

UGANDA / JUDGMENT

Wamara v Mugas and 11 Others (Civil Suit 17 of 2017) [2023] UGHCLD 338 (31 August 2023)

[2023] UGHCLD 338

COURT

HC: Land Division (Uganda)

BEFORE

Byaruhanga Rugyema, J

CASE / FILE NUMBER

Civil Suit 17 of 2017

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THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT MASINDI CIVIL SUIT NO.17 OF 2017

WAMARA CHRISTOPHER ::::::::::::::::::::::::::::::::::**VERSUS****MUGASA WILLIAM & 11 ORS ::::::::::::::::::::::::::::::::::****Before: Hon. Justice Byaruhanga Jesse Rugyema****JUDGMENT**

- The Plaintiff who is a biological son and heir to the late Byembandwa \$[1]\$ claim against the Defendants for a declaration that the 2 pieces of land, situate at Kizazi, Kyabando village, measuring approximately 25 acres and Murro village, measuring approximately 50 acres, both at Bwijanga sub county, Masindi District belongs to the estate of the late Byembandwa Erinest, an order for permanent injunction, mesne profits, general and special damages with interest thereon.
- It is the Plaintiff's case that the Defendants are children of his late \$[2]\$ brother Balamu Mugasa who without any authorization or consent thereof converted ownership of the 50 acres of land at Murro village, the suit land, against the beneficial interest of the Plaintiff by way of sugar cane growing and have over 7 years denied the plaintiff access to the suit land though he possesses the 1st and automatic right of inheritance of part of his late father's estate.

- In their joint defence, the Defendants denied the Plaintiff's allegations [3] and contended that the suit land originally belonged to their late father Balamu Mugasa, the elder brother to the Plaintiff, who acquired it from the Government of Omukama of Bunyoro Kitara, Sir Tito Gafabusa Winyi IV in 1948 whereon he settled his mother a one Bulandina Nyamijumbi who had separated with her husband, the late Byembandwa Erinesti.
- That the Plaintiff and his mother Kitakuruho Zeridah were settled at [4] Kizazi. Kyebabanda village where his father Byembandwa Erinesti had established them.
- [5] That however, later the Plaintiff's father Byembandwa Erinesti joined his 1st wife Bulandina Nyamijumbi, the mother of the Defendants' father, Balamu Mugasa on the suit land leaving the Plaintiff and his mother Kitakuruho Zeridah at Kizazi village. The defendants averred that it was until 1980 when Bulandina Nyamijumbi disputed the suit land with the plaintiff and the local authorities resolved the matter in Defendants' grandmother, the late Bulandina favour of the Nyamijumbi.
- It is the Defendants' contention therefore that the suit land at Murro [6] village does not form part of the estate of the late Byembandwa Erinesti to confer the plaintiff any interest thereon and that neither the plaintiff's mother nor any of his siblings claim any interest in the suit land.
- When the suit came up for scheduling, the following issues were framed [7] for determination of this matter;
- 1. Whether the suit property belongs to the estate of the late Byembandwa Erinesti.
- 2. What remedies are available to the parties.
- Whereas the Plaintiff was unrepresented, the Defendants were [8] represented by Mr. Richard Akugizibwe. Written submissions were filed for consideration in the determination of this suit.

Issue No.1: Whether the suit property belongs to the estate of the late Byembandwa Erinesti.

- [9] The general rule governing the burden of proof and the standard of proof in civil suits is S.101-103 of the Evidence Act which is to the effect that the burden of proof lies on the party who asserts the affirmative of the issue or question in dispute. The standard of proof in civil cases is on a balance of probabilities; Lugazi Progressive School & Anor Vs Serunjogi & Anor [2001-2005] HCB Vol 2 at p.122.
- In the instant case, the plaintiff therefore bears the burden to prove his [10] case on the balance of probabilities that the suit property at Murro belongs to the estate of his late father Byembandwa Erinesti and that he has a beneficial interest thereon.

- [11] It is apparent from the scheduling memorandum notes and the evidence of the parties in this suit that the following are agreed facts:
 - a) The plaintiff and the defendants' father, Balamu Mugasa are all children of the late Byembandwa Erinesti.
 - b) The plaintiff and the defendants are disputing over the piece of land located at Murro village measuring 50 acres.
 - c) The father of plaintiff and Balamu Mugasa, the father of the defendants died in 1977 and was buried on the suit land.
 - d) The late **Byembandwa Erinesti** had a piece of land measuring 25 acres at Kizazi Kyebabanda where he settled the plaintiff's mother Zeridah Nyamijubi and her children.
 - e) The Defendants are in occupation and utilization of the suit land.
- [12] In a bid to prove his case, the plaintiff (PW1) testified that he is the customary heir and a biological son to the late Byembandwa Erinesti who owned 2 pieces of land at Murro village measuring 50 acres and at Kizazi village measuring 25 acres. It is the land at Murro that is in dispute. That his late father Byembandwa married his mother Zeridah Nyamijubi on the suit land at Murro where she produced his 2 elder siblings, Kitembo Mary (PW2) and Nyandera (PW3). That he stayed on the suit land with his father where he put up grass thatched house which the defendants have razed down together with his father's house.
- The defendants on the other hand adduced evidence to the effect that [13] they were born on the suit land. That when their father Balamu Mugasa acquired the suit land, he settled thereon his mother a one Bulandina Nyamijumbi who had separated with her husband, Byembandwa Erinesti but that later, her husband joined her upon which they stayed together until his death in 1972 where upon he was buried on the suit land.
- [14] In view of the above evidence as adduced by the parties, the issue is whether the plaintiff has a beneficial interest in the suit land.
- [15] During cross examination, the plaintiff Wamara Christopher (PW1) testified that the defendants, save for the 5th defendant whose father he does not know, are children of his brother the late Balamu Mugasa who by 1978, before he got missing from his working station in Kampala where he was a police officer, was staying on the suit land at Murro together with his many children. He also conceded that the defendants' father Balamu Mugasa was born on the suit land.
- On his part, the plaintiff conceded that he was not born on the suit land. [16] That he was instead born on his father's piece of land in Kizazi-Kyebabande village where he has a house. He however claimed that he

