



BACKGROUND

The suit land formerly belonged to one **Waliyu Beet**. In **Civil Suit No. 0013 of 2011**, Waliyu Beet sued his biological mother, **Naseeta Rehema**, before this Honorable Court, and Naseeta Rehema obtained judgment against him. A decree issued, and upon taxation a certificate of costs was issued in the sum of UGX 14,433,500/=, which together with general damages of UGX 2,000,000/= brought the total decretal **sum recoverable from Waliyu Beet to UGX 16,433,500/=**.

Waliyu Beet having failed to satisfy the decree, Naseeta Rehema, through her bailiff M/S Sky Auctioneers and Court Bailiffs (represented at trial by PW2, Osingilio Didimus Benard), applied for and obtained a warrant of attachment dated 20th September 2018 (PEX10), which was executed on the suit land on 8th May 2019 in the presence of police (PW5, D/ASP Maloba Moses Philip) and the area LC1 chairpersons. Notices of attachment and intended sale were pinned in Kaperi village, at Nabitende, in Pallisa Town, at Court and at the Police Station (PEX13, PEX14), and the property was thereafter advertised for sale in the Daily Monitor newspaper on 27th June 2019, in compliance with Order 22 rule 64 of the Civil Procedure Rules S.I 71-1.

Before the advertisement and sale, the 1st defendant, Zama Namuzungu, had attempted to challenge the execution by way of **Miscellaneous Application No. 09 of 2019** for objector proceedings. That application was **dismissed by this Court for want of prosecution**, and it was only after that dismissal that the attachment and sale process proceeded to advertisement.

The suit land was valued by the Government Valuer: the Kaperi portion at a normal value of UGX 11,000,000/= (forced sale value UGX 7,150,000/=), and the Nabitende portion at a normal value of UGX 15,600,000/= (forced sale value UGX 11,400,000/=) (PEX16, PEX17). On 3rd September 2019 the plaintiff, having expressed interest, purchased both portions from the bailiffs for a total of UGX 17,500,000/= (UGX 7,200,000/= for Kaperi and UGX 10,300,000/= for Nabitende), and a sale agreement was executed (PEX19, PEX20). The plaintiff paid the purchase price in full, and Naseeta Rehema was paid UGX 16,433,500/= in satisfaction of her decree, which she acknowledged by thumbprint.



On 17th December 2019, the bailiffs, assisted by police and in the presence of the area LC1 chairpersons and residents, handed over vacant possession of the suit land to the plaintiff, and a return was made to Court (PEX24). The plaintiff took possession and cultivated the land. In the course of 2020, the defendants, who are children of Waliyu Beet, entered upon the suit land without any claim of right recognized by this Court, destroyed the plaintiff's gardens of maize, peas, groundnuts, sorghum and cassava, and obstructed the plaintiff's use of a tractor to plough the land, leading to reports of criminal trespass and threatening violence at Pallisa Central Police Station (Vide SD Ref/25/31/2020 and related references).

The defendants' case, in brief, is that the suit land does not belong to the estate or interest of Waliyu Beet capable of attachment for his personal debt, but was given away by Waliyu Beet to his children — the boys receiving land at Kaperi and Kayinja, and the girls receiving land at Nabitende — as a customary or living gift ("gift vivos") in the years 2000 and 2010, long before the attachment. They contend that Waliyu Beet is still alive and that they derive their claim from a document/will he executed to that effect, and that the plaintiff has never been in effective occupation.

REPRESENTATION

The plaintiff was throughout represented by Counsel Denis Mugoda of M/S Nangulu & Mugoda Advocates. The defendants were, at various stages, represented by Counsel Kibalya and later appeared unrepresented; the 1st and 3rd defendants actively participated in the defence hearing while the 2nd and 5th defendants were largely absent from the later stages of trial.

ISSUES FOR DETERMINATION

1. Who is the rightful owner of the suit land situate at Kaperi Cell and Nabitende Central Village?
2. Whether the defendants' counterclaim is tenable in law.
3. What remedies are available to the parties?



EVIDENCE OF THE PLAINTIFF

PW1, the plaintiff Ali Ahmed, testified that he learnt of the sale of the suit land from an advertisement in the Daily Monitor newspaper of 27th June 2019, carried out due diligence, confirmed with this Court that the warrant of attachment arising from Civil Suit No. 0013 of 2011 was genuine, and was shown the valuation report by the bailiffs before he purchased the two portions of land on 3rd September 2019 for a total of UGX 17,500,000/=. He testified that he was handed vacant possession on 17th December 2019 in the presence of police and area residents, that he cultivated the land, and that in 2020 the defendants trespassed onto the land, destroyed his crops, and obstructed him when he brought a tractor to plough, prompting him to report the matter to Pallisa Central Police Station.

