THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
Coram: Madrama, Mulyagonja & Mugenyi, JJA
CIVIL APPEAL NO. 153 OF 2017

BETWEEN

HAMIDA SETTENDA MUKASA :::::::::::::::::::::::::: APPELLANT

AND

MWAMINI TWEMANYE SEKIBALA ::::::::::::::::::::::::::RESPONDENT

(Appeal from the judgment of the Honourable Lady Justice Damali N. Lwanga dated 2nd May 2017, in High Court (Land Division) Civil Suit No. 361 of 2008)

JUDGMENT OF IRENE ESTHER MULYAGONJA, JA

Introduction

This is an appeal from the judgment of the High Court in which the trial judge found that the appellant trespassed upon the respondent's land. She issued a permanent injunction prohibiting the appellant from further trespassing on the respondent's land and damages of UGX 8,000,000 with interest thereon, from the date of judgement till payment in full. She awarded no costs against the appellant.

Background

The appellant brought the suit in the High Court against the respondent for trespassing on the land in dispute, part of land at Lukuli Makindye, Lusaka Zone 6, Kampala District. She sought a declaration that she was the rightful owner thereof. She further sought for an eviction order against the respondent, together with an order to demolish the illegal structures on the land, a permanent injunction restraining the

respondent from ever trespassing on the land again, as well as mesne profits, general damages and interest thereon and the costs of the suit.

The appellant claimed that during his lifetime, their father gave portions of land to his offspring and his 2 wives. That after his death she was given an additional piece of land adjacent to the portion given to her by her father, by trustees of his estate. That this was given to her as compensation for part of the land that could not be developed because of heavy electric lines that run across it. Further, that around June 2008 the respondent trespassed upon the land making bricks and putting up a temporary stall for her business. That she demanded possession thereof but the respondent did not comply.

The respondent denied that she trespassed upon the land. She filed a counterclaim in which she claimed that it was instead the appellant who trespassed on her land in the process of constructing an enclosure for the developments on her portion of land. She further accused the appellant for disrupting her and her tenants' business while making erroneous claims to her land. She sought a declaration that she is the rightful owner of the and the appellant is a trespasser thereon, general damages for trespass and inconvenience and a permanent injunction restraining the appellant from further trespassing on the land, as well as the costs of the counterclaim, with interest thereon.

The trial judge found in favour of the respondent and made the orders that I have already stated above. The appellant now brings this appeal preferring 5 grounds of appeal as follows:

1. The learned trial judge erred in law and fact when she failed to properly and exhaustively evaluate, scrutinise and appraise the evidence on record thereby arriving at a wrong decision.

2. The learned trial judge erred in law and fact when she failed to conduct the locus in quo (sic) properly thereby arriving at a wrong decision.

3. The learned trial judge erred in law and fact when she made a decision based on inconsistencies and contradictions in the testimonies of the defendant's witnesses and thus arrived at a wrong decision.

4. The learned trial judge erred in law and fact when she held that the appellant was a trespasser on the suit land.

5. The learned trial judge erred in law and fact when she relied on and admitted hearsay evidence from the defendant's witnesses and thus arrived at a wrong decision.

The appellant proposed that this court sets aside the decision and orders of the trial judge and allows the appeal with the prayers set out in the plaint. Further that the costs of this appeal and those in the court below be provided for. The respondent opposed the appeal.

Representation

At the hearing of the appeal Mr Owen Murangira, learned counsel represented the appellant. Mr Ambrose Tebyasa, learned counsel, represented the respondent. The parties filed written submissions as directed by court. The appellant filed fresh submissions on 7th December 2020 to replace those filed when the appeal was first called on for hearing in 2018, while the respondent's advocate prayed that he be allowed to adopt the submissions that were filed on 20 July 2018. This appeal was therefore disposed of on the basis of written submissions only.

Duty of the court

The duty of this court as a first appellate court, is stated in rule 30(1) of the Rules of this court (**SI 10-13**). It is to re-appraise the whole evidence adduced before the trial court and reach its own conclusions on the facts and the law. But in so doing the court should be cautious of the fact that it did not hear and observe the witnesses testify (See **Kifamunte Henry v. Uganda, SCCA 10/1997.**)

Submissions of counsel

With regard to ground 1 the appellant's counsel went through the bulk of the evidence adduced by the plaintiff in a bid to prove that she presented sufficient evidence to show that she was the owner of the land in dispute. Some of the evidence he focused upon was the boundary mark that was adduced as evidence in a photograph presented by the Appellant and marked **Exhibit P1**.

Counsel for the appellant also referred court to the picture of an old lorry that was adduced in evidence as **Exhibit P2** to show that the appellant occupied and used the land in dispute as a parking yard before the respondent trespassed on it, as the appellant alleged. He also dwelt on the size and demarcations of the land in dispute, which he said were better presented by the appellant than the respondent. The crux of his submissions was really to re-evaluate the whole evidence presented by the appellant to show that she owned the land in dispute.

With regard to ground 4 which he addressed next, the complaint that the trial judge erred in law and fact when she held that the appellant was a trespasser on the land in dispute, the appellant's counsel submitted that the evidence on record showed that the appellant was the owner of the land and that had the trial judge considered the evidence led by the appellant she would have come to the same

conclusion. He asserted that it was the respondent that trespassed upon the appellant's land. He repeated the testimony of the appellant where she stated that the respondent first trespassed upon the land in 2008, in the lower part neighbouring the piece of land owned by Ahmed Nsibirwa. Further that she made bricks on the land and constructed a house thereon. Also that the appellant went on to state that the respondent was at the time of her testimony operating her welding business on the same land.

Counsel went on to advance the argument that the appellant produced photographs showing bricks that she said the respondent made on the land in dispute. He compared this to the evidence which was preferred by the trial judge where the respondent testified that it was the appellant who trespassed on about 3 feet of the land in dispute when she constructed a perimeter wall for her storeyed building. He submitted that this was not correct because the land in dispute belongs to the appellant. Counsel then quoted text in the judgement, at page 128, lines 13-20, of the record of appeal, where the trial judge referred to the appellant's conduct as inconsiderate and insensitive when she built only 3 to 4 feet from her mother's rental structure, totally blocking access and leaving almost no space between the buildings, which was a great inconvenience to the occupants moving to and from their rentals.

