



THE REPUBLIC OF UGANDA
IN THE CHIEF MAGISTRATE'S COURT OF PALLISA AT PALLISA
CIVIL SUIT NO. 013 OF 2024

MUKULA DAN

PLAINTIFF

VERSUS

1. OPOLOT ALEX
2. NEKESA MARGARET

DEFENDANTS

*Before: His Worship Kyembe Karim
Magistrate*

JUDGMENT

Land outlives the hands that till it. It is planted, inherited, and quarrelled over, long after the people who first claimed it are gone. It cannot speak for itself, and so it falls to others to tell its story — and, too often, to tell it differently.

This is one such story: of a mother and her sons, once bound by blood, now divided by a quarter acre of soil. It falls to this court to look past what was claimed and find what was proved, so that a family's dispute may end in a clear and settled truth.

Introduction

By way of an ordinary plaint filed on 30th July, 2024, the plaintiff instituted the instant civil suit against the two defendants, seeking a declaration of ownership of the suit-land, a declaration that the defendants are trespassers thereon, an order of permanent injunction, general damages, and costs of the suit.

Plaintiff's Case

The plaintiff's action against the defendants lies in the tort of trespass to land measuring approximately a quarter of an acre, situate at Apuna Village, Apuna Parish, Kibale Sub-county, Pallisa District.



It is the plaintiff's assertion that he purchased the suit-land on 29th January, 2014 from one Okiria Galfasio, whereupon an agreement was executed and witnessed by the 2nd defendant, and that he immediately took possession through cultivation of food crops such as cassava, maize, and soya bean. He states that in 2016 he constructed a semi-permanent house in which he allowed his mother, the 2nd defendant, to reside, while also using part of the remaining land for cultivation, until 2021 when he asked her to vacate — which she duly did. He then planted eucalyptus trees, until 2024, when the 1st defendant (his brother) entered upon the land, uprooted the trees, and the defendants, he alleges, colluded to lay claim to ownership of the suit-land.

Defendants' Case

The defendants filed a joint written statement of defence in which they denied the entire claim and filed a counterclaim seeking a declaration of fraud against the plaintiff, a declaration of ownership, general damages, and costs of the counterclaim.

They assert that the plaintiff never purchased the suit-land from Okiria Galfasio as alleged; that it was instead the late Kagezi Demiano (former husband of the 2nd defendant) who purchased the land in 2014 from Okiria Galfasio for UGX 1,000,000/=; that the plaintiff never took possession as alleged, and that it is the 2nd defendant who has remained in possession and cultivation to date; that the plaintiff never constructed the semi-permanent house as alleged; that the eucalyptus trees were planted at night and a pit latrine dug the following morning, and that on the instructions of the 2nd defendant and LC officials, one Clement and others uprooted the trees; and that the 2nd defendant was allocated the suit-land by her late husband under his will.

Representation

The plaintiff was represented by M/S Justice Centres Uganda, while the defendants were self-represented.

Scheduling

At scheduling, both parties framed two issues for the court's determination, namely:

1. Whether the plaintiff is the rightful owner of the suit-land.
2. Whether the plaintiff is entitled to the reliefs sought in the plaint.



I note that neither of the framed issues addresses the defendants' counterclaim. Under Order 15 rules 1(5) and 5 of the Civil Procedure Rules, this court may frame or amend issues as will enable it to dispose of a case expediently. Accordingly, the court amended the issues to read as follows:

1. Who is the rightful owner of the suit-land?
2. What remedies are available to the parties?

Evidence Adduced

The plaintiff testified as his own first witness, and his testimony was recorded as **PW1 – Mukula Dan**. In sum, he told the court that the suit-land originally belonged to one Okiria Gilfasio, his neighbour to the east and south, and one Okiring to the north, and that Okiria Gilfasio sold it to him on 29th January, 2014, and that he is currently in occupation. He exhibited PEX1, the sale agreement, in proof thereof. He further told the court that he built the house on the land in 2015 and licensed the 2nd defendant to reside there until 2021, when he asked her to vacate and she duly complied. He stated that he remained in possession, cultivating various crops, until around July 2024, when the 1st defendant uprooted his eucalyptus trees, prompting him to lodge a criminal complaint vide **SD 84/74/2024**.

On cross-examination by the 1st defendant, he stated that in 2015, upon the passing of Okiria Gilfasio, clan leaders convened and receipts were issued; that one Moses assisted with the construction; that the land given to the 2nd defendant was distinct from the suit-land; and that the uprooted eucalyptus trees were five months old.

On cross-examination by the 2nd defendant, he further testified that the land is his, that the 2nd defendant had only come to visit, and that he later sent her back to the land apportioned to her by her late husband.

PW2 – Osagara Joseph testified that the 2nd defendant is his mother, and that he signed as witness and caretaker of the suit-land on behalf of Okiria Gilfasio, from whom PW1 purchased the suit-land for UGX 950,000/= on 29th January, 2014. He stated that it was the practice of the clan to issue receipts, and that he was present when the receipts in question were issued. As to the discrepancy between the date of sale and the date stamped on the agreement, he explained that it was owing to PW1's failure to pay the clan fee or commission on the date of purchase.



