

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT GULU
HCT – 02 – CV – CA – 031 – 2004
(Arising from C.S. No. GUL- OO – CV – CS – 0074 – 2003)

MRS. BETTY KIBWOTA:.....APPELLANT

=VERSUS=

- 1. OLOYA JOEL**
- 2. OMARA GODFREY**
- 3. BONGOMIN ALFRED**
- 4. ALYEK ALICE**
- 5. LAKAREBER JENIFFER**
- 6. VENTORINA LAMUNU OKELLO:.....RESPONDENT**

BEFORE: HON. JUSTICE REMMY K. KASULE

RULING

This appeal arises from the Chief Magistrate Court, Civil Suit No. 74 of 2003. Judgment in that suit was delivered on 6th December, 2004, and this appeal was lodged therefrom on 13th December, 2004. On 14th December, 2004, the Chief Magistrate, Gulu, was requested by the Registrar, High Court, Gulu, to forward the Court file of the trial proceedings and judgment to this court so as to have the appeal determined. The file has never been furnished to this court. All efforts to trace the same have been futile.

On 19th May 2008, on the basis of proceedings by way of Photostat copies provided to the court by counsel for both appellant and respondents, court allowed counsel to make submissions on the grounds of appeal. Judgment was reserved.

This court has come to the conclusion that it cannot proceed to deliver judgment in the absence of the original trial because the pleadings filed in the trial court are missing. So too are the documentary exhibits that the parties submitted to court. Further, from the Photostat copy of proceedings and judgment availed to this court, it would appear that the issues in dispute involve a sale of a plot of land by the respondents to the appellant. The value of that plot of land, at the material time, is put by the parties to have been around shs 6.000,000/= This brings out the issue whether or not, at the time of filing and trial of the original civil suit No. 74 of 2003, the trial court was seized of jurisdiction. It is not possible to resolve on such issue in the absence of the original court file.

The appeal has been in this court for now four (4) years. Progress must be made in the matter. Court therefore, in the interest of justice to all the parties involved in the appeal, orders that a retrial be and is hereby ordered in the case. In order not to spend any further unnecessary time, the retrial shall be conducted by the High Court. The respondents, as plaintiffs are to file and serve their pleadings in the High court by the 16th February, 2009, the appellant, as defendant by the 2nd March, 2009, any reply to be filed by 9th March, 2009, and the case is to be mentioned on the 16th March, 2009 at 9.00 a.m. None of the parties is to pay any fees.

This court orders that the status quo of the suit land, Plot 50E Andrea Olal Road, be preserved in that it is not to change ownership from any of the parties to this appeal/suit to some other third party, and the parties hereto are restrained from putting any permanent structures and/or taking permanent occupation or use thereof, until the final determination of the suit to be re-tried.

It is ordered that as to who will take the costs of the proceedings so far conducted, that is of this appeal and of the trial in the lower court, is to be decided upon in the ordered retrial.

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Remmy K. Kasule

Judge

30th January, 2009.