

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
[LAND DIVISION]

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CIVIL SUIT NO. 009 OF 2015

1. DDUMBA NATHAN:.....PLAINTIFFS

VERSUS

1. HAJJI JABERI KABITO

2. CHRISTINE KAYIGA:.....DEFENDANTS

BEFORE: HON. JUSTICE HENRY I. KAWESA

JUDGMENT

The Plaintiff sued the Defendants as beneficiaries and administrators of the estate of the late John P. Zimula Mugwanya for;

- i) Trespass to land which people subsequently sold the said land to the Plaintiff.
- ii) The Plaintiff seeks for recovery of the said land as the Defendants are trespassers on the same, having sold their interest therein,
- iii) General damages,
- iv) Permanent injunction,
- v) Interests and;

vi) Costs of the suit.

The Defendants did not enter any defence to the suit. The Plaintiff therefore proceeded *ex-parte*.

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The proposed issues were;

- 1. Whether the Plaintiff is the rightful owner of the suitland**
- 2. Whether the Defendants are trespassers on the suit land.**
- 3. Remedies.**

The Plaintiff's case is supported by the evidence of PW2 (Dumba Nathan), PW2 (David Nsubuga), PW3; Tumwine Andrew and PE1,2,3,4,5,6,7,8 and 9, all showing that the Plaintiff purchased the suitland from the people who purchased from the Defendants.

I have examined the evidence as provided and I am satisfied that, as claimed, the Plaintiff is the rightful owner of the suitland.

The first issue is accordingly in the affirmative.

Issue No. 2

Whether the Defendants are trespassers on the suit land.

The evidence as shown is that the Plaintiff bought the land from other people to whom the Defendants had sold the land. However, when he took possession, the Defendants interfered with his possession and destroyed his property.

In *Hajji Bumbakali versus Peter Muhairwe & Ors; Civil Suit No. 036 of 1999*, citing *Justine E M N Lutaaya versus Sterling; Civil Eng. Appeal No.11 of 2002*; it was held that;

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“Trespass to land occurs when a person makes an unauthorised entry upon another’s land and thereby interfering with another’s person lawful possession of the land”.

It is trite that possession may physical or constructive. In this case, there is evidence that the Defendant was in possession of the suit land. Tumwine Andrew (PW3) said that after purchase, the Plaintiff fenced the suitland, but the Defendant destroyed the fence.

The statement of Yiga Joseph contains evidence that he sold the land he had bought from D2 (Pius Musiitwa) to the Plaintiff. An agreement for payments due was exhibited. The witness shows that the Defendants broke the wall fence the Plaintiff put up.

PW2 – David Nsubuga bought land from D1; Michael Kutanwa Mugwanya, Pius Musiitwa Mugwanya and Milly Muganwa. He sold it to the Plaintiff and the Plaintiff was to get the land title from the Defendants, after the final instalments is paid.

The 1st Defendant signed the transfer form and the Plaintiff, given he transfer forms, obtained vacant possession and a copy of the title was given (PEX9). The Plaintiff began his activities on the land and built a wall fence. The fence was later destroyed by the Defendants. The evidence above shows that the Defendants, without any claim of right, trespassed on the Plaintiff’s land and destroyed his property.

This issue therefore terminates in the positive.

Issue No. 3

Remedies.

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I find that in view of the trespass, the Plaintiff is entitled to a declaration that the Defendants are trespassers. The Plaintiff is also entitled to an order of recovery of the land. The Plaintiff prayed for damages.

It is trite that general damages are in the discretion of the trial judge. These damages should be compensatory to place the Plaintiff back to the position he would have been at, if the Defendant had not committed the alleged vices against him.

I do find that in this case, the Defendants interfered with the Plaintiff's quiet enjoyment and possession of his land. They even broke his fence.

For all the loss, pain and suffering, this court will condemn the Defendants to general damages as follows.

The mischief happened since (2014) = 6 years. Each year will be given a compensation index of loss taken at shs. 500,000/- per month which is a total loss of $(500 \times 12) = 6,000,000/-$ (*six million shillings*) only per year.

This amount translates to Ugshs. 6,000,000/- x 6 (years of loss) = Ugshs. 36,000,000/- (*thirty six million shillings*) only per year.

The Defendants shall be condemned to pay the Plaintiff general damages of this Ushs.36,000,000/- (*thirty six million shillings*) only per year.

The Defendant shall also meet the costs of this suit.

I so order.

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Henry I. Kawesa

JUDGE

21/01/2021

21/01/2021:

Shaban Sanywa for the Plaintiff.

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Plaintiff present.

Defendants absent.

Court: Judgment delivered to the parties above.

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Henry I. Kawesa

JUDGE

21/01/2021

Court: Right of Appeal explained to the parties.

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Henry I. Kawesa

JUDGE

21/01/202.