



have not filed their respective defences to the counterclaim. However, I have looked at the Court record, and there is no evidence of service on them the said 2<sup>nd</sup> amended written statement defence and a counterclaim. It appears to me that the said defendants by counterclaim were never served. If that is so, I directed that the defendant/plaintiff by counterclaim serve the 2<sup>nd</sup> and 3<sup>rd</sup> defendants by counterclaim with the counterclaim within seven (7) days from the date of this ruling.

In his written statement of defence, paragraph 2 thereof, the defendant raised a preliminary objection based on the following grounds:-

- (i) The plaintiff's Certificate of title relating to Land comprised in Leasehold register volume 1570 Folio 15 Buwekula Block 389 plot No.5 as to 200.00 hectares of land at Kisombwa estate Mubende District is tainted with illegality. The illegality referred to herein is more particularly contained in paragraphs Nos. 3; 4 (a) to 4 (g); 5 and 6 of the defendant's affidavit in reply dated 25/06/2012, copy of which is annexed hereto marked annexure "A".
- (ii) The defendant is the registered proprietor of the suit land comprised in leasehold register volume 1556 Folio 10 Buwekula Block 389 plot No. 4 as to 1067.00 hectares of land at Kisombwa estate Buwekula Mubende District; and is in possession of a valid certificate of title; upon which land the defendant physically occupied and his cattle started grazing since 1978. The defendant's lease was duly registered by the Commissioner for Land Registration on 30/3/1987, under Instrument No. 229995. As his leasehold certificated of title LRV. 1556 Fol. 10 annexed hereto marked annexure "B" shows.
- (iii) The defendant states that, contrary to the wild and false allegations contained in paragraph Nos. 4; 5; 6; 7; 8 (a); 8(b) and 9 of the registered amended plaint; the plaintiff who was registered as a transferee/ proprietor of the suit land on 15/11/1999 under Instrument No. 305351 as his leasehold certificate of title volume 1570 Folio 15 annexed to the 2<sup>nd</sup> amended plaint marked annexure "A" shows: cannot sustain an action in trespass to the suit land against the defendant; who occupied the suit land before him in 1978. If anything, it is the plaintiff who holds a "fake" and "fake title" who is a trespasser on the defendant's land as the survey reports documents Nos. 21 and 22 referred to in paragraph No. 4 (b) (v) below show.
- (iv) The Commissioner for Land Registration erroneously /fraudulently registered the plaintiff as proprietor of the suit land on 15.11.1999 under Instrument No. 305351

by virtue of a document purporting to be a transfer of land; but which document was signed by only two (2) joint tenants: (i) Yokana Kashamba and (ii) Eria Ndiisa without the concurrence of George Rwiguta the 3<sup>rd</sup> joint tenant/ registered proprietor who the plaintiff told this Hon. Court to the effect that at the material time of the sale/transaction he was dead. Hence, the registration of the plaintiff's transfer of sale over the suit property without the signature of George Rwiguta: a 3<sup>rd</sup> joint tenant was null and void ab initio.

- (v) The plaintiff's claim for special and general damages of the total sum of Shs. 2, 401,600,000/= against the defendant on the basis of an illegal and void certificate of title is unsustainable.

The analysis of the above grounds that form the preliminary objection raised are grounds based on issues of fact and to a small extent mixed with law. There is therefore a need for the parties to adduce evidence to prove them true or untrue as the case may be.

I have considered the submissions by both counsel for the parties. What is crystal clear is that the plaintiff is claiming that his land is comprised in LRV 1570 Folio 15 Buwekula Block 389 plot 5, land at Kisombwa estate Mubende District. Whereas, the defendant in his pleadings is claiming that he is the registered proprietor of the land comprised in LRV 1556 Folio 10 Buwekula Block 389 plot 4 land at Kisombwa estate Buwekula, Mubende District. Each party has a certificate of title for a piece of land he claims as described above. The issue at stake now is who is the rightful owner of the suit land as among the two claimants, that is, the plaintiff or the defendant.

Since, there are two different certificates of title for the same suit land, there is need for the parties to adduce evidence to prove whether the suit land is LRV 1570 Folio 15 Buwekula Block 389 plot 5 on the part of the plaintiff or LRV 1556 Folio 10 Buwekula Block 389 plot 4 on the part of the defendant. After ascertaining that, then the legal points raised by Counsel for the defendant in the above stated grounds of the preliminary objection shall come into play. I hasten to add that, however, the legal documents availed by the defendant in his pleadings and submissions speak for themselves and definitely the same documents must have put the plaintiff and his Counsel on serious notice. I advise counsel for the plaintiff to study the said documents with a view to advise his client on the way forward of his suit.

I also take note that the legal points the defendant raised in his defence, he has at same time pleaded them in his counterclaim. The plaintiff in his reply denied all the allegations of the defendant/1<sup>st</sup> plaintiff by counterclaim in the counterclaim. The issues raised by the said pleadings are issues of law and fact. In that regard, therefore, there is need for parties to adduce evidence in support of their respective cases. I, hence decline to entertain the preliminary objection raised by Counsel for the defendant at this point in time, as the said objection cannot dispose of the entire suit in the plaint and that of the counterclaim.

I would advise the parties to use the documents submitted upon by Counsel for the defendant in a bid to settle this matter out of Court in order to save time and costs of the suit. From the pleadings of the plaintiff and those of the defendant, together with the documents referred to by both parties, this is a case which should be settled by the parties out of Court. However, the aforesaid is besides the point if the parties prefer litigation to an amicable settlement of their dispute, so be it.

In the result and for the reasons given hereinabove in this ruling, the suit and the counterclaim shall proceed on a full hearing after scheduling conference on 28<sup>th</sup> August, 2012 at 10:00am.

Dated at Kampala this 22<sup>nd</sup> day of August, 2012.

sgd  
**Murangira Joseph**  
**Judge**