

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT FORT PORTAL

CIVIL APPEAL NO. DR. MFP 8/90

(Original Civil Appeal No. 9/89 of Kabale Court)

KAMUHANGIRE MIISI:.....:APPELLANT

VERSUS

KASHUMBA GERALD:.....: RESPONDENT

BEFORE: THE HONOURABLE MR. JUSTICE I. MUKANZA

JUDGMENT

This is an appeal by David Kamuhangire hereinafter referred to as the appellant against the ruling of the learned Chief Magistrate sitting at Kabale dated 24th January, 1990 whereby the learned Chief Magistrate upheld a preliminary point of law raised by the learned counsel representing Gerald Kashumba hereinafter referred to as the respondent in that the subject matter of the appeal was the same subject matter that was decided in Civil Suit No.7/86 of Kagunga court before Magistrate Grade I Mr. Akiiki Kiiza.

The background of this case simply is a land dispute. It dates as far back as 1985 before the Resistance council system came into operation. The appellant is stated to have filed his complaint before the Adhoc Committee of the Resistance council and the latter found in his favour. As if that was enough he filed a case against the respondent under the RC system RCI. On 7th June, 1989 and judgment was delivered in his favour. He was allowed to use the disputed land. The respondent not being satisfied with the decision complained before the RC2 court. He lost the case. The court found for the appellant who was allowed to use the land in dispute.

The respondent not being satisfied with the decisions of the courts of R.C.I and R.C. II complained to the RC III court. The latter court after hearing evidence from the parties and their witnesses found that the disputed land was the property of the respondent. In all those courts the appellant all along maintained that he bought the land in question from one Bataringaya who bought the same land from the father of the respondent also called Gashumba.

However in Civil Suit No. 7/86 the respondent sued one Charles Bataringaya for the same piece of land before a Magistrate Grade I court sitting at Kagunga and judgment was delivered in his favour.

Be that as it may the appellant not being satisfied with the decision of the RC III court appealed to the Chief Magistrate court. He listed about nine grounds of appeal. The learned counsel appearing for the appellant arrived in court a bit late when the learned counsel for the respondent had already submitted on his preliminary point of objection to the appeal which as I stated earlier on was upheld. He was advised by the court if he so wished to file in a written submission in reply. That advice was apparently not adopted by the appellant.

The appellant not being satisfied with the decision of the Chief Magistrate applied for leave from the Chief Magistrate's court to appeal to the High Court under S. 232 (1) (c) of the Magistrate's courts Act 1970. Leave was readily granted by the Chief Magistrate (not the one who presided over the appeal).

The appeal is grounded on three reasons:—

1. That the learned Chief Magistrate erred in law by entertaining the application of counsel for the respondent when no notice of application has been given.
2. That the learned Chief Magistrate erred in dismissing the appellants appeal relying on wrong documents and the doctrine of resjudicate could not apply since the appellant had acquired his own independent rights in the land under dispute.
3. That under the circumstances the ruling of the learned Chief Magistrate occasioned a miscarriage of justice.

At the commencement of the hearing of this appeal the first ground of appeal was abandoned by the appellants counsel and the court proceeded to hear the rest of the grounds of appeal.

The learned counsel appearing for the appellant submitted that the underlying principle of resjudicata is that there must be an end to litigation. While it is true the appellant bought the land from Bataringaya who was the defendant in Civil Suit No. 7 of 1986.

The appellant bought land in 1982 and took up possession and developed his rights independent of the seller. So that when Civil Suit No. 7/1986 was filed in Rukungiri the appellant had already his land independent and separate from those of Bataringaya. So when the respondent filed C.S. No. 7/1986 in Rukungiri court he well knew that the appellant was on that land and that was exemplified by the proceedings of the RC I, II and RC III courts. And when cross examined those courts by the appellant accepted that he the respondent had appeared with the appellant. His explanation in R.C. Courts was that he filed a Civil Suit No. 7/1986 as a sort of an appeal against the ruling of the NRM committee of 1985 so after the respondent had appeared with the appellant before the NRM tribunal and lost he could not have clandestinely filed a suit against the person who was not in possession of the disputed land.

The learned coinee¹ continued that he was very suspicious how Civil Suit No. 7/86 was decided because Bataringaya having appeared almost throughout the trial decided to abandon the case and an exparte judgment was entered for the respondent. His fear was that the court was deceived by parading that there was one Bataringaya when he was not there. His suspicion are raised when the respondent had instead of joining the appellant with whom he had appeared in the PC courts and then joined some one who no longer had interest in the land. The issues therefore in Civil Suit No.7/86 were not substantially and directly in position to dispose of the issue in Civil Appeal No. 9 of 1989.

On the third ground of appeal the learned counsel submitted that the ruling of the Chief Magistrate caused a miscarriage of justice because he was calling upon the appellant to trace Bataringaya who was alleged by the respondent and the PC's that they had no trace of him. It could only have been fair arid just to allow the party in occupation and who had been in occupation before the filing of Civil Suits No.67/86 to exhaust his legal venues against the

respondent. He prayed that the appeal be allowed and the matter be remitted back to Kabale to try the appeal emanating from the RC III court.

