

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)
CIVIL APPEAL No.043 OF 2022
(Appeal from Civil Suit No.11 of 2015)

KYAMUMI SARAH ::: APPELLANT

VERSUS

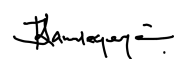
NABABI MARGARET ::: RESPONDENT

BEFORE; HON. LADY JUSTICE NALUZZE AISHA BATALA

JUDGEMENT

Introduction;

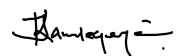
1. ***Kyamumi Sarah*** herein after referred to as the Appellant brought this appeal against ***Nababi Margaret*** herein after referred to as the respondent appealing against the decision of Her Worship Basemera Sarah Anne Noah of Makindye Chief Magistrate's Court in civil suit no.11 of 2015 delivered on the 3rd day of May 2022, by which judgment was entered in favour of the Respondent (defendant in the lower court) against the appellant (plaintiff in the lower court) for; orders that the respondent /defendant is the



rightful owner of the kibanja situate at Sembabule village, defendant found not to be a trespasser on the suit land, permanent injunction restraining the plaintiff from trespassing, wasting, alienating, damaging or developing the suit land, general damages and costs of the suit were provided to the respondent/defendant.

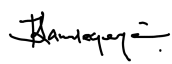
Background;

2. At the lower court, the appellant sued the respondent for trespass on the suit kibanja measuring 17 by 44 by 12 fit located in Sembabule village, Kabowa, Rubaga Division, Kampala District, for orders evicting the defendant from the suit land, permanent injunction restraining the defendant agents or servants from further trespassing on the suit land, general damages and costs of the suit.
3. The appellant's case was that she purchased the suit land on the 17th day of August 2012 from the late Nababi margret who was the defendant's aunt at an agreed sum of UGX 2,500,000 (two million five hundred thousand shillings only) which the appellant paid in full as agreed upon in the sales agreement marked PEX1.



4. It was agreed between the parties that the appellant would take immediate possession of the suit property upon payment of the full purchase price.
5. The appellant alleged that around 2014, the defendant trespassed on the suit land and had it fenced. The defendant alleges that she is the heirness and beneficiary to the estate of her late aunt Nababi Margaret and letters of administration were attached on court record which were never contested by the plaintiff.
6. The defendant/respondent alleged that the late never disposed off or sell her land when she was still alive and at the time of her death, she had complained of the conflicts regarding the land to the area chairperson Kitebi police station.
7. The trial court entered judgment for the respondent and awarded the reliefs mentioned earlier.
8. Being dissatisfied with that decision, the appellant appealed on the following grounds, namely; -
 - i) The learned Trial Magistrate erred in Law and fact when she failed to distinguish the suit land and the estate of the Deceased.



- ii) The learned Trial Magistrate erred in law and fact when she disproved the plaintiff's sales agreement because the chairman had no copy on his file.
- iii) The learned Trial Magistrate erred in law when she disproved the plaintiff's sales agreement because there was no attestation by any witness filed on record.
- iv) The learned Trial Magistrate erred in Law and fact when she failed to evaluate the plaintiff's evidence in as far as ownership of the suit property is concerned.
- v) The learned Trial Magistrate erred in law and fact when she entered judgement in favor of the Defendant/respondent for ownership of the suit land and costs without considering all the evidence adduced by the plaintiff.
- vi) That the learned Trial Magistrate erred in law and fact when he failed to exercise his discretion judiciously thereby arriving at a wrong conclusion.
- vii) That the Trial Magistrates erred in law when she concluded that all records on court file proves that the defendant is the right full owner of the suit land 

- viii) That the learned Trial Magistrate erred in in law and facts when he came out with the conclusion that the sales agreement presented by the plaintiffs to court was tainted with very many inconsistencies and it was not signed by witnesses on its face.
- ix) That the learned Trial Magistrate erred in law and facts when she concluded that it was a misrepresentation in the sales agreement because in the usual practice of sales agreement the neighbors of the land are supposed to be present.
- x) The Learned Trial magistrate erred in law when she held that there was illegality in the sales agreement because it was not attested.

Representation;

9. At the hearing of the appeal, the appellants were represented by Mr. Kakeeto Denis of M/S Denis Kakeeto Advocates and there was no representation from the respondents despite being served. In arguing the appeal, counsel for the appellant addressed grounds 1 separately, 2,3,8,9 & 10 together then addressed grounds 4,5,6 & 7 lastly.



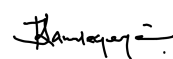
10. The appellant filed submissions in support of the appeal whereas the respondent did not file submissions opposing the appeal despite being served with the same.