PW3 – Tukei Nathan testified that he is a neighbour of the suit-land, which now belongs to the plaintiff, who purchased it from Okiria Gilfasio, and that he witnessed the transaction and signed the sale agreement. On cross-examination, he stated that on the date of the transaction, all the money was brought by the plaintiff, though he could not say whether the 2nd defendant had also contributed.

PW4 – Okiria Bosco testified that he is a grandchild of the 2nd defendant and that he witnessed the transaction and signed the sale agreement. He stated that the plaintiff did not have the money to pay the clan leaders at the time, which is why the stamp was not obtained on the date of the transaction.

In their defence, the defendants likewise called four witnesses.

Opolot Alex, the 1st defendant, testified as DW1. He told the court that the land belongs to the 2nd defendant; that it originally belonged to Okiria Gilfasio, who sold it to the 2nd defendant's husband on 30th January in 2014 for UGX 1,000,000/=, with boundary marks planted in milk tree and ejumla. He stated that the husband built the house on the land, in which the 2nd defendant now resides, and that in 2021 the husband died, leaving a will showing distribution of his property. He testified that in 2024 the 2nd defendant hired out the suit-land to one Akurut Rose, who is, incidentally, the plaintiff's wife; that the plaintiff, then in Kampala, sent someone to plant eucalyptus trees; and that upon learning of this, the 2nd defendant convened a meeting of clan elders and local authorities. On cross-examination, he added that he was present when the 2nd defendant's late husband purchased the suit-land, although the defendants do not possess receipts.

The remaining defence witnesses echoed this account. **DW2 – Koote Magdalene** testified that the 2nd defendant's husband purchased the suit-land in her presence, and that the sale agreement was drafted by the chairman of Apuna, although she did not have a copy of it. **DW3 – Okinei Philip** testified, under cross-examination, that the plaintiff resides on land that was part of the share given by their father; that the sale agreement bore an LC stamp, though he too had no copy; and that he was the one who drafted the agreement, on 30th January, 2014, in respect of the same land now in dispute. **DW4 – Omunuk Simon** testified that the 1st defendant is his nephew and the 2nd defendant his sister-in-law, and that the 2nd defendant's husband purchased the suit-land for her on 30th January, 2014, in his presence. On cross-examination, learned counsel for the plaintiff obtained signature specimens from DW4, and the court observed no likeness between them. The agreement and the signature specimen were admitted as plaintiff's exhibit PEX3.



No submissions were filed by either party to assist the court, and I have accordingly evaluated the evidence to the best of my ability.

Analysis

Issue 1: Who is the rightful owner of the suit-land?

The burden of proof in civil cases lies upon the plaintiff, as provided under Sections 100 and 101 of the Evidence Act. Black's Law Dictionary, 9th Edition, defines who an owner of land and property is, and I also borrow the reasoning in **Marko Matovu & 2 Others v. Muhammed Sseviri & 2 Others, SC Civil Appeal No. 7 of 1978**, for the proposition that possession can sometimes be used as an indicator of ownership. This, however, is a rebuttable presumption.

DW1, Opolot Alex, told the court that in 2024 the 2nd defendant hired out the suit-land to one Akurut Rose, the plaintiff's wife, and that the plaintiff, then in Kampala, sent someone to plant eucalyptus trees, prompting the 2nd defendant to convene a meeting of clan elders and local authorities upon learning of it. On the contrary, PW1, Mukula Dan, told the court that in 2024 he asked the 2nd defendant to leave, and that she complied.

In **Oketh v. Republic (1965) EA 555**, the Court of Appeal held that it is the duty of the trial court to consider the evidence adduced by the parties as a whole before accepting it or making findings of fact. Section 2 of the Evidence Act, Cap. 8, defines evidence as the means by which any alleged matter of fact, the truth of which is submitted to investigation, is proved or disproved, and includes testimonies by accused persons, admissions, judicial notice, presumptions of law, and ocular observation by the court in its judicial capacity.

I note that both parties agree that at some point the 2nd defendant was in occupation, and that the plaintiff planted eucalyptus trees on the suit-land, which have since been uprooted, allegedly at the prompting of the 2nd defendant. If it were true that the 2nd defendant hired out the land to the plaintiff's wife for a fee, it is difficult to see why she would then turn around and have the plants uprooted. This account strikes me as unreasonable, and it appears to me that the defendants sought a convenient explanation for the plaintiff's presence on the suit-land without undermining their own defence. It is the finding of this court that the plaintiff is, indeed, in physical occupation of the suit-land.



Turning to ownership, both parties agree that the suit-land originally belonged to one Okiria Galfasio. The plaintiff asserts that he purchased the land directly from Okiria Galfasio on 29th January, 2014, and exhibited PEX1 in proof. The defendants, on the other hand, assert that it was the late husband of the 2nd defendant who purchased the suit-land from Okiria Galfasio in 2014. Only DW4 stated a precise date of purchase — 30th January, 2014 — notably, a day after the date on which the plaintiff claims to have transacted.

