THE REPUBLIC OF UGANDA

IN THE CHIEF MAGISTRATE'S COURT OF PALLISA AT PALLISA

CIVIL SUIT NO. 001 OF 2018

ARYONG ANSELM :: PLAINTIFF

VS

1. EMURON FRANCIS
2. OSAURO CLEMENT :: DEFENDANTS

Before: His Worship Kyembe Karim Esq.

Magistrate G.I

JUDGMENT

Introduction.

The plaintiff brought this suit by way of an ordinary plaint under the provisions encapsulated under Order 7 of the civil procedure Rules seeking recovery of recovery of land measuring approximately 4 acres, permanent injunction, a declaration that the Suitland belongs to the plaintiff, general damages and costs of the suit.

Plaintiff's case:

It's the plaintiff's case that he has at all material times been the customary owner of the suitland having received the same as a gift intervivos from his now late father, a one, Anselm Aryong who had purchased the same from the 1st defendant's paternal grandfather, a one, Okia M. Emuron in the year 1978 and that the plaintiff has been in occupation since 1982 until sometime in 2017 when the 1st defendant started laying claims over the same, hence this suit.

Defendant's case:

The defendants filed a joint written statement of defence disputing the entire claim and also filed a counter claim seeking for declarations that the total land measuring 12 acres constitutes part of and is the property of the 1st defendant as a beneficiary and administrator of the estate of his late father, a one, Adocor Girifansio. That the 1st defendant owns a home and ancestral grave yard on the suitland and natural trees.

The plaintiff called 3 witnesses while the defendant called 2 witnesses.

Evidence and submissions:

The plaintiff submitted that he has been in constructive use and adverse possession of the suitland for now, 43 years. Learned counsel for the plaintiff pointed out for court the testimony of Pw1 who testified that he was given the suitland as a gift inter vivos by his, now late father of whom he shares the name ARYONG ANSELM on the 28th December, 1982. Learned counsel also pointed out the testimony of Pw2 who told court that she is the biological mother of the plaintiff, while the 1st defendant is a son to her (Pw2's) biological brother, a one, Adocor Girifasio and that the contested 4 acres of land originally belonged to a one, Okia Manueli (Pw2' biological father) who sold it to her (Pw2's) now late husband, Aryong Anselm, the father of the plaintiff who subsequently gave it to the plaintiff as a gift intervivos.

As regards the sale agreement of the said contested land, learned counsel for the plaintiff pointed out testimony of Pw2 to the effect that it is the RDC of Pallisa who violently took away the original in the meeting convened on the 24th August, 2017 and that Pw2 clarified that the 4 acres contested

land did not constitute part of the land inherited by the 1st defendant as heir, since the same had already been sold several years ago.

Regarding the visit to the locus in quo, learned counsel for the plaintiff submitted that the plaintiff showed court the salient physical features, including the *"enyereyere"* tree and the *"ejinga"*tree and that the defendants, on their part had failed to show court the exact size of their land and location.

As regards the validity of acquisition of the claimed interest in the suitland, learned counsel for the plaintiff cited for court the case of **Gabriel Mugambwa _VS Bwambale HCCS NO. 359/1992 (unreported)** for the proposition that in Uganda, land can be acquired by purchase, gift or inheritance and the case of **Mariko Matovu and others –VS- Sseviri and anor (1979) HCB at 174,** whereof **Ssekandi, J** held that customary rights may be established by the cultivation of crops, grazing of animals and establishment of wells for cattle and such rights are protected by law.

Learned counsel also cited for court **Section 5 of the Limitation Act** for the argument that the 1st defendant is barred by limitation and thus cannot recover the suitland under counter claim and cited for court the case of **Asther-VS-Whitlock (1965) LRIQB** for the proposition that *"…a person who is in possession has a title which is good against the whole world except a person with a better claim.."*

Learned counsel concluded by imploring this court to find in favor of the plaintiff and grant the reliefs sought in the plaint.

In reply thereto, learned counsel for the defendant submitted first by pointing out to court the burden and standard of proof placed upon the plaintiff under sections 101, 102 & 103 of the Evidence Act and also cited **Maganja Hussein _VS- Mubiru Christopher HCCS NO. 129 OF 2010** in support thereof. Learned counsel for the defendants also pointed out for court that the plaintiff failed to adduce the purported sales agreement of 1978, upon which the plaintiff's father purportedly purchased the Suitland and neither did the plaintiff adduce a gift inter vivos deed in his favor for the alleged 28th December, 1982.

