

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA

LAND DIVISION

CIVIL SUIT NO. 0737 OF 2019

PAUL MPENGERE BUSUULWA :::::::::::::::::::::::::::::::PLAINTIFF

VERSUS

1.ZIGWA HENRY KITAGENDA


2.KAYONGO JAMES :::::::::::::::::::::::::::::::::::::::DEFENDANTS

BEFORE: HON: JUSTICE JOHN EUDES KEITIRIMA


JUDGMENT

1. The Plaintiff's cause of action against the defendants as stated in his
Plaint is as follows;

- (i) That sometime in 1976, the late Benjamin Mulalira who was the Plaintiff's uncle and while still alive gave away the suit land to the Plaintiff as the said deceased did not have any children. Consequently in 1977 the Plaintiff built his residence on the suit property and settled thereon with his family without any incident and with the full knowledge of all the relatives, the defendants inclusive. That all this was done while the said Benjamin Mulalira was still alive.


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- (ii) That the late Benjamin Mulalira passed away in 1997 and upon his death, the Plaintiff was installed as his legal heir as the said deceased had made it clear while still alive that he had given away his property to the Plaintiff.
- (iii) That he enjoyed quiet possession of the suit property without incident for twenty years before the passing on of Benjamin Mulalira and has been in occupation of the suit property for the last 53 years.
- (iv) The Plaintiff claims that sometime in 2015, the Plaintiff realized that the defendants who are his cousins had started laying claim over the suit land on account that the clan leader a one Yusuf Male who is also a father to the 1st defendant had distributed the suit property and given the defendants three acres of land leaving the Plaintiff with two acres.
- (v) That the defendants have been directing some individuals to cultivate the suit land and have also embarked on the process of being granted Letters of Administration of the estate of the late Benjamin Mulalira targeting the suit land well knowing that the deceased's estate was distributed before his death and given to the Plaintiff. That the defendants have insisted that they are entitled to a share in the suit land well knowing that the suit land belongs to him since 1977 without challenge from any one including the defendants.


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- (vi) The Plaintiff contends that he is the rightful owner of the suit land and occupied the same in 1977 a year after it was given to him by the late Benjamin Mulalira and it has always been clear to the defendants but the defendants are taking advantage of Benjamin Mulalira's death to now lay claim over the suit property something they never did while the deceased was still alive.
- (vii) That the defendants have threatened to evict and dispose of the suit property to third parties in a bid to extinguish the Plaintiff's interest.
- (viii) That the defendants have engaged surveyors who have embarked on the subdivision of the suit property.
- (ix) That the defendants have trespassed and continue to trespass unless they are restrained to trespass on the Plaintiff's suit property.
- (x) That as a result of the defendant's conduct, the Plaintiff has suffered inconvenience, psychological torture for which he holds the defendants responsible and claims for general damages.

2. The Plaintiff is seeking for the following remedies;

- i. A permanent injunction against the defendants.



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- ii. A declaration that the Plaintiff is a bonafide and or lawful occupant on the suit land.
 - iii. In the alternative but without prejudice to the above a declaration that the property comprised in **Kyadondo Block 191 Plot 11** does not form part of the estate of the late Benjamin Mulalira as the same was given away by him to the Plaintiff.
 - iv. A vesting order directing the Commissioner Land Registration to register the suit property into the names of the Plaintiff or appointing the Plaintiff administrator of the estate of the late Benjamin Mulalira.
 - iv. General damages, interest and costs of the Suit.
 - v. Any other relief that this Court shall deem appropriate in the circumstances.
3. In their amended written statement of defence the defendants state inter alia;
- i. That the suit land belonged to the late Benjamin Mulalira who acquired it as a share from the estate of his late father Yakobo Kitagenda.
 - ii. That the late Benjamin Mulalira died intestate and was never survived by any wife or child but a sister Tabitha Mukiibi.
 - iii. That the late Benjamin Mulalira never gave any land to the Plaintiff during his life time but the Plaintiff was only permitted


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to live on the suit land as a care taker by the deceased's relatives owing to the mental instability of the deceased during his life time.