When the defence witnesses were asked about the sale agreement they claim to have witnessed, none could produce it. Under Section 58 of the Evidence Act, Cap. 8, a fact in issue may be proved by direct oral testimony, save for the contents of a document. While the defence witnesses insisted on having executed and witnessed a written sale agreement, none could produce it, and no exception to the general rule against parole evidence of a document's contents was shown to apply. Their testimony on this point is therefore inadmissible.

Land may be acquired in various ways: by purchase, gift, or inheritance, as held in **Gabriel Mugambwa v. Bwambale, HCCS No. 359 of 1992 (unreported)**. Relatedly, Ssekandi J., in **Mariko Matovu and Others v. Sseviri and Another (1979) HCB 174**, held that customary rights may be established by cultivation of crops, grazing of animals, and the establishment of wells for cattle, and that such rights are protected by law. It has also been said, in a number of authorities, that land is not purchased from unknown sellers as though it were produce at a market. In the present case, the only evidence tendered by the defence in support of the alleged purchase by the 2nd defendant's late husband is hearsay, and is accordingly inadmissible.

The defendants maintain that they received the suit-land as a bequest from the 2nd defendant's late husband, who is said to have acquired it by purchase. This court is not satisfied that the alleged purchase was proved to the required standard. In the absence of proof that the 2nd defendant's husband purchased the suit-land before purporting to bequeath it to her, this court is inclined to find that no such transaction between Okiria Galfasio and the 2nd defendant's late husband ever took place. It follows that the husband could not bequeath what he did not own.

The plaintiff, by contrast, demonstrated both possession and a sale agreement, and no evidence was led to suggest that Okiria Galfasio disputes either the possession or the sale. In *D.R. Pandya v. R* (1957) EA 336 at 338, it was held that where a question arises as to which witness ought to be believed over another, the



answer turns on the general circumstances and the demeanour and conduct of the witnesses before, during, and after the fact, including their demeanour at trial.

It is the finding of this court that the suspicious circumstances surrounding the alleged purchase by the 2nd defendant's late husband — coming, as it does, one day after the sale to the plaintiff — together with the defendants' failure to produce the alleged sale agreement and the contradictions in their pleadings and evidence, leave this court in considerable doubt as to the truthfulness of their version of events on a balance of probabilities. The plaintiff's account, by contrast — that he purchased the land from Okiria Gilfasio for valuable consideration, and demonstrated possession through cultivation, among other things — is believable on a balance of probabilities.

Having so found, it follows that the suit-land belongs to the plaintiff, and I find accordingly. It follows, too, that the purported donation, gift, or bequest of the suit-land to the 2nd defendant cannot be valid, even if it occurred as alleged, since the purported donor has been found not to have owned any interest in the land in the first place.

For the reasons given above, it is my finding on Issue 1 that the plaintiff is the rightful owner of the suit-land.

Issue 2: What remedies are available?

The plaintiff sought a declaration of ownership of the suit-land, a declaration that the defendants are trespassers thereon, an order of permanent injunction, general damages, and costs of the suit.

The power to award damages is exercised in the circumstances of a judicious estimation of the loss to the victim once the breach of duty or injury has been established. The governing principle of assessment is *restitutio in integrum*, the basic measure of damages being restitution, as held in *Dr. Denis Lwamafa v. Attorney General*, HCCS No. 79 of 1983, [1992] 1 KALR 21. The essence of damages is compensatory: neither to punish the defendants nor to confer a windfall on the plaintiff, nor to leave the claimant's actual loss unrepaired, as held in *Lydia Mugambe v. Kayita James & Another*, HCCS No. 339 of 2020.

While this court has found that the plaintiff proved his ownership on a balance of probabilities, he pleaded the loss of his eucalyptus trees only in general terms, and has not satisfied this court as to the quantum of damage suffered. The court notes that the plaintiff is in occupation of the suit-land, having regained it following the 2nd defendant's departure.



As to the defendants' counterclaim, it is dismissed for want of a valid cause of action. It is trite that before instituting a suit a party must demonstrate an interest, whether equitable, possessory, legal, or otherwise, and in this case, the ground of their claim has failed.

In sum, Issue 2 is also resolved in favour of the plaintiff, with the following orders.

Orders

1. A declaration doth issue that all that suit-land measuring approximately a quarter of an acre, situate at Apuna Village, Apuna Parish, Kibale Sub-county, Pallisa District, belongs to the plaintiff.
2. A declaration that the defendants are trespassers thereon.
3. As the plaintiff is the one in possession, no order of vacant possession shall issue.
4. The plaintiff is granted UGX 1,000,000/= (ONE MILLION ONLY) as general damages for the uprooted eucalyptus trees.
5. A permanent injunction doth issue against the defendants, jointly and severally, restraining them from laying any claim over the suit-land.
6. Each party shall bear their own costs, in the spirit of promoting reconciliation among family members.

I so order.

Dated at Pallisa this2nd day ofJune 2026

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HIS WORSHIP KYEMBE KARIM
MAGISTRATE.