

THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
CIVIL APPEAL NO. 134 OF 2013
(Arising from H.C.C.S No. 421 of 2011)

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1. MUSOKE SEMUKAAYA
2. SENOGA DEOGRATUIS
3. KYAZZE LAABAN **APPELLANTS**

VERSUS

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1. M/S LIFE MINISTRY UGANDA
2. AUPAL JOHN ROBERT
3. DAVID WATABA
4. KYARAMPE RHODA
5. STANLEY KYOBE **RESPONDENTS**

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CORAM: HON. JUSTICE CHEBORION BARISHAKI, JA
HON. JUSTICE STEPHEN MUSOTA, JA
HON. JUSTICE PERCY NIGHT TUHAISE, JA

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JUDGMENT OF COURT

This appeal arises from the judgment and orders of Hon. Justice Murangira in Civil Suit No. 421 of 2011.

25 Background

On 18th February 1999, Life Ministry Uganda purchased 1.5 acres of land comprised in mailo Register Kyadondo Block 211 plot 326 from Susan Nakomo Kitaka Gawera. The land was registered in the names of Susan Nakomo Kitaka Gawera. The 2nd, 3rd, 4th and 5th
30 respondents purchased portions off the said land and paid by way of

relinquishing their retirement benefits due to them from the 1st respondent. The land was subsequently subdivided into parcels registered in each of the respondents' names. The respondents filed a suit at the High Court seeking for a declaration that they are the
5 rightful owners of the said land and the appellants/defendants are trespassers. Judgment was entered in favour of the respondents.

The appellants were dissatisfied with the decision of the trial court and filed this appeal on the following grounds;

- 10 1. The learned Judge erred both in law and fact in finding that the appellant's Written Statement of Defence disclosed no reasonable answer to the plaint.
2. The learned Judge erred both in law and fact when he expunged appellant's written submission in reply thereby failing to consider them in arriving at his decision.

15 **Representation**

At the hearing of the appeal, Mr. Godfrey Byekwaso appeared for the appellant while Mr. Ojambo Samuel appeared for the respondent.

Appellant's submissions

It was argued for the appellant that the written statement of defence
20 effectively responded and gave a good answer to the pleadings of the plaintiffs. The trial judge faulted the appellants only for not saying that they were responding to para 5. The appellants pleaded that the respondents derived their title from a special certificate of title which was obtained illegally and fraudulently and the details of this fraud
25 were pleaded which constituted an adverse claim. The appellants claimed to have a title from the person that acquired letters of administration and as such, court ought to have examined both claims.

Counsel relied on **Interfreight Forwarders ltd vs. East African
30 Development Bank S. C. Civil Appeal No. 33 of 1993** where it was held that pleadings are adverse claims or prepositions of facts and law. In addition, the special title attached to the amended plaint indicates that a letter of administration had been granted and on the

other hand, the respondents pleaded that in the same estate, there had not been any letters of administration granted except those that were granted to them. This was also a matter that had to be resolved by court.

5 In regard to expunging from record of the appellant's submissions, counsel argued that documents are effective only when they are filed in court. The letter of withdrawal from the suit by counsel for the defendants was written and signed on the 25th April 2013 and later, the same lawyers filed written submissions on behalf of defendant.
10 This had no negative effect on the appellant's case because the submissions were filed first before the letter of withdrawal.

Respondent's submissions

In reply, counsel for the respondent submitted that this matter was decided on a point of law under Order 6 rule 30(1) of the Civil
15 Procedure Rules. The suit land belonged to the plaintiffs and the judge mentioned 7 plot numbers including block 21 plot 634, 635, 636, 637, 638 and 639 to which the appellants did not lay any claim regarding the said plot numbers. The appellants only stated that they are the rightful owners of the land and that they have letters of
20 administration for plot 326.

In regard to expunging the written submissions, counsel submitted that the trial Judge stated that he considered the submissions of both parties before coming to his conclusion.

Consideration of the appeal

25 This being a first appellate court, it has a duty to re-evaluate the evidence, weighing conflicting evidence, and reaching its own conclusion on the evidence, bearing in mind that it did not see and hear the witnesses. In **Kifamunte v Uganda Supreme Court Criminal Appeal No. 10 of 1997** court stated that:

30 "We agree that on first appeal, from a conviction by a Judge the appellant is entitled to have the appellate Court's own consideration and views of the evidence as a whole and its own decision thereon. The first appellate court has a duty to review the evidence of the case

and to reconsider the materials before the trial judge. The appellate Court must then make up its own mind not disregarding the judgment appealed from but carefully weighing and considering it. See also the cases of **Pandya v. R [1957] EA 336, Bogere Moses v. Uganda SCCA No. 1 of 1997 and Rule 30(1) of the Court of Appeal Rules** that are of the same effect.

Furthermore, a first appellate court has to bear in mind that it has neither seen nor heard the witnesses and should therefore make due allowances in that regard (**Selle and Another v Associated Motor Boat Company [1968] EA 123**). We have borne these principles in mind in resolving this appeal.

Ground 1

The learned trial judge struck out the appellant's written statement of defence under Order 6 rules 8, 10 and 30.

Rule 8 states;

"8. Denial to be specific.

