

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

HCT-05-CV-CA-0053-2003
(From Orig. MBR-CV-CS-0107/2002)

DEUDANTA FOKWESIZAAPPELLANT

VERSUS

BARIREGYE SILIVIARESPONDENT

BEFORE: THE HON. MR. JUSTICE P. K. MUGAMBA

JUDGMENT

This appeal is against the judgment of the Chief Magistrate, Mbarara, delivered on 26th November 2003. The grounds of appeal are:

- a) The learned Chief Magistrate erred in law and misdirected her mind when she failed on the overwhelming evidence to hold that the appellant was the owner of the land in dispute.
- b) The learned Chief Magistrate totally failed to follow and appreciate the evidence as adduced in court and in the process entered a bad judgment which occasioned a miscarriage of justice.
- c) The learned Chief Magistrate erred in law and evidence when she awarded general damages for inconvenience amounting to Shs. 250,000/= which were never specifically pleaded and proved.

The present respondent was plaintiff in the trial court. She testified, as PW1, that her husband had bought the suit piece of land from PW2. At the time of the purchase PW2 had made an agreement of sale with the husband of the plaintiff. The purchase price was Shs. 300,000/=. The agreement mentions the husband of the plaintiff as purchaser and PW2 as the vendor. There is nowhere the appellant herein is mentioned.

In their respective testimonies both PW2 and the defendant agreed they had cohabited for 11 years and that together they had produced children. There is no evidence they were husband and wife though the defendant hinted at it without due proof.

PW2 and the defendant never lived on the suit land during their cohabitation and no evidence was produced by the defendant to show she had any interest in the land at the time it was sold by PW2 to the plaintiff's husband. I find that the learned trial magistrate properly found that the suit land was properly sold by PW2 to the husband of the plaintiff and that the defendant has no legitimate claim to it. I do not accept the contention in the first ground of appeal that there was overwhelming evidence the appellant was the owner of the land in dispute. The contrary is true. There is sufficient evidence to show the respondent, administrator of the estate of her deceased husband, is owner of the land in dispute. The first ground of appeal therefore fails.

As for the second ground of appeal, having found as I have regarding the first ground I find that this ground also fails.

Concerning the third ground the learned Chief Magistrate awarded Shs. 250,000/= as general damages and not as special damages, which require proof. As the damages were awarded to compensate for her inconvenience and since I find the inconvenience was unjustified I see no reason to disturb the award. This ground is also unsuccessful.

Consequently I dismiss this appeal with costs.

P. K. Mugamba

Judge

26th October 2004

Mr. Bazaare for appellant

Parties before court

Ms Tushemereirwe court clerk

Court:

Judgment read in court