Counsel for the respondent then asserted that the trial judge imported her own opinions and assumptions which were nowhere in the evidence on record during the trial, when she referred to the demeanour of the appellant. Further that there was no complaint from the mother and the parties to enable her to make such conclusions about the appellant. He concluded that had the trial judge properly evaluated the evidence she would have found that it was the respondent that trespassed upon the appellant's land.

Counsel for the appellant next submitted on ground 2 which was that the trial judge erred in law and fact when she failed to conduct the visit to the locus in quo properly, and that therefore she arrived at a wrong decision. Counsel referred to Practice Direction No. 1 of 2007 which provides, among other things, that during a visit to the locus in quo the court should record the proceedings: observations views or opinions and conclusions of the court, including drawing a sketch map, if necessary.

He referred us to the decision in the case of **Deo Matsanga v. Uganda [1998] KALR 57**, where it was held that the purpose of visiting the *locus in quo* is to check on the evidence adduced during the trial. That the proceedings at the locus in quo should form part of the record of the court. And that the trial judge should record everything that the witnesses stated at the locus in quo and the opposite party should be afforded an opportunity to cross examine them.

The appellant's counsel then referred us to the proceedings at the locus in quo at pages 232 to 238 of the record of appeal, and submitted that the record did not comply with what is required to be done by Practice Direction No. 1 of 2007. He pointed us to the particular recording of the trial judge that, *"After that they agreed that the side of the building on the plaintiff's building be referred to as the front..."* and submitted that nowhere in the proceedings at the locus was it shown that the parties were asked which side of the building should be referred to as the front or the back. That the trial judge just concluded that the parties agreed about this, without indicating in the proceedings how they reached that agreement.

Counsel finally submitted that the trial judge's failure to conduct the visit as is required in the Practice Direction he cited was in breach of known procedures. He prayed that the evidence obtained at the locus in quo be disregarded as having been obtained contrary to procedure.

Turning to ground 3, which was that the trial judge erred in law and fact when she made a decision based on contradictions and inconsistencies, the appellant's counsel submitted that the trial judge ignored the inconsistencies and contradictions in the evidence of the respondent's witnesses and thus arrived at a wrong decision that the land belongs to the respondent.

He pointed us to the evidence of the respondent, at page 208 of the record, where she stated that her mother and stepmother were still alive but did not attend the meeting at which the trustees distributed the assets of the deceased to his offspring. He contrasted it to the testimony of DW3 on page 223, lines 18 to 19 of the record, where the witness testified that if the minutes were brought showing that their mothers did not attend the meeting, the minutes would be forged. He referred us to **Exhibits PE9A** and **PE9B**, copies of the minutes in question and stated that they did not show that Mariam Nakanwagi and Hajjat Sarah Nasanga attended the meeting.

Counsel went on to submit that DW2 contradicted DW1's evidence at page 214 of the record of appeal. That this was when he said that he knows the land in dispute belongs to both the appellant and the respondent because their father gave it to them before he died. However, he also at the same time stated that he did not know the exact portions claimed by each of the parties. That in addition, the same witness stated that after the funeral rites, he was among those who confirmed what the deceased gave to his offspring and distributed the rest to those that he had not given any land.

Counsel then referred us to the decision in **Haji Musa Sebirumbi v Uganda, Criminal Appeal No 10 of 1981**, where the principles to be applied by the courts in dealing with inconsistencies were restated. He finally submitted that the inconsistencies and contradictions that

cannot be explained pointed to deliberate untruthfulness which was meant to be used to grab the appellant's land.

With regard to ground 5, the complaint that the trial judge erred when she admitted and relied on hearsay evidence adduced by the respondent's witnesses, he submitted that DW3, Sabiti Kirabira, at page 222 of the record of appeal, stated that he was not present when their father gave the land in dispute to the respondent, but their father and mother told him so. He went on to submit that DW5, Aisha Nakkazi, stated that she was not present when the land was given to the respondent, but the respondent's mother told everyone so. He contended that this was hearsay evidence and was inadmissible. He thus prayed that this court rejects it.

In conclusion he prayed that this court finds that the appellant proved all the grounds of appeal, allows this appeal and enters the orders prayed for by the appellant in the plaint.

Counsel for the respondent argued ground 1 of the appeal in similar fashion to the submissions of counsel for the appellant. It was as though he dealt with all the grounds of appeal in ground 1. For that reason, I did not find it useful to set out his submissions. I will explain why not when disposing of ground 1.

With regard to ground 2 the complaint that the trial judge did not conduct the visit to the *locus in quo* properly, the appellant's counsel submitted that the visit was not to initiate fresh evidence but to check on evidence adduced by witnesses in court. That the trial judge in this case made a detailed report accounting for every finding and all observations that she made at the *locus*. That the record does not reflect counsel for the parties objecting to the manner in which the proceedings at the *locus* were conducted; neither did any of the parties do so. He added that all through the trial and the submissions in the lower court

the appellant's counsel did not criticise the trial judge on this matter. That it was his opinion that the appellant was on a fishing expedition to find fault with the trial judge.

He went on to submit that the record shows that what the appellant and the respondent where both present at the *locus* and each of them was given an opportunity to explain their positions to the trial judge. That the trial judge in her judgement, at page 124 lines 10-25, explained how she freely walked around with the parties and counsel for the plaintiff at the *locus in quo*. That the observations made by the trial judge and the fact that the parties agreed about the front and back of their late mother's house were also well recorded.

Counsel went on to submit that he did not find any errors by the trial judge that disclosed a miscarriage of justice to the appellant. He further pointed out that the advocates representing the appellant in this appeal did not represent her in the High Court; therefore, none of them was present at the *locus in quo*. He emphasised that counsel for the appellant at the time did not complain about the procedure adopted by the trial judge at the *locus*. He thus invited us to reject this ground of appeal.

In reply to the submissions on ground 3, that the trial judge based her decision on inconsistencies and contradictions in the testimonies of the witnesses for the respondent to arrive at her decision, counsel for the respondent asserted that this ground of appeal was unfounded. He submitted that by the erroneous interpretation of the respondent's evidence, counsel for the appellant created a picture that the appellant was present at the meeting where the distribution of the land by the deceased was confirmed by the guardians.

It was observed that counsel for the respondent replied to this ground on the basis of submissions that were filed by the appellant in 2018. His submissions therefore addressed different points than those raised by

the appellant in the submissions filed in December 2020. I was therefore unable to marry the two sets of submissions on this point and so excluded the respondent's further submissions on this ground.

