

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(CIVIL DIVISION)
MISCELLANEOUS CAUSE NO 419 OF 2017

NABAASA VICTORY:.....APPLICANT

VERSUS

- 1. EDWARD OCHOM**
- 2. TUGUME EZRAGENERAL :.....RESPONDENTS**

BEFORE: HON JUSTICE SSEKAANA MUSA

RULING

The Applicant brought this Application under Article 26 & 50 of the Constitution, Section 3(1), 4, 9, 10 & 14 of the Human Rights (Enforcement) Act, 2019 and Rules 6(1)(a), 7((1), 8 & 11 of the Judicature(Fundamental & Other Human Rights & Freedoms(Enforcement Procedure) Rules, 2019 seeking the following orders that;

1. A declaration that the continued respondent's interference with the applicant's rights quiet possession of property infringes upon and or threatens the applicant's Constitutional right to property guaranteed under Article 26 of the Constitution of the Republic of Uganda.
2. A permanent injunction restraining the Respondents from any further infringement upon and/or threatening of applicant's Constitutional right to property guaranteed under Article 26 of the Constitution.
3. General damages to be paid to the applicant for inconveniences caused due to the actions afore stated.
4. The respondents to pay the applicant costs of this application.

The grounds of this application are specifically set out in the affidavits of **Nabaasa Victory-the applicant**, Tumwesigye Moses and Kabagambe Moses which briefly states;

1. That the applicant is the registered owner of land comprised in Busiro Block 438 Plot 132 and Busiro Block 444 Plot 161 situate at Nkumba Wakiso district since 4th December 2017 having purchased the same from Wycliff Kigundu Kato.
2. That since then the applicant occupied the land through his agents Tumwesigye Moses and Kabagambe Moses who maintained the place and constructed a fence around it and later hired armed guards from Guard Force Security and Investigation Services Limited to guard the premises on her behalf.
3. That on 17th February 2021, the 1st respondent wrote to Guard Force Security & Investigation Services Limited instructing them to withdraw guards from the suit land.
4. The 2nd respondent on 22nd February 2021 commanded a police patrol car which deployed seven policemen and evicted both armed guards and the agents thus interfering with the applicant's possession and enjoyment of the said property replacing them with policemen.
5. The respondents have no legal claim of right on the said property.
6. That it is in the interest of protecting fundamental Human Rights, rule of law, just and equitable that the application is allowed.

In opposition to this Application the Respondents through the 1st Respondent an Assistant Inspector General of Police, Director Operations in Uganda Police Force- Edward Ochom filed an affidavit in reply wherein they vehemently opposed the grant of the orders being sought briefly stating that;

1. That the police deployed on land comprised in Busiro Block 438 Plot 890 to prevent criminal trespass related clashes and not Busiro Block 438 Plot 132 and Block 444 Plot 161 as alleged by the applicant.
2. That several complaints have been filed with police in respect of this land by different persons-Kalule Oscar and Nabaasa Victory vide CRB/136/2020, CRB 456/2020 and CRB 457/2020.
3. In an attempt to establish the ownership of the disputed land, on 18th February, 2020, the Principal Staff Surveyor in the Ministry of Lands, Housing and Urban Development, submitted a boundary opening report which established that Block 444 and 438 are adjacent to each other, Plot 161 lies in Block 444, Plots 132, 890 and 891 lie within Block 438 and Plot 161 is different from Plot 132.
4. That when the three case files *Entebbe CRB 136/2020. Uganda v Nabasa Victory & 7 others*, *Entebbe CRB 456/2020 Uganda v Kalule Oscar*, and *Entebbe CRB 457/2020, Uganda v Kalule Oscar*, were sent to the Directorate of Public Prosecutions (DPP) for perusal and advice, the DPP, in a letter dated December 21st, 2020, advised police that;
 - i) *The Parties desist from entering the other plots of land as such trespass shall constituted an offence and liable for court action.*
 - ii) *The complainant be given quiet possession of his land as per the clearly demarcated boundaries in the Principal Staff Surveyors Report as well as the Sketch Plan on record.*
 - iii) *The case file be resubmitted for a final decision after ensuring that the complainant has been given quiet possession of his land.*
5. On 15th February, 2021, AIGP Twarihuka Erasmus on behalf of the Inspector General of Police wrote to the Divisional Police Commander, Entebbe Police Division instructing him to ensure that the private armed guards on the land be removed and the registered proprietor be given quiet possession as instructed by the Director of Public Prosecutions.

