

UGANDA / JUDGMENT

Nantale v Namusoke (Civil Suit 97 of 2018) [2024] UGHCLD 154 (31 May 2024)

[2024] UGHCLD 154

COURT

HC: Land Division (Uganda)

BEFORE

Kazaarwe, J

CASE / FILE NUMBER

Civil Suit 97 of 2018

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

LAND DIVISION

CIVIL SUIT NO. 97 OF 2018

5 ROSE NANTALE-----

PLAINTIFF (Suing through Her Lawful Attorney STELLA MUBEEZI)

VS

AGNES REDEMPTA NAMUSOKE KAWESA-----DEFENDANT

10 Before: Hon. Lady Justice Olive Kazaarwe Mukwaya

JUDGMENT

The Plaintiff, Ms. Rose Nantale brought this action through her lawful Attorney Stella Mubeezi against the Defendant, Ms. Agnes Redempta Namusoke Kawesa seeking;

- 1. A declaration that the suit land comprised in Kyadondo Block 72 Plot 241 at 15 Namaliga belongs to the Plaintiff as its equitable owner and the Defendant has no interest in it whatsoever.
- 2. A declaration that the Defendant's purported purchase and registration on the suit land was fraudulent thus null and void.

- 3. An order cancelling the Defendants dealings in the land including a purported 20 application to remove the Plaintiff's caveat and transfer the land to a Sittankya alone and eventually to the Defendant.
- 4. An order that the Defendant hands over the original certificate of title to the Plaintiff and or an order cancelling the Defendant's registration name on the suit land and a direction to the Commissioner Land Registration to enter the name of 25 the Plaintiff as the proprietor thereof.
- 5. A permanent injunction restraining the Defendant, his servants and any person claiming through him from any further trespassing, laying claims of ownership and or interfering with the Plaintiff's quiet enjoyment of the suit land.
- 6. General damages for land fraud and unlawful dealings in land.
- 7. Punitive damages.
- 8. Costs of the suit.
- 9. In the alternative, an order of compensation to the Plaintiff by the Defendant at
- 5 the open market value of the suit land together with all the developments thereon as determined by the Chief Government Valuer and sanctioned/approved by the Court.

PLAINTIFF'S FACTS

On the 4th day of June 2009, the Plaintiff bought land comprised in Kyadondo Block 72

- 10 Plots 23 then (now 241) land at Namaliga measuring approximately 5.5 acres from Sittankya Semu and Aida Nabayengo as administrators of the estate of the late Christopher Lule. Despite making full payment, the vendors failed to give the certificate of title to enable her subdivide the land, although she repeatedly asked for it. Nonetheless, she took possession of the land. While she was in possession, by virtue of 15 her equitable / unregistered interest, the Defendant and the aforementioned
- administrators illegally entered into a sale agreement dated 9th August 2011. And as a result, the Defendant was registered on the certificate of title in 2016. At the time of the registration in 2016, the vendors were deceased. These events deprived the Plaintiff of possession of her land. Hence this suit.
- 20 Ms. Stella Mubeezi, a sister and the lawful Attorney of the Plaintiff, PW1, testified that in early 2009, the Plaintiff informed her and a Judith Lutaaya that she wanted to buy land. Judith helped them locate land. They visited it and conducted inquiries from the local council authorities who confirmed that it belonged to Sittankya and Aida Nabayengo as administrators of the estate of the late Christopher Lule. It was, however, still in the

- 25 process of being registered through their lawyers' M/s Ntende, Owor & Co. Advocates. Eventually, the Plaintiff bought the suit land comprised in Kyadondo Block 72 formerly Plot 23, now Plot 241, measuring approximately 6.5 acres, at a consideration of UGX 26,000,000/= and she paid an initial deposit of UGX 8,000,000/=, on the 4th day of June 2009 as per Exb. P.1. She immediately took possession of the land by carrying out
- 30 cultivation.

Since the vendors were not yet registered on the certificate of title at the time of the Plaintiff's purchase, they agreed that the balance of UGX 18,000,000/= would be paid after registration. However, the Plaintiff through a Mr. Christopher Kagiri paid a further deposit of UGX 4,000,000/= on the 4th day of August 2009 to help in facilitate the 5 process. A copy of the acknowledgement was admitted and marked Exb. P.2. For close

to two years, the Plaintiff demanded for the duplicate certificate of title she had purchased but the vendors did not respond.