PW2, Osingilio Didimus Benard, a retired bailiff of M/S Sky Auctioneers and Court Bailiffs, corroborated the plaintiff's account of the execution process in detail. He testified that he executed the decree in Civil Suit No. 0013 of 2011 between Waliyu Beet and Naseeta Rehema; that he obtained the certificate of taxation (UGX 14,433,500/= plus UGX 2,000,000/= general damages, totalling UGX 16,433,500/=); that he applied for and obtained a warrant of execution and a warrant of attachment (PEX8, PEX9, PEX10); that he attached the suit property on 8th May 2019 with the assistance of police, pinned notices of attachment and intended sale at Kaperi, Nabitende, in Pallisa Town, at Court and at the Police Station (PEX13, PEX14, PEX15); and that at the time of attachment it was Waliyu Beet who was in possession of and utilizing the suit property. He testified that the property was advertised in the Daily Monitor on 27th June 2019, valued by the Government Valuer (PEX16, PEX17), and, after a renewed warrant of attachment (PEX18), sold to the plaintiff for UGX 17,500,000/= by sale agreement dated 3rd September 2019, following which he paid UGX 16,433,500/= to Naseeta Rehema, who acknowledged receipt by thumbprint (PEX19). He filed a return before Court on 3rd September 2019 (PEX20), taxed his bill of costs at UGX 5,790,000/= (of which only UGX 1,000,000/= has been recovered) (PEX21), and, the defendants having refused to vacate peacefully, obtained a warrant of vacate/delivery on 3rd October 2019 (PEX22), wrote to the Regional Police Commander for security on 5th November



2019 (PEX23), and delivered vacant possession to the plaintiff on 17th–18th December 2019 in the presence of the area residents, making his report to Court on 18th December 2019 (PEX24).

On cross-examination, PW2 confirmed that he executed the sale agreement on 3rd September 2019, that the witnesses to the agreement were for the buyer, and that although the area LC1 chairpersons were present at the handover they declined to sign or stamp the agreement, which he maintained does not invalidate the sale. He testified that it was Mutasa Emmanuel who informed him that the cassava found on the land at the time of attachment belonged to Waliyu Beet.

PW3, Saziri Kyabise, a resident of Nabitende village and a long-time friend of the plaintiff, testified that he accompanied the plaintiff to this Court, that they together met the bailiff, that he witnessed the sale agreement, and that on 17th December 2019 the bailiff handed over the suit property to the plaintiff in the presence of police without objection, including from the 1st, 2nd and 6th defendants who were present. He confirmed the neighbours and approximate acreage of both portions and testified that the plaintiff thereafter planted groundnuts, sorghum, peas and cassava on the land, which crops were later uprooted by the defendants.

PW4, D/IP Kaboole Alexander, a police officer attached to Budaka Police Station, testified that he verified from Court that the judgment and warrant of attachment arising from the dispute between Waliyu Beet and Naseeta Rehema were authentic, that he and his team visited the land before hand-over and were informed by the area chairpersons and residents that it belonged to Waliyu Beet, and that on 17th December 2019 he, his team and the bailiff handed over the Kaperi portion to the plaintiff peacefully and without interference in the presence of the chairperson and residents.

PW5, D/ASP Maloba Moses Philip, then Deputy OC CID in charge of the land desk, testified that on 8th May 2019 he was part of the team, together with the LC1 chairpersons of Nabitende (Mutaisa Musa) and Kaperi (Mutasa Emmanuel), that witnessed and secured the bailiff's attachment exercise, at which a document confirming that the land was to be sold upon Waliyu Beet's failure to pay the decretal sum was executed. He testified that he later responded when the plaintiff, having taken a tractor to plough the land, was obstructed by the defendants, and that the



defendants' relatives reported allegations of criminal trespass against the plaintiff at Pallisa Central Police Station, following which he advised the parties to seek redress in Court. He confirmed that it later emerged that the 1st defendant, Namuzungu, and the 3rd defendant's witness (DW3) had an interest in the property, though neither was present at the time of the original attachment and hand-over.

