

UGANDA / JUDGMENT

Nek Sam Odongo v Ekanya Malson (Civil Suit 25 of 2019) [2024] UGHC 9 (17 January 2024) [2024] UGHC 9

COURT

High Court of Uganda

BEFORE

Ajiji, J

CASE / FILE NUMBER

Civil Suit 25 of 2019

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT LIRA

CIVIL SUIT NO. 025 OF 2019

NEK SAM ODONGO ::::::::::::::::::::::::::::::

VERSUS

EKANYA MALSON ::::::::::::::::::::::::::::::

BEFORE: HON. JUSTICE ALEX MACKAY AJIJI

JUDGMENT

1. BACKGROUND

The Plaintiff sued the Defendant in this suit for the orders that the Defendant is a trespasser on the suit land, eviction orders against the Defendant, a permanent injunction restraining the Defendant his agents and or servants from trespassing or continuing to trespass, cultivating, using and/or enjoying the suit land, general damages at interest of 30%, interest of 30% on mense and costs.

The Plaintiff's facts are that the Plaintiff is the owner and registered proprietor of land comprised in FRV 3010 Folio 18, Plot at Yona Okoth Road, Lira Municipality in Lira District having obtained the same through a lease that was granted to him for 49 years lease by Lira District Land Board over the suit land on the 06th day of August, 2002 and a lease certificate of title was

processed and described as leasehold Register Volume 3010, Folio 18, Plot No.1 measuring approximately 0.308 hectares (hereinafter as the suit land). That he enjoyed quiet possession of the suit land until about June, 2019 when the Defendants without the plaintiff's consent trespassed on the suit land and went ahead to construct a house thereon rendering it impossible for the Plaintiff to enjoy quiet possession of his land fossor

The Defendant in his written statement of defence denied all the Plaintiff's claim and averred that the Plaintiff has never been the owner of the suit land and that the Defendant has been using the some land for gardening and does not extend in any way to the Plaintiff's land. That in 2011 he brought stones and placed them to border the land and he has been using and continued to use the same up to 2014 when the Plaintiff started disputing the land.

The Defendant contended that he inherited the suit land from his late parents OBUIN JOHN JOHNSON who died in 2005 and NABAFU HILDER who died in 2018 and that his father acquired the suit land by way of purchase from then the Ministry of works, Housing and Communication. That the suit land belonged to the Ministry of works before his father bought it. That the suit land was allocated to his father by the Ministry of Works through a letter dated 30th day of 2003.

That the suit land was allocated to the Defendant's father, he entered into a tenancy agreement with the Ministry of Works, Housing and Communication on the 19th day of June, 2003;

1. That after the said house was allocated to the Defendant's father, he entered into a tenancy agreement with the Ministry of Works, Housing and Communication on the 19th of June, 2003

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2. That on 21st April, 2005, the Permanent Secretary Ministry of Works, Housing and Communication wrote a letter to the District Physical Planner Lira about the government policy to sell off the institutional houses and requested that the physical planner should undertake planning of the Ministry institutional quarters along Ireda Road Lira and develop sit lay out plans for the properties,

and that eventually the suit land was sold to his father with a residential house thereon

2. Legal Representation

$\mathcal{A}$

Hallmark Advocates represented the Plaintiff whereas the Defendant was represented by Egaru & Co. Advocates.

There is no submissions nor evidence from any of the parties to this suit. This court will therefore rely on the facts in the Plaint and those in the written statement of defence to determine this suit.

That being the position, this court will formulate issues as empowered under Order 15 of the Civil Procedure Rules as below;

- i. Whether the Plaintiff is the lawful owner of the suit land and if so, whether the Defendant is a trespasser.
- ii. What are the remedies available to both parties?

3. Determination of Court

In the Plaint, the Plaintiff's claim is that he purchased the suit land from Lira Land Board by way of a lease on 6th of August, 2002 and he was given a leasehold certificate for Leasehold Register Volume 3010, Folio 18, Plot No. 1, land at Yona Okoth Road, in Lira Municipality measuring approximately 0.308 hectares upon which he enjoyed quiet possession until June, 2019 when the Defendant trespassed on the land without the consent of the Plaintiff.

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The Plaintiff attached the leasehold certificate on the plaint as annexure "A". In that annexure, the certificate is for Leasehold Register Volume 3010 Folio 16, Plot No.1 measuring approximately 0.308 issued on 6th of August, 2002 under Instrument No. 326645 in the names of NEK SAM ODONGO. He also attached annexures "B" and "C" which are pictures showing a foundation of a building allegedly established on the suit land by the Defendant.

The Plaintiff also attached annexure "D" which indicate that the LC.1 officers tried to mediate the Plaintiff and the Defendant but the Defendant stubbornly ignored their instructions stopping him from continuing with the construction of the house on the suit land.

The Defendant on the other hand averred in the written statement of defence that he inherited the suit land from his late father OBUIN JOHN JOHNSON who died in 2005 and NABAFU HILDER who died in 2018. That his father acquired the suit land through purchase from the then Ministry of Works, Housing and Communication which was allocated to his father by the Ministry of Works through a letter dated 30th day of 2003.