In reply to ground 4, the complaint that the trial judge erred when she found that the appellant was a trespasser on the respondent's land, counsel for the respondent supported the findings and decision of the trial judge on this point. He further submitted that the respondent proved, as the judge found, that her father gave her the land in dispute during his lifetime. That the argument by the appellant's counsel that the trustees gave the land in dispute to the respondent was oblivious of the evidence on the record. That the trial judge, after analysing the evidence and the visit to the *locus in quo*, confirmed that it was actually the appellant who trespassed on the respondent's land, by about 3 feet.

He went on to submit that the learned trial judge had the opportunity of visiting the *locus in quo* and observed for herself the manner in which the appellant erected her structures in total disregard of the neighbours, including her step mother. That unfortunately, present counsel for the appellant never participated in those proceedings. That had they been present, they would not have faulted the trial judge for her observations. He maintained that the appellant was indeed a trespasser on the respondent's land.

With regard to ground 5, which was that the trial judge erred when she relied on hearsay evidence from the respondent's witnesses, counsel for the respondent asserted that the evidence adduced by Kirabira Sabiti (DW3), at page 85 of the record, that his father and mother told him that the land in dispute was given to the respondent was not hearsay evidence. Further that Kirabira got direct information from his father, the donor, in the presence of his mother, that he gave the land in dispute to the respondent.

Counsel added that the contention that the evidence of DW1, DW2 and DW4 was false, inconsistent and contradictory were imaginary and founded on falsehoods introduced during cross examination. That when the three witnesses were cross examined by counsel for the appellant, they remained firm, consistent and truthful in their testimony.

Counsel went on to state that the submissions of the appellant's counsel failed to prove any error on the part of the trial judge. That as a result, the appeal should be dismissed with costs to the respondent.

The appellant's counsel filed 20 pages of submissions in rejoinder on the 8th August 2018. They related mainly to ground 1, the complaint that the trial judge did not properly evaluate the evidence on record. I will not dwell on those submissions here because it is the duty of this court, as a first appellate court, to revaluate the whole of the evidence before the trial court.

Determination of the appeal

Ground 1

With regard to this general complaint that the trial judge did not properly evaluate the evidence on record, it is pertinent to first examine the framing of the complaint vis-à-vis the requirements of rule 86 (1) of the Rules of this court, which provides as follows:

> **(1) A memorandum of appeal shall set forth concisely and under distinct heads, without argument or narrative, the grounds of objection to the decision appealed against, *specifying the points which are alleged to have been wrongfully decided*, and the nature of the order which it is proposed to ask the court to make.**

At the risk of being repetitive, but for clarity of my decision about ground 1, it was framed as follows:

"The learned trial judge erred in law and fact when she failed to properly and exhaustively evaluate, scrutinise and appraise the evidence on record thereby arriving at a wrong decision."

It is self-evident that in this ground of appeal, the appellant did not specify the points alleged to have been decided wrongly by the trial judge, as is required by rule 86 (1) of the Rules of this court. Instead, counsel for the appellant went on a fishing expedition in his submissions which made him appear to be re-evaluating the whole of the evidence on record in order to find the errors alleged to have been made by the trial judge. He went on and on for a whole six and a half pages, in very small print, which to my mind, was trying to carry out a task reserved for this court.

It is my view that this was all unnecessary since he also touched on points that were raised in the other grounds of appeal, such as the complaint that the trial judge did not observe inconsistencies and contradictions in the evidence but instead relied on them to come to her decision. He also submitted about whether or not the deceased gave the land in dispute to the appellant or the respondent, the subject of all the other grounds of appeal. Clearly this was unnecessary since the court would have to re-evaluate the evidence in respect of the same matters in the rest of the grounds of appeal.

But most importantly, the manner in which ground one was framed was contrary to rule 86 (1) of the Rules of this court. It is also my opinion that it added no value to the appellant's appeal. I would therefore strike out ground one of the appeal.

Ground 2

With regard to the grievance about the manner in which the proceedings at the *locus in quo* were conducted by the trial judge, the appellant's

counsel relied on Practice Direction No 1 of 2007,[1] Legal Notice No. 11 of 2007, to contend that it was not followed by the trial judge and so she acted in breach of known procedures in that regard.

Paragraph/clause 3 of LN No. 11 of 2007 provides for visits to the *locus in quo* as follows:

> **"During the hearing of land disputes the court should take interest in visiting the locus in quo, and while there:**
>
> **a) Ensure that all the parties, their witnesses, and advocates (if any) are present.**
> **b) Allow the parties and their witnesses to adduce evidence at the locus in quo.**
> **c) Allow cross-examination by either party, or his/her counsel.**
> **d) Record all the proceedings at the locus in quo.**
> **e) Record any observation, view, opinion or conclusion of the court, including drawing a sketch plan, if necessary."**

The gist of this provision is that proceedings at the *locus in quo* should be as near as possible in form to those recorded by the trial judge during the hearing in court. In other words, the court extends its physical boundaries to the *locus in quo* to continue hearing the case, while viewing for itself on the ground what the dispute is about. The proceedings are particularly useful for establishing boundaries in disputes, as was the case in the matter now before us.

I have not found an authority of this court or the Supreme Court on the manner in which proceedings in civil matters ought to be held at the *locus in quo.* The nearest I could find, which binds this court, as opposed to **Deo Matsanga v. Uganda (supra)**, a decision of the High Court which counsel for the appellant cited to persuade us to rule in his favour but also acknowledged was not binding on us, is the decision of the then

[1] This Practice Direction was issued by the Chief Justice on 22nd March 2007. It was meant to regulate the "Issue of Orders relating to Registered Land which affect or impact on Tenants by Occupancy."

Court of Appeal in **Matsiko Edward v. Uganda, Criminal Appeal No. 75 of 1999.**

In that case, the appellant complained about the manner in which the visit to the *locus in quo* was conducted. The trial judge recorded only his observations at the *locus in quo*. He did not specifically record the testimony of any of the witnesses. In addition, the only witnesses he recorded to have attended there before him were the prosecution witnesses No. 1 and No. 2. The accused and his advocate were glaringly not present.

