

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

HCT-05-CV-CA-0001/2004
(From Civil Suit No. 0085-1995)

RUTAGONYA MATIAS..... APPELLANT

vs

RWITARE GILGORIRESPONDENT

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

JUDGMENT

The appellant brought this appeal against the respondent following the former's dissatisfaction with the decision of the Chief Magistrate Mbarara delivered on 15th December 2003. The five grounds of appeal contained in the memorandum as originally drafted are:

1. The learned Chief Magistrate erred in law and fact to hold that the society was functional and its land comprised occupied and unoccupied land.
2. The learned Chief Magistrate erred in law and fact to hold that contrary to the Resolution of the members the 2nd defendant distributed the society land consequently deprived the plaintiff of his own land.
3. The learned Chief Magistrate despite the overwhelming evidence on court record arrived at a wrong conclusion that there was illegal distribution of the society land which was prejudicial to plaintiff's interest.
4. The learned Chief Magistrate's order to distribute the unoccupied land of the society to the members in accordance with the members Resolution shall occasion a miscarriage of justice.
5. The learned Trial Magistrate misdirected herself on the law and evidence and as a result came up with a bad judgment which was against the weight of the evidence on record.

It is the duty of the first appellate court to reconsider and evaluate the evidence on record and come to its own conclusions bearing in mind, however, the fact that it never saw the witnesses as they testified.

See *R vs Pandya* [1957] EA 336; *Selle vs Associated Motor Boat Co* [1968] EA 123; *Nsibambi vs Lovinsa Nankya* [1980] HCB 81.

Taking advantage of that posture I have looked not only at the recorded evidence but also at certain of the documents I dare say are key to this case but which for unknown reasons were not considered in evidence though they are on the file. I refer to the certificate of registration for Bugona-Rutungu Farmers Co-operative Society dated 29th October 1985 and the certificate of title dated 24th August 1982 done in the names of Matiyasi Rutagonya and Gerigora Rwitare operating as Kashenyi Rutungu Barisa Kweterana. The two documents were annexures to the plaint of Rwitare, the respondent herein.

I find paragraphs 4 and 5 of the plaint significant. Paragraph 4 mentions that on 29th October 1985 Bugona-Rutungu Farmers Co-op. Society was formed by Rwitare and 77 other members in order to acquire land known as Vol. 1195 Folio 19 Kajara Block 27 Plot 1. Paragraph 5 states that a certificate of title was later prepared and made out in the aforesaid society's names. The respondent in his testimony as PW1 confirms this as does PW2 and PW3. Obviously this is not true given that the certificate of title was issued on 24th August 1982 long before the society was registered on 29th October 1985. What is more, what appears on the certificate of title besides Rwitare and Rutagonya is the business name not of the society mentioned but that of Kashenyi Rutungu Barisa Kweterana. Respectfully I see no relationship between Bugona-Rutungu Farmers Cooperative Society and the land in issue. I so hold and proceed to the grounds of appeal.

Regarding the first ground of appeal even if the Society were functional, which the body of evidence denies was the case, there is no evidence of any land it held. Similarly I find no evidence of land being distributed by Rutagonya as alleged or at all. As a consequence all the grounds of appeal must be upheld as no evidence exists of any land being held by the society let alone of a resolution emanating from a society seized of the land at one time or another. The

plaintiff had the onus to prove them if he could. See sections 101, 102, 103 Evidence Act. I find lack of appreciation of the above led the learned trial magistrate to arrive at a wrong decision.

Consequently the appeal succeeds and the decision of the lower court is set aside. The appellant is entitled to costs here and below.

P. K. Mugamba

Judge

9th March 2005