That the suit land was allocated to the Defendant's father, he entered into a tenancy agreement with the Ministry of Works, Housing and Communication on the 19th day of June, 2003

That on 21st April, 2005, the Permanent Secretary Ministry of Works, Housing and Communication wrote a letter to the District Physical Planner Lira about the government policy to sell off the institutional houses and requested that the physical planner should undertake planning of the Ministry institutional quarters along Ireda Road Lira and develop sit lay out plans for the properties,

and that eventually the suit land was sold to his father with a residential house thereon

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The Defendant attached annexure "A" which is a letter dated 30th May, 2003 authorizing allocation of the institutional house on the suit land to MR. J. J. OBUIN from 1st June, 2003 and making sure that the house thereon is not damaged. The letter was written by the District Engineer Lira.

The Defendant also attached annexure "B" which is a tenancy agreement dated 19th of June, 2003 between the Ministry of works, housing and communications and MR. OBUIN JOHN JOHNSON at a monthly rent of \$66,000/=.

Clause 2 of the Tenancy Agreement states that; "The Tenancy Agreement may be **determined by the Authority on the death of the Tenant** or by either party giving to the other one month's previous notice in writing of his desire to determine the same."

4. Analysis of Court

Issue No.1: Whether the Plaintiff is the lawful owner of the suit land and if so, whether the Defendant is a trespasser.

It is trite that land in Uganda may be acquired through a gift, purchase, sale by mortgage and inheritance.

In the instant case, the Defendant contended that he acquired the suit land by way of inheritance from his father which he purchased from the Ministry of Works, Housing and Communication. He however did not attach any evidence to prove the purchase. All that the Defendant attached is a tenancy agreement which as per Clause 2 of the same ended at the death of his father.

Asson I have noted some miss-match in annexure "A" and "B" attached to the written statement of defence. While annexure "A" allocated the house on the suit land to the Defendant's father in June 2003, in the same month, the Ministry rented the same house to him. This court did not understand whether allocation acted like booking awaiting the former tenancy agreement, other than that presumption, there was no reason why a person authorized to occupy the house would then turn into a tenant.

It is also observed that the letter and the tenancy agreement that is attached to the written statement of defence by the defendant were issued in 2003 after the suit land had already been sold to the Plaintiff and for that reason, neither the land Board of Lira nor the Ministry of Works, Housing and Communication had power to give it out to anybody because they did not have ownership rights.

On the other hand, the Plaintiff said he acquired the suit land by way of purchase as a leasehold. He attached annexure "A" to the plaint which is a leasehold certificated registered in his name on 6th of August, 2002

Section 59 of the Registration of Titles Act provides that a certificate of title is conclusive proof that the person named in the certificate is the proprietor \$ \cdots \cdots \cdots \$

Section 176 (c) of the Registration of Titles Act provides that a registered proprietor of land is protected against an action for ejectment except on ground of fraud. See *Kampala Bottlers versus Damanico (U) Ltd*, S. C. Civil Appeal No. 22 of 1992 and *H. R. Patel versus B. K. Patel* [1992 - 1993] HCB 137).

The above therefore means that looking at annexure "A" to the Plaint, the Plaintiff's ownership can only be impeached on grounds of illegality or fraud, attributable to the transferee which none was raised by the Defendant.

Accordingly, the plaintiff has proved that he is the lawful owner of Volume 3010 Folio 18 Plot No.1 land at Yona Okoth Road, Lira Municipality in Lira District. Having found that the Plaintiff is the lawful owner of the suit land, the Defendant automatically becomes a trespasser on the suit land.

Issue No.2: What are the remedies available to both parties?

General damages

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The Plaintiff prayed for general damages from the date of trespass till payment in full at 30% interest.

In Civil Suit No. 366 of 2017 *Luzinda Mariam Babirye Vs. Ssekamatte and 5 Others*, court stated that;

"As far as damages are concerned, it is trite law that general damages are awarded in the discretion of court. Damages are awarded to compensate the aggrieved, fairly for the inconveniences accrued as a result of the actions of the defendant. It is the duty of the claimant to plead and prove that there were damages losses or injuries suffered as a result of the defendant's actions"

It is apparent that a Plaintiff who suffers damage due to the wrongful act of the Defendant must be put in a position he or she should have been in had she or he not suffered the wrong. See *Kibimba Rice Ltd v Umar Salim*, S. C. C. A of No. 17 of 1992.

In Uganda Revenue Authority vs Stephen Mabosi SCCA No.1 of 1996, court stated; "An award of interest is discretionary; the basis of such an award is that Defendant has kept the Plaintiff out of his money and the Defendant has had use of it so the Plaintiff ought to be compensated accordingly"

In the instant case, the Plaintiff attached annexures "D" and "E" which indicate that the Plaintiff tried to stop the Defendant from trespassing on the suit land but he remained adamant and continued with the trespass.

Accordingly, the Plaintiff is awarded \$5,000,000/= (Five Million Shilling) as general damages. No interests are awarded.

In the final result, this suit succeeds in the following terms;

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The Plaintiff is declared the lawful owner of Leasehold Register \$i.\$ Volume 3010, Folio 18, Plot No. 1 land at Yona Okoth Road, Lira

Municipality in Lira District Measuring approximately 0.308 hectares.

- ii. An eviction order is issued against the Defendant.
- iii. A permanent injunction is issued restraining the Defendant, his agents and or servants from trespassing or continuing to trespass, cultivating, using and or enjoying the suit land
- iv. \$5,000,000/= is awarded for general damages payable from the date of this judgment till payment in full
- Costs of the suit are awarded to the Plaintiff. \$\mathbf{V}.\$

Dated and delivered in Lira this 17th day of \$J\$ mae?

ALEX MACKAY AJIJI JUDGE

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