When Ms. Judith Nalutaaya went to M/S Ntende Owor & Co. Advocates to inquire about the progress of registration, they informed her that Mr. Sittankya had taken the title and 10 subdivided Plot 23 into Plot 240 and 241 as per a copy of the area Schedule marked Exb. P.17. Plot 240 was registered in the name of Ms. Edith Byenda and Plot 241, as residue, measuring approximately 5.5 acres. A copy of his acknowledgement of receipt of the title for Plot 241 was admitted and marked Exb. P.4.

- Immediately, the Plaintiff carried out a system search of the respective plots and 15 discovered that the land was indeed registered in the names of Mr. Sittankya Semu and Ms. Aida Nabayengo as per Exb. P.13. It also had an existing caveat in the name of Ms. Agnes Redempta Namusoke Kawesa, as purchaser on the 2nd September 2011, which was shocking as the Plaintiff had bought the same land and in effect also lodged a caveat as per Exb. P.3 and P.24. A copy of the Defendant's caveat and sale agreement
- 20 were admitted and marked Exb. P.14 and 15 respectively. The Plaintiff reported the matter to police and also involved the LC authorities of the area. And in a meeting they held, it was confirmed in the presence of the LC Committee that the suit land was sold to the Plaintiff by the two and that the title was fraudulently taken from them. They however pledged to acquire it and in effect signed transfer forms and availed a 25 photocopy of the certificate of title. A copy of the transfer form was admitted and marked Exb. P.5.

To give their new terms effect, a variation agreement marked Exb. P.12 capturing the new Plot 241 measuring approximately 5.5 acres was made, as it was the same land which the Plaintiff had bought and had been in possession of since 2009, but only less 30 by a one acre. And at all material times, the Plaintiff was in possession carrying out

various cultivation activities on the land which included tree planting, banana plantation, mango trees and pineapple growing among others. The said land also had boundary demarcations using concrete poles and neither the Defendant nor had her agents had ever come to the land.

- 5 As years passed by, the Plaintiff discovered that the Defendant had transferred the suit land into her name and was registered on the title in June 2016 despite being aware of the Plaintiff's interest therein. The Defendant even went ahead to fraudulently remove the caveat of the Plaintiff without serving the notice to show cause why the caveat should be removed. Through her then lawyers of M/s Nampandu, Mugwanya, Muwawu
- 10 & Co. Advocates, the Plaintiff made an inquiry at the local council authorities and they confirmed that both Mr. Sittankya Semu and Ms. Nabayengo Aidah had both passed on, on the 10th day of June 2013 and the 2nd day of March 2015 respectively according to Exb. P.6. They therefore could not have effected any transfer and/or carried out any transactions pertaining registration of the above land in 2016.
- 15 Subsequently, the Plaintiff, through her lawyers wrote to the Registrar of titles Wakiso informing him of the fraudulent transactions seeking his intervention to no avail. A copy of the letter was admitted and marked Exb P.7. After the Defendant got registered in 2016, she forcefully took possession of the suit land and cut down the Plaintiff's banana plantations through her agents. She further disposed the Plaintiff and proceeded to
- 20 carry out different activities in addition to subdividing Plot 241 into Plots 690 and 691 leaving Plot 692 as residue that was also further subdivided into 929 and 930 all during the pendency of this suit. Copies of the mutation and area schedules were tendered into evidence and marked Exb. P.8 and P.9. The Plaintiff's attorney subsequently lodged caveats on all the subdivided plots to prevent any further registrations by third parties at
- 25 least until after determination of this suit as per Exb. P. 10 and 11.

PW2, Ms. Judith Nalutaaya corroborated PW1's testimony in all substantial particulars. She also maintained that the Plaintiff has at all material times been in possession of the suit land. She also added that despite the death of the administrators, the Defendant through her lawyers fraudulently wrote to the registrar of titles Wakiso purportedly acting on behalf of Sittankya Semu seeking to strike her name off the certificate of title. A copy of the letter was admitted into evidence and marked Exb. P.25.

PW3, Mr. Kisitu Simon, the area Defence Secretary, testified that he met the Plaintiff at the time she was purchasing the suit land. He was present when the purchase 5 agreement was being made before the local authorities and in the presence of Salongo Kakembo William, Mr. Kagiri and the area LC 1 Chairman at the time Mr. Ssengozi Adam. After completing the purchase of the land, the Plaintiff asked Mr. Kisitu to keep watch on the land and also supervise the employees she would later bring to carry out several activities on the land. A short while after the purchase, the Plaintiff introduced 10 him to workers who began clearing the land and after began to plant mango trees, bananas and exotic pine trees on the land which activity he supervised. A few years

later, while he was on the land as instructed by the Plaintiff, the Defendant came onto the land claiming that she had purchased it. When the seller, who was still alive at the time, was invited by the LC Chairman to clarify on the issue, he stated that he sold the 15 suit land to the Plaintiff. This did not settle the dispute and it was reported to police and then to Court.

