

UGANDA / JUDGMENT

Tumwine v Kiyingi (Civil Suit 632 of 2020) [2024] UGHCLD 281 (13 November 2024)

[2024] UGHCLD 281

COURT

HC: Land Division (Uganda)

BEFORE

Nkonge, J

CASE / FILE NUMBER

Civil Suit 632 of 2020

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

LAND DIVISION

CIVIL SUIT NO. 632 OF 2020

JOHN TUMWINE ::::::::::::::::::::::::::::::

VERSUS

KIYINGI PAUL ::::::::::::::::::::::::::::::

Before: Lady Justice Aleandra Nkonge Rugadya

JUDGMENT

Introduction: 10

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The plaintiff filed this suit seeking a declaration that the plaintiff is lawful owner/legal owner of the suit land comprised in private mailo land at Lubata Lusanja - Wakiso - Kyadondo vide Block 199 Plot 84, measuring approximately 0.0510; a declaration that the defendants is a trespasser on the suit land; a declaration that the defendant is liable for fraudulently dealings in 15 the suit land in as far as buying the same with knowledge of the plaintiff's interest; a declaration that the land sale agreement entered between the defendant and a one Nampinga Racheal is null and void ab

initio for fraud, and overtaken by earlier & legal interest; a declaration that the defendant is liable for contempt of court orders in Civil Suit No. 15 of 2017; an order for mesne 20 profits; an order for permanent injunction stopping the defendant from further trespass and any dealings in the suit land; an order for vacant possession and eviction of the defendant by demolishing any structure thereon; special damages of Ugx 41,000,000/-; general and punitive damages; an award of Ugx 100,000,000/= as compensation for the contempt of court order; and a fine for 25

contempt of court, worth *Ugx 100,000,000/=;* order of detention in civil prison for a period not exceeding six months for contempt of court orders; interest on

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the suit. all the damages at 307o from the date of breach till payment in full and costs of

The facts of the case:

The facts as pleaded by the plaintiff are that on the 2^d day of June, 2016, he bought an equitable interest in the land comprised in Facts - Lubata - Wakiso measuring approximately 50x100 ft from a one Kakooza Robunah who promised to connect him to the landlord so that he acquires a legal interest in form of ^a title.

10 The plaintiff bought the said land without any encumbrances or third party interests whatsoever after consulting the neighbours, the LC 1 chairperson of the area who even witnessed the agreement and the registered proprietor who even consented to such purchase and later executed a written consent'

That after buying, the plaintiff took over exclusive possession and ownership of the said land/ kibanja as well as quiet possession and was referred by the said

- 15 Kakooza Robunah Eva to the registered owner/landlord who executed consent to purchase the said land, thereby recognizing the plaintiff as the new owner of the said suit land. He even executed mutation forms and transfer forms to him to that effect and thereafter the plaintiff embarked on the sub-division and transfer of the land.
- 20 Sometime in early 2017 however, the plaintiff decided to sell off the said land and therefore started bringing potential buyers on the suit land but they were threatened by one Zziwa Eddic who purportedly claimed ownership and started trespassing on the said land.

This prompted the plaintiff to file civil suit No. 75 of 2017, around April, 2017.

25 As the above civil suit was ongoing, a one Zziwa Eddic around August, ²⁰¹⁷ without any claim of right destroyed the plaintiff's fence and attempted to plant cassava on the said land using the defendant's herd, which prompted the

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plaintiff to file a case of criminal trespass and malicious damage to property vide Ref: a6/ 15/ oB/2017.

