

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA

HOLDEN AT JINJA

CIVIL SUIT NO.MT.4 OF 1992

OSUNA OTWANI ::::::::::::::::::::::::::::::::::::::: PLAINTIFF

V E R S U S

BENARD SATSI & 11 OTHERS ::::::::::::::::::::::::::::::: DEFENDANTS

BEFORE: THE HON. MR. JUSTICE C.M. KATO

J U D G M E N T

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The plaintiff in this suit is one Osuna Otwani. The defendants are:- 1. Benard Satsi, 2. Moses Masaba, 3. Francis Magambo Emase 4. Raimond Emase, 5. Alex Mutai, 6. David Onyimbo, 7. Hanington Mauda, 8. Gerald Sitete, 9. Peter Okojo, 10. Timothy Aigido, 11. Simon Bukai and 12. Sophia Betty. Apart from the first defendant Benard Satsi all the remaining 11 defendants were served with summons to enter an appearance but none of them entered any appearance nor did any of them file any written statement of defence. The plaintiff through his counsel decided to discontinue the suit against the first defendant, apparently because that particular defendant's whereabouts were unknown and personal service could not be effectively effected upon him; the discontinuation is contained in a notice addressed to the District Registrar Jinja dated 30/11/92. This judgment does not therefore affect the first defendant but it is relevant in respect of the remaining 11 defendants.

In his plaint the plaintiff is complaining that the defendants have trespassed upon his land comprised in leasehold Register No.50956 Volume 619 folio 1. The plaintiff is praying for vacant possession of the suit property, mesne profits, general damages, interest at court rate and costs of this suit.

As pointed out earlier in this judgment none of the 11 defendants who were served with summons to enter appearance ever entered appearance or filed any written statement of defence as a result of that failure to enter an appearance and to file a written statement of defence the plaintiff, by his letter to the District Registrar of Tororo dated 18/9/92, applied for and obtained an interlocutory judgment on 1/10/92, against the 11 defendants in favour of the plaintiff under the Provisions of Order 9 Rule 6 of Civil Procedure Rules. This matter is now before me for the purpose of assessment of damages.

The only witness who testified in this case was the plaintiff himself Osuna Otani (PWI). In his evidence he stated that in 1989 he bought the suit property from a halfcast called Kohli, he paid 20,000,000/= for the land. The land is near Malaba bridge. After payment for the land the property was transferred into his names as per annexure A to the plaint. After he had got the land transferred to him the defendants started cultivating it and erecting houses on it, he gave them notice to leave his land but they refused. As a result of that interference he has been unable to develop his piece of land which covers some 210 acres.

According to the certificate of title (Annexure A to the Plaint) there is no doubt over the plaintiff's proprietary interest in the land. According to the Annexure the land was transferred to him under instrument NO.241612 on 17/10/89. In the absence of any piece of evidence to the contrary I hold that the plaintiff is the lawful owner of that piece of land comprised in leasehold register NO.50956 Volume 619 Folio 1 situated near Malaba bridge. Being the lawful owner of the land the plaintiff is entitled to quiet enjoyment of his land. I believe the plaintiff when he says in his evidence that the 11 defendants have entered upon his land without his consent and have refused to quit it despite his notice to them to do so.

The defendants are certainly trespassers upon plaintiff's land and they must be evicted from it by all lawful means; in other words the plaintiff is entitled to an eviction order which he has craved for in his plaint.

Regarding the issue of mesne profits, the plaintiff did not advance any credible piece of evidence that he suffered anything in form of mesne profits, the claim for mesne profits is accordingly disallowed.

As for general damages, the plaintiff testified that due to the defendant's acts of occupying his land he has been unable to develop his land which he intended to use for farming and building some houses for renting. I believe that bit of evidence as being truthful. The plaintiff has definitely lost use of his land due to the trespass committed upon it by the defendants. The plaintiff is entitled to damages for all the inconvenience he has suffered as a result of that trespass.

There is, however, the question of how much the plaintiff should get in terms of general damages. The learned counsel for the plaintiff Mr. Majanga suggested a sum of 5,000,000/= as reasonable compensation to the plaintiff for the inconvenience ~~might have~~ ~~he~~ suffered. I find that figure too high in the absence of any explanation as to the exact extent of plaintiff's losses, although it is admitted that he was inconvenienced in one way or other. The land is said to be about 210 acres but its real economic value is not known; considering all the circumstances of this case, in particular the time the defendants have been on the land unlawfully, I feel that an award of 990,000/= for general damages will sufficiently compensate the plaintiff for the inconvenience he has suffered at the hands of the defendants. Each defendant is accordingly to pay the plaintiff 90,000/= general damages.

In final conclusion judgment is entered against each of the 11 defendants in favour of the plaintiff. Each defendant is to pay the plaintiff 90,000/= (total being 90,000/= X 11 = 990,000/=) with interest at court rate from date of judgment till payment in full. The defendants are to pay to the plaintiff costs of this suit. It is hereby ordered that the defendants do leave the plaintiff's land immediately, failure to do so they are to be evicted forthwith by the lawful authorities. So be it done.

[Signature]
C.M. KATO
J U D G E
16/8/93.

16/8/93 Obel Majanga for plaintiff.
Plaintiff is present.
Defendants absent.
Baligeza Moses court clerk.

COURT: Judgment is delivered,
Signed and dated.

C.M. KATO
J U D G E
16/8/93.