

MUGANZI PATRICK PLAINTIFF

VS

TIONO MOSES DEFENDANT

Learned Magistrate G.I

Introduction:

Muganzi Patrick (*hereinafter referred as the plaintiff*) instituted this suit on the 20th September, 2024 against Otono Moses (*herein after referred as the defendant*) by way of an ordinary plaint under the provisions of Order 7 of the Civil Procedure Rules, S.I 71-1.

The plaintiff's claim is for recovery of land measuring approximately ¼ of an acre valued at approximately 4,000,000/=-, hereinafter referred as the "*Suitland.*"

Plaintiff's case:

It is the plaintiff's case that around the 7th June, 2003, the plaintiff purchased the Suitland from a one, Amongo Esiteri and paid a consideration of UGX. 150,000/= and an agreement drawn to that effect. That the plaintiff thereupon, entered the Suitland and started cultivating

the same until the year, 2014, when, owing to being a pastor in the Baptist Church, the plaintiff was transferred to Natoto Church. That in 2017 when he returned to check on the Suitland, he found when the defendant had entered thereupon, hence this suit to recover the said Suitland.

Defendant's case:

The defendant, on the 16th October, 2024, filed a written statement of defence in reply thereof disputing the claim together with a counter claim. Therein his defence, he raised several points of objection to the effect that the suit is irregular, nonstarter, frivolous, vexatious, and undated, in abuse of court process and bad in law.

In his counter claim, he sought declarations that he is the rightful owner of the suitland, a permanent injunction, general damages and costs of the counter claim.

It was the defendant's/counter claimant's case that he lawfully obtained the suitland on the 12th June, 2013 by way of purchase from a one, Subula Robert at a consideration of UGX. 700,000/= without any 3rd party claims and an agreement duly executed thereafter. That prior to purchase, the defendant conducted due diligence and ascertained that it is the plaintiff who indeed originally purchased the suitland from the said Among Esiteri and later sold it to the said Subula Robert in 2008 at a consideration of UGX. 700,000/= and that it is from the said Subula Robert from whom the defendant purchased the suitland and took possession thereupon.

Representation:

Both parties appeared and proceeded *pro se*'.

As both parties were unrepresented lay litigants, this court deemed it a proper case to invoke **Article 128(2)(e)** of the Constitution of the Republic of Uganda, 1995 as amended to dispense justice without undue recourse to technicalities. Technical procedures were thus dispensed with and the suit heard as informally as possible.

Scheduling:

At scheduling, 2 issues were framed for court's determination.

1. Who of the parties is the rightful owner of the suitland?
2. Remedies available to the parties.

Evidence adduced:

The plaintiff called a total of 2 witnesses to prove his case. He testified as his first witness and his testimony taken down as Pw1. In a nutshell, while admitting to being privy to the said Subula Robert, Pw1 told court that it is not true that he sold the suitland to the said Subula Robert but instead, he only mortgaged it to him as security for repayment of a loan of UGX. 700,000/=.

Pw2-Subula Tom, told court that the plaintiff is his father and he knows that the suitland belongs to the plaintiff, having purchased the same from his auntie, a one, Among.

In his defence, the defendant called a total of 2 witnesses. He testified as his first witness and his testimony was taken down as Dw1. He told court that he purchased the suitland from Subula Robert in the presence

of the clan elders and the local council authorities. He exhibited both the sale agreement between Subula Robert and the plaintiff and also exhibited the sale agreement between himself and the said Subula Robert.

Dw2-Subula Robert confirmed both sale agreements as a signatory thereof and that he is the one who sold the suitland to the defendant by sale agreement dated 12th June, 2013, having purchased the same from the plaintiff by sale agreement dated 16th June, 2008. Both agreements and their respective translations were collectively admitted as defence exhibit **DEX1**.

Resolution:

Issue 1: Who of the parties is the rightful owner of the Suitland?

In the course of hearing, this court took note that it is not a disputed fact that the Suitland originally belonged to a one, Amongo Esiteri, who later sold it to the plaintiff.

What appears to this court to be the center of contention is how the suitland came to be claimed by Subula Robert and later, sold to the defendant.

The plaintiff claims to have mortgaged the suitland to Subula Robert as mortgage for repayment of a loan of UGX. 700,000/=.

On the other hand, the defendant's evidence is that the said Subula Robert purchased the suitland from the plaintiff and later sold it to the

defendant. To prove the said purchase and subsequent sale, the defendant exhibited **DEX1**.

I note that the same agreement dated 16th June, 2008 was duly signed by both the plaintiff and Dw2. The plaintiff did not deny signing the same and I did not see any evidence to show that the same was forged. In **Kimatu Vs Wanjohi (2016)eKLR** it was stated that evidence not challenged or controverted can be deemed admitted.

While the said undisputed sale agreement dated 16th June, 2008 stipulates a sale, the plaintiff insists that the transaction was a mortgage arrangement as security for repayment of a loan of UGX.700,000/=.

Under Section 60 of the Evidence Act cap 8, contents of a document are to be proved by primary evidence. To say, the undisputed sale agreement dated 16th June, 2008 is to be proved by reading and interpreting what is contained therein and not what the witnesses tell court that the document means.

This is sometimes called the ***parole evidence rule***. It is settled as a general rule that no oral evidence which purports to vary the contents of a document is to be admitted. Of course, this rule has exceptions, but none of the parties pleaded, let alone, gave court cause as to why it should evoke the said exceptions.

That be as it may, this court read the said agreement dated 16th June, 2008 and in absence of any reason as to why it should evoke the exceptions to the parole evidence rule, this court is left no choice but to

satisfy itself of the contents therein which stipulate a sale of the suitland by the plaintiff to the said Subula Robert.

As the undisputed agreement of 16th June, 2008 has inclined court to agree that it was a sale of the suitland for reasons shown in the foregoing, the party burdened with the requirement to furnish proof to the effect that the same was not a sale but a mortgage now rests upon the plaintiff as per the provisions under **Section 101** of the Evidence Act cap 8.

The plaintiff ought to have, but did not, deny executing the agreement. Neither was its veracity discounted in cross-examination. This court was not satisfied that this burden was discharged by the plaintiff.

Under **Section 2** of the Evidence Act Cap 8

*“evidence” denotes 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. [Bolding & underlining added for emphasis]*

In **Kabale District Local Government Council vs Musinguzi (2006) 2 EA at 131** it was stated that a party presenting unchallenged evidence has no duty to prove it further. Same reasoning was adopted in **Uganda Commercial bank ltd vs Yakub (2013) UGCOMMC 153**.

Under **Section 28** of *The Evidence Act*, cap 8, Laws of Uganda, 2023 revised edition admissions are not conclusive proof but they create an *estoppel* against the party admitting the same.

Having admitted entering transactions (*whether sale or mortgage*) with Dw2 vide agreement dated 16th June, 2008, admitted as **DEX1**, the plaintiff is thereby estopped from denying the same and the defendant/counterclaimant is duly discharged under **Sections 28 and 57 of The Evidence Act cap 8, Laws of Uganda, 2023 revised edition** from adducing any further proof thereof.

For the above reasons, it is the finding of this court that the plaintiff has *failed to prove on a balance of probabilities that he is the rightful owner of the suitland, he, having sold off the same to Subula Robert who subsequently sold it to the defendant.*

Accordingly, **Issue 1**, is resolved in favour of the defendant/counter-claimant.

Issue 2: What remedies available to the parties.

As **issue 1** has been resolved in favour of the defendant, I make the following orders in conclusion.

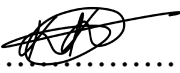
1. The plaintiff's suit is wholly dismissed with no orders as to costs.
2. The defendant's counter-claim hereby succeeds with the following orders:-
 - a. A declaration doth issue that the Defendant/ counter claimant is the rightful owner of the suitland.

- b. A permanent injunction doth issue restraining the plaintiff/counter defendant, his agents, workmen, assignees and successors in title from laying any further claim over the suitland.
- c. No general damages are granted since none was proved.

3.Each party is ordered to bear own costs of the counter claim in the spirit of encouraging reconciliation.

I so order.

Dated at PALLISA this ...23rd.....day ofJUNE.....2025

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HIS WORSHIP KYEMBE KARIM

MAGISTRATE GRADE 1