Learned counsel for the defendant further emphasized the principle that ***"...lands are not vegetables and are not bought from unknown sellers..."*** and in support thereof, he cited **Hajji Nasser Katende –VS- Vithalindas Halindas & Co. Ltd CACA No. 084 of 2003** and **Taylor –VS- Stibbert (1803-13) ALLER 432.**

Learned counsel for the defendant also assailed the competence of the whole suit, altogether, submitting that in absence of a sale agreement or a deed of gift intervivos, or letters of administration, the plaintiff is precluded from claiming the estate of his deceased father. Learned counsel cited for court Section 191 Succession Act as amended for the proposition that;

> *"No right to any part of the property of a person who has died intestate shall be established in any court of justice unless Letters of Administration have first been granted by a court of competent jurisdiction."*

Learned counsel further submitted that the defendants at the visit to the locus in quo, it was found that it is the plaintiff who is in occupation of the

disputed 4 acres with a cassava garden to the exclusion of the defendants and as such, in absence of acts of trespass, the plaintiff cannot sustain a cause of action in trespass and similarly, a plea of adverse possession cannot be available to him who has sued in trespass.

Learned counsel for the defendants also pointed out paragraph 4(a) of the plaint whereof the plaintiff pleaded that he is a customary owner of 4 acres, 2 acres being on the upper part and 2 acres being on the lower part towards the swamp at Okaribwok village and yet, at the visit to the locus in quo, only the lower part of the land was shown to court to be the claimed 4 acres.

Regarding the 2017 meeting convened by the RDC as testified by Pw2, learned counsel for the defendants submitted that it is the plaintiff together with his brother who executed an agreement denouncing claims to the Suitland and that the RDC's report, the minutes and the agreement were collectively exhibited for the defendants as **DEX1** and the same was not discredited in cross-examination and as for the 2nd defendant, he has no interest in the suitland and his only participation is merely as a concerned clan leader who intervened to resolve the matters amicably. He concluded by inviting court to believe the defence case and enter judgment in favor of the defendants and on the counter claim.

Issues:

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

1. To whom does the Suitland belong?
2. What remedies?

However, in written submissions, both learned counsel for the respective parties raised some points of law. Under **Order 15 rule 1(5), & 5 of the CPR** this court can frame or amend issues as will enable it ably dispose of a case expediently. Thus, court amended issues to read as follows:-

1. Whether the plaintiff's suit is properly before this hon. Court?
2. Whether the defendant's counter-suit is properly before this hon. Court?
3. To whom does the Suitland belong?
4. Remedies available, if any?

Resolution:

Issue 1: Whether the plaintiff's suit is properly before this hon. Court?

Evidence & burden of proof:

Section 101 of the Evidence Act, cap 8 is to the effect that *"he who alleges must prove."*

Learned counsel for the defendant assailed the competence of the whole suit, submitting that in absence of a sale agreement or a deed of gift inter vivos, or letters of administration, the plaintiff is precluded from claiming the estate of his deceased father. Learned counsel cited for court **Section 191** Succession Act as amended for the proposition that;

> *"No right to any part of the property of a person who has died intestate shall be established in any court of justice unless Letters of Administration have first been granted by a court of competent jurisdiction."*

Israel Kabwa.-Vs-Martin Banoba Musiga civil appeal no. 52/1995 while resolving a ground of appeal in relation to an objection regarding the locus standi of the plaintiff/beneficiary to bring the suit in the trial court, whereas without a letters of administration TSEKOOKO. J. S.C. held:

> *"…would still fail in my view even if no letters of administration had been obtained because the respondent's rights to the land and his developments thereon do not depend on letters of administration…"*

In paragraph 4(a) upto (j) of his plaint, the plaintiff pleaded facts to the effect that he brought his claim in his personal right as a donee of a gift intervivos from his now deceased father, the late, Aryong Anselm.

I have not seen any pleadings or evidence to the effect that the plaintiff seeks to recover property belonging to the estate of his now deceased father, the late Aryong Anselm. Of course, him being a son the late Aryong Anselm also makes him a beneficiary in the 1st degree to the estate of the said late Aryong Anselm, and as held in the ***Israel Kabwa case supra***, he would still sustain the case, even in absence of letters of administration.

But in this case, court is satisfied that the plaintiff in his personal right seeks to recover the land allegedly gifted to him intervivos by his now deceased father. The defendant's objection is accordingly over ruled. **Issue 1** is resolved in the affirmative

Issue 2: Whether the defendant's counter-suit is properly before this hon. Court?

Originally, both defendants were unrepresented lay litigants and filed their Written statement of defence in person whereof they unconventionally pleaded counter claims intertwined with the defence.

O.6 r. 17 of the CPR implores this hon. Court not to reject any pleadings on mere want of form.

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. The counter-claims seek recovery of 10-12 acres of land, declarations of ownership, general damages and costs of the counter claim.

Learned counsel for the plaintiff/counter defendant cited for court **Section 5 of the Limitation Act** for the argument that the 1st defendant is barred by limitation and thus cannot recover the suitland under counter claim and cited for court the case of **Asther-VS-Whitlock (1965) LRIQB** for the proposition that *"…a person who is in possession has a title which is good against the whole world except a person with a better claim.."*

It is trite that a counter-suit is a separate suit whose merits are determined separately, but the evidence has to be considered and analyzed as a whole in resolution of the two cross-disputes.

Unfortunately, learned counsel for the plaintiff did not point out for this court the facts upon which he relies to raise objection that the counter claim is barred by limitation. The plaintiff bears the burden to argue an prove his objection as per **Section 101** of the Evidence Act**.**

That be as it may, I note that the defendants plead specifically in paragraphs 3(i)(ii) and the rest of the pleading facts to the effect that the counter-defendant/plaintiff only came on the suitland around 2017-2018 hence the complaints to the RDC and others.

Section 5 of The Limitation Act, provides for limitation of actions for the recovery of land. It states as follows;

> *"No action shall be brought by any person to recover any land <u>after the expiration of twelve years</u> from the date on which the right of action accrued to him or her or, if it first accrued to some person through whom he or she claims, to that person."*

Under **Section 6 of the same Limitation Act**, it is provided that *"the right of action shall be deemed to have accrued on the date of the dispossession."*

In ***F. X Miramago v. Attorney General [1979] HCB 24,*** Court stated that the period of limitation begins to run as against a plaintiff from the time the cause of action accrued until when the suit is actually filed.

From the pleadings pointed out hereinabove in paragraphs 3(i)(ii) and the rest of the written statement of Defence, this hon. Court is satisfied that the counter claim was filed well within stipulated time. The objection is accordingly overruled and **issue 2** is answered in the affirmative.

<u>Issue 3:</u> To whom does the Suitland belong?

Section 58 of the Evidence Act, cap 6 provides that a fact in issue can be proved by direct oral testimony, save for the contents of a document.

In ***Haji Asuman Mutekanga –Vs- Equator Growers (U) Ltd, S.C. Civil Appeal No.7 of 1995,*** it was stated that it is trite law that strict proof

does not necessarily always require documentary evidence. Oral testimony is good evidence to prove a fact in issue.

Section 57 of the Evidence Act, cap 8 Laws of Uganda, 2023 revised edition provides that facts admitted need not be proved.

From reading the plaint and the written statement of defence, the plaintiff's claimed rights *prima facie*, accrue from a gift inter vivos, while the defendants claim that the total land measuring 12 acres constitutes part of and is the property of the estate of late Adocor Girifansio, the father of the 1st defendant.

Regarding the sale agreement of the said contested land, learned counsel for the plaintiff pointed out testimony of Pw2 to the effect that it is the RDC of Pallisa who violently took away the original in the meeting convened on the 24th August, 2017 and that Pw2 clarified that the 4 acres contested land did not constitute part of the land inherited by the 1st defendant as heir, since the same had already been sold several years ago.

Regarding the validity of acquisition of the claimed interest in the suitland, learned counsel for the plaintiff cited for court, and I agree with him as regards the case of **Gabriel Mugambwa _VS Bwambale HCCS NO. 359/1992 (unreported)** for the proposition that in Uganda, land can be acquired by purchase, gift or inheritance and the case of **Mariko Matovu and others –VS- Sseviri and anor (1979) HCB at 174,** whereof **Ssekandi, J** held that customary rights may be established by the cultivation of crops, grazing of animals and establishment of wells for cattle and such rights are protected by law.

However, learned counsel for the defendant submitted in reply thereto first by pointing out to court the burden and standard of proof placed upon the plaintiff under sections 101, 102 & 103 of the Evidence Act and also cited **Maganja Hussein _VS- Mubiru Christopher HCCS NO. 129 OF 2010** in support thereof. Learned counsel for the defendants also pointed out for court that the plaintiff failed to adduce the purported sales agreement of 1978, upon which the plaintiff's father purportedly purchased the Suitland and neither did the plaintiff adduce a gift inter vivos deed in his favor for the alleged 28th December, 1982. He further emphasized the principle that ***"...lands are not vegetables and are not bought from unknown sellers..."*** and in support thereof, he cited **Hajji Nasser Katende –VS- Vithalindas Halindas & Co. Ltd CACA No. 084 of 2003** and **Taylor –VS- Stibbert (1803-13) ALLER 432.**

I am inclined to agree with learned counsel for the defendant.

This court is aware that **Under Section 60** of the Evidence Act cap 8, contents of a document are to be proved by primary evidence.

This is sometimes called the ***parole evidence rule.*** It is settled as a general rule that no oral evidence which purports to testify to or vary the contents of a document is to be admitted.

I am also aware that this rule has exceptions. Unfortunately for the plaintiff, no such exceptions were pleaded, let alone, proved to this court. It appears to me that the oral testimony to the effect that the sale agreement was taken away by the RDC was only introduced in evidence yet unsupported with pleadings. It seems to me to have been an afterthought.

I note that In paragraph 4(d) of his plaint, he pleaded that he had attached the said sale agreement as **Annexure "A"** to a suit he filed on 20th January, 2018 whereas the meetings through which the same was withdrawn from him were conducted in May, June, July and August of 2017 as per paragraph 4(e) of his plaint.

While the plaintiff meticulously pleaded how the meetings with the RDC transpired and how, allegedly, he was allegedly coerced to sign documents renouncing his claim over the suitland, I have not seen anywhere where he states that the said sale agreement was also taken away from him as he testified.

It is settled that parties are bound by their pleadings. In the case of **Mohan Musisi Kiwanuka SCCA No. 14 of 2002** and **A.N Biteremo Vs Damascas Munyandasituma C.A No. 15 of 1999,** it was stated that**:**

> *"… a party's departure from pleadings is good ground for rejecting the evidence and such a litigant might be taken to be a liar…"*

As a general rule, relief not grounded in pleadings cannot be granted by a court of law.

Having failed to plead how and why the said sale agreement could not be exhibited in court as to be afforded the exceptions to the general rule leaves this court no choice but to presume that none existed in the first place.

As the plaintiff's now deceased father's purported interest acquired by way of purchase, was not proved, none could have validly been gifted to the plaintiff.

I also note that the plaintiff did not exhibit any such gift intervivos deed.

In the alternative, the plaintiff submitted that he is protected by the doctrine of adverse possession, the 1st defendant having not challenged him for more than 12 years and that the counter claim is time barred.

In resolution of Issue 2, I have already found that the counter claim is not time barred and as such, the plaintiff's plea of adverse possession cannot be sustained.

The 1st defendant led unchallenged evidence to show that the whole suitland measuring approximately 12 acres belonged to the estate of his now late father. Even the plaintiff admitted that fact, while pleading that the 1st defendant's father is the one who sold to his(plaintiff's) father.

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.**

According to **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 added for emphasis].

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 that the land originally belonged to the now deceased 1st defendant's father, the plaintiff is estopped from denying the same and the 1st defendant is duly discharged under **Section 28 and 57 of *The Evidence Act* cap 8, Laws of Uganda, 2023 revised edition** from adducing any further proof thereof.

Having failed to establish how the plaintiff acquired his claimed rights, it is the finding of this court that the suitland forms part of the estate of the 1st defendant's now deceased father.

In conclusion therefore, I find as a matter of fact that the suit land forms part of the estate of the 1st defendant's father and the plaintiff is the one trespassing.

In the result, I resolve **Issue 3** in favour of the 1st defendant.

Issue 2: what remedies are available to the parties?

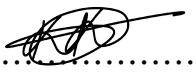
In conclusion, I make the following orders.

1. The plaintiff's suit fails and is hereby dismissed.
2. The defendant's counter claim succeeds
3. A declaration doth issue that the suitland belongs to the estate of the 1st defendant's now deceased father, Adocor Girifansio.
4. The plaintiff is given 5 months from the date hereof to realize harvests from his crops and vacate the suitland.

5. An order of vacant possession is accordingly issued against the plaintiff and the same shall take effect only after lapse of 5 months from the date hereof as allowed in order 4 here above.
6. General damages were not proved and none is granted.
7. I order each party to bear their own costs in the interest of encouraging reconciliation.

I so order.

Dated at PALLISA this ……14th….day of ……JULY……2025



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HIS WORSHIP KYEMBE KARIM

LEARNED MAGISTRATE GRADE 1