

**THE REPUBLIC OF UGANDA**  
**IN THE COURT OF APPEAL OF UGANDA AT KAMPALA**

[*Coram: Egonda-Ntende & Musota, JJA and Kasule Ag. JA*]

**CIVIL APPEAL NO. 249 of 2017**

(Arising from High Court Civil Appeal LD No.15 of 2016)

(Arising from Civil Suit LD No. 29 of 2011)

**BETWEEN**

Kasese District Local Government Council =====Appellant

**AND**

1. Baluku Luciano Buhaka	}	=====Respondents
2. Masereka Julius		
3. Bamwite David		
4. Emmanuel Buhaka		
5. Marahi Julius		

*(On appeal from the judgment of the High Court of Uganda, (Oyuko Anthony Ojok, J.,) delivered on 1<sup>st</sup> June 2017 at Fort Portal.)*

**Judgment of Fredrick Egonda-Ntende, JA**

**Introduction**

[1] This is a second appeal, against the decision of the High court in Civil Appeal No 15 of 2016. The respondents instituted Civil Suit No. 29 of 2011 in the Chief Magistrate's court at Kasese against the appellant for trespass seeking an eviction order, a declaration that the suit property belongs to the respondents, a permanent injunction against the appellant and damages.

- [2] The respondents' case is that they are beneficial owners of customary land measuring approximately 4.6 hectares located in Kisagazi, Nyakasanga 1 Parish, opposite the civil aviation airfield in Kasese Municipal Council. The respondents claim to have inherited the land from their father, the late Stephen Kule as a gift *inter vivos* in 2000 who had been using the suit property uninterrupted. The respondents also claim that upon inheriting the suit property, they continued cultivating seasonal crops and later deposited building material to construct houses on the land but they were stopped by the appellant's agents.
- [3] The appellant on the other hand claims that the suit property is government land that was formerly owned by the Ministry of Agriculture, Animal Husbandry and Fisheries but following the policy reforms of privatization, decentralization, divestiture and democratization, the Government divested of itself of the suit property which was formerly a class 1 agricultural workshop and handed it over to the appellant for developmental purposes.
- [4] The trial court in its decision found that the respondents are the owners of the suit property and that the appellant was a trespasser. The trial court awarded damages of UGX 20,000,000 to the respondents and ordered that the file be forwarded to the High court for purposes of cancellation of the freehold title in the names of the appellant. The appellant being dissatisfied with the decision of the trial court appealed to the High Court on the following grounds:

'(1) The Learned Trial magistrate erred in law and fact when he failed to evaluate the evidence on Record that the Appellant/Defendant/The Central Government is the owner of the suit property and had operated a mechanized Agricultural workshop on the suit land and therefore had been in occupation of the land as far back as the 1950's.

(2) The Learned Trial Magistrate erred in law and fact when by holding that the Respondents/ Plaintiffs were *bona fide* occupants of the suit.

(3) The Learned Trial Magistrate erred in law and fact by holding that Respondents/ Plaintiffs are customary owners of the suit land.

(4) The Learned Trial Magistrate erred in law and fact when he held that the Appellant/ Defendant was falsely laying a claim and are therefore trespassers on the suit land.

(5) The Learned Trial Magistrate erred in law and fact when he held that the Appellant's/Defendant's Title to the land **(LRV 143 Folio 23 Plots 176-186, Kabarole Road)** was obtained fraudulently and therefore should be cancelled.

(6) The Learned Trial magistrate erred in law and fact when he held that the suit land was not available for leasing to the Appellant/Defendant.'

[5] The first appellate court found that the appellant was the owner of the suit land and allowed ground no.1. At the same time, it found that the respondents are *bona fide* occupants of the suit property and that their interest in the suit property as *bona fide* occupants supersedes the registered interest of the respondents. The learned appellate judge upheld the decision of the trial court and dismissed the appeal with costs. He ordered for the cancellation of the certificate of title held by the appellant. Being dissatisfied with the decision of the first appellate court, the appellant has now appealed to this court on the following grounds:

'(1) The Learned Judge erred in law when declared the respondents to be the customary owners of the suit land and that it was not available for leasing to the Appellant yet in resolution of Ground 1, he declared the appellants the rightful owners of the suit land comprised in FRV 143 Folio 23 Plots 176-186.

(2) The Learned Judge erred in law by ordering the cancelling of Certificate of Title for property comprised in FRV 143 Folio 23 Plots 176-186 registered in the names of the appellant after declaring it (the appellant) the lawful owner of the property.

(3) The Learned Judge erred in law when he declared the appellant trespassers on the suit having declared them the lawful owners of the suit property.

(4) The Learned Judge erred in law when he attributed fraud on the part of the appellant yet it had not been specifically pleaded and tried.

(5) The Learned judge erred in law in finding that the respondents were *bona fide* occupants on the suit land yet the same, as he found in the resolution of ground 1 the appeal is and has always been occupied by the Appellant who is the registered proprietor.’

[6] The respondents oppose the appeal. And they filed a cross appeal on the sole ground below:

‘1. The learned trial judge erred in law and fact when resolving the 1<sup>st</sup> ground of appeal held that the appellant is the lawful owner of the suit land and been in occupation as far back as the 1950’s.’

#### **Submissions of Counsel**

[7] At the hearing, the appellant was represented by Mr. Kiryaye Samuel while the respondent was represented by Mr. Ahabwe James and Mr. Nahinda Enock.

[8] Counsel for the appellant in his submission relied on section 3 (1) of the Land Act and Kampala District Land Board and Another v Venansio Babweyaka and Others [2008] UGSC 3 to define customary system of land ownership. Counsel for the appellants argued that the respondents did not prove that they had a customary interest in the subject land.

[9] Mr. Kiryaye submitted that the appellant produced a certificate of title in court to prove that it is the rightful owner of the suit property. He was of the view that a certificate of title, in absence of fraud attributed to the transferee is conclusive evidence of ownership. Counsel for the appellant submitted that having found that the appellant was the lawful owner of the suit property, it was a reasonable conclusion that the appellant’s act of processing the certificate of title was consistent with the appellant’s right of ownership.

[10] Counsel for the appellant stated that trespass occurs when a person makes an unauthorized entry upon land and thereby interferes with another person’s lawful possession of the land. He referred to Justine E.M.N. Lutaya v Stirling Civil Engineering Company Ltd [2003] UGSC 39. Counsel for the appellant argued that the appellant is the lawful owner of the subject land and therefore could not have made an unlawful entry unto