The plaintiff also filed a suit No. 15 of 2017 against one Zziwa Eddie in the Magistrate's Court at Kasangati for trespass and declarations that he is the lawful owner of the suit land/kibanja'

Judgment was entered in the plaintiff's favour as the lawful owner of the suit land. Meanwhile that before the civil suit was disposed of, the defendant connived with Zziwa Eddie and started claiming to have bought the suit land from Zziwa's children,

He attempted to build on the said land which again prompted the plaintiff to report a criminal trespass case vide ref; 37/21/Og/2017, only this time for police to intervene. The defendant was advised that since the matter was in court he should apply to be joined as a party to the ongoing case, advice which he ignored' 10

That while aware of the ongoing suit, the defendant still did not stop any further interference with the suit land and after the matter was finally determined by court, the plaintiff went ahead and applied for vacant possession against Zziwa Eddie of the suit land at the High court (Execution & Bailiffs Division). A warrant of vacant possession was granted on 29th June, 2018' 15

The said warrant was finally cleared by a bailiff called Kaluba Mugabi Joseph who then went to the suit land and gave the plaintiff vacant possession without any resistance from anybody and after a return on the warrant to give vacant possession was filed in court. The plaintiff took over possession of the suit land and even fenced it and started utilizing it' 20

On the 25th day of August, 2018 while in Luwero for a workshop for a week' the plaintiff was informed that the defendant, Zziwa & others had forcefully come onto the suit land without any claim or right and had started constructing on the suit land without the plaintiff's consent or authority' 25

On the 30th day of August, 2018, the plaintiff filed an application for contempt of the court decree in Civil Suit No. 15 of 2017 against the defendant but unfortunately it could not set off since the file was moved to High Court Execution & Bailiffs Division for an application for objector proceedings by the defendant.

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The defendant however never prosecuted the said application for objector. The plaintiff went ahead to fix the hearing himself and when it came up for hearing, the defendant produced some agreements claiming to have purportedly bought the land from a one Nampima Racheal.

It was the plaintiff's claim therefore that the purported purchase was procured fraudulently and as such all the dealings by the defendant in the suit land were fraudulent and the purported agreement is null and void.

That due to the acts of the defendant, he has suffered grave mental anguish, distress and inconvenience as the said piece of land was a source of livelihood for his family and thus hold the defendant liable in general damages.

- On his part, the defendant filed a defence claiming that he bought the suit land on the 28th day of July, 2017 situate at Lusanja LC1 Kiteezi ward, Kasangati Town Council, Wakiso District measuring approximately 120 ft by 50ft in which he acquired equitable interest.
- The said land was sold to him by Nampiga on the 28th day of June 2017, who 20 had bought the same from Ddembe Caroline on the 28th day of June 2017. Ddembe had bought it from Muluya Richard on the 12th of October 2014. Zziwa Eddy had acquired the same from Kakande Obadiah in 2013.

The defence:

It was the defendant's claim that he took over possession of the suit land and is 25 currently in occupation of the same; and enjoyed quiet possession of the same until 2017 when the plaintiff came onto the land and started destroying his property.

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He instituted a criminal case against the plaintiff. Later, on the 13th day of July 2018, the plaintiff went to the plaintiff's home with court documents containing a warrant to give vacant possession in respect of the suit land.

Execution was stopped by the local council Chairman as there were some inconsistencies in the documents and the defendant filed an objector application since the suit land did not belong to Zziwa Eddie and the defendant had not been a party to the suit between the plaintiff and Zziwa vide: Civil Suit No. 15 of 2017.

Since then, the plaintiff has been interrupting the defendant's quiet possession on the suit land, subsequently filing this suit him.

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Representation:

The plaintiff was represented by M/s Newmark Advocates, while the defendant was represented by *M/s Nsereko Mukalazi & Co. Advocates*

Issues:

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- 1. Whether the plaintiff is the lawful owner of the suit land?

- 2. Whether the defendant is a trespasser on the suit land?
 - 3. Whether the defendant is liable for fraudulent dealings in the suit land?
 - 4. Whether the defendant is liable for contempt in civil suit vide \$CS\$ No. 15 of 2017?
5. What reliefs are available to the parties?

Issues No. 1 and 2:

Whether the plaintiff is the lawful owner of the suit land?

