

THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
MISCELLANOEUS APPLICATION NO. 224 OF 2017

(Arising from Civil Appeal No. 137 of 2016)

(Arising from Civil Appeal No. 40 of 2014)

1. BYAHUGWAHO ZEBRONE
2. SEMBABULE DISTRICT LAND BOARD ::::::::::: APPLICANTS
VERSUS
NAKABONYE ESEZA ::::::::::: RESPONDENT

CORAM: HON. JUSTICE F.M.S EGONDA NTENDE, JA
HON. JUSTICE STEPHEN MUSOTA, JA
HON. JUSTICE PERCY NIGHT TUHAISE, JA

RULING OF COURT

This application was brought under S.11 of the Judicature Act and Rules 30(1) (b), (2), (3) & (4), 43 and 44 of the Judicature (Court of Appeal Rules) Directions seeking for leave to adduce additional evidence on appeal.

The grounds upon which this application is premised are contained in the affidavits of Tusingwire Paul and Byahugwaho Zebrone.

Briefly, Byahungwaho Zabuloni deponed thus;

1. That I went with one Paul Tusingwire my nephew to the offices of Sembabule District Land Board looking for the application of the 75 acres of land by the respondent and as he was reading the Sembabule District Land Board general file, he discovered this piece of evidence.
2. That he explained to me that the respondent only applied for 35 acres of the suit land and that the additional 40 acres came by surprise on her deed plan.

3. That the said evidence shows that the respondent admitted that she was willing to surrender and transfer the 40 acres to any other person who would apply for the same indicating that she admitted that the 40 acres were not known by her.
- 5 4. That I was sure that the application for 75 acres of the said land by the respondent was just a fraudulent transaction between the respondent, Sembabule District Land Board and not in existence as alleged at the hearing and subsequent appeal before the High Court.(sic).
- 10 5. That the admission by the respondent that she only applied for 35 acres of land and not 75 acres shows that the application forms for rural land upon which judgment was based were not in existence at all.
- 15 6. That the evidence to be adduced is absolutely necessary to enable this court reach a conclusive and just decision concerning all the matters on the outcome of the appeal.
7. The respondent will not in anyway be prejudiced if the application is granted.

In his affidavit, Paul Tusingwire deponed that;

- 20 1. He was together with the 1st applicant when they discovered the document containing the additional evidence to be adduced.
- 25 2. He went with the 1st applicant to the District Land Board to search whether there was indeed proper application for 75 acres of land made by the respondent in 2002 to the District Land Board.
- 30 3. While perusing through the general file for applications, he discovered a document written in the same hand writing as another document tendered in court during the hearing signed by the respondent and stating different things from what she had testified on as the basis of her case.
4. He photocopied the said document dated 10th August,2008.

5. He proceeded to the 1st applicant's lawyer who advised that that piece of evidence depicted fraud which was vital to the case.

5 In the respondent's affidavit in reply, she contends that this application is defective, an abuse of court process and barred in law. That the said strange document dated August 2008 allegedly made by the respondent is denied and has nothing to do with the appeal. She argues that her original cause of action as against the 1st applicant was premised on a claim for 75 acres of land of which the
10 respondent is the registered proprietor.

That the process of acquisition of these 75 acres out of the Residue of Ranch land was commenced in 2002 when an application was made in favor of the respondent and a certificate of title issued in 2008. According to the handwritten application dated August 2008
15 (which is sought to be adduced as additional evidence) it was after she had acquired her certificate of title and is not known to her.

Background

Before considering the merits of this application, we have considered it necessary to give the following background to this application. The
20 appeal in which the applicants seek to adduce additional evidence is a second appeal originating from the decision of the High Court on appeal which upheld the decision of the trial Court. The respondent, who is a wife to one of the former squatters of Ranch No. 49 B Masaka Ranching scheme, is said to have grabbed the piece of land which
25 was occupied and used by the 1st appellant. The respondent obtained a lease over the suit land and later the certificate of Title without any surveys, visitation, public hearing or neighbors consent as required by land law. That the respondent acted fraudulently in the process of acquiring the suit land and by the time the trial court awarded the
30 suit land to the respondent, there was no subsisting lease. The appellant now seeks to overturn the decision of the trial court and 1st appellate court.

The additional evidence intended to be adduced is that:-

- (a) A copy of the Local Council 1 recommendation showing that the respondent has never applied for 75 acres of residue land in Ranch No. 49B but only applied for 35 and somehow found a deed plan of 75 acres.

Representation

At the hearing of the application, Mr. Patrick Yayehangane appeared for the applicants while Mr. Kugonza Enock appeared for the respondent.

Mr. Kugonza raised a preliminary objection that this being a second appeal, this court cannot take additional evidence under rule 30 of the rules of this court. That it is envisaged that taking additional evidence can only be done where the matter came from the High court while acting in its original jurisdiction. That the High court did not have the opportunity to hear and consider what the applicants want this court to consider. Learned counsel prayed that this court rejects this application this being a second appellate court and with costs.

In reply, Counsel Yayehangane submitted that Rule 30 (2) of this court rules allow taking additional evidence.

We have considered the submissions of respective counsel with respect to the preliminary objection raised. We are persuaded by counsel for the respondent's argument with regard to the application of rule 32(2) of the Judicature (Court of Appeal Rules) Directions. The rule clearly prohibits this Court from taking additional evidence while it is hearing appeals emanating from the High Court in exercise of its appellate jurisdiction.

Rule 32(2) of the **Judicature (Court of Appeal Rules) Directions** provides that;

32. General powers of the court.

(2) On any second appeal from a decision of the High Court acting in the exercise of its appellate jurisdiction, the court shall have power to appraise the inferences of fact drawn by the trial court, but shall not have discretion to hear additional evidence.

5 The above rule clearly prohibits this court from taking additional evidence on a second appeal from the High Court acting in its appellate jurisdiction. It envisages the idea that there must be an end to litigation. We agree with counsel for the respondent that this application seeking leave of this court to adduce additional evidence
10 is incompetent in view of the clear provision in R. 32 (2) of the rules of this court and we accordingly dismiss it with costs.

Dated this 25th day of March, 2019

15 Signed



Hon. Justice F.M.S Egonda Ntende, JA

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Hon. Justice Stephen Musota, JA



Hon. Lady Justice Percy Night Tuhaise, JA