

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MBARARA

H.C.C.M.A NO. 59/99
(From Civil Appeal No. MMB 33 of 1990)

NTUNDUBEIRE & OTHERSAPPLICANTS

-VS-

MUREMA & OTHERSRESPONDENTS

BEFORE: THE HON. JUSTICE P. K. MUGAMBA

RULING

This application was brought under Section 84 of the Civil Procedure Act. It sought revision of the decision of the Chief Magistrate on appeal. Section 84 CPA provides inter alia:

‘The High Court may call for the record of any case which has been determined by any magistrate’s Court and if such court appears to have –

(a) exercised a jurisdiction not vested in it by law: or

(b) failed to exercise a jurisdiction so vested, or

(c) acted in exercise of its jurisdiction illegally or with material irregularity or injustice,

the High Court may revise the said case and may make such order therein as it thinks fit’

I have heard the submissions of both counsel and read the pleadings accompanying them. I have also read the judgment of the Chief Magistrate from which this application arose. While the judgment dealt with the decision of the Grade II Magistrate at Kagango which it held was wrongly arrived at and proceeded to set aside the Chief Magistrate therein did not pronounce herself concerning the ownership of the disputed land. The affidavit in reply by Mureru, one of the respondents, has attached to it what purports to be an extract of the decree. In part of that document ii states:

‘4. The land the subject of the suit is decreed to belong to the Appellants’.

That statement is reflected nowhere in the judgment of the Chief Magistrate. Suffice it to say the intended extract is a forgery and I note this with a heavy heart. Whoever was responsible for its making did a disservice to the cause of justice.

I am in no doubt that the learned Chief Magistrate said nothing about the status of the land in dispute after she set aside the judgment of the Grade H Magistrate at Kagango. In my view what the learned Chief Magistrate should have gone ahead to do would have been to order for a retrial and let the costs abide the outcome of that retrial bearing in mind that it was court which erroneously entered the judgment in the court of the Grade II Magistrate.

Consequently a retrial is ordered and costs to abide the outcome thereof.

P. K. Mugamba
Judge

11th February 2004

Mr. Kahungu-Tibayeita for applicant

Mr. Ngaruye for respondent

Ms Tushemereirwe court clerk

Court:

Ruling read in court

P. K. Mugamba
Judge