

UGANDA / JUDGMENT

Ntoreine v Namutebi (Civil Suit No. 98 of 2019) [2022] UGHCLD 143 (5 August 2022)

[2022] UGHCLD 143

COURT

HC: Land Division (Uganda)

BEFORE

Keitirima, J

CASE / FILE NUMBER

Civil Suit No. 98 of 2019

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THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT KAMPALA (LAND DIVISION) CIVIL SUIT NO. 98 OF 2019

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JUSTUS NTOREINE:.....

VERSUS

CISSY NAMUTEBI:.....

BEFORE: HON. JUSTICE JOHN EUDES KEITIRIMA

JUDGMENT

The Plaintiff's claim against the defendant is for: 15

- a) A declaration that the Plaintiff is the lawful owner of land comprised in Block 11 Plot 137 measuring 0.10 hectares located at Kabowa, Kibuga County hereinafter referred to as "the suit land."
- 20 b) A declaration that the defendant is trespassing on the Plaintiff's land.
- c) A permanent injunction restraining the defendant from interfering with the plaintiff's quiet possession of the suit land.
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- d) General damages.

July 2002
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- e) Interest and costs.
- 30 The facts constituting the Plaintiff's cause of action as stated in his plaint are that:
- (a) The Plaintiff entered an agreement for sale of land comprised in Block No. 11 Plot No. 137 measuring 0,10 hectares hereinafter referred to as "the suit land".
- (b) That he bought the suit land from a one Josephine Nakazzi Kasozi and Catherine Nankya Mutagubya on the 11-th January 2019. A copy of the sale agreement was tendered in Court and marked as Exh P.1. 35
- 40 (c) That the Plaintiff thereafter took possession of the suit land and started carrying on his activities.
- (d) That the defendant without any colour of right came upon the Plaintiff's suit land and started harassing the Plaintiff claiming that she had an interest in the suit land.
- (e) That the defendant using police arrested and detained the plaintiff's workers who were occupying the suit land.
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- (f) That at the police the defendant accused the plaintiff of wanting to grab her land and threatening her.
-)) (g) That the Plaintiff informed the Police officers that he had bought the suit land from Josephine Nakazzi Kasozi and Christian Nankya Mutagubya who were the registered proprietors of the suit land. A copy of the certificate of title was tendered in court and marked as exhibit P.2.
- (h) That the said Christine Mutagubya clarified that the defendant who is her sister exchanged her interest for another piece of land and had no interest in the suit land. 60

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- (i) That the defendant has continued to trespass on the suit land despite the fact that she has no interest on the suit land.
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- (j) That the suit land was the property of the late Joseph L. K Kasozi who during his lifetime transferred the suit land to Josephine Nakkazi Kasozi, Robinah Naluwaga and Christine Nankya Mutagubya.

The Plaintiff contends that he is the rightful and lawful owner of the suit land with full possessory rights and no other person has interest in the suit land. The Plaintiff seeks for the following declarations/orders:

- i. That the Plaintiff is the lawful owner of the suit land comprised in Block No. 11 Plot No. 137 land at Kabowa.
- ⁷⁵ I. A declaration that the defendant is trespassing on the suit land.
- r. A permanent injunction restraining the defendant from interfering with the Plaintiff's quiet enjoyment of the suit land.
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- iv. General damages.
- v. Interest and costs.

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vi. Any other relief that this court deems fit.

In her written statement of defence the defendant states inter alia:

- That she possesses an equitable interest on the suit land and her equitable interest ranks in priority to that of the plaintiff because she obtained her interest in 1975 when the land was donated to her and her sisters by her late father.
- ii. That it is instead the Plaintiff who is a trespasser on the suit land and that the Plaintiff is not entitled to the remedies he is seeking.

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- ⁹ s iia. The defendant disregards the sale agreement that was tendered in court and maintains that those who were disclosed therein as vendors are her resulting trustees with absolutely no right to dispose of the suit land.
- 100 iv. That the Plaintiff's attempted entry on her land was opposed because the suit land belongs to the defendant and she has been occupying it for over forty years.
- 105 That in 2002 she even constructed her house on the suit land and has been residing in that house undisturbed since then save for the attempted entry of the Plaintiff in 2019.
- vt. The defendant denies having ever exchanging her interest in the suit land with another.
- v . The defendant admits that the suit land belonged to her late father Joseph L. K Kasozi who subsequently donated it to her, Christine and Josephine and the duo with their mother Robinah were registered as trustees on the same property for her benefit and theirs as well.
- v . That unlike her said sisters who no longer live on the suit land, she constructed her house thereon in 2002 and she has been living there all through.
- tx. That her said sisters were not joint tenants on the suit land but resulting trustees.

