

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

H.C.C.A.NO. 13/91
(Original CS. MMB 124/89)

RUTAFURURWA AND 9 ORSAPPELLANTS

VS

KAMIRAMARESPONDENT

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

JUDGMENT

This is an appeal against the decision of the Grade 1 Magistrate Mbarara delivered on 20th August 1991. Four grounds were raised in the memorandum of appeal. They were:

1. That the learned trial magistrate erred in law and in fact in holding that the document of the R.C.III executive referred to by counsel for the defendant/respondents is/was a judgment.
2. That the learned trial magistrate erred in law and in fact in holding that the R.C. III Court was duly constituted whereas it was not.
3. That the learned trial magistrate erred in law in holding that the suit was barred by the doctrine of res judicata.
4. That the ruling of the learned trial magistrate was against the weight of the available evidence and thus caused a miscarriage of justice.

At the hearing of the appeal Mr. Mwene-Kahima appeared for the appellants while Mr. Katembeko was counsel for the respondent. It was the argument of counsel for the appellants that the doctrine of res judicata could not apply to the case before the trial court because there was no judgment by any other court in existence at the time which had disposed of the matter then at hand. He argued that what purported to be a judgment from the R.C. III Court was in fact no

judgment as the document was signed by only one person namely Muhumuza Willy, the Chairman R.C. III Ruhama. He added that according to the statute setting up R.C. Courts such court could be properly constituted with a quorum of five members; which appears not to have been the case if the R.C. III Court's document is to go by.

Mr. Katembeko for the respondent argued that the statute which created R.C. Courts did not state anywhere that the judgment of the court should be signed by all members of the committee. He argued further that the R.C. III judgment shows the case was heard and judgment was passed. He said the presumption is that the case was properly heard and that S.4 of the statute referred to the constitution of that court and not to whose signature should appear on the judgment.

I have listened carefully to the arguments on either side. I have perused the document that is being contested but which both parties agree issued from the R.C. III Chairman of Ruhama.

What is in issue is whether the doctrine of res judicata applies to this matter as was the ruling of the learned Grade I magistrate, Mbarara. For res judicata to apply the matter ought to have been heard and determined. Where the merits of the matter were not heard and determined the doctrine does not apply. Section 7 of the Civil Procedure Act should be taken into account. In relation to this I must refer to paragraph 388 of Halsbury's Laws of England, 3ft1 edition which states:

'In order to ascertain what was in issue between the parties in the earlier proceedings, the judgment itself must of course be looked at and the verdict, if any, on which it is founded; and where there have been pleadings, those should also be examined being in fact part of the record.'

The point of reference is the document from the R.C. III Ruhama which bears the curious heading 'RWAMWIRE FOREST PL NATION'. Apparently it bears evidence but does not acknowledge from who such evidence was gathered. Yet the statute requires there be a record of court proceedings. The opening sentence states that after carefully listening to disputes on the subject above the following were reached and observed. There is no disclosure of who listened, reached or observed. Could it have been only the Chairman since he was the single signatory to the document? I find such a conclusion is not farfetched given what appears in clause (6) of the document.

‘(6) Reference to R.C.1 in which I was invited to have a tour over the disputed forest...’

Clearly the above statement is in the singular and not the plural as would have been the case had the matter been before a properly constituted court. That and the fact that there is only one signatory to the document, no mention that there was a hearing after which a judgment was arrived at lead me to the irresistible conclusion that the document is anything but a judgment. At best it is .a report by the Chairman to whoever is concerned. Being the report that is was it did not find it necessary to include names of the persons involved in the dispute.

Having held that there was no judgment in the R.C. III Court my finding is that the doctrine of res judicata does not apply. The ruling and decree of the trial court are set aside and in consequence the hearing of the suit before that court should proceed to determine it on merit.

Costs to be in the cause as the ruling was occasioned by court.

P. K. Mugamba

Judge

30th June 2005