- iv. The defendants contend that the said deceased's estate was never distributed before his death and as such the Plaintiff's claims of acquisition of the suit land as a gift from the late Benjamin Mulalira are false.
- v. That following the death of Benjamin Mulalira, the clan members in consensus with the family members elected the Plaintiff as the heir of the late Benjamin Mulalira.
- vi. That the family and clan members agreed to distribute the estate of the late Benjamin Mulalira which comprised of five acres among the Plaintiff and the defendants, with the Plaintiff getting two acres and the defendants getting one and a half acres each.
- vii. That the said developments were communicated to the Administrator General by the head of the family lineage who recommended the beneficiaries to the process of acquisition of Letters of Administration of the estate of the late Benjamin Mulalira.
- viii. That the defendants stated using their portions of land by cultivating food and planting trees in perfect harmony with the Plaintiff and a file was opened by the Administrator General vide **Mengo Administration Cause No. 1981/2007.**


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- ix. That the defendants were shocked when the Plaintiff started making false complaints and allegations against the defendants framing them as grabbers of the suit land.
- x. That several meetings were called to resolve the matters but the Plaintiff remained uncooperative for selfish interests.
- xi. That in March 2019, the Administrator General summoned the parties and other family members to hold a family meeting relating to the Administrative Cause.
- xii. The defendants contend that before completion of the legal process of administration of the estate of the late Benjamin Mulalira, the Plaintiff filed a suit to obtain letters of administration through this Court.
- xiii. That the Plaintiff never owned the suit land during the lifetime of Benjamin Mulalira and the said late Benjamin Mulalira never at any time gave away any part of the suit land to any person.
- xiv. That the family members elected the Plaintiff and the defendants to jointly apply for letters of administration as beneficiaries of the estate of the late Benjamin Mulalira who would thereafter take over the estate in proportion shares.
- xv. The defendants aver and contend that the surveyors were engaged to demarcate the boundaries and alleviate the Plaintiff's fears and claims that the defendants through their agricultural activities had encroached on his two acres.


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4. The defendants pray that the suit be dismissed with costs.


5. In their joint scheduling memorandum, the following issues were raised for determination;

- a) **Whether the Plaintiff is a bonafide or lawful occupant of the Suit property.**
- b) **Whether the purported distribution of the suit property to the defendants by the clan members was lawful.**
- c) **Whether the late Benjamin Mulalira gave the suit land comprised in Block 191 Plot 11 to the Plaintiff as a gift.**
- d) **If not, whether the suit land forms part of the estate of the late Benjamin Mulalira.**
- e) **Whether the Court has jurisdiction to grant letters of administration of the deceased estate to the Plaintiff.**
- f) **Remedies available to the parties.**

6. The parties adduced evidence by way of witness statements from which they were cross examined. The detail of their evidence is on record.

7. **Resolution of issues**

(i) **Whether the Plaintiff is a bonafide or lawful occupant of the Suit property.**


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8. Plaintiff's evidence


The Plaintiff testified that sometime in 1976, the late Benjamin Mulalira who is the proprietor for the land comprised in **Kyadondo Block 191 Plot 11** and who was also his uncle donated the suit land to him as his uncle never had children.

The Plaintiff stated that this donation was put into writing in a letter dated 10th July 1993 where his uncle addressed the matter in a one Mutuba Fred. The said letter was tendered in Court and marked exhibit PE1.

The plaintiff stated that in 1977 he built his residence on the suit property and settled thereon with his family without any disturbance /incident and with the full knowledge of all his relatives the defendants inclusive. That all this was done while the said Benjamin Mulalira was still alive and he started cultivating the entire land that comprises five acres.

That Plaintiff stated he planted banana plants, coffee plants, eucalyptus trees and also reared animals on the suit land for the last forty-four years. The Plaintiff tendered in court pictures of the developments on the suit land. The pictures were collectively marked as Exh PE5.

The Plaintiff further stated that the late Benjamin Mulalira passed away in 1997 and upon his death the clan members who included the



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defendants installed him as the legal customary heir of the said deceased. That no one at that point ever raised the issue of distributing the suit property since they knew it had been given to him. That at the time of the late Benjamin Mulalira's passing, he had enjoyed possession of the suit property without incident for a period of twenty years.

