THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT JINJA

CIVIL REVISION NO. 001 OF 2006

(Arising from Kaliro Civil Suit No. 0033 of 2002)

MUNOBWA MUHAMED::APPLICANT

VERSUS

UGANDA MUSLIM SUPREME COUNCIL ::::::::::::::::RESPONDENT

BEFORE: HON. LADY JUSTICE IRENE MULYAGONJA KAKOOZA

ORDER IN REVISION

This application arose from the decision of Igeme Nabeta, Senior Grade II Magistrate sitting at Kaliro, in which he declared that the piece of land in dispute belongs to the respondents who were the plaintiffs in the suit. He further ordered that the applicant/defendant and his relatives, agents and employees be evicted from the land within 30 days of the judgment and the respondents be left in possession thereof. He further issued a permanent injunction to restrain the applicant from trespassing on the land and ordered that he pay the costs of the suit.

The applicant's complaints in this application were set out in the notice of motion and repeated in his affidavit dated 21/03/2006. He complained that the trial magistrate had no jurisdiction to entertain the suit and thus acted illegally because the value of the land was above his pecuniary jurisdiction. The applicant also complained that the trial magistrate acted illegally and with material irregularity and injustice when he failed to properly evaluate the evidence on record thus reaching a wrong decision. Finally, that the trial magistrate acted with material irregularity and injustice when he wrongly applied the principle of bona fide occupancy to find in favour of the respondent.

In an affidavit deposed by Taita Idi, a member of Namukoge Mosque Committee, the respondent challenged the application because the suit was heard inter parties and judgment delivered in the presence of the applicant. But thereafter, the applicant and his relatives demolished the mosque

and a latrine and proceeded to construct houses on the land which led to the arrest and imprisonment of the applicant for defying court orders. He further averred that because the applicant's hands were sullied by these acts and he made no efforts to appeal against the judgement in issue, he was not entitled to remedies claimed in this application.

Taita Idi also averred that the applicant delayed to challenge the jurisdiction of the court and only raised it as an afterthought. That though he had counsel representing him in the lower court, he (the advocate) made no objection to the jurisdiction of the court till the matter was completed and judgment delivered. Further that the court already handed the land in dispute over to the respondents and any order in revision reversing the orders of the lower court would occasion serious hardship to the respondents who have developments on the land including crops. Further that the applicant had been committed to civil prison on account of the costs of the suit which he had not paid. Also that some of the claims made by the applicant in this application properly belonged in an appeal and not a civil revision. The respondents prayed that the application be dismissed.

When this application finally came before me for hearing on 3/09/2009, I ordered the parties' advocates to file written submissions in order to comply with the provisions of s. 83 (d) of the Civil Procedure Act that parties in such matters must be heard before the court exercises its discretion in revision. M/s Lukwago & Co. Advocates then filed submissions on behalf of the applicant