Duty of the appellate court;

11. This being a first appeal, this court is under an obligation to re-hear the case by subjecting the evidence presented to the court below to a fresh scrutiny and re-appraisal before coming to its own conclusion. **(See; Nanensio Begumisa and three others vs Eric Tiberaga SCCA 17 of 2000)**

12. It is a well-settled principle of law that on a first appeal, the parties are entitled to obtain from the appellate court its own decision on issues of fact as well as of law. Although in a case of conflicting evidence the appeal court has to make due allowance for the fact that it has neither seen nor heard the witnesses, it must weigh the conflicting evidence and draw its own inference and conclusions, the nature of this duty was put more appropriately in **Selle vs Associated Motor Boat Co. [1968] EA 123.**

13. An appeal is by way of retrial and the principles upon which this Court acts in such an appeal are well settled, briefly put they



are; that this Court must reconsider the evidence, evaluate it itself and draw its own conclusions, though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect.

14. In particular this Court is not bound necessarily to follow the trial judge's findings of fact if it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on the demeanor of a witness is inconsistent with the evidence in the case generally. **(See; Abdul Hameed Saif Vs Ali Mohamed Sholan (1955), 22 E. A. C. A. 270)**

Power of the appellate court;

15. Section 80 (i) of the Civil Procedure Act Cap.71 grants the high court appellate powers to determine a case to its finality, providing that subject to such conditions and limitations as may be prescribed in the appellate court shall have the power to determine a case finally.
16. The appellate court shall have the same powers and shall perform as nearly as may be the same duties as are conferred and



imposed by the act on courts of original jurisdiction in respect of suits instituted in it.

Analysis and determination of the grounds of appeal;

- i) The learned Trial Magistrate erred in Law and fact when she failed to distinguish the suit land and the estate of the Deceased.

17. Counsel for the appellant in his submissions in support of the appeal states that the trial magistrate failed to distinguish the estate of the late Nababi margret from the suit land and counsel referred to the locus visit conducted by court as stated at pages 30 & 36 of the record of proceedings.

18. Counsel further submits that the late Nababi Margret had sold part of her land to the appellant and requested the LC1 Chairperson to use the proceeds from the sale to help her construct a permanent house in the adjacent plot to the suit land as stated at 78 of the record of proceedings which is PW3 witness statement.



19. Counsel for the appellant submits that the appellant took possession after the purchase of the suit land and informed the seller the late Nababi margret to remove her temporary structures which she later removed and the appellant started pouring sand on the same suit land.

20. By the reading and analyzing of the locus proceedings at page 30 of the record of appeal, the appellant confirmed to court that she had never taken possession of the suit land ever since she purportedly bought the same, the respondent showed court the suit land and how it was a court yard to the main house forming part of the estate of the late Nababi margret and she further stated that that's where she has always lived even when the late was still alive.

21. The trial magistrate at page 36 of the record of proceedings reached to a finding that the appellant had never taken possession of the suit land and observed that the suit land was clearly distinct from the appellant's land and that the suit land had permanent structures including a toilet and some rooms.

22. The LC1 chairperson Mr. Ssematimba Abaasi Kikulumu PW3 in his witness statement at page 78 of the record of proceedings

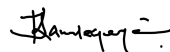


states that the appellant is the owner of the suit land on the basis of the sale agreement executed on the 17th of August 2012 in favor of the appellant by the late Nababi margret.

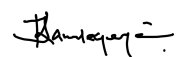
23. The LC1 Chairperson (PW3) stated that he witnessed the said sales agreement and at the same time he is the person who drafted the same as per his testimony during cross examination at page 16 of the record of proceedings.

24. The record has it clearly at page 16 in the testimony of the LC1 chairperson (PW3) during cross examination where he stated that the appellant never took immediate possession of the suit land during the lifetime of the late Nababi Margret, the same LC1 Chairperson in his evidence in chief at page 78 stated the appellant was given vacant possession thereon by the late Nababi Margret upon execution of the sales agreement.

25. At page 17 of the record of proceedings in the testimony of PW3 during cross examination stated that it is not true that the late Nababi sold land to the appellant and that the late never got any copies of the purported sales agreement drafted by PW3 the area LC1 Chairperson who also did not have a copy of the same sales agreement that he drafted.



26. I find inconsistencies and contradictions in the evidence of the area LC1 chairperson (PW3) to be so major that they were intended to mislead court in reaching a fair and just finding.
27. The underlying principle on inconsistencies and contradictions has been stated by courts of law and I will draw reference to the decision in **Oryem David v. Omory Phillip, H.C.C.S No. 100 of 2018** where it was stated that “What constitutes a major contradiction will vary from case to case. The question always is whether or not the contradictory elements are material, i.e “essential” to the determination of the case. Material aspects of evidence vary from case to case but generally in a trial, materiality is determined on the basis of the relative importance between the point being offered by the contradictory evidence and its consequences to the determination of any of the facts or issues necessary to be proved. It will be considered minor where it relates only on a factual issue that is not central or that is only collateral to the outcome of the case.”
28. The reading of the said averment takes me to the point that where the inconsistency is very material and essential to the



determination of the case then it goes to be a major one that cannot be ignored by court.

29. In the instant appeal the evidence of PW3 speaks to the fact that who is the owner of the suit land, the testimony of PW3 is a central factor in determination of this ground as the local authority of the area, however I find the same evidence to be tainted with contradictions that would instead mislead court other than helping court.