That the said deceased never contested his possession of the suit property.

The Plaintiff stated that he was surprised when in 2015 he realized that the defendants who are his cousins started laying claim over the suit land on account that the clan leader a one Yusuf Male a father to the 1st defendant had distributed the suit property and given the defendants three acres of land leaving him with two acres.

The Plaintiff further stated that in 2018 the defendants started directing some individuals to cultivate the suit land and in the process they destroyed his crops which he vehemently protested. That when he tried to stop them, he was over powered and he then appealed to the office of the Deputy Resident District Commissioner who then summoned the defendants through the LC1 Chairman. That he also later learnt that the defendants had embarked on the process of obtaining Letters of Administration for the estate of the said deceased.


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The Plaintiff further stated that he was surprised when on the 4th June 2019 the defendants and their brothers came to his home and lured him into sharing the suit property with the defendants. That he resisted the suggestion and informed them that he was not ready to share the suit property with any one since they all knew that the property had been donated to him by the said deceased.

The Plaintiff stated that the defendants have over time been descending on the suit land, clearing his crops and forcefully trying to cultivate the suit land amidst protests from him and his family members.

He further stated that he has been reporting some incidents to the Police.

The Plaintiff contended that he is lawful and bonafide owner of the land having occupied the same since 1977 a year after it was given to him by the said deceased. That the defendants are taking advantage of the said deceased's death to now lay claim over the suit property.

The Plaintiff further contended that the defendants have all received their shares from their parents but are also interested in his share which is unfair.

The Plaintiff also contended that the defendants have never been in possession of the suit property and they are only attempting to get into possession by destroying his crops and planting theirs. The Plaintiff further contended that the defendants applied for a temporary injunction

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against him but it was dismissed on account that the defendants were not in possession of the suit land but were only forcing their way into possession.

The Plaintiff prayed that this court makes a declaration that the suit property does not form part of the estate of the late Benjamin Mulalira or in the alternative he be declared a bonafide and lawful occupant of the suit land.

The Plaintiff also prayed for general damages and costs of the suit.


The Plaintiff called two other witnesses Mutumba Fred (PW2) and Nakandi Grace (PW3) to corroborate his evidence.

9. Defendant's defence

Zigwa Henry Kitagenda hereinafter referred to as DW2 and the 1st defendant in this case stated that the plaintiff and the defendants are grandsons of the late Yakobo Kitagenda and that they were all nephews of Benjamin Mulalira who died a bachelor without a child and intestate.

DW2 stated that the suit land belonged to the late Benjamin Mulalira who had acquired the same from the estate of his late father Yakobo Kitagenda.

DW2 contended that the late Benjamin Mulalira died intestate and never bequeathed his estate to any one and therefore the plaintiff's


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claims that he received the suit land as a gift from Benjamin Mulalira were false and fabricated.

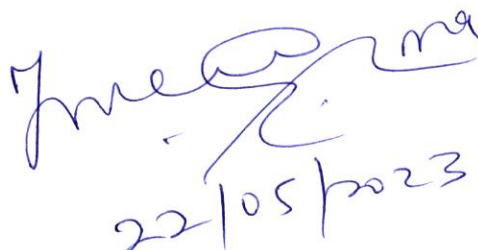
DW2 stated that he lived with the late Benjamin Mulalira during his last days but he never mentioned anything about giving his land to any person.

DW2 further stated that after the death of Benjamin Mulalira, the clan members with the consensus of the family members met and appointed the Plaintiff as the heir of the late Benjamin Mulalira.

DW2 further stated that during the last funeral rites of the late Benjamin Mulalira, the head of the lineage a one Yusuf Male asked whether anyone had any document written by the late Mulalira and none produced any document. That the family members then agreed to share and divide the estate of the said deceased which comprised of five acres. The same was divided between the plaintiff and the defendants. That the Plaintiff was given two acres and the defendants received one and a half acres each.

That the suit land was partially surveyed and each portion was dully demarcated with boundary marks. The sketch map was tendered in Court and marked as Exh D.3.