With regard to the manner in which such proceedings ought to be conducted, the court relied on a decision of the East Africa Court of Appeal and ruled as follows:

> *The law regarding a view of the locus in quo in criminal cases was correctly, in our view, stated by* ***Sir Udo Udoma CJ as he then was in Mukasa Vs. Uganda [1964] EA 698 at 700*** *that:*
>
> > *"A view of a locus in-quo ought to be, I think to check on the evidence already given and, where necessary, and possible, to have such evidence ocularly demonstrated in the same way a court examines a plan or map or some fixed object already exhibited or spoken of in the proceedings. It is essential that after a view a judge or magistrate should exercise great care not to constitute himself a witness in the case. Neither a view nor personal observation should be a substitute for evidence."*

As to how evidence is supposed to be recorded by the trial court in civil proceedings, Order 18 CPR, "Hearing of Suits and Examination of Witnesses," sets out the structure of the proceedings, from beginning to end. Rules 5 and 6 of the Order provide for recording of evidence as follows:

> **"5. How evidence to be recorded.**
>
> **The evidence of each witness shall be taken down in writing by or in the presence and under the personal direction and superintendence of the judge, not ordinarily in the form of**

question and answer but in that of a narrative, and when completed shall be signed by the judge.

6. Records made in shorthand or by mechanical means.

Notwithstanding rule 5 of this Order, the evidence given or any other proceeding at the hearing of any suit may be recorded in shorthand or by mechanical means, and, if the parties to the suit agree, the transcript of anything so recorded shall, if certified by the judge to be correct, be deemed to be a record of the evidence or other proceeding for all the purposes of the suit."

In this case, the trial judge seems to have recorded the evidence herself in long hand. She did so in the third person, in that she recorded the testimony of the witnesses, for example, of the appellant as contested by the respondent, as well as her observations, at page 233-234 of the record of proceedings, as follows:

"Evidence and observations

The plaintiff showed court the boundary plant along that border which she said indicates the boundary of her land which was donated to her by their father, but this was disputed by the defendant who told court that the boundary plant was demarcating the boundary of Nalongo's land from theirs, in the presence of Nalongo.

One side of the plaintiff's structure was built on the mother's rental building, just about 3-4 feet from the building, blocking it and leaving almost no space for the occupants between the two buildings, and no compound or light for the rental buildings.

The plaintiff told court that the mother's compound where one side of her building sits is the land the father gave her, stretching up to Nalongo's road. However, the defendant, Tubirye and Sabiti contended that the plaintiff was given the land in front of her building which had an electric pole and now forms part of the big compound for her storied (sic) building; the defendant showed court the boundary mark along the main road which demarcates her land on the upper side, and said it stretches up to Nalongo's access road.

The plaintiff told court that the other side of her structure is a Mosque which she is constructing on her later father's directive, and the 6 storeys on it are all necessary for Mosque related

business. However, the defendant, Tubirye and Sabiiti insisted that the trustees/guardians gave that piece of land to the plaintiff in lieu of what the father had given her upon realizing that her portion had electric poles."

The whole of the record at the *locus in quo* was preserved in the same fashion, in the third person. But even though it was not in the style of a narrative in the first person, it consisted of evidence that was given by the witnesses that appeared before the trial judge during those proceedings. At the beginning of the proceedings the trial judge records that the people before her where the LC 1 Chairman Herbert Nsubuga Salongo, Mpagi Sunday who was counsel for the plaintiff, both of the parties to the suit, as well as DW3, DW4 and DW5. The judge also indicated that counsel for the respondent arrived at the end of the proceedings. That as a result, he did not cross examine the appellant.

Most importantly, the trial judge recorded her initial observations before she took any evidence from the witnesses that appeared before her at the *locus in quo*. She also drew a sketch map, attached to the proceedings, indicating the position of the structures on the land that belonged to the deceased, the appellant and the respondent, as well as neighbouring structures, especially the access roads. The trial judge in her record of the testimonies of the witnesses made sure she attributed statements to particular witnesses, as well as the parties.

Counsel for the appellant does not complain that there was unfairness in the proceedings at the *locus in quo*. His major complaint seems to be that the trial judge did not strictly follow the manner of recording proceedings that is specified in the CPR, regarding hearings of this nature. However, it is clear from the record that the evidence that was recorded from the witnesses before the judge was distinct from her own observations and opinions about the site of the dispute.

About the complaint that the trial judge on her own initiative came to a conclusion that the parties agreed as to which was the front and the back of their mother's rentals on the land, the appellant's counsel contended that the parties did not agree on this because there is no evidence on the record about how they came to do so.

In her judgment at page 14, which is page 121 of the record of appeal, the trial judge stated and found that it was not true that the respondent failed to explain the boundaries of her land to the court, due to the fact that her mother's rental structure had tenements on both sides, which made it difficult to identify the front from the back. Referring to the proceedings at the *locus in quo*, the trial judge resolved this contest as follows:

> *"The challenge was however, overcome at the locus in the presence of the parties, by deciding that the side of the building which is near the plaintiff's storied (sic) structure be referred to as the front. The defendant then explained that her four corner kibanja starts from the rear corner of the mother's building, stretches past the front corner of the building and continues up to the main road where there are boundary plants, then downwards up to Nalongo Nsibirwa's access road. I found that explanation to be clear, and it is indicated in the sketch plan of the locus in quo. One of the defendant's houses where the welding business operates was built on the suit land."*

I observed that it was clear from the record of proceedings, at page 237, that this happened during the cross examination of the respondent by counsel for the appellant about the boundaries of her land in relation to her mother's rental building. The trial judge recorded the proceedings as follows:

> *"Counsel for the plaintiff cross examined the defendant on the boundaries of her land in relation to the lower corners of the mother's rental building. The challenge was which corner to refer to as the front and which one is at the back, (sic) given that the building had rentals on each side and each of them could qualify for the front or the back. After agreeing that the side of the building on the side of the plaintiffs building be referred to*

as the front the defendant explained that her land starts from the rear corner of the mother's building, passes the front corner and extends up to the main road where there is a boundary plant on the upper side, and it stretches up to the access road of Nalongo on the lower side (as indicated on the sketch plan)."

It then becomes apparent to me that the appellant's counsel is in this appeal trying to challenge evidence that came onto the record as a result of previous counsel's cross examination of the respondent at the *locus in quo*. This is indeed absurd as it indicates that present counsel did not take care to read the record from which the appeal arose, carefully.