And

Whether the defendant is a trespasser on the suit land? 25

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In *Shelk Muhammed Luboua uersus Kltara EnterprLses Ltd C. A No.4 of 1987*, the E,ast Afrlcan Court of Appecl noted that in order to provc thc alleged trespass, it was incumbcnt on the party to provc that the disputed land belonged to him; that thc dfcndant had entered upon that land; and that the entry !'!as unlawful in that it was made without his prcmision; or that thc defendant had no claim or right or intercrest in thc land. (Ref also: ILC. C. S No. 778 of 2072, *Tagebua GeolJreg and Anor Vs Kaglmu Ngudde Mustata*; *Justine E. M. N. Lutadga Vs Sterllng Chil Engneerlng Co, SCCA .l\Io. 11 of 2002*).

Irespas to land occurs when a pcrcson directly cntcrs upon land in posscsslon of another without permission and remains upon the land, places or projects any object upon the land. It is a possessory action where if remedies are to be awarded the plaintiff must prove a possccssory intercrest in land. 10

Such possession should be actual and this requires the plaintiff to demonstrate his/her exclusive possccssion and control of the land. An action for the tort of trespass to land is therefore for cnforccment of possessory rights rather than

proprietary rights. fOdeyk Alex & Anor us Gena 4 others: Clvll Appeal No. 9 of 2017). 15

As stated in *Tageba Geoflreg and Anor as Kaglml IICCS No. 71 oJ 2072* quoting *OJuang us I\Si Ison Bagonza CACA No. 25 of 2002*, for one to claim intercrest in land he/shc must show that hc/shc acquired interest/titlc from

It was an agreed fact that thc defendant was in possession of the suit land. It was also not in dispute that thc plaintiff is the rcgistercd proprietor of the land comprised in Kgadondo block 799, plot 84, mcasuring approximate ly 0. 05 10

25 hcctares.

The plaintiff filed Cluil Suit JVo. IS oJ 2017 against one Eddie Zziwa in the Magistrate s' court at Kasangati for trespass and deciarations were made that he was the lawful owner of suit landlkibanja and accordingly, judgment was cntered in his favour; and in the terms below:

someone who previously had intercst/title thcrcon.

The following were the orders of court:

- 1) A declaration that the plaintiff is the bona fide purchaser and owner of the two plots of land located at Lusanja- Kasangati Town Council Wakiso District, measuring 50x 100ft and 95x 54 feet bought from Robinah Kakooza and defendant respectively.
- 2) The acts of the defendants and his agents of interfering in peaceful enjoyment of the said plots are illegal and unlawful.
- 3) Permanent injunction issued against the defendants and his agents and any person claiming under him for trespass or interfering with the plaintiff's peaceful and quiet enjoyment of the two plots.
- 4) The defendants to pay Ugx 2,000,000/ = for general damages.
- 5) The defendant to pay costs of the suit.

To prove such ownership, the plaintiff in addition relied on his own evidence as Pw2, a Police officer by the name of Mwegarukyemu Denis formerly \$Pw1.\$ attached to Kasangati Police; Pw3 Kaluba Mugabi Joseph, the bailiff who 15 executed the decree; Pw4 Joseph Magambo, a neighbor who also knew the person who sold to the plaintiff.

The defendant on his part relied on the evidence of Dw1, Obadiah Kakande; Dw2, the defendant himself; Dw3 Musujja Semandwa Sendowooza the registered proprietor; Dw4 Eddie Zziwa and Dw5, Eddy Kabonge, a surveyor.

The judgment of the lower court was also tendered in evidence by the plaintiff. The said judgment had been passed on the 26th day of March, 2018 by the Magistrate's Court at Kasangati, and admitted as PExh 4, and together with it were: a decree PExh 4(a) extracted on 28th March, 2018; a warrant of vacant possession made dated 29th June, 2018 of the two plots, PExh 5; and a return

25 on warrant made on 17th July, 2018, (PExh 7).

