. On being taken before Mitanda, he was ¹¹ > threatened with imprisonment if he did not transfer the land to the defendant. ¹ ' Though he refused to voluntarily sign transfer documents, his thumb-print was forced onto a transfer form (Agreed exh. 3 and 4). He later sought for intervention of several individuals and offices in an effort to recover the land. The plaintiff tendered in evidence correspondences from or to various offices —[Q related to his complaint and efforts at recovery of the land (exh. P6 -14).

I said earlier that the defendant pleaded that the plaintiff was given 10 acres of land comprised in Busiro Block 375 Plot 8, but he fraudulently registered himself as owner of 10 acres of land on Block 375 Busiro Plot 17. The *I* defendant did not adduce evidence to prove its pleadings nor did it dent the plaintiff's testimony by way of cross-examining him. The plaintiff's counsel Mr. Adonia Bamenyisa pointed out in his written submissions that since the plaintiff pleaded the he was the registered proprietor of this land before the defendant fraudulently became registered proprietor, and since he has adduced uncontroverted evidence to prove his factual allegations/pleading, I should decide the first issue in his favour. The learned counsel relied on passages to that effect contained in the case of Departed Asians Custodian Board vs. Issa Bukenya T/A New Mars Ware-House - <SCCA. No>. ²⁶ of 1992.

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I agree with the learned Mr. Bamenyisa that the plaintiff has discharged the burden of proving that he was the registered owner of Busiro Block 375 Plot 17 from 15/10/1987 (Agreed exh. 4) until the defendant fraudulently deprived him of it on the 2/9/1998. In fact the Final Account of the estate of the ^J plaintiff's father Stanley Luguza Bugaga, drawn by the defendant, shows that the plaintiff was a devisee of 10 acres of land comprised in Busiro Block 375 Plots 17 and 8 (Agreed exh. 2).

As author of Agreed exh. 2, the defendant is estopped from denying its contents. Given the evidence before me, I find in answer to the first issue that the property comprised in lock 375 Plot 17 is that of the plaintiff. I also '^1 ^q find that the transfer of this property to the defendant was fraudulently done.

The third issue is whether Busiro Bock 375 Plots 17 and 8 are on the same <7 certificate of title.

-20 Z> The plaintiff's evidence on this issue was brief. I gather from the said evidence that Busiro Block 375 Plot 8 comprised 10.50 acres of land that was shared out between his siblings and a niece i.e. Fausta Nanyonjo, Nanyonga, Sulaiman Mutume and a niece, Nanyonjo. According to the plaintiff the duplicate certificate of title was never located at the time of distributing his father's estate. A special certificate was applied for but the beneficiaries never picked it up from the Registrar of Titles. The land was later sold; presumably, the buyer picked it up.

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There is corroboration of the plaintiff's testimony in the form of a letter dated 20/10/1987 from the Chief Registrar of Titles to the Editor, Uganda Gazette (Exh. P14) asking the Editor to publish his notice of intention to issue a special certificate of title to Block 375 Plot 8 Busiro in the name of Stanley Luguza Bugaga as the one originally issued had got lost. A receipt for shs. 60/= was issued on the 21/1/1987 (exh. P.14). It can be inferred from this evidence that Plot 8 had a separate certificate of title from Plot 17.

Agreed exh. 4 is further evidence that Plot 17 has a separate certificate of title from Plot 8. That is, the answer to this issue is that Plots 17 and 8, Busiro Block 375 are not on the same certificate of title

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That brings me to the last issue, remedies available to the parties.

The plaintiff has proved that his name was fraudulently cancelled from the land comprised in the certificate of title of Busiro Block 375 Plot 17. I declare him to be entitled to the land and order the Commissioner for Land Registrar/Chief Registrar of Titles, to cancel the name of the Administrator $\frac{215}{5}$ General as registered proprietor of the said land. In place thereof, I order the name of the plaintiff to be registered on the said certificate of title and all other relevant records kept by the said officer, in relation to the land. They should reflect the plaintiff as registered owner.

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The third prayer was for an order condemning the defendant for selling of parts of the land in the suit as well as the issue of eviction orders against people on the land. Again, no concrete evidence was led to prove sales during the time the defendant's name was on the certificate of title as registered proprietor. The plaintiff should be at liberty to file separate suits to recover the pieces in issue. The orders he asked for cannot be issued.

Lastly, the plaintiff prayed for costs of the suit. Since he has substantially succeeded in his action, I grant his prayer and order the defendant to pay his costs in this suit.

C. A. Okello JUDGE 27/07/2010

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