Going back to the record created by the trial judge at the *locus*, it is my opinion, and I find so, that the trial judge did all that was required by Practice Direction No.1 of 2007. The evidence that she recorded at the site is very clear; it shows this court the position of all the structures referred to in the testimonies of the witnesses in court depicted in the sketch plan. At the beginning, she describes what she saw and creates a list thereof before taking evidence from any of the parties and the witnesses present. I am therefore unable to fault the trial judge for the manner in which she recorded the proceedings. This is especially because the mandatory requirements of Order 18 rule 5 are that the proceedings shall be recorded *"in writing"* and when they are completed, they *"shall be signed by the trial judge."* She complied with both of these requirements.

I observed that although the recording of the evidence by the trial judge was not in first person, a narrative by the witnesses in their own words, the evidence recorded in the third person was in the form of a descriptive narrative by the trial judge. I therefore cannot say that a miscarriage of justice was occasioned when she did not record the evidence in first person, as is normally done by trial courts.

Moreover, Article 126 (2) (e) of the Constitution enjoins the courts to administer substantive justice without undue regard to technicalities. This is one such case where the niceties of Order 18 rule 5 of the CPR, which counsel did not mention but which clearly applies, cannot be put before the substance of the dispute wherein the judge was trying to get to the crux of it in order to render justice to the parties. It is also pertinent to point out that if any of the parties was disadvantaged by the process, it would be the respondent because in the absence of her advocate, she did not get an opportunity to cross-examine the appellant. But she did not complain about this because she got an opportunity to show the relevant features of the land in dispute to the court on her own.

Ground 2 of the appeal therefore had no merit at all, and I would dismiss it.

Grounds 3 & 5

Ground 3 was the complaint that the trial judge based her decision on testimonies of the respondent's witness said to be riddled with inconsistencies and contradictions. The main complaint was about the judge's reliance on the testimonies of DW2, DW3 and DW4; that though DW4 claimed to have been present when the deceased gave the land in dispute to the respondent, she did not include him in the list of persons present at the material time in her testimony at page 189 of the record. In ground 3, the appellant complained that the testimonies of DW3 and DW5 contained hearsay evidence which the trial judge ought not to have relied upon. Since the two grounds relate to technicalities in the admissibility and relevance of evidence, I will consider them together.

In her decision on the ownership of the land in dispute, the trial judge, at page 122 of the record, referred to the witnesses for the respondent when she stated thus:

"Three defence witnesses supported the evidence of the defendant. DW4 who is a cousin brother to both parties testified that he used to stay with their family and knew the adjoining parcels of land that late Settenda gave to each of them. He told court that he was present when the suit land was given to the Defendant and that the plaintiff is the one who encroached on the defendant's land. DW3 who is a brother to the parties and the heir to their late father told court that although he was not present when the suit land was given to the defendant, their father, mother and stepmother informed him about it. DW5 a neighbour told court that the mother to both the parties allowed her to do her business of selling charcoal and assorted foodstuff on the suit land but warned her that the land belongs to the defendant and she might wish to utilise it any time; that the mother in fact used to tell everyone that the suit land belongs to the defendant."

The testimony of the respondent on page 189 shows that the persons that were present when her father initially gave her land were Kamadi Lukambagire, Hajati Mariam Nakanwagi, her mother and her mother's co-wife Hajati Sarah Nassanga, paternal Aunt Mary Babirye and the respondent herself. It is therefore true that the respondent did not name DW3 as one of the people that were present when her father gave her the land. Indeed, DW3 admitted so in cross examination at page 223 of the record of proceedings. It must therefore be established whether the testimony of this witness (DW3), and the others complained about, added any value to the respondent's case, as the trial judge found.

In his testimony, DW3, Sabiti Kirabira stated that he was the brother of both the parties to the suit, being the son of the same mother and father. At page 222 of the record, DW3 states in cross examination, that though he was not present when the deceased gave the land in dispute to the respondent, the deceased and his mother told him so. That after it was given to her, she began to make bricks and sell charcoal on the land.

As to whether the testimony of Kirabira was hearsay, Black's Law Dictionary (9th Edition by West) defines hearsay evidence at page 790 thereof as follows:

> *"Traditionally testimony that is given by a witness who relates not what he or she knows personally, but what others have said, and that is therefore dependent on the credibility of someone other than the witness."*

Section 59 of the Evidence Act provides that oral evidence must be direct, in the following terms:

> **"Oral evidence must, in all cases whatever, be direct; that is to say—**
>
> **(a) if it refers to a fact which could be seen, it must be the evidence of a witness who says he or she saw it;**
>
> **(b) if it refers to a fact which could be heard, it must be the evidence of a witness who says he or she heard it;**
>
> **(c) if it refers to a fact which could be perceived by any other sense, or in any other manner, it must be the evidence of a witness who says he or she perceived it by that sense or in that manner;**
>
> **(d) if it refers to an opinion or to the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion on those grounds, ..."**

DW3 said his father told him that he gave the land in dispute to the respondent. He must have heard his father him tell him so; he therefore remembered the words of his father and testified about them in court. The late Settenda was the owner and donor of the land. His information to DW3 therefore must have been credible, unless the contrary is proved, which it was not.

After the land was given to the respondent, she began to carry out her business of selling charcoal and making bricks on it, the purpose for which it was given to her. DW3 witnessed this with his own eyes. His testimony about it was therefore direct and credible. It was also direct evidence when he stated that the land in dispute had the respondent's

house on it and that at the time he testified, her offspring carried on their welding business on it.

As to whether the information given to him by his mother that the land in dispute was given to the respondent was hearsay, the respondent stated that her mother was present when the deceased gave the land to her. She saw and heard this happen. DW3's statement that he heard about the donation from his mother then must be left to court to determine whether the mother's information to him was credible or not. I would say it was because the respondent testified that she was present when her father gave and showed the land in dispute to her.

Turning to the testimony of DW4, Tubirye Joseph, he was the cousin to both the parties to this appeal, being the son of their paternal uncle. He stated that he at one time resided at the deceased's home and knows that the appellant's land is distinct from that of the respondent. He further testified that the deceased gave a piece of land to the appellant on which she constructed a storeyed building. He distinguished it from the respondent's land which he said had a welding workshop on it. That the two pieces were adjoined to each other but separated by a pit latrine. Further that he was present when the appellant received her piece of land from the deceased; it was he (DW4) that uprooted coffee trees that were present when she received it from her father, though he could not recall the date when she received it.