30. The findings of the trial magistrate during the locus visit depict the fact that the appellant has never been in possession of the suit land, the same land has never belonged to the appellant since it's the respondent in actual possession of the same with structures thereon.

31. It is my considered opinion that the trial magistrate rightly reached at a just finding that the suit land has never belonged to the appellant and the same formed part of the estate of the late Nababi Margret, the appellant only started claiming possession after the death of the late Nababi Margret, the appellant further never had any structures on the same land and she produced the purported sales agreement after the death of the late Nababi



Margret. If indeed the late intended to give immediate possession of the suit land to the appellant upon execution of the sales agreement, then why didn't the appellant start demanding immediate possession in 2012 after the payment of the full consideration of the suit land, why did the appellant wait until the late Nababi Margret's death to start claiming possession of the said suit land.

32. In the circumstances, having examined ground 1 in detail I resolve the same in the negative, thus ground 1 fails.

Grounds 2,3,8,9 and 10.

33. In submitting on these grounds, counsel for the appellant submitted that the trial magistrate relied on the fact that the LC1 Chairperson drafted and attested the sales agreement PEX1 and never retained a copy of the same to rule that there was no valid sales agreement.

34. Counsel for the appellant also submitted that the trial magistrate relied on the fact that all the witnesses to the sales agreement were the appellant's witnesses and that no neighbor



witnessed the same sales agreement hence reaching at an erroneous decision.

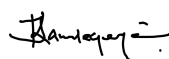
35. For there to be a valid contract as per the definition of the same under section 10 of the contracts act of 2010 there should be a meeting of minds with intentions to create legal obligations between the parties.

36. The objective theory of contracts holds that an agreement between parties is legally binding, if in the opinion of a reasonable person who is not a party to the contract, an offer has been made and accepted. (***See; Flexible Systems Ltd Vs Mokeri Alois Muller (2010)2 All ER.***)

37. A contract is not a contract in the sense of subjective meeting of minds, the existence of a contract is determined by the legal significance of the external acts of a party to the purported agreement since a contract is a series of external acts giving the objective semblance of an agreement.

38. This honorable court will proceed to examine the acts to determine the issue in question.

39. It is captured in the testimony of the appellant at page 12 of the record of proceedings where she clearly states that the respondent



was supposed to render immediate vacant possession of the suit land upon payment of full price in 2012, this is a fact that is collaborated with a clause in the sales agreement marked PEX1, however the appellant waited till 2014 when the purported seller Nababi Margret died to enforce the said sales agreement.

40. Further the appellant in her testimony at page 12 states that she never produced the sales agreement every time she was requested to do so between 2012 whenever conflicts arose regarding the land not until the death of the purported seller Nababi Margret that is when she produced the sales agreement and decided to enforce the same.

41. It is in the testimony of the LC1 Chairperson PW3 at page 16 of the record that the late Nababi Margret reported to police about the conflict surrounding the suit land and police summoned the appellant where she was requested to produce the sales agreement but the appellant never showed up and that she never produced the sales agreement.

42. Further the LC1 chairperson PW3 in his testimony at page 17 states that the late Nababi Margret at all times demanded from him a copy of the sales agreement but he told her that he did not

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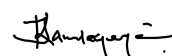
remain with any copy of the same and that it was the appellant who had the copy. The late Nababi Margret facilitated the LC1 chairperson to reach out to the appellant such that the appellant provides the LC1 chairperson with a copy but all failed in vain.

43. The LC1 chairperson clearly states in his cross examination at page 17 that it is not true that the late Nababi Margret sold her land to the appellant and that the appellant at all times failed to produce a copy of the purported sales agreement until after the death of the late Nababi Margret that is when the appellant produced the said sales agreement.


44. This was a contract that was supposed to be effected immediately in 2012 upon payment of the full purchase price, however the same was never enforced until the death the purported seller in 2014.

45. The conduct of the appellant is evident that there existed an intention to deprive the late Nababi Margret of her interest in the suit land.

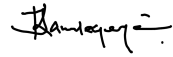
46. In the circumstances therefore, this honorable court is of a finding that there was no sale of the suit land to the appellant, therefore grounds 2,3,8,9 and 10 are answered in the negative.



Grounds 4,5,6 and 7.

47. The spirit of these grounds rotates around ownership of the suit land, something that issue 1 has already covered in my determination of issue 1, I made a finding that the suit land formed part of the estate of the deceased Nababi Margret not the appellant.
48. I am of the view that the averments made under issue 1 completely settle and resolve the grounds hereunder.
49. In the circumstances, I have had the opportunity to examine the entire record, testimonies and evidence of the parties as pointed out in all the grounds upon which the instant appeal is based which I have fittingly resolved. I am satisfied that the trial court arrived at its decision and findings based on very plausible legal principles.
50. The conclusion of this court is that the trial court correctly arrived at its conclusion when it decided in favor of the respondent/defendant in its judgement.
51. In the final result, I find no merit in this appeal which I hereby dismiss with no order as to costs. 

I SO ORDER.



NALUZZE AISHA BATALA

JUDGE

19th /03/2024

Delivered via ECCMIS