EVIDENCE OF THE DEFENDANTS

DW1, Zama Namuzungu, the 1st defendant, testified that in the year 2000 she, together with Sabani Semanda, Abu Mutwali, Alisati Katooko, Kadiri Pande, Hussein Pande, Amina Mbulansimo, Zula Kantono and Salama Kataike, were given land by their father Waliyu Beet — the sons receiving 4 acres at Kaperi and 2½ acres at Kongova village, and the daughters receiving 2 acres at Nabitende Parish — and that a document/will dated 2000 was executed to that effect, her father being still alive and, on her account, already benefiting from that same will though he remains living. She testified that they used the land until 2020, when they were informed that the plaintiff and others had destroyed their crops using a tractor.

On cross-examination, DW1 confirmed that her father litigated with her grandmother, Naseeta Rehema, before this Court, but that she does not know the outcome of that case or whether her father was ordered to pay costs; that she has not personally constructed on the suit land; that at the time she filed her objector application (Misc. Application No. 09 of 2019) the plaintiff had not yet purchased the land, and that the plaintiff bought the land only after she filed that application; and that her application was dismissed for want of prosecution, after which the advertisement for sale was published. She could not say whether her father thumb-printed or signed the 2010 document, though she maintained he was present at its execution.

DW2, Obwori John Wilson, testified that he escorted the county clan leader (Pella David) when land was distributed to the daughters at Nabitende on 7th September 2010, and to the sons at Kaperi on 10th October 2000, and that documents were made on those occasions. On cross-examination, however, he conceded that he did not sign any document, does not know whether the clan leader signed or stamped it, has no proof that he was present save his own word, was not present at all on



10th October 2000 (the Kaperi distribution), and is not aware of the outcome of the litigation between Waliyu Beet and Naseeta Rehema or of any attachment or sale of the suit land. Given this witness's admitted absence from the very events he purported to describe and his lack of any corroborating detail, the Court affords his evidence no weight and, as urged by plaintiff's counsel, disregards it as being without evidential value.

DW3, Batala Abdul Zaake, the county clan secretary since 1970 and a relative of the defendants, testified that the boys got land at Kaperi and Kagwese and the girls at Nabitende, that in 2011 Waliyu Beet sued his mother Naseeta Rehema, and that "the sons used tricks" to attach land Waliyu Beet had earlier given his children. On cross-examination he admitted that he was not a witness to the case between Waliyu Beet and Naseeta Rehema, that he is not aware of any attachment or sale of the suit land by Court, and that he was not present when the land at either Nabitende or Kaperi was distributed to the children in 2009/2010, his evidence on those events being received at second hand.

DW4, Katooko Alisati, the 3rd defendant, testified that the land was given to them by their father Waliyu Beet in 2010, that a document to that effect exists though left at home, and that those present included Salimia Kataike, Lazia, Zama Namuzungu, herself, Zura Kantono, Amina Mbulansimo and clan authorities. On cross-examination she confirmed that she is aware of the earlier litigation between her grandmother Naseeta and her father Waliyu Beet but that nobody won that case and she does not know whether Court attached the suit property; that the plaintiff has never cultivated the suit land; that they went to police because the plaintiff had ploughed their land and destroyed their crops; that she does not know who wrote the document giving them the land, as she was cooking while it was being written; that she does not know whether she signed it, or whether the other alleged beneficiaries signed; and, critically, that her father Waliyu Beet is still alive and that it is a will made by him, upon which they rely to claim the land, and that they were all supposedly present at its "execution."



THE LOCUS VISIT

This Court conducted a locus in quo visit on 5th February 2026. At the locus, the plaintiff was unable, on his own account, to state with precision the extent or exact boundaries of either portion of the suit land, and had to be directed to the boundary points by third parties present at the visit. It was, by contrast, the defendants who were found in actual physical possession of both portions of the suit land, a fact confirmed at the locus itself. Graves were observed on the Kaperi portion, but the defendants were unable to state who was buried there, maintaining only that the land was given to their father at a time when the graves already existed; they also alleged the existence of boundary mark-stones on the Kaperi land but were unable to point out any such stones to Court throughout the visit.

This Court has considered whether the plaintiff's need for assistance in identifying the precise boundaries at the 2026 locus visit undermines his claim of ownership. It does not. The plaintiff's title rests on the documentary chain of attachment, valuation, and sale analysed below, and on the due diligence he carried out in 2019, before purchase, when he personally inspected the land, ascertained its approximate acreage from the valuation report, and was informed of its neighbours and boundaries by the executing bailiff and the persons then in possession. That the plaintiff, who has been kept out of possession by the defendants' own unlawful conduct since 2020, required assistance six years later to re-identify boundaries on land he has not been permitted to use, is unsurprising and does not detract from his proved title. If anything, it further corroborates the finding, already evident from the state of the land at locus, that it is the defendants -- not the plaintiff -- who have remained in continuous physical possession throughout the intervening period.