With regard to the land given to the respondent, DW4 testified that he participated in building a charcoal store on it for the respondent, and that it was he that sold her the iron sheets used to roof it. Further that all this happened when Haji Settenda, their father, was still alive. He added that he recalled that the store that he helped to construct measured 12 x 12 feet and was 15 feet high. That however, the

respondent stopped dealing in charcoal and rented the store to another to carry on the same business.

It is my view that DW4 stated what he heard, saw and did with regard to the land in dispute. That could not all have been hearsay evidence; it complied with the provisions of section 59 (a), (b) and (c) of the Evidence Act. With regard to the information received from the mother of the parties, he did not lie. He was forthright when he stated that it was she who told him that the land belonged to the respondent. It is also in evidence from the testimony of the respondent that she was present when the deceased donated the land to her and marked it off. The actions that she took thereafter, as stated by DW4, where in support of her counterclaim and the testimony that she was indeed the lawful owner of the land.

Turning to the testimony of Nakazzi Aisha (DW5), she stated that she requested for permission to use the land in dispute for her business in 2001. That she was selling charcoal and various foodstuffs at the *kiosk* which she found on the land. She explained that it was the mother of the parties to this appeal that gave her permission to use the land and the charcoal *kiosk* she found on it. Further that the mother informed her that it belonged to the respondent who was away at her marital home at the time. She added that the respondent's mother asked her not to give the respondent a hard time, should she return to build on her land.

Nakazzi further stated in cross-examination that the appellant did not evict her from the land in dispute because it belonged to the respondent. That the respondent's mother informed her right from the beginning, and everyone else, that the land belonged to the respondent. Further that it was after the mother died that the appellant began to construct buildings on the land. That the clan reported this to court, (Local

Council) which stopped the construction. She further explained that the respondent had a girl who sold charcoal for her at the *kiosk* but the girl died. And that she (DW5) took over the stall and only stopped her charcoal business because Jenifer Musisi evicted such traders from the streets because she was against dirty buildings in the city.

It is my view that in her testimony related above, apart from the information from the respondent's mother that the land in dispute belonged to the respondent, DW5 stated exactly what she did on the land, and the source of the authority to do so. As to whether the information from the parties' mother was hearsay, she did not try to hide that it was indeed information from the mother, instead, she emphasised it.

However, there was already evidence before the court through the respondent herself (DW1) that her mother, Hajati Mariam Nakanwagi was present when her father donated the land to her. That in fact, he gave her this land specifically because he did not want her to use her Uncle Sebaggala's land to carry on her charcoal business. Sebaggala was the respondent's maternal uncle. He thus identified a suitable piece of land on his own land, beside the road, for the respondent to carry on her business in which she sold charcoal.

It was then in the discretion of the court to determine whether in view of the testimony of DW1, the testimony of DW5 about the information from the parties' mother was credible or not. I therefore would not conclude that the whole of DW5's testimony with regard to the ownership of the property in dispute was hearsay evidence that the court ought not to have relied upon.

As to whether DW2 contradicted DW1's evidence, at page 214 of the record of appeal, when he said that he knows the land in dispute belongs to both the appellant and the respondent because their father gave it to

them before he died, and that he did not know the exact portions claimed by each of the parties, his testimony from which the contentions of the respondent's counsel arose was as follows:

> *"I know the suit land in dispute. The land belongs to both of the children, the plaintiff and the defendant. Each one owns part of the suit land. The suit land had been given out before Haji Settenda died, we just confirmed what he had given out.*
>
> *The plaintiff has a storeyed structure on her land but which encroached on the defendant's land. There is a welding business on Mwamini's land and a small house. We are not the ones who gave the portion of land to the defendant where there is a welding business and a small house. I don't know the exact portion which is claimed by both the plaintiff and the defendant (the suit land).*
>
> *Part of the land with a storeyed building is fenced off, the unfenced part has a dug foundation but not constructed yet."*

DW2 was Ssebagala Muhammud Seninde, a cousin to the parties to this appeal. He was 72 years old when he testified. He did not claim to have been present when the deceased distributed his land among his offspring. His role came about after his death when the family was going to hold the ceremony for the last funeral rites. He participated in the distribution of the estate of the deceased as a member of the clan, and as a trustee appointed by the offspring of the deceased. It would appear that is why he was summoned to testify. It is for the same reasons that he appeared not to know which piece of land was in dispute in the suit.

It is also clear from the judgement that the trial judge did not rely on his testimony to resolve the issue about the ownership of the land in dispute. He clearly was not sure who of the parties to the suit owned the land. With regard to his statement that the land in dispute belonged to both of the parties to the suit, he clearly contradicted the testimony of the respondent and all the other witnesses called to testify on behalf of the respondent. But he was only one such witness.

In conclusion grounds 3 and 5 only partially succeed, to the extent that DW2 contradicted the testimony of the respondent with regard to the ownership of the land.

Ground 4

This was the complaint that the trial judge erred when she found and held that the appellant trespassed on the respondent's land. Apart from the assertion that the trial judge ought to have found in favour of the appellant on the basis of all the evidence she adduced, the main argument advanced by counsel for the appellant was that the trial judge in her judgement, at page 127 of the record of appeal, referred to the appellant's conduct as inconsiderate and insensitive. That when she did this the trial judge imported how own opinions and assumptions into the judgment because there was no evidence on the record that she recorded the demeanour of the appellant, at all. That neither was there a complaint from the mother of the parties or any them to enable her make such a conclusion about the conduct of the appellant.

The trial judge's findings about the conduct of the appellant were at page 128 of the record of appeal, where she made the following observations and conclusion:

> *"That evidence of trespass is typical of the plaintiff's arrogant, inconsiderate and insensitive actions on their late father's land generally, as she constructed her building only 3-4 feet from the mother's rental structure, totally blocking access and leaving almost no space between the 2 buildings, which is a great inconvenience to the occupants moving to and from their rentals. The other side of her 6 storey building was also constructed only 2-3 feet from part of the father's house which is occupied by the plaintiff's stepmother, and whose weakened wall on that side has scary cracks.*
>
> *My findings on the above two issues have resolved both the Plaintiff's suit and the counterclaim of the Defendant. The Plaintiff's suit is dismissed while the Defendant's counterclaim succeeds"*

I accept counsel for the appellant's submission that there is no evidence on the record of the trial in court that the trial judge made any comment or observation about the demeanour of the appellant as she testified. There is also no evidence that any of the witnesses for the respondent referred to the conduct of the appellant in the strong terms employed by the trial judge in her judgement.