That when the family arrived at the said decision, the Head of the family lineage (the late Yusuf Male) who was also a brother to the late

Handwritten signature in blue ink, followed by the date 22/05/2023.

Benjamin Mulalira wrote to the Administrator General on the 7th April 2003 recommending the beneficiaries (the Plaintiff and the defendants) to process the acquisition of letters of administration. The letter to the Administrator General was tendered in Court and marked as Exh D.4.


DW2 further stated that the family members elected the defendants and the Plaintiff to apply for letters of administration as beneficiaries of the estate of the late Benjamin Mulalira.

That the family also allowed them to freely occupy and use their respective portions as they processed letters of administration for the estate of the said deceased.

DW2 stated that a file was then opened vide **Administrator General Mengo Administration Cause No. 1981 of 2007**. The form for report of death to the Administrator General was tendered in Court and marked as Exh. D.5.

DW2 further stated that on 19th September 2018, the Administrator General wrote to the chief Administrative Officer to call for a family meeting in respect of the estate of the said deceased. The said letter was tendered in court and marked as Exh D.6.

That when the Town Clerk summoned them for a meeting, the defendants attended in response to the summons, but the Plaintiff and his children caused chaos in the meeting and as a result they failed to



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have any meaningful resolutions that would form a report to be returned to the Administrator General.

DW2 further stated that a month later on 27th November 2018, they were summoned by the Deputy Resident District Commissioner on account that she had received a complaint that they (defendants) had grabbed the Plaintiff's land that had been given to him by the said late Benjamin Mulalira. That they still attended the meeting in the office of the Deputy Resident District Commissioner but the Plaintiff and his children still caused chaos and they failed to deliberate on the matter.

DW2 further stated that on 30th January 2019, the Deputy District Commissioner called for another meeting which the Plaintiff refused to attend and as such the meeting flopped.

That the defendants then reported back to the Administrator General about their failure to hold a family meeting pursuant to his letter of 19th September 2018. That this prompted the Administrator General to call for a meeting in her office. That when they attended the meeting, the Plaintiff claimed that the whole suit land belonged to him and wanted to be appointed the sole administrator of the estate of the late Benjamin Mulalira. That when the Plaintiff was asked for any documentation to prove his claim, he never produced any letter or writing gifting him the suit land.


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DW2 stated that to their dismay before the completion of the legal process of administration of the estate of the late Benjamin Mulalira, the Plaintiff filed this suit on 2nd September 2019.

That after filing this suit the Plaintiff went ahead to cut down the defendants' crops and confiscated the 2nd defendant's trees. That the matter was reported to police but the Police never assisted them.

DW2 contended that the Plaintiff's allegations that they trespassed and grabbed his land were not true as all of them were beneficiaries of the estate of their late uncle Benjamin Mulalira in the proportions that had been allocated by the family and clan members.

DW2 further contended that the plaintiff is neither a Kibanja nor mailo owner but a relative who has been staying on the suit land as a caretaker until when the family decided on the sharing and distribution of the suit land.

DW2 further contended that the Plaintiff is just greedy and exploiting the fact that most of the siblings to the late Benjamin Mulalira are dead.

DW2 prayed that the suit should be dismissed with costs.

DW2 called two witnesses to corroborate his evidence.

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10. Decision of Court on issue one;

S.29(1) of the Land Act as amended provides that “Lawful Occupant” means;

(a) a Person occupying land by virtue of the repealed;

- i. Busuulu and Envujjo law of 1928;
- ii. Tooro Landlord and Tenant Law of 1937;
- iii. Ankole Land lord and Tenant Law of 1937;

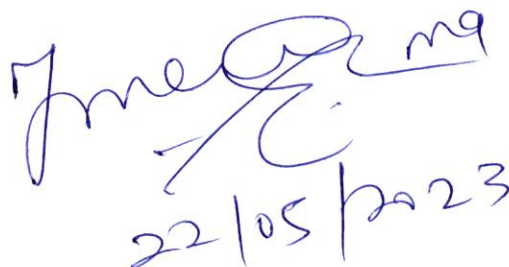
(b) a person who entered the land with the consent of the registered owner, and includes purchaser; or

(c) a person who had occupied land as a customary tenant but whose tenancy was not disclosed or compensated for by the registered owner at the time of acquiring the lease hold certificate of title.