RESOLUTION OF ISSUE ONE — WHO IS THE RIGHTFUL OWNER OF THE SUIT LAND

It is trite that in a suit for a declaration of ownership, the burden lies on the plaintiff to prove his case on the balance of probabilities, and where a party relies on a specific event or document as



founding title, that party must adduce credible evidence of it: Section 101 and 103 of the Evidence Act.

The plaintiff's case is anchored on a documentary and procedural chain that this Court finds was proved to the required standard: the decree in Civil Suit No. 0013 of 2011 (PEX7), certificate of taxation, warrants of execution and attachment (PEX8–PEX10), notices of attachment (PEX13–PEX15), advertisement of sale, valuation report (PEX16, PEX17), renewed warrant of attachment (PEX18), sale agreement of 3rd September 2019 (PEX19), return to Court (PEX20), bill of costs (PEX21), warrant of vacate/delivery (PEX22), the letter to the Regional Police Commander (PEX23), and the report of delivery of vacant possession (PEX24). This documentary trail was corroborated by the oral evidence of PW2 (the executing bailiff), PW3 (an independent resident witness), PW4 and PW5 (the police officers who attended the attachment and hand-over). None of this evidence was seriously discredited in cross-examination.

This Court further finds that the plaintiff discharged the standard of due diligence demanded of a purchaser of land. In *Hajji Nasser Katende v Vithalidas Halidas & Co Ltd*, CACA No. 84 of 2003, it was held that land is a valuable commodity which cannot be bought as one would buy vegetables from an unknown seller, and that a purchaser is expected to make reasonable inquiries not only of the land itself but of the persons in possession before completing a purchase. That standard, echoed in *Taylor v Stibbert* (1803-13) All ER 432 and *UP & TC v Abraham Katumba* (1997) IV KALR 103, requires reasonable inquiry of the persons in possession and use of the land at the time of purchase, not an indefinite familiarity with the land years later. The plaintiff met that standard: before completing the purchase in 2019 he inspected the suit land, confirmed with this Court the authenticity of the underlying decree and warrant of attachment, obtained and relied on a valuation report giving the approximate acreage of each portion, and was informed of the boundaries and neighbours by the executing bailiff, in circumstances where it was then Waliyu Beet, not the defendants, who was found in possession.

Against this, the defendants' case rests entirely on an alleged customary gift or will said to have been made by Waliyu Beet to his children in the years 2000 and 2010. This Court finds that



evidence unreliable and insufficient to displace the plaintiff's proved title, for the following reasons.

First, none of the defence witnesses who spoke to the making of the alleged 2000/2010 document was in fact present when it is said to have been made, save for DW1 and DW4, whose own evidence was riddled with material inconsistencies and admissions of ignorance. DW1 could not say whether her father signed or thumb-printed the document. DW4 did not know who wrote the document, could not say whether she herself signed it, and could not say whether any of the other purported beneficiaries signed it. DW2 admitted under cross-examination that he was not even present at the Kaperi distribution he purported to describe, and had no document, stamp evidence, or any corroboration beyond his own assertion. DW3, despite his position as county clan secretary, admitted he was not present at either distribution and had no personal knowledge of the events, his testimony amounting to hearsay on the central facts in issue.

Second, and decisively, it is not in dispute — indeed it was the evidence of the defendants' own witnesses — that Waliyu Beet is still alive. The defendants nonetheless describe the document upon which they rely, variously, as a "gift" and, in the words of DW1 and DW4, a "will." In *Beatrice Asire Mallinga v Jonathan Obukunyang Malinga, HCT-04-CV-CS-0013-2013, Kawesa J.* held that "a will by its nature is ambulatory, that is it must establish the testator's wishes and only takes effect upon the death of the testator." *A living donor's children cannot found a present claim of ownership on an instrument that has not yet, and may never, take effect*, and the defendants' own inconsistent characterisation of the document as both an inter vivos gift and a will further undermines its reliability as a source of present title.

Third, the defendants' account is internally inconsistent as to the dates, acreages, and beneficiaries of the alleged distribution — DW1 spoke of the year 2000 for the sons and 2010 for the daughters with acreages of 4 and 2½ acres respectively at Kaperi and 2 acres at Nabitende for the daughters; DW3 and DW4 gave materially different accounts of who was present, and DW2 reversed the dates for the Kaperi and Nabitende distributions relative to DW1's account. Such inconsistency among witnesses called to prove the same central fact further weakens the defence case.