- tzs x. That the said trustees had no right to sell the suit land.
- xt. That all the meetings that were held with the local council L resolved that she had an equitable interest on the suit land.

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| 130 | | xii. The defendant prayed that the suit should be dismissed with costs. |

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| | The defendant raised a counterclaim where she stated inter alia: | |

| | That she claims against the counter defendant for orders that: | |

| | i. | The suit land is a resulting trustee property. |

| 135 | ii. | That Christine and Josephine were registered on the Certificate of Title to
the suit land as resulting trustees. |

| 140 | u. | That the said Christine and Josephine have no rights to sell the suit land
without being mindful of her interest as a beneficiary. |

| | | iv. That the cancellation of the name Robinah Nalwanga from the title without
replacing her with another trustee was erroneous. |

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| | | A declaration that the purported sale of the suit land as can be deduced
from the sale agreement is contrary to the law and should be revoked. |

| 150 | vt. | That the suit land belongs to all the three daughters of the late Kasozi. |

v . That a permanent injunction should be issued restraining the counter defenda nt/P la intiff from interfering with the quiet possession enjoyment and utilization of the suit land.

- vlll. An order compelling Christine and Josephine to refund the purchase price if any with interest of 40%.
- 160 ix. General damages.
- x. Costs.

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The facts constituting the counterclaimant's cause of action as stated in her counter claim are inter alia:

- 165 i. That the counter claimant is the biological daughter of the late Joseph L. K Kasozi and Robinah Naluwaga.

- . That Josephine Nakazzi Kasozi and Christine Nankya Mutagubya are biological Sisters of the counterclaimant.

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- t. That their late father during his lifetime donated the suit land to the counterclaimant, Christine and Josephine being her biological sisters.
- 775 iv That the suit land was registered in the names of their late father in 1975 vide Instrument No. KLA 76904.
- That upon donation of the suit land, her sisters Christine, Josephine and their mother Robinah were registered as proprietors of the suit and in 2008 vide Instrument No. KLA 3986677 to hold the said land in trust for themselves and herself . 180

vi. That upon the demise of their mother in June 2012, her sisters irregularly cancelled the name of their mother from the title on 4th December 2018 and transferred the land vide Instrument No. KCCA 00056518 to themselves without her knowledge. 185

That she was shocked to learn that the counter defendant claims he bought the suit land on the 23'd January 2019 from her said sisters yet they were simply trustees and they hold the suit land for her benefit and for the benefit of their mother's estate. 190 VI.

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¹⁹⁵ viii. That she constructed her house on the suit land in 2002 and she has consistently lived on the suit land with her parents during their life time till to-date.

The counterclaimant prays for the following declarations /orders:

- i. The suit land is a resulting trustee property.
- 200
- ii. That Christine and Josephine were registered on the Certificate of Title of the suit land are resulting trustees.
- 20s iii. That the said Christine and Josephine have no rights to sell the suit land without being mindful of her interest as a beneficiary.
- iv. That the cancellation of the name of Robinah Nalwanga from the title without replacing with another trustee was erroneous and should be nullified.
- A declaration that the purported sale of the suit land was contrary to the law and should be revoked.
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- That the suit property belongs to all the three daughters of the late Kasozi.
- 220 vii. A permanent injunction restraining the counter defendant from interfering with the quiet possession, enjoyment and utilization of the suit land.
- viii. An order compelling Christine and Josephine to refund the purchase price of the suit property with interest at the rate of 40%.
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- ix. General damages.
- x. Costs.

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In his reply to the written statement of defence and counter claim the counter defendant/Plaintiff states inter alia:

- That the suit land was the property of the late Joseph L. K Kasozi who transferred the property during his lifetime to Josephine Nakayizza Kasozi , Christine Nankya Mutagubya and Robinah Naluwaga.
- 23s ii. That the counter claimant/defendant has no interest in the suit land and has no valid claim.
- t. 240 That the counter claimant/defendant has no beneficial interest in the suit land and that the registered proprietors Josephine Nakayizi , Christine Nankya Mutagubya and Robinah Naluwaga were joint tenants.
- That the defendant/counter claimant has never occupied the suit land and the house on the suit land she lays claim to belonged to the late Robinah ^Na luwaga.
- The Plaintiff/counter defendant avers that there is no resulting trust that was created.
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- The Plaintiff/counter defendant further contends that the suit land was gifted to Josephine Nakkazi Kasozi , Christine Nankya Kasozi and Robinah Naluwaga by the Joseph L. K Kasozi in his lifetime and that the defendant/counter claimant had exchanged her portion of land with that of Robinah Naluwaga who had another piece of land and the defendant chose to take that piece of land and give her interest in the suit land to Robinah ^N/sup>^a/sup>luwaga. 255
- The Plaintiff/counter defendant further contends that the said registered proprietors were not trustees nor holding the suit land for the benefit of 260 vii.