(2) “Bona fide occupant” Means a person who before the coming in to force of the Constitution;

(a) had occupied and utilized or developed any land unchallenged by the registered owner or agent of the registered owner for twelve years or more; or

(b) had been on land by the Government or an agent of the Government, which may include a local authority.


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11. It is not disputed that the Plaintiff built his house on the Suit land and settled there with his family since 1977.


12. It also not disputed that when Benjamin Mulalira passed away in 1977 the Plaintiff was installed as his heir.

13. It is not disputed that the Plaintiff entered the Suit with the consent of the late Benjamin Mulalira. The defendants however insist that the Plaintiff was only allowed on the suit land as a care taker.

14. The evidence of DW1 to that effect was hearsay as he stated during cross examination that it was his late father who told him that the Plaintiff was on the suit land as a caretaker of the late Benjamin Mulalira.

15. There was no documentary evidence to show that the Plaintiff was appointed a caretaker of the suit land by the late Benjamin Mulalira. It is also not contested that the late Benjamin Mulalira allowed the Plaintiff to settle on the suit land since 1977 and at the time of the death of Benjamin Mulalira, it was the Plaintiff who was settled on the suit land.

16. It is further acknowledged by the defendants and their witnesses that the Plaintiff has a residential house, banana Plantation and gardens on the suit land. This was also ascertained by this court when the court visited the locus in quo.


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17. Therefore, in the absence of any credible evidence that the Plaintiff was appointed as a caretaker of the suit land by the late Benjamin Mulalira, it is evident that the late Benjamin Mulalira allowed the Plaintiff to settle on the suit land. A caretaker could not have been allowed to build a permanent residence, cultivate bananas which are of perennial nature. It is clear that the Plaintiff had been allowed by the late Benjamin Mulalira to permanently settle on the suit land.

18. The Plaintiff was also able to adduce evidence of the late Benjamin Mulalira's intention to permanently bequeath him the suit land as shown in the letter that was tendered in Court and marked as exhibit PE1. In the said letter the said deceased had written to Mutumba Fred (PW2) requesting him to get transfer forms for him so that he could transfer the suit land to the Plaintiff. Mutumba Fred corroborated this evidence when he testified in Court to that effect.

19. I therefore find that the Plaintiff is the lawful occupant of the suit land as he was allowed to settle on the suit land by the registered owner the late Benjamin Mulalira and in accordance with **Section 29.**

(1) (b) of the Land Act Cap 227 (as amended).

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20. The clan head therefore had no jurisdiction to distribute the suit land to the defendants.

21. It was held in the case of *Kampala District Land Board and Chemical Distributors versus National Housing and Construction Corporation - S.C.C.A No. 2 of 2004* that a bonafide occupant was given security of tenure and his interest could not be alienated except as provided by the law.

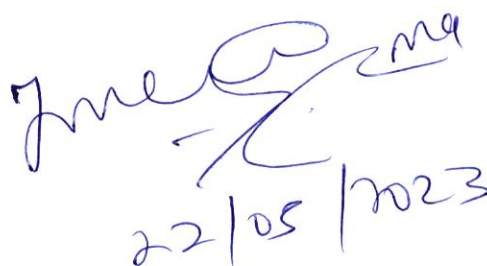
22. There is also clear evidence as shown in exhibit PE1 and the evidence of PW2 that the said Benjamin Mulalira intended to gift the suit land to the Plaintiff. The suit land was therefore no longer available for distribution to the defendants.

23. This in my view resolves the whole dispute as resolving the other issues would be superfluous.

24. Judgment will therefore be entered for the Plaintiff against the defendants with the following declarations/Orders;

- i. The Plaintiff is a lawful occupant of the suit land.**
- ii. A permanent injunction will be issued against the defendants refraining them from trespassing on the suit land.**
- iii. A vesting order will issue directing the Commissioner, Land Registration to transfer the suit land into the Plaintiff's name.**

26. I will award the costs of this suit to the Plaintiff.


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Hon. Justice John Eudes Keitirima

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