PW4, Mr. Salongo Kakembo William corroborated PW1, PW2 and PW3's evidence in all material particulars. He testified that in 2009 his nephew Mr. Kagiri Christopher informed him that the Plaintiff was interested in purchasing land and on making inquiries

- 20 he discovered that Mr. Sittankya was selling a plot of land. Mr. Kakembo approached Mr. Sittankya over the issue since he was well known to him together with his family and was aware that the land constituted the part that he had shared from his late father's estate. After seeing the land and finding it vacant, PW4 recommended it to Mr. Kagiri who in turn visited it and subsequently recommended it to the Plaintiff. Mr. Kakembo 25 also testified that he was present at the execution of the purchase agreement for the
- suit land and at the payment of the second instalment of the purchase price.

PW5, Mr. Siras Nyonyintono, a professional Valuer working with M/s Land Point Associates testified that on 6th July 2023 he was engaged by M/s Nabukenya Mulalira & Co. Advocates, on behalf of their client the Plaintiff, to undertake a valuation of the suit 30 land to establish the current market value, for evidential purposes in Court. After the

inspection, he found that the same to have an incomplete residential house and being used for agricultural purposes. He also found that the current market value of the suit land is UGX 375,000,000/= as per the valuation report marked Exb P.33.

DEFENCE

5 The Defendant denied all the Plaintiff's claims and averred that carried out due diligence before she purchased the land. She entered into sale agreement with the registered proprietors on the 9th day of August 2011 with the honest belief that the Administrators were the rightful owners. And that at the time of her purchase, the suit land was vacant. It was further her averment that the Plaintiff has never occupied or utilised the suit land 10 and neither has she ever paid the full purchase.

DW1, Ms. Agnes Redempta Namusoke Kawesa, the Defendant, testified that she purchased the suit land which is currently Kyadondo Block 72 Plots 929, 930, 691 and 690 land at Namaliga. A copy of the sale agreement was admitted into evidence and marked Exb. D.5. She added that she carried out the necessary due diligence by

- 15 carrying out a search at the land registry and visiting the suit land before lawfully purchasing it as per a copy of the search letter marked Exb. D.1. At the time of the purchase, the land was vacant and she did not at any time find the Plaintiff or any of her representatives in occupation of the same. Ms. Namusoke further testified that the vendors also represented to her that the said land was free from any encumbrances
- 20 and did not inform her of any sale agreement they had earlier purportedly executed with either the Plaintiff or her representatives. Additionally, the Plaintiff has never paid any consideration for the purported purchase of the suit land and there is no evidence to that effect.

The Defendant went on to testify that her transfer form for the suit land was executed in 25 2011 during the lifetime of the vendors and consideration paid. A copy of the transfer form was admitted and marked Exb. D.3. She then registered a caveat on the suit land prior to any other encumbrance. She also clarified that the Plaintiff did not show cause why her caveat should not be vacated and or institute a suit in the High Court in the statutory time. A copy of the notice to show cause was tendered into evidence and

30 marked Exb. D.4.

Ms. Namusoke denied participating in or having ordered anyone to cut off any plantations on the suit land purportedly belonging to the Plaintiff. She stated that she is not aware of any dealings between the Plaintiff and the vendors relating to the suit land. It was also her assertion that she was a bonafide purchaser for value without notice of

5 any fraud and insisted that her registration as the registered proprietor was legal. She added that the subject land has been disposed of to third parties.

REPRESENTATION

The Plaintiff was represented by Ms. Tusiime Asia Kiribedda and Ms. Justine Nakajubi Mufumbya of M/S Nabukenya, Mulalira & Co. Advocates while the Defendant was

10 represented by Mr. Kobobe Andrew and Mr. Walusimbi Nelson of M/S Walusimbi & Co. Advocates.

Locus visit took place on the 9th day of September 2023.