Fourth, at the locus visit the defendants were unable to substantiate two matters they had put forward as corroborating their claim: the identity of persons said to be buried in graves on the Kaperi land, and the existence of boundary mark-stones which they alleged but could not point out. Their inability to make good on evidence they themselves introduced further diminishes the credibility of their case.

Fifth, this Court notes that the 1st defendant's own objector application, Miscellaneous Application No. 09 of 2019, brought precisely to raise the claim now advanced by way of counterclaim, was dismissed by this Court for want of prosecution, and it was only thereafter that the advertisement and sale proceeded. The defendants were therefore fully aware of the attachment process and had an avenue to challenge it at the appropriate stage, which they did not pursue to conclusion.

For these reasons, this Court finds that the plaintiff has discharged the burden of proving that the suit land, both the Kaperi Cell portion and the Nabitende Central Village portion, was validly attached and sold to him in execution of the decree in Civil Suit No. 0013 of 2011, and that he is the rightful owner of both portions. The defendants have failed to prove any subsisting interest in the suit land capable of defeating the plaintiff's title. Issue One is accordingly resolved in favour of the plaintiff.

RESOLUTION OF ISSUE TWO — WHETHER THE COUNTERCLAIM IS TENABLE IN LAW

Plaintiff's counsel submitted, and this Court agrees, that the defendants' counterclaim is not tenable in law. Section 34(1) of the Civil Procedure Act, Cap 282, provides that all questions arising between the parties to a suit in which a decree was passed, or their representatives, relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit. In **Francis Micah v Nuwa Walakira, SCCA No. 24 of 1994, reported at (1995) KALR 60**, the Supreme Court held that this provision requires all matters relating to execution to be determined by the executing Court and not by a separate suit.



The present counterclaim is, in substance, a challenge to the execution and sale of property attached and sold in satisfaction of the decree in Civil Suit No. 0013 of 2011. That challenge ought properly to have been brought before, and determined by, the Court executing that decree — which avenue the 1st defendant in fact invoked by way of **Miscellaneous Application No. 09 of 2019**, only to have it dismissed for want of prosecution. The defendants cannot, by way of a fresh counterclaim in a separate suit, reopen a question of execution that the law commits exclusively to the executing Court, particularly where that execution has since concluded. There must be an end to litigation, and a successful party — here, the plaintiff as purchaser, and Naseeta Rehema as decree-holder before him — is entitled to enjoy the fruits of the process the law provides.

This Court further notes, without needing to rest its decision on this ground alone, that the defendants' written submissions in support of the counterclaim were not shown to have been properly endorsed, sealed, or signed by counsel then representing them, a further procedural infirmity going to the tenability of the pleading.

Issue Two is accordingly resolved against the defendants. The counterclaim fails and is hereby dismissed.

RESOLUTION OF ISSUE THREE — REMEDIES

Having found that the plaintiff is the rightful owner of the suit land and that the defendants' counterclaim is not tenable, this Court finds that the plaintiff is entitled to the remedies sought. It was the plaintiff's uncontroverted evidence that he has been denied the use and enjoyment of property he lawfully purchased through a court process, that his crops were destroyed, and that he has been unable to carry out farming on the land since 2020, which amounts to real inconvenience warranting an award of general damages.



DECISION AND ORDERS

For the reasons set out above, judgment is entered for the plaintiff against the defendants jointly and severally, and this Court makes the following orders:

- (a) It is hereby declared that the plaintiff, Ali Ahmed, is the rightful and lawful owner of the land situate at Kaperi Cell, Kagwese Ward, Pallisa Town Council, Pallisa District, measuring approximately 3 acres, and the land situate at Nabitende Central Village, Nabitende Parish, Kasodo Sub-County, Pallisa District, measuring approximately 2 acres.
- (b) An order for vacant possession of both portions of the suit land is hereby issued in favour of the plaintiff.
- (c) A permanent injunction is hereby issued restraining the defendants, their agents, servants and/or any person claiming through them, from further interfering with, trespassing upon, or laying any claim to the suit land.
- (d) General damages of UGX 1,000,000/= (Uganda Shillings One Million only) are awarded to the plaintiff for the inconvenience occasioned by the defendants' unlawful interference with his use and enjoyment of the suit land.
- (e) The defendants' counterclaim is dismissed.
- (f) The costs of the suit and of the counterclaim are awarded to the plaintiff.

It is so ordered.

A handwritten signature in black ink, appearing to be "H/W Kyembe Karim", is written over a horizontal line.

HW KYEMBE KARIM

MAGISTRATE

CHIEF MAGISTRATE'S COURT OF PALLISA AT PALLISA

DATE: ___13th___July_____2026_____