The learned counsel representing the respondent submitted that the appeal was rightly held to contain issues caught by the resjudicate under S. 7 of the Civil Procedure Act. C.S. No. 7 of 1986 is a former suit when compared to the RC III Chairman decision. The Chief Magistrate court sent two letters to R.C. III court advising them not to entertain the suit one of the letter was dated 8th August 1988 and the other is dated 5th September 1988 as well. A court was to be competent if established by law. The RC's courts are creatures of Statute No. 1 of 1988. That the court mentioned by his learned friend as having entertained the matter in 1985 was not a competent court. It will be unsafe to put on record of this court that there was such committee when the law at that time was not recognizing such committee at all. Bataringaya was not a fictitious person introduced to defeat the cause of justice. He was mentioned by the appellant in the memorandum of appeal before the Chief Magistrate as a person who sold him land. A person claiming under another person as explained in section 7 of the CPA Cap 65 includes a person who claims to have purchased from the person who has had litigation with the other party. In the circumstances Bataringaya was party and a purchaser from Bataringaya was claiming to have had that land through Bataringaya. The matter was resjudicata when looked at from all angles. According to the 2 letters the RC courts had no authority to re-open a case which had already been decided upon by a Magistrate's court. In proceeding to hear the case the RC were contravening the Statute which had created it. The learned trial Magistrate looked at grounds 3 & 6 of the memorandum of appeal in his letter to the RC's. In ground 3 the appellant admitted that the respondent had used the land for 2 years while his father was still alive.

In ground 6 the appellant explained that the father of the respondent testified for his son. The Chief Magistrate looked at ground 7 in which the appellant stated that Bataringaya sold the land to him, and later sold the same to David Gashumba. The Chief Magistrate found that even if the appeal had been prosecuted it would have been useless because the grounds only showed confusion. The RC.III court informed the appellant of the existence of Charles Bataringaya whom he claimed sold him land and requested him to bring Bataringaya but failed. So whether one considered in whole or resjudicate alone there was no merit in the appeal. He prayed that the appeal be dismissed. After the submission by the learned counsel representing the parties

I now turn to consider the appeal. First that the learned Chief Magistrate erred in dismissing the appeal relying on wrong documents and the doctrine of resjudicate, could not apply since the appellant had acquired his own independent rights. Section 7 of the Civil Procedure Act states:-

“No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court.”

In the present appeal the parties are the appellant and the respondent the subject matter is land which was adjudicated upon by the RC III court of the area where the land was situated; but in Civil Suit No.7/86 which was decided by the Grade I Magistrate Rukungiri at Kagunga the parties were the respondent as the plaintiff and one Kyomuhangire was the defendant while the subject matter was the same but the parties were not the same. I agree with the learned counsel for the respondent that when the appellant filed his suit before the RC adhoc committee in 1985 and succeeded the RC system had not come into operation. The RC Committees were the creature of Statute No. 1 of 1988. However the respondent was aware that he was litigating with the appellant who is stated to have bought the land from Kyomuhangire way back in 1982. It was therefore improper when he filed Civil Suit No.7/86 against Bataringaya whom he knew no longer had interest in the subject matter land. I agree with the learned counsel for the appellant that the appellant had acquired his rights in the subject matter land independently of one Kyomuhangire. Therefore when the respondent filed the said Civil Suit 7/86 against Kyomuhangire he ought to have joined the appellant as a party in order to dispose of the dispute once and for all.

As already explained above the dispute went through all the three systems of the RC courts from RC I to RC III. At the court of RC III the appellant lost the case and he appealed to the Chief Magistrate court. The learned counsel for the respondent submitted that the RC courts were directed not to entertain the case because the same had been adjudicated upon by court with competent jurisdiction. The learned counsel then purportedly showed to this court two letters or in way tendered in courts two letters dated 5/9/89 and 18th August 1988 stopping the RC'S not

entertain the matter because the same had already been litigated upon before. The two letters were never referred to at the trial in R.C. courts and they were not written by the Chief Magistrate but a certain grade I Magistrate Beyanga so it is not true that the learned Chief Magistrate wrote to the RC's stopping them from entertaining the matter. What was certain from records was that the Chief Magistrate wrote a letter setting aside the *exparte* judgment of the RC III court and ordered for a retrial. Moreover the two letters referred to me had no evidential value because I was not receiving fresh evidence when I entertained the appeal. The RC courts therefore had the requisite jurisdiction to entertain the matter. Civil Suit 7/86 was therefore not a resjudicate in that though the subject matter in the case was the same as was in the instant appeal. The parties were not the same. In Civil Suit No. 7/86 the parties were the respondent as the plaintiff and one Kyomuhangire as the defendant. Besides that the appellant had acquired his own interest and rights in the subject matter and as such he was not claiming the said land through Kyomuhangire who had since 1986 disappeared. The learned Chief Magistrate therefore erred when he dismissed the appeal on the pretext that the appeal was resjudicate. This ground of appeal therefore succeeds.

The second ground of appeal was that the decision of the Chief Magistrate caused a miscarriage of justice. It was true that the learned counsel representing the respondent arrived late when the preliminary point of law had just been argued. Looking at the nature of the claim land case of which I take judicial notice that it is a sensitive matter in this country it would have been fair to allow the appellant to exhaust all his legal venues on the matter since he was the party in occupation of the land since 1982. And it was also not proper for the learned *Chief* Magistrate to have advised the appellant to trace the said Bataringaya for refund of the money he paid for the land because the said Bataringaya has since 1986 disappeared. There was no trace of him. This ground of appeal also succeeds.

In the end I allow this appeal with costs and I order that the case file be remitted back to the Chief Magistrate Kabale with directions that he proceeds to hear the appeal from the RC III court on its merits and so I order.

I. MUKANZA

JUDGE

31/7/91