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Going by the said return and the attached inventory, which documents were never challenged, the parties to the suit, neighbours and police had all witnessed the peaceful execution of the orders.

A fence was erected by the plaintiff were present to ensure that they did not go beyond the boundaries. The plaintiff in addition presented a copy of the sale agreement, **PExh1** dated ² June, 2016 between him and a one Robina Eva Kakoza, for the purchase of land measuring 50x100\$ feet.

The purchase price was *Ugx 15,000,000/=*, duly signed and stamped by the chairman LC 1 Lusanja, where the land is located. The consent of the registered owner, Musujja Ssemandwa Ssendoowoza was tendered in as **PExh 3** in respect of the two plots. The consent document also had a sketch of the area bought and in respect of which the plaintiff had secured a title.

The ensuing judgment and orders issued by the lower court against Eddie Zziwa as defendant and his agents were never set aside or challenged in any competent court. As also confirmed through the evidence of **Pw2** and **Pw3**, the orders had been duly executed.

Since it is an admitted fact that the kibanja which is currently occupied by the defendant is the subject of this dispute, that would also imply that this was the same kibanja over which the warrant of vacant possession had been issued, in execution of valid orders made by a competent court, and which judgment has

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never set aside.

The defendant did not file a counterclaim. However, Eddie Zziwa a key witness to this case testifying as **Dw4** and in support of the defendant's claim of ownership claimed that the judgment was not in respect to the two pieces of land but to the land claimed to have been sold by Zziwa's sister, which claim **Dw4** disputed. The defendant relied on a number of sale agreements indicating

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the former successive owners of the kibanja.

This court is mindful of the dangers of appearing to be exercising appellate jurisdiction over the dispute which was already resolved by the lower court but also had to rule out any possible confusion as detected between the kibanja in dispute and the authenticity of the title which was created after the court order

was made. $\$ \mathsf{S} \$$

Thus having admitted that the kibanja he is currently occupying was the suit land, the only remaining pertinent question was whether the certificate of title later obtained by the plaintiff was for that same exact area over which the execution was made as per the court orders or a different area.

That would mean that anything contained in the **plot 84** later on acquired by ¹⁰ the plaintiff, beyond what he was entitled to as per that judgment should not have been included in the title.

Bearing in mind the said warning above, the defence evidence can only be restricted to proof of ownership of the kibanja which was not subject of the court decision and in respect to which execution was done, but which may have been irregularly included in the certificate of title.

The defendant tendered in **DExh 2a/b**, a sale agreement showing measurements of 120ft x 50 ft. Eddie Zziwa, **Dw4** claimed to have sold the said kibanja to Muliya Richard, on 12th November, 2014 at a sum of *Ugx 16,000,000/=*. The said plot was said to have been bought by Zziwa from Obadiah Kakande, who testified as

20 \$Dw1\$.

It is the same kibanja which was sold to Caroline Ddembe on 12th October, 2015, (**DExh 3 a/b**), at Ugx 20,000,000/=, and was witnessed by the LC chairman, Kibuuka Samuel.

DExh 4 \$a/b\$ is a sale agreement dated 28th July, 2016, between Caroline Ddembe 25 as the vendor and Rachael Nampinga as purchaser. The consideration as stated in that agreement was Ugx 35,000,000/=. The said kibanja passed on from Nampinga to the defendant on 28th July, 2017 (**DExh 5**), at Ugx 36,000,000/=.

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As noted by court, the area was slightly bigger than the 50ft x 100ft claimed by the plaintiff, who had already bought his on 2nd June, 2016 even before Ddembe sold it to Nampinga, the defendant's predecessor.

The LC 1 Chairman Kibuuka Samuel had been a witness to the agreements relied on by the defendant: **DExh.3**, **DExh 4**; and **DExh 5**. He was also the same $\$S$ person who on 16th August, 2015 had endorsed the agreement relied by the plaintiff for a kibanja, (bearing the same measurements of 120ftx 50 ft), between Kakande Obadeya and Kakooza Eva Robina, (**DExh 1a/b**), which was witnessed by Zziwa himself (**Dw4**), the defendant in the concluded suit. Kakooza later sold the kibanja to the plaintiff.