had gardens in Murro village, on the suit land, had there a grass thatched house and further that it was in 1986 when his step mother Nyamijumbi Bulandina, mother to the father of the Defendants and the 1st defendant chased him away from the suit land which he now claims his beneficial interest.

- I do however find that the plaintiff told court lies that he had gardens \$[17]\$ on the suit land in Murro village and that he was only chased away by his step mother Nyamijumbi Bulandina and the 1st Defendant. This claim is not supported by any evidence.
- The plaintiff himself during cross examination revealed that his \$[18]\$ siblings born of his mother, Kitakuruho Nyamijubi Zeridah got their shares at **Kizazi village** because this is where they stay. He is the one, as the heir who did the distribution of the property at Kizazi with the authority of the family. At page 12-13 of the typed record of proceedings, he stated thus;

"By the time our father died, none of my siblings were staying with our father at Murro. At the distribution of our father's estate, I got my share at Kizazi village."

- The above is clear evidence that the plaintiff has no beneficial interest \$\lceil 19 \rceil\$ in the suit land at Murro. None of the children of his step mother Bulandina got any share at Kizazi village where he himself carried out the distribution because their share was at Murro village. He got his share at Kizazi village.
- This evidence as adduced by the plaintiff is consistent with the \$[20]\$ defendants' case. The plaintiff's mother Zeridah Nyamijubi during cross examination stated that true, she got married to Byembandwa in 1943 at Murro village but her husband relocated her at Kizazi village and she left Murro village in 1947. She clarified that none of her children who include the plaintiff has any activity at Murro or has ever stayed there. They stayed with her at Kizazi village. At page 13 of the typed proceedings, she stated thus:

"Since I left Murro, I have never gone back because there is no need. My husband settled me with my children including the plaintiff at Kizazi."

- [21] Both Ssekasamba Nyandera Kasifa (PW3) and Kitembo Mary (PW4) who are sisters of the plaintiff clarified during cross examination that they left Murro in 1947 for Kizazi where they have stayed to date. **Kizazi** is their home.
- [22] For avoidance of doubt, PW4 concluded that she wants the children of **Balamu** to enjoy their father's property in Murro and she loves them.
 - It follows therefore that the plaintiff's mother PW2 and his sister PW3 \$[23]\$ and PW4 having clearly stated during cross examination that they have no interest in the suit land, the plaintiff also cannot have any. In the premises, I find the 1st issue in the negative.

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

- In the 1^{st} instance, it is the evidence of the plaintiff that he was chased away from the suit land in around 1986 by his step mother Bulandina Nyamijumbi and the ^{1st} Defendant. He nevertheless filed this suit in 2017. As counsel for the defendants rightly submitted, the suit is barred by S.20 of the Limitation Act which provides for limitation of actions claiming personal estate of a deceased to 12 years. 2ndly, the plaintiff cannot recover that which has been occupied for a period of more than 12 years without interruption, Ss.5,6 & 11 of the Limitation Act.
- From the foregoing, this suit would be dismissed for being caught up by limitation; *Kamya Andrew Vs Kinyara Sugar Ltd*, HCCS No.22/2013, *Masindi and Iga Vs Makerere University* [1997] EA 65.
- [26] In conclusion, I find that it is clear that by 1978 when the plaintiff's father Byembandwa Erinesti died, the plaintiff's mother Zeridah Nyamijubi and her children were settled on his land at Kizazi village where they acquired their shares and the Defendants' grandmother Bulandina Nyamijumbi, mother to their father were settled at the suit land at Murro village where the Defendants have their shares. The plaintiff has no interest in the suit land.
- The plaintiff's filing of this suit must have arisen from his greed to grab the land of the children of his brother. The plaintiff's suit is found to have no merit at all. He is motivated by greed. He is therefore not entitled to the reliefs sought. The suit is in the premises dismissed with costs to the defendants.

Dated at Masindi this $\mathbb{R}$ day of **August**, 2023.

Byaruhanga Jesse Rugyema

JUDGE.

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