the defendant/counter claimant and that the defendant has no beneficial interest in the suit land.

265 VU. The Plaintiff/counter defendant further contended that the suit land was held by the said Josephine Nakkazi Kasozi, Christine Nankya Kasozi and Robinah Nalugwa as joint tenants with the right of survivorship and the Registrar of Titles basing on that cancelled Robinah Nalugwa's name from the title after her death.

- ix. The Plaintiff/counter defendant further contends that the defendant/counter claimant is being greedy as she took Robinah Naluwaga's portion of the land and sold the same for her sole benefit.
- 275 In their joint scheduling memorandum, the following issues were framed for determination:
 - 1. Whether the purported sale of the suit land was lawful.
 - 2. Whether the defendant/counter claimant has any interest in the suit property.

3. The remedies available to the parties.

285 The case proceeded ex-parte the defendant and her Counsel having failed to appear and defend/prosecute their case although they were duly served and there is an affidavit of service on record.

The Plaintiff brought three witnesses who tendered in their witness statements.

In his witness statement, Justus Ntoreine the Plaintiff and hereinafter referred to as "PW1" stated that he entered into an agreement for sale of land comprised in

290 Block No. 11 Plot 137 measuring 0.10 hectares hereinafter referred to as "the suit land" from a one Josephine Nakkazi Kasozi and Christine Nankya Mutagubya on the 11th January 2019. The sale agreement was tendered in court and marked as exhibit PE1.

295 That before the purchase, he carried out a search and due diligence and established that the suit land was the property of Josephine Nakkazi Kasozi and Christine Nankya Mutagubya and there were no other adverse interests as shown in the certificate of title. The certificate of title was tendered in court and marked as exhibit PE2.

That after the purchase and after one week, he took possession of the suit land and started carrying on his activities.

That to his utter shock, the defendant after two weeks of his taking possession forcefully came on the suit land and started making claims that the suit land was hers.

305 That the defendant started harassing and threatening his workers who were carrying out some activities on the land.

That the defendant also went to the police post and complained that he had threatened violence on her and was trespassing on her land which allegations were not true.

310 That the defendant using police came to the suit land and caused the arrest and detention of his workers at Ndeeba Police Post and he was also summoned to appear to the said police post.

That he went to the Police Post and was later joined by one of the vendors Christine Nankya Mutagubya. That he clarified to the Officer in Charge of the said Police Post that he had bought the suit land from the registered proprietors of the suit land.

That the said Christine Nankya Mutagubya also informed the Police that the defendant/counter claimant had no interest in the suit land as the suit land was owned by Josephine Nakkazi Kasozi and herself.

320 That the Police never proceeded with the investigations as it was clear that to them that the defendant's claims had no basis.

That during his lifetime, the late Joseph L. K Kasozi had gifted and transferred the suit land to his daughters Josephine Nakkazi Kasozi, Christine Nankya Mutagubya and his wife Robinah Naluwaga. The transfer form was tendered in court and marked as exhibit P.3.

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That the defendant/counter claimant on and around February 2019 forcefully and 325 without any authority entered upon the suit land and started occupying the house that was built on the suit land claiming that the house belonged to her.

That he contested the defendant's actions and sued her in court.

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That the defendant has continued to trespass on his land as she has no interest on the suit land. 330

The Plaintiff/Counter defendant contended that he purchased the suit land in good faith having established the registered proprietors and that there were no adverse claims.

PW1 prayed that this court issues a declaration that the defendant is a trespasser, issue a permanent injunction restraining the defendant from interfering with his 335 quiet possession and enjoyment of the suit land, award him general damages for the inconveniences caused by the defendant and costs of the suit.

In her witness statement, **Christine Nankya Mutagubya** hereinafter referred to as "PW2" stated that the defendant/counter claimant was her biological sister.