On 15th July, 2018 two days after the execution of the orders, the said chairman wrote to the magistrate Kasangati court to clarify on the ownership of the two plots, neither of which according to him belonged to the plaintiff or defendant in the concluded suit. **ref. DExh 6**.

In that letter he claimed that only one plot measuring 120ftx 50 ft belonged to 15 the defendant. That the other plot measuring 92ft \times 50ft\$ belonged to one benedict Byomugabe.

The LC letter therefore implored the court to review the court order, which apparently was never done. The Lc chairman, whose evidence was considered critical, was however not called to testify either in the lower court or in this

20 present suit.

No such review as requested by him was made and indeed no application or order for stay of stay of execution of the said orders of court were made before the said execution was conducted.

What appears on record is an application filed by the defendant on 1st August, 25 2018, pending the outcome of the objector proceedings. (Ref MA No. 1723 of 2018). The said application was never heard.

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But also equally important to note, and contrary to the contents of the LCI's letter, the defendant had no backing to support his claim that both plots belonged to him as started in that application.

Musujja semandwa Sendowooza the registered proprietor never signed any of the sale agreements relied on by the defendant. Testifying as D^{ar}3 and in total disregard of the court's conclusions which he himself never questioned, he made a feeble attempt to deny the plaintiffs ownership.

It was his evidence that the defendant approached him in 2017 after the kibanja bigger than that claimed by the plaintiff had already been sold to him, and as per plaintiff evidence, by 2017, the plaintiff had already bought 1st kibanja'

According to D^{ut}3, the plaintiff never bought the mailo interest in the land; but used the opportunity of fraud during the earlier subdivisions to demarcate off the land from the title which he had handed over to him.

The plaintiff also tendered in court PD^{xh} 77 proof of the interaction between the plaintiff and D^{ur}3 and his assurances to him that there was no dispute on the land which the plaintiff intended to buy.

PD^{xh} 77 was plaintiff's evidence that prior to that meeting, D^u3 had already registered his consent to the purchase between Kakooza and the plaintiff. The said land that was consented to in respect of one kibanja was however only 50^{ft} x 100^{ft}.

As already observed by court, there is no indication that prior to the sale between the plaintiff and Kakooza which he had endorsed, he had already given his consent any other earlier transfers of the same portion of land, as the defendant wished court to believe.

What the registered owner claimed however in paragraph 15 was that the plaintiff never took him to the land which he set out to buy from him, which was uncharacteristic of a prudent vendor, but also rather absurd, considering the fact that D^{ur}3 even gave the plaintiff the original title to help him in the 25

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subdivision. He never raised any complaint against the plaintiff's actions, not until this suit was filed.

Thus also equally absurd therefore was Dw3's denial of the fact that the plaintiff never bought the mailo interest, yet he had without any coercion had handed over the title to the plaintiff, without setting any condition.

His further claim was that he was made to sign documents in the Registrar's office to rectify the anomaly which was detected in his title; and that the plaintiff took advantage and made a title for himself was done.

He denied having received money from the plaintiff and also denied having signed any transfer/mutation documents for him, matters which were never brought out in evidence during the trial.

Amidst all this controversy, the defendant purchased the kibanja, part of which was already sold off and already a subject of the court dispute. The only survey on record is the one conducted by Dw5 Kabonge Eddy.

This was done only after court had made its pronouncements known on the issue 15 of ownership of this land; also after the plaintiff had already obtained the necessary consent from Dw3, to whom he had even handed over the title.

In the case of Jennifer Nsubuga versus Micheal Mukundane, Civil Appeal No. 208 of 2018, it was held that:

".....due diligence investigation would seek to cross check or 20 confirm the vendor's claim by inquiring, seeking to cross-check or confirming the vendor's claim to title by inquiring of independent persons knowledgeable about the land or that which could otherwise shed light on the bonafides of the intended land purchase.

It ought to be directed at persons that are independent of the 25 beneficiaries of the land transaction in question, with a view to ascertaining the authenticity of the title sought to be conveyed. Of

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necesslty that utould exemPt routine, contro,ctual inqulrles mode of the seller to establish hislhet title to propertg".

It has been held that as thc law now stands a person who purchases an estate which he knows to be in use of another other than the vendors without carrying out thc due inquiries from thc person in occupation and usc; failure to make reasonable inquiries; ignorancce or ncgligencce was hclld to form particulars of thc offence of fraud; and use commits fraud. (See: tlgand'a Posts and Telecommunlcatlons as Abraham Kltl,tlnnba SCCA l\Io. 36 of 1995))'

In the present case, from the evldcnce of Put!, the defcndant knew that thc land was not for sale. A notice to that effect had been put up but later removed. There is no evidence that he ever consulted the neighbours before purchasing the kibanja

The defendant besides not only knew about the existence of the suit which was later concluded against Ziwa. He also knew about the outcome of the suit and

could not deny that he was around when the said orders of court were being executed. 15

He even filed objection proceedings relating to the land which was the subject of an earlier suit which he therefore continued to illegally occupy even after the execution of the orders.

clear signals which ought to have served as a red flag were ignored by the defendant. Within a short time, the ownership of the kibanja had exchanged numerous hands from the time Ziwa bought it to the time when Nampinga sold it to the defendant, without consent of the registered owner' 20

The consents allegedly signed between the plaintiff and Ziwa and involving some third parties with all due respect did not offer any useful support to the defence evidence of ownership. (Ret: DExh 9-DExh 12). These to court were vague documents that lacked appropriate details. 25

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From the evidence of Du)3, the defendant never conducted the necessary due diligence before purportedly purchasing the kibanja from Nampinga as he only sought the consent of the registered owner, Dut's, not before but after the purchase was made.

It is hardly surprising therefore that when the registered owner gave his consent to the plaintiff, he was not aware of any conflicting interests by the original kibanja claimants.

Essentially therefore, what the defendant bought was an already encumbered kibanja which was subject of several transactions which were not known or validated by the registered owner, part of which was subject of a decree.

A decree is not only personal but binds the assignees or representative of the judgment debtor and is enforced in rem. (Ref: Dr. Simon senturnbue as Lichotas Golooba: IIIA No. 639 oJ 2019). The strength of the lower court's judgment thus lies wholly in the fact that it was a judgment binding onto parties 15 and non-party alike.

As per the decision in *Stnmbic Bo;nk (Il Ltd & Anor vs The Commissioner General, t RA M. A. No. 42 of 2070*, contempt of court was defined to constitute refusal to obey an order of court.

For contempt of court to succeed the conditions are: existence of lawful, clear and unambiguous court order; personal service onto or knowledge of the order by the potential contemnor; the potential contemnor's disobedience and or failure to comply with the order.

In *Bettg KTzito vs Dickson Kizito & 6 others cTnll Application*. Nos 25 and 26 of 2021 the Supreme court observed that the order must be obeyed in totality and that a party who chooses to disobey the order without good reason risks being held in contempt'

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That the court order must state clearly and unequivocally what should and should not be done as court would be reluctant to punish or condemn an alleged contemnor for an order whose terms are unclear and ambiguous'

In response therefore to Issues 7'4, the orders were very clear in this case- The defendant did not deny knowledge of the orders. The defendant committed trespass on the land which was subject of court orders'

With impunity, he ferried materials, put up structures in the night settling on the kibanja, and remaining in possession thereof after the court decision was made and executed, all in total disregard of the order. In so doing, he therefore committed contempt of the court orders.

court also observed during the locus that the survey report presented through the evidence of Duts pointed to some errors committed during the subdivision under which plot 84 had been created.

Such errors in my view would require rectification, taking into careful consideration of the orders which were already executed' 15

Remedies:

The plaintiff sought the following orders:

a declaration that the defendant is a trespasser on the suit land; a declaration that the defendant is liable for fraudulently dealings in the suit land in as far as buying the same with knowledge of the plaintiff's interest; a declaration that the land sale agreement entered between the defendant and a one Nampingo Racheal is null and void ab initio for fraud, and overtaken by earlier & legal interest; ^a declaration that the defendant is liable for contempt of court orders in civil suit No. 15 of 2017; an order for mesne profits; an order for permanent injunction stopping the defendant from further trespass and any dealings in the suit land; an order for vacant possession and eviction of the defendant by demolishing any structure thereon; special damages of UGX 47,000,000/=; general and punitive damages; an award of UGX 200,000,000/= as compensation for the contempt of 20 25

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court order; and a fine for contempt of court, worth UGX 200,000,000/=; order of detention in civil prison for a period not exceeding six months for contempt of court orders; interest on all the damages at 30% from the date of breach till payment in full and costs of the suit.

5 This court found that the defendant acted with reckless impunity when he violated an order which was executed in his presence. The amounts as proposed by the plaintiff as fine, compensation and special damages for such violation however lacked sufficient backing; and found by court to be rather excessive.

The plaintiff did not also present any evidence to prove that the kibanjahad been 10 a source of livelihood for his family. What he was able to prove however was that he had suffered grave mental anguish, distress and inconvenience as would ordinarily happen through wrongful acts of the defendant'

In Klgt nba RTce Lt doers us ll'rr'rar Sallms.c.c. A No. lTof 1992, the Supreme Court held that a plaintiff who suffers damages due to the wrongful act of the 15 defendant must be put in the position he/she would have been in had he/she not suffered the wrong.

A compound sum of Ilgx So,000,000/- would therefore be fair as general damages, to atone for and cater for both the impunity and wrongful acts of the defendant which occasioned inconvenience and loss to the plaintiff.

²⁰ In the premises, the plaintiffs action succeeds in the terms below:

- 7. The parties are bound by the decision of the lower court by which the plaintiff was declared as the rightful owner of the kibanja which were the subject of the suit in Civil Suit No. 15 of 2017;
- ²⁵ 2. The defendant contravened the contempt of court orders issued by the lower court in respect of the land/plot which were subject of the court orders;
- 3. A fresh survey is to be conducted by an independent surveyor in the presence of the Lcs, neighbours, Police and both parties to confirm the

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actual area of the kibanja which was subject of the court case, and over which execution was conducted. The measurements of the kibanja should tally with the ones under the decree of court, and the boundaries of the certificate of title for block 199, plot 84 comprised in land at Lubata, Kuadondo obtained later by the plaintiff;

- 4. In the event that the results from the survey reveal that the plaintiff's title extends beyond the boundaries as spelt out in the order of the lower court, vide Civil Suit No. 15 of 2017, the certificate of title issued under the plaintiff's names on 18th June, 2020 shall immediately be referred to the office of the Registrar of titles for correction/rectification;
- 5. The costs of the survey exercise shall be met equally between the parties.
- 6. A permanent injunction issues, preventing the defendant, his agents and those claiming under him from further trespass on the land which was subject of the court order; and from further dealings in the suit land;
- 7. Accordingly:

- a) an order of eviction issues against the defendant over the land α illegally occupied by him and which he must vacate within 30 days from the date of delivery of this judgment;
- b) a sum of Ugx \$80,000,000/\$ = is to be paid both as general and punitive damages to the plaintiff for the inconvenience caused to the plaintiff through the violation of the lower court's orders.

Alexandra Nkonge Rugadya

Defined by encil

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Judge

13th November, 2024

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Prepared on 13 October 2026 · Esheria