During scheduling, the following issues were formulated for Court's resolution;

ISSUES

- 15 **1. Whether the Plaintiff acquired an equitable interest in the suit land?**
- **2. What remedies are available to the parties?**

RESOLUTION OF THE ISSUES

Issue 1

20 Whether the Plaintiff acquired an equitable interest in the suit land?

In the case of **Ismael Jaffer Allibhai and others vs Nandalar Harvijan Karia & another SCCA N. 53 of 1995**, it was held that in a sale of immoveable property, upon payment of deposit, property passes to the purchaser who acquires equitable interest. Five witnesses testified for the Plaintiff as to her purchase and occupation of the suit

25 land. Exb. P.1, is a copy sale agreement between the Plaintiff and the late Sittankya Sengendo Semu dated 4th June 2009. It clearly indicates that the Plaintiff paid a deposit of UGX 8,000,000/= and agreed to pay the balance when the vendor was registered on the title of the land then comprised in Kitanda Block 72 Plot 23. Exb. P.2, dated 4th August 2009, is an acknowledgement of receipt of an additional UGX 4,000,000/= from

the Plaintiff by the vendor, the late Sittankya Sengendo Semu. In that agreement she undertook to pay the balance of UGX 14,000,000/- on the 20th August 2009. When the deceased was eventually registered on the suit land, the Plot number had changed to Plot 241 following subdivision of the land. And he was jointly registered on the land, as co-administrator with Ms. Aida Nabayego on the 28 5 th October 2010.

On the 13th April 2013, the co-administrators of the estate of the late Christopher Lule, entered into an agreement with the Plaintiff for her purchase of Block 72 Plot 241, in the presence of PW3, among others. They sold to her 5.5 acres at UGX 4,000,000/= per 10 acre, at UGX 22,000,000/=, they acknowledged that the money had been paid in full

and undertook to hand over the title in 4 months. They did not do so.

Instead, in a letter dated the 23rd April 2016, marked Exb. P.6, it was confirmed by the Kitanda Kiryamuli LCI Secretary that the two had died on the 10th June 2013 and 2nd March 2015, respectively. On the 2nd 15 June 2016, the Defendant was registered as proprietor on the suit land. Her purchase agreement, Exb. D.5 dated 9th August 2011 was executed with the co-administrators and it was agreed that the vendors would hand over duly signed transfer forms upon the purchaser paying the purchase price in full. There is no indication that the purchase price was paid in full.

During the locus visit, PW2, Ms, Nalutaaya Judith pointed out the boundaries and the Plaintiff's crops and trees on the suit land. The Defendant was absent. Ms. Nalutaaya stated that she was not sure whether the Defendant had any developments on the suit land.

Counsel for the Plaintiff made extensive submissions in support of the Plaintiff's case which I acknowledge and agree with. There is ample evidence that the Plaintiff acquired an equitable interest in the suit land upon entering the agreements dated 4th June 2009, 4 th August 2009 and 13th April 2013. While it is true that only one administrator dealt 30 with the Plaintiff in the first

two agreements, I find that his co-administrator, the late Aida Nabayego endorsed her co-administrator, the late Sittankya's actions in the final agreement dated, 13th April 2013. I find that the Defendant's interest could only be subject to the Plaintiff's equitable interest in the suit land.

Issue 1 is resolved in the affirmative.

Issue 2

What remedies are available to the parties?

I find that the Plaintiff is entitled to some of the remedies sought in the Plaint. There is abundant evidence that subsequent transactions took place on the land during the 10 pendency of this suit and affected third parties were not parties to this suit. I will therefore exercise caution and limit the remedies as between the Plaintiff and the Defendant.

An alternative prayer for compensation of the market value of the suit land was made by 15 the Plaintiff and I find that in the circumstances, this is the most appropriate remedy.

And in my view, a sum of UGX 50,000,0000/= in general damages is sufficient in light of the inconveniences suffered arising from the Defendant's actions.

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In conclusion, I enter judgment for the Plaintiff and order as follows;

- **1. It is declared that the Plaintiff acquired an equitable interest in the suit land comprised in Kyadondo Block 72 Plot 241 at Namaliga.**
- **25 2. It is declared that the Defendant's purported purchase and registration on the suit land deprived the Plaintiff of her equitable interest.**
- **3. General damages of UGX 50,000,000/= are awarded to the Plaintiff.**
- **4. Compensation to the Plaintiff by the Defendant at the open market value of the suit land together with all the developments thereon as determined by 30 the Chief Government Valuer and sanctioned/approved by the Court within 90 days of the date of this judgment.**
- 5. **Costs of the suit.**

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5 Olive Kazaarwe Mukwaya

JUDGE

31st May 2024

Delivered by email to Counsel for the Parties.

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