That the suit land originally belonged to her late father Joseph L. K. Kasozi. 340

That her late father gifted the suit land to his daughters who included herself, the defendant and Josephine Nakkazi Kasozi.

That thereafter the defendant wanted money to go to Canada and she approached their mother Robinah Naluwaga requesting for money but their mother had no money.

That the defendant then requested their mother to sell off her land in Kabowa which had been given to her by their father.

That their mother agreed to sell off her land in Kabowa on the understanding that the defendant was to exchange her share and interest in the suit land which the defendant accepted.

That the defendant and their mother went ahead and sold the land in Kabowa and the defendant was given money. That this position was explained to their late father.

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3s5 That their father requested for a written note from the defendant confirming that she had exchanged her share in the suit land with their mother and the defendant wrote a note to that effect.

That it was on the basis of the above that their late father gave them transfer forms signed in favour of their mother, herself and her sister Josephine Nakazzi. The transfer forms were tendered in court and marked as exhibit PE3.

360 That the defendant in attempt to grab their land started using tricks by claiming that she was building a house for their mother on the suit land despite their protests.

That the defendant then turned round to claim the land and house.

That in 2012 after their mother died, she and her sister decided to sell the suit land.

That at the time of sale, she and her said sister were in possession of the suit land and promised to leave the land after one month. That they indeed left after one month and gave the plaintiff vacant possession.

370 That she was later called by the Plaintiff who informed her that the defendant had come onto the suit land claiming the same. That the Plaintiff also informed her that the defendant had reported the matter to police claiming that he was a trespasser.

That she went to Ndeeba Police post and explained that the defendant had no claim on the suit land and that the defendant only intended to frustrate the Plaintiff in utilizing the suit land.

In her witness statement, Josephine Nakazzi stated that the defendant was her biological sister and that the suit land originally belonged to their father the late Joseph L. K Kasozi.

380 That their late father first gifted the suit land to his daughters and thereafter the defendant wanted to go to Canada and she approached their mother requesting for money but their mother had no money.

That the defendant then requested their mother to sell off her land in Kabowa which land had been given to her by their father.

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385 That their mother agreed to sell off her land in Kabowa on the understanding that the defendant was to exchange her share in the suit land which the defendant accepted.

That the defendant and their mother went ahead and sold the land in Kabowa and the defendant was given the money. That the said position was explained to their father L. K Kasozi and it was on that basis that their late father signed for

390 them transfer forms. That their father also requested for a handwritten note from the defendant clarifying that the defendant had exchanged her portion of land with their mother.

That the defendant was not included in the said transfer because she had chosen to take another piece in Kabowa that belonged to their late mother which she sold off.

That the defendant in an attempt to grab their land, started using tricks claiming that she was building a house for their late mother despite their protests.

That the defendant later turned round to claim the land and the house.

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400 That when their mother died in 2012, she and PW2 decided to sell the land and at the time of sale, she was in possession of the suit land and promised to leave in ^a month's time.

That she later on vacated the suit land and gave the Plaintiff vacant possession of the suit land.

PW3 contended that the defendant only seeks to frustrate the Plaintiff in utilising the suit land and has no basis for staying on the suit land.

She stated that this court should declare the defendant a trespasser on the suit land and issue a permanent injunction restraining the defendant from interfering with the Plaintiff's quiet enjoyment of the suit land.

410 The Plaintiff filed written submissions the details of which are on record and which I have considered in determining this case.

I will determine all the issues concurrently as they are interrelated.

At the time of the sale of the suit land to the Plaintiff, the same was registered in the names of Josephine Nakkazi Kasozi, Robinah Naluwaga and Christine Nankya

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Mutagubya as shown in the Certificate of Title that was tendered in Court and marked as exhibit P.2

In the sale agreement, the vendors were Josephine Nakkazi Kasozi and Christine Nankya Mutagubya who are two of the registered proprietors of the suit land. According to exhibit P.3 the suit land had indeed been transferred to the said three registered owners by the late Joseph L. K Kasozi who was a father and husband to the transferees. This evidence was not disputed.

Section 55 of the Registration of Titles Act Cap 230 provides that "Two or more persons who are registered as joint proprietors of land shall be deemed to be entitled to the land as joint tenants; and in all cases where two or more persons are entitled as tenants in common to undivided shares of or in any land, those

persons shall in the absence of any evidence to the contrary be presumed to hold the land in equal shares."

is entitled to the same rights of use over it as the others.

Therefore the said joint proprietors of the suit land were deemed to be joint tenants. Joint tenancy confers a right of survivorship on any surviving co-owners. Joint tenancy was defined in the case of *Bull versus Bull* - 7 Q. B 234 as one where two or more persons together as a group own the entire interest in the land; hold the whole jointly and nothing separately. A joint tenancy arises where the various owners hold the land together in one chunk which is undivided and each member

For a tenancy to be recognised as a joint tenancy, the four unities must be present. These are:

- i. Unity of possession, each joint tenant being as much entitled to possession and enjoyment of any part of the land as any other tenant and none having special rights.
- Unity of interest, each joint tenant having an interest of the same kind and (if appropriate) of the same duration, and any rents or profits being divided equally between them. 440 ii.
- 445 Ir. Unity of title, each joint tenant having acquired his or her rights by the same conveyance or by simultaneous adverse possession; and

and 446 Ir. Unity of time, each joint tenant having acquired his or her vested interest at the same time.

Unity of time, each joint tenant having acquired his or her vested interest at the same time.

In such a case the right of survivorship applies to the effect that when one dies, the estate wholly vests in the other or others who have survived him or her and no share goes to the estate of the deceased. The intestacy rules have no effect on this nor does a Will.

In this case the vendors (PW2 and PW3) were entitled to the right of survivorship at the point of death of one co-owner (their mother) and the interest of their mother in the suit land passed to them and therefore they could legally sell the suit land to the Plaintiff as they did in this case.

The defendant did not adduce any evidence to substantiate her claims in her written statement of defence and counterclaim. It was held in the case of *H, G Gandesho and another versus G. I. Lutooya* - S. C. C, A No. 74 of 1989 that

uncontested evidence should be taken as the truth.

> The defendant had claimed that her sisters and her mother who were registered on the certificate of title to the suit land and were resulting trustees for her benefit. The defendant had claimed that she possesses an equitable interest on the suit land which takes priority to that of the Plaintiff.

465 470 From the evidence adduced by PW2 and PW3 who are sisters to the defendant, the suit land had formerly been gifted to them by their late father. The defendant however later on exchanged her interest with her mother who gave her land in Kabowa which she sold off to go to Canada. That is how the vendor's mother was registered on the suit land. The defendant cannot therefore have her cake and eat it as well.

There was therefore no resulting trust as claimed by the defendant as the donor of the suit land's intention was to transfer legal ownership to his said two daughters (Josephine Nakkazi Kasozi and Christine Nankya Mutagubya) and their mother (Robinah Nalugwa). Surely there is no way the donor would have omitted

475 the name of the defendant on the transfer form if he intended her to benefit from the suit land as well. He should have mentioned it in the transfer form or his Will. The defendant's claim that there was a resulting trustee is not backed by any iota of evidence.

Section 136 of the Registration of Titles Act Cap 136 provides that "Except in the case of fraud, no person contracting or dealing with or taking or proposing to take or transfer from the proprietor of any registered land, lease or mortgage shall be required or in any manner concerned to inquire or ascertain the circumstances in or the consideration for which that proprietor or any previous proprietor thereof was registered, or to see to the application of any purchase price or consideration money, or shall be affected by notice actual or constructive of any trust or unregistered interest, any rule of law or equity to the contrary notwithstanding, and the knowledge that any such trust or unregistered interest is in existence shall not of itself be imputed as fraud."

The Plaintiff adduced evidence that was never challenged by the defendant that 490 he carried out the necessary due diligence and found that the only people who had interest in the suit land were the registered owners on the certificate of title and from whom he bought the suit land for valuable consideration. He was therefore a bona fide purchaser for value without notice. The defendant has failed to prove her interest in the suit land and her occupation of the same 495 amounts to trespass.

Judgment will therefore be entered for the Plaintiff against the defendant with the following declarations:

- i. The Plaintiff is the rightful owner of the suit land comprised in Block ¹¹ Plot 137 land at Kabowa measuring 0,10 hectares.
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- ii. The defendant is a trespasser on the suit land.
- iii. A permanent injunction is issued restraining the defendant from interfering with the quiet possession of the suit land by the Plaintiff.
- iv. The defendant is to pay twenty million shillings (20,000,000/=) as general damages to the Plaintiff.

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- v The defendant is to pay interest of LOYo per annum on item iv above from the date of judgment until payment in full.
- vi, The defendant will also pay the costs of the suit.

vii, The counter claim is also dismissed with costs.

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Hon, Justice John Eudes Keitirima oslo8l2022

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Prepared on 13 October 2026 · Esheria