6. On 17th February, 2021-AIGP-Edward Ochom as Director Operations wrote to the private security firm, Guard Force Security & Investigations Ltd, instructing it to remove its guards from the suit property in the presence of the DPC Entebbe Division, under the police directive to Private Security Organisations against interference with civil disputes.
7. The deployment was intended to prevent criminal trespass and clashes between the two parties and it was in the interest of justice and rule of law.

The Applicant was represented by *Noel Nuwe and Franklin Byekitinisa* while the respondents were represented by *Mugisha Moses* (State Attorney).

The parties were given timelines for filing submissions but it appears they have both failed to file submissions. This court shall proceed to determine the matter on the evidence available on court record.

There was an application for joinder of parties to this application and I have deemed it unnecessary to hear it and in the interest of time the determination of this suit will render the application for joinder irrelevant and unnecessary.

Whether the Applicant's right to property was violated by the respondents?

The right to property or the right to own property is often classified as a human right for natural persons regarding their possession.

The applicant is aggrieved by the actions of the respondents who are both serving police officers for deploying on his land and causing the removal of the private security guards hired by the applicant together with her two agents who were deployed on the land.

The Police officers deployed on the same land upon guidance and advice of the Director of Public Prosecutions since the applicant and other persons were all claiming ownership of the different plots of land and according to their evidence it was to forestall any potential criminality that would arise between the two parties.

The police are mandated to keep law and order and any actions rooted from their core mandate under Article 212 of the Constitution can never be interpreted as an infringement of rights of parties. The functions of the Uganda police Force shall include;

- (a) To protect life and property;
- (b) To preserve law and order;
- (c) To prevent and detect crime; and
- (d) To cooperate with civilian authority and other security organs established under this Constitution and with this Constitution and with the population generally.

The applicant's claim to property whether rightly or wrongly has been put in question, therefore the applicant's right to property to enforce any claim to use or benefit of it is in dispute. The police once approached through a complaint must investigate the rivalrous claims and the exclusive enjoyment of the property will definitely be interfered with. The actions of the police officers in such circumstances cannot be deemed to have infringed upon the applicants right to property.

There were several case files *Entebbe CRB 136/2020. Uganda v Nabasa Victory & 7 others*, *Entebbe CRB 456/2020 Uganda v Kalule Oscar*, and *Entebbe CRB 457/2020, Uganda v Kalule Oscar*, were sent to the Directorate of Public Prosecutions (DPP) for perusal and advice, the DPP, in a letter dated December 21st, 2020, advised police that;

- I. The Parties desist from entering the other plots of land as such trespass shall constituted an offence and liable for court action.*
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- III. The case file be resubmitted for a final decision after ensuring that the complainant has been given quiet possession of his land.*

The police as part of the Executive arm of government have a duty to secure the property rights under Article 26 of the Constitution. The police power is the

power of government to secure the citizens and their property rights. But the exercise of police power is legitimate only in so far as it is used to secure rights and prevention of commission of crime. The use of police power cannot be used for non-police power purposes. It is a power mainly to secure property rights through restraints or sanctions and not some general power to act arbitrarily with bias and malice between complainants. The police power is thus limited to that extent.

Therefore, police must orient themselves and always operate in a manner consistent with the Constitution and the laws of Uganda. This is premised in the fact that the police serve the public and they are accountable to the public they serve.

There is no justification for the claim that the respondent in their capacity as police officers interfered with the applicant's quiet possession of property or threatened the applicant's constitutional right to property guaranteed under Article 26 of the Constitution. The respondents are law enforcement officers who are under conditions stipulated by law and competent to use police powers in prevention of crime like in the present case.

The actions of the respondents were within their constitutional parameters of ensuring law and order and thus avoiding commission of crimes by the two parties (Nabaasa Victory and Kalule Oscar).

What remedies are available to the parties?

This application fails and is dismissed with no order as to costs.

I so order.

SSEKAANA MUSA

JUDGE

30th July 2021