

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT IGANGA
CIVIL SUIT NO. 85 OF 2023

NASSER MUNULO :..... PLAINTIFF

VERSUS

AISHA ENAZA:..... DEFENDANT

BEFORE: HON. MR. JUSTICE BATEMA N.D.A. JUDGE

JUDGMENT

Introduction:

10 The Plaintiff sued the Defendant for a declaration order that he is the lawful owner of the suit land, a permanent injunction, special and general damages for trespass and costs. The Plaintiff's claim is that he is a co-registered proprietor of approximately 13.5110 hectares of land comprised in FRV JJA 699, Folio 19, Plot 278 at Kabugweri Nakivumbi, Bugweri, Iganga District together with his mother, a one Nalumansi Amina.

The Plaintiff further claims that the suit land originally belonged to his late father, a one Abdul Munuulo who through his Will dated 10/10/1999 bequeathed the said land that was unregistered at the time to his wife, a one Hajjat Nalumansi Amina and his children begotten with Amina including the Plaintiff.

20 The Plaintiff alleges that upon Abdul Munuulo's demise, his mother and siblings surrendered their interests in the land making him the exclusive owner of the same. The Plaintiff now alleges that the Defendant is falsely claiming ownership of the suit land through a forged purchase agreement that she purportedly executed with the Plaintiff's deceased father where as not.

The Plaintiff finally maintains that while he allowed the Defendant to continue cultivating on the suit land as a long time family friend whose friendship had evolved through their father, the suit land at all times remained in control and in constructive possession of the Plaintiff and his family.

30 The Defendant was duly served on 27th April 2023 with the Summons to file a Defence but no reply was filed. On 30th June 2023, Court entered a default judgment and the matter proceeded for formal proof.

The Plaintiff and his mother, Hajjat Amina Munuulo filed witness statements which were admitted as their evidence in Chief. There was no cross examination.

Issues for court's determination

Counsel for the Plaintiff filed written submissions and raised the following issues;

1. **Whether the Plaintiff is the lawful owner of the suit land?**
2. **Whether the Defendant trespassed on the suit land?**
3. **What are the remedies available?**

40 In determining all the issues, court bears in mind the principle of law that "the Plaintiff has to prove his case on the balance of probabilities even where the Defendant failed to enter appearance.

Resolution of Issues

Issue 1

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

The Plaintiff argued that following the death of his father, the late Abdul Wandira Munuulo, his mother, Nalumansi Amina and siblings signed and handed over transfer forms in respect of the suit land to him. The Plaintiff further argued that it

was the deceased's Will dated **10th October 1999** that had bequeathed the suit land to Nalumansi Amina and her children including the Plaintiff.

50 At trial, the Plaintiff, PW1 adduced a copy of the Will and the same was exhibited as **P.E.2**. I have carefully perused the copy of the Will and on page 2 of the english translated version, the late Haji Abdul Munuulo bequeathed the Kabugweri land which is described to be in the southern part to the children born to Nalumansi Amina.

This is further corroborated by the codicil dated **2nd January 2001**, exhibited as **P.E.3** wherein the testator parceled the suit land into two (2) portions but maintained that the said land was for the benefit of all his children born to Hajati Amina Munuulo.

60 Suffice to note, the Will is dated, duly signed by the testator, Haji Abdul Munuulo and attested to by at least 6 witnesses including a one Haji Arajabu Enaza. Furthermore PW1 in paragraph 11 of his witness statement testified that the late Haji Arajaabu Enaza was the husband to the Defendant and therefore having witnessed the said Will, Aisha Enaza (now widow) could not lay any legitimate claim over the same.

I have no doubt in my mind that the suit land belongs to the estate of the late Abdul Munuulo. I also hold the view that the same is for the overall benefit of his children born to Nalumansi Amina Munuulo. In short the Will was unchallenged and the same was admitted as evidence in court guiding on who should be the rightful beneficiary of the suit land.

70 However, I reject the submission by the Plaintiff that he is the sole owner of the suit land on the flimsy claim that his mother and siblings signed and handed over transfer forms in his favour. No evidence whatsoever was presented before this Court to prove this claim.

Moreover when the suit land was brought under the operation of the Registration of Titles Act, the title was issued in the names of both Nalumansi Amina and the Plaintiff as joint tenants. Read in the context of the Will, I can only conclude that Nalumansi Amina is holding the shares of her other children namely;

1. Bakari Igambi

2. Nasser Munuulo

3. Batambuze Abdu

80 4. Mgaezi Ismael

5. Yakubu Munuulo M.

6. Sofia Yoyeta

7. Jafaali Magezi.

All these are supposed to be registered on the land title, in addition to the Plaintiff as joint owners.

In the absence of any registrable instrument signed by the Plaintiff's siblings, this court cannot safely conclude that the suit land belongs exclusively to the Plaintiff and his mother. The mother has her property named separately elsewhere.

90 To that end, the Commissioner Land Registration is hereby directed to rectify the register and enter the names of the rest of the rightful beneficiaries on the land title in respect of the suit land.

Issue 2

Whether the Defendant trespassed on the suit land?

It was PW1's testimony that although the Defendant had been permitted to continue cultivating on the suit land by the Plaintiff's late father, the Plaintiff and his family remained in effective control and constructive possession of the suit land.

PW1 further testified that some time in 2000, the Defendant attempted to fraudulently sell off the suit land to 3rd parties as though she was the lawful owner where as not.

100 I have already found that the suit land belongs to the estate of the late Abdul Munuulo and is being held in trust by the Plaintiff and his mother for the benefit of the Plaintiff and the Plaintiff's siblings.

The Defendant's continued stay and use of the suit land against the will of the lawful beneficiaries amounts to trespass. She must be evicted forthwith. I answer the second issue in the affirmative.

Issue 3

What are the remedies available?

110 The Plaintiff prayed for a declaration that he is the lawful, legal and rightful owner of the suit property, a permanent injunction restraining the Defendant, or her agents and representatives from interfering with the suit property, special and general damages and costs.

Having found that the suit land belongs to the estate of the late Abdul Munuulo for the benefit of all the deceased's children born to Nalumansi Amina, the specific prayer by the Plaintiff is rejected.

I also note with concern that the Plaintiff merely prayed for special and general damages but never proved the same at trial. Damages must be proved. ***See Masaka Municipal Council v. Takaya Frank (C.A.C.A No. 173 of 2015) [2021]***. This court accordingly denies the Plaintiff the said remedies.

In the final result, Judgment is entered for the Plaintiff with the following orders;

120 1. The suit land belongs to the Plaintiff and his siblings namely;

(a) Bakari Igambi

(b) Nasser Munuulo

(c) Batambuze Abdu

(d) Magezi Ismael

(e) Yakubu Munuulo M

(f) Sofia Yoyeta

(g) Jafaali Magezi

who should be registered as joint owners.

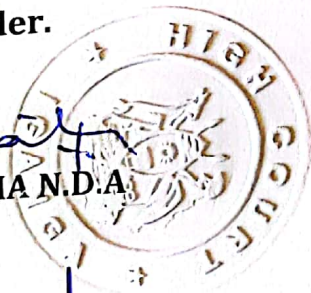
2. The Commissioner Land Registration is directed to rectify the register and comply with order (1) above.

3. The Defendant be evicted at her own cost and embarrassment.

4. The Plaintiff is granted costs of the suit.

I so order.


BATEMA N.D.A.
JUDGE



25 / 03 / 2024