It shall not be sufficient for a defendant in his or her written statement to deny generally the grounds alleged by the statement of claim, or for the plaintiff in his or her written statement in reply to deny generally the grounds alleged in a defence by way of counterclaim, but each party must deal specifically with each allegation of fact of which he or she does not admit the truth, except damages."

Rule 10 states;

"10. Evasive denial.

When a party in any pleading denies an allegation of fact in the previous pleading of the opposite party, he or she must not do so evasively, but answer the point of substance. Thus, if it is alleged that he or she received a certain sum of money, it shall not be sufficient to deny that he or she received that particular amount, but he or she must deny that he or she received that sum or any part of it, or else set out how much he or she received. If the allegation is made with diverse

circumstances, it shall not be sufficient to deny it along with those circumstances.”

Rule 30 states;

“30. Striking out pleading.

- 5 (1) The court may, upon application, order any pleading to be struck
out on the ground that it discloses no reasonable cause of action
or answer and, in any such case, or in case of the suit or defence
being shown by the pleadings to be frivolous or vexatious, may
order the suit to be stayed or dismissed or judgment to be
10 entered accordingly, as may be just.”

The trial Judge found that the defendants/appellants merely denied the plaintiffs/respondents ownership but did not specifically reply to the averments in the plaint.

Paragraph 4 of the plaint stated that;

- 15 “The plaintiff’s claim against the defendants jointly and severally is for:-

- (a) A declaration that they are the rightful owners of the land and property comprised in Mailo Register Kyadondo Block 211 Plots 634, 635, 636, 637, 638 and 639.
- 20 (b) An order that the defendants trespassed upon their land comprised in Mailo Register Kyadondo Block 211 plots 634, 635, 636, 637, 638 and 639.
- (c) A permanent injunction restraining the defendants, their successors in title, agents and any one acting in their stead
25 howsoever described from dealing, entering, transacting or doing anything on the suit land”

The appellants, in their written statement of defence stated in reply to paragraph 4 of the plaint that;

3. In specific reply to paragraph 4 thereof;
- 30 The defendants shall aver that they are the rightful owners of the suit land as they do have the letters of Administration of the

Estate of the Late Asanasiyo Zaake of Block 211 Plot 326 at Kikaya. A copy of the letters of Administration is attached hereto. The defendants aver that the plaintiffs did obtain registration illegally from a person who never had any powers to do so.”

5 The appellant’s reply was in regard to Block 211 Plot 326 which was the mother title to plots 634, 635, 636, 637, 638 and 639. Paragraph 3 of the written statement of defence was, in our view, a specific denial to paragraph 4 of the plaint. The difference is that the appellants claimed ownership of the mother title which was Block
10 211 Plot 326. The appellants averred that they are the rightful owners of the suit land because they have letters of administration of the estate of the late Asanasiyo Zaake which included Block 211 Plot 326. The appellants also averred that the respondents had illegally obtained ownership from one Susan Nakomo Kitaka who illegally
15 obtained letters of administration.

We do not agree with the learned trial Judge that the appellant’s written statement of defence was incurably defective. The appellants averred that they are the rightful owners of the suit land because they do have the letters of administration of the state of the late
20 Asanasiyo Zaake of Block 211 Plot 326 Land at Kikaaya and this, in our view, was a triable issue for the trial court to resolve. In the premises, we find that ground 1 of the appeal succeeds.

Ground 2

The appellants argue that the trial Judge expunged the appellant’s
25 written submission in reply and failed to consider them in arriving at his decision. The trial judge held that;

*“It is very important to note that counsel for the defendants filed in court the defendant’s written submissions in reply to the plaintiff’s written submissions in reply to the plaintiff’s written
30 submissions on 15th April 2013. On the 17th April 2013 counsel for the defendants filed in court a notice of withdrawal of instructions, which I hereby reproduce*

5 The question that arise now is that; whether the submissions by
counsel for the defendants are valid. The letter of withdrawal
from the suit by counsel for the defendants was written and
signed on 15th April 2013; and at the same time or may be much
later in terms of time lapse the same lawyers filed written
submissions on behalf of the defendants. The answer, therefore,
is that the written submissions filed by M/S Ssekaana
Associated Advocates & Consultants were filed in court without
instructions. Unfortunately counsel for the defendants never gave
10 reasons why they withdrew from the case. Wherefore such
written submissions could be struck out.”

From the above excerpt, it is clear that the learned trial Judge did
not attach weight to the appellant’s submissions in reply and yet the
letter from Ssekaana Associated Advocates & Consultants
15 withdrawing from the matter was filed in court after the submissions
had been filed. We agree with learned counsel for the appellant that
a document is considered on court record after it has been filed. It is
our considered view that the withdraw letter was filed after the
submissions in reply had been filed and as such, could not be struck
20 out.

Consequently, the appeal succeeds and we make the following
orders;

1. The judgment and orders in High Court Civil Suit No. 421 of
2011 are hereby set aside.
- 25 2. The appellant/defendants’ written statement of defence and
submissions are reinstated.
3. High Court Civil Suit No. 421 of 2011 should be fixed for hearing
in the next available session.
4. Costs will abide Civil Suit No. 421 of 2011.

30 We so order

Dated this 17th day of March 2020



Hon. Justice Cheborion Barishaki, JA

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Hon. Justice Stephen Musota, JA

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Hon. Justice Percy Night Tuhaise, JA

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