However, in his testimony at page 221 of the record, Sabiti Kirabira (DW3), as did the respondent, stated that the dispute between the sisters commenced after their mother's death. The plaintiff constructed a house in the mother's compound and extended it onto the defendant's portion of land. Further that the mother did not allow her to build in that place. That in fact the mother's death was a result of an illness that resulted from a conflict with the appellant over the construction she had commenced in her compound, without permission. That as a result of the dispute between the appellant and the mother, the appellant barked at her; she then suffered a bout of high blood pressure which resulted in her illness and eventual death. The appellant's counsel did not cross examine the witness about these assertions so they most likely occurred as stated.

DW2 went on to testify that after their mother's death, Sheiks organised a meeting with the family and resolved the issue. That their mother's compound was given to the appellant who they asked to construct 2 rooms for 2 of the male offspring, himself included. But she did not construct those 2 rooms and as a family they held several meetings to resolve the dispute but all their attempts where futile. He went on to testify that the appellant is the only member of the family who contested the distribution of the assets of the deceased by the guardians identified by and appointed by the members of the family.

However, in cross examination he stated that in spite of this the appellant built on the land that was given to her by the guardians on which she had started her construction before her mother's death. DW3 had earlier on stated in-chief (page 220 of the record) that the appellant began to construct her structure on the mother's land without permission but the land which was given to her by their father remained vacant. That the guardians gave her another piece of land because the piece her father gave her was under an electricity power line and construction under it was prohibited.

On her part, the respondent testified about the conduct of the appellant in relation to the guardians appointed by members of the family and other members of the family. She stated in different portions of her testimony which run from page 187 to 212 of the record, that after their father's death, because he died intestate, their brother, Sabiti Kirabira, was appointed as his heir by the clan. That the appellant rejected his appointment. She contended that because she was the first born, she should take charge of all their father's affairs.

The respondent further testified that after they chose and appointed trustees/guardians who were their cousins and the only surviving paternal uncle, Abdu Wahab Wamala, they began to organise for a ceremony for the last funeral rites. But the appellant also rejected this. She said that in her Islamic religion such ceremonies were not allowed. However, the process went ahead and the guardians distributed their father's property confirming what the father had given to the respondent during his lifetime.

She further testified that the guardians noted that the land which the deceased had given to the appellant was under electric power lines and she could not build a house on it. That as a result they gave her the portion of land between the father's main house and their mother's

rental house. That the guardians confirmed that which their father had given to her (the respondent), the stretch of land from the corner of their mother's house up to the road. She described it as measuring134×30 feet or metres, and that it was the surveyors that she hired that told her what the size of the land was.

The respondent further testified that on her mother's plot there is a building with 12 rentals and a six-storey building which was constructed by the appellant after their mother died in 2007. That it was during this construction that the appellant entered upon their mother's plot and encroached on the respondent's land by 3 feet. That it was then that this dispute begun, in 2008. The respondent stated that she came to know about the encroachment when her sister, Zula Nakimu, informed her that the appellant was constructing a building and had begun to excavate a foundation on the respondent's land.

She further testified that she went to inspect her land and found that indeed, the appellant had already taken 3 feet off her land and fenced it off within her land. That when she confronted the appellant, the appellant's response was that since she got married to a non-Muslim, according to Islam, she was a *Kafir* who should not build on their father's land but she should instead be stoned to death.

Further, that there were several efforts to try and reconcile them and resolve the dispute. That the first was a hearing before the members of the village Local Council (LCs) and the appellant was invited to the meetings which she attended in their father's house. And that after gathering evidence the Chairman gave his judgement in favour of the respondent. But the appellant continued to defy the judgement and dug the foundation which encroached onto her land. That when she went to tell her to get off the land, it resulted in a scuffle which led to the arrest of the respondent and her imprisonment in Luzira Prison for 2 days.

That following this, the respondent reported the matter to the Resident District Commissioner (RDC) but they never reached an agreement because the appellant refused to attend before the RDC. That area Sheiks also intervened to try and reconcile them but they failed to reach a settlement.

The respondent further testified that in 2014 they were invited by the Landlady (Namasole Sarah Natoolo) to formalise their tenancy on the land and get certificates of ownership as *Bibanja* holders so that they could start paying rent (*obusulu*). That all of the deceased's offspring agreed to pay and the Landlady's agents took measurements of the land. But after this, the respondent was arrested on allegations that she forged the signature of the Namasole on her certificate. That she later found out that it was the appellant who complained to the police. But all her siblings produced similar certificates and supported her and as a result she was not prosecuted for forgery but released on bond. The respondent produced a *Kibanja* certificate dated 27 January, 2015 in her name, which was admitted in evidence as **DE1**.

Further evidence about the appellant's conduct is present in the proceedings at the *locus in quo*. The trial judge recorded that Tubirye accused the appellant of constructing buildings on 3 plots: what the guardians gave her, what her father gave her, after shifting the electric poles, and the compound of their mother's rental building. That she now wanted to extend her project into the respondent's land without justification.

The trial judge also noted that Nakkazi (DW5) while at the *locus in quo* complained that the appellant threatened her over testifying in favour of the respondent. Further that she (the trial judge) warned the appellant to desist from threatening witnesses.

With all these complaints about the appellant's conduct, it was not surprising to me that the trial judge described her behaviour towards her father's land as *"generally arrogant, inconsiderate and insensitive."* I therefore concluded that the appellant's behaviour in relation to the land and towards her siblings, as well as their guardians, properly fit into the description that the trial judge aptly employed.

I also find that the testimonies of the witnesses at the *locus in quo* indicated the various structures and markers on the deceased's piece of land and the trial judge drew a sketch map to depict what was on the ground. The map confirmed the evidence that was given by the respondent in court. The witnesses DW3, DW4 and DW5 that were summoned on her behalf also confirmed their testimonies in court at the *locus in quo*. They were able to show the court on the ground where the land in dispute was and how far the appellant encroached onto it.

In conclusion of ground 4, the body of evidence on record shows that the appellant indeed trespassed on the land that the deceased gave to the respondent during his lifetime. The trial judge therefore made no error when she found so.

Ground 4 of the appeal therefore also fails and I would dismiss it.

The respondent's counsel prayed that the costs of this appeal and those in the court below be granted to the respondent. However, this is a family dispute that has defied settlement since 2008 when the appellant 1st trespassed on the respondent's land. The trial judge did not award costs to the respondent for her counterclaim though she was successful. She refused to award costs in order to promote reconciliation between the parties who are siblings with the same father and mother.

It is also my view that the members of the family ought to be reconciled to each other. That equilibrium in the family may return when the orders

entered by the trial judge are complied with. It is unnecessary to add the burden of costs against the appellant onto those orders.

In conclusion, this appeal substantially fails and I would dismiss it and confirm the orders entered by the trial judge, with each party to bear their own costs for the appeal.

Dated at Kampala this 18th Day of March 2022.

Irene Esther Mulyagonja

JUSTICE OF APPEAL

THE REPUBLIC OF UGANDA

THE COURT OF APPEAL OF UGANDA
AT KAMPALA

CORAM: MADRAMA, MULYAGONJA AND MUGENYI, JJA

CIVIL APPEAL NO. 153 OF 2017

BETWEEN

HAMIDA SETTENDA SEKIBALA ..... APPELLANT

AND

MWAMINI TWEMANYE SEKIBALA ..... RESPONDENT

(Appeal from the Judgment of the High Court of Uganda (Land Division) (Lwanga, J) in Civil Suit No. 361 of 2008)

JUDGMENT OF MONICA K. MUGENYI, JA

1. I have had the benefit of reading my sister, Hon. Lady Justice Mulyagonja's draft judgment in this case. I agree with the conclusion that the Appeal fails. I do, nonetheless, deem it necessary to highlight the following brief observations with regard to *Grounds 2* and *3* of the Appeal. They were framed as follows:

    (2) The learned trial judge erred in law and fact when she failed to conduct the locus in quo properly thereby arriving at a wrong decision.

    (3) the learned trial judge erred in law and fact when she made a decision based on inconsistencies and contradictions in the testimonies of the defendant's witnesses and thus arrived at a wrong decision.

2. With regard to *Ground 2*, learned Counsel for the Appellant cited the case of **Deo Matsanga vs Uganda [1998] KALR 57** in support of the preposition that the trial court's proceedings during its visit to the *locus in quo* were procedurally irregular. They did also cite **Haji Musa Sebirumbi vs Uganda, Criminal Appeal No. 10 of 1981**, where the principles to be applied by the courts in dealing with inconsistencies had been restated, arguing that inconsistencies and contradictions that cannot be explained point to deliberate untruthfulness. The foregoing authorities both pertain to criminal trials.

3. I am constrained to respectfully caution Counsel against seeking to apply to civil proceedings principles advanced in criminal trials. For present purposes, it will suffice to point out that in the case of **Matsiko Edward vs Uganda, Criminal Appeal No. 75 of 1999**, the Court of Appeal cited with approval the decision in **Mukasa vs Uganda [1964] EA 698 at 700** to specifically addressed the principles governing visits to locus in quo '***in criminal cases***' where it was held (per Udo Udoma, CJ):

> A view of a locus in-quo ought to be, I think to check on the evidence already given and, where necessary, and possible, to have such evidence ocularly demonstrated in the same way a court examines a plan or map or some fixed object already exhibited or spoken of in the proceedings. It is essential that after a view a judge or magistrate should exercise great care not to constitute himself a witness in the case. Neither a view nor personal observation should be a substitute for evidence. *(my emphasis)*

4. To begin with, criminal trials are not the subject of *Practice Direction on the issue of orders relating to registered land which affect or impact on tenants by occupancy, Practice Direction No. 1 of 2007*. By virtue of its long title, as well as Guideline 3 thereof, that *Practice Direction* clearly lends itself solely to land disputes. Guideline 3 provides as follows:

> **During the hearing of land disputes the court should take interest in visiting the locus in quo, and while there:**
>
> **(a) Ensure that all parties, their witnesses, and advocates (if any) are present.**
> **(b) Allow the parties and their witnesses to adduce evidence at the *locus in quo*.**
> **(c) Allow cross-examination by either party or his/ her counsel.**
> **(d) Record all the proceedings at the locus in quo.**
> **(e) Record any observation, view, opinion or conclusion of the court, including drawing a sketch plan, if necessary.**

5. Even if per chance one sought to draw inspiration from the criminal proceedings' approach, it would appear that the gist of the decision in **Mukasa vs Uganda** (supra) is to have a view of *locus in quo* corroborate evidence already on record either by observation or demonstration. Whereas this practice might be prudent for the more stringent standard of proof in criminal trials, not necessarily so with civil proceedings. In any event, as highlighted above Guideline 3 of *Practice Direction No. 1 of 2007* succinctly lays out the parameters applicable to locus in quo visits in land disputes. I would therefore agree with Lady Justice Mulyagonja's deference to Order 18 of the Civil Procedure Rules (CPR) in her determination of *Ground 2* of this Appeal.

6. In the same vein, recourse to **Haji Musa Sebirumbi vs Uganda** (supra) for the treatment of inconsistencies in a civil case is, with respect, misplaced given the disparity in the standard of proof applicable to the criminal trial in issue therein.

7. Having so observed, I do respectfully agree with the conclusion in the lead Judgment that this Appeal should fail. I do similarly abide the decision on costs.

Dated and delivered at Kampala this 18th **day of** March **, 2022.**

Mugenyi

Hon. Lady Justice Monica K. Mugenyi
JUSTICE OF APPEAL

THE REPUBLIC OF UGANDA,

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

(CORAM: MADRAMA, MULYAGONJA, MUGENYI, JJA)

CIVIL APPEAL NO 153 OF 2017

HAMIDA SETTENDA MUKASA} ..... APPELLANT

VERSUS

MWAMINI TWEMANYE SEKIBALA} .....RESPONDENT

(Appeal from the Judgment of the High Court Lady Justice Damalie N. Lwanga dated 2nd May, 2017 in High Court (Land Division) Civil Suit No 361 of 2008)

JUDGMENT OF CHRISTOPHER MADRAMA, JA

I have had the benefit of reading in draft the judgment of my learned sister Hon. Lady Justice Irene Esther Mulyagonja, JA.

I agree with her that the appeal be dismissed for the reasons she set out in her judgment and I have nothing useful to add. Hon. Lady Justice Monica K. Mugenyi, JA also agrees, the following orders issue:

1. The Appellant's appeal stands dismissed and the orders issued by the trial judge are affirmed.

2. Each party shall bear her own costs of the appeal.

Dated at Kampala the 16th **day of** March **2022**

Christopher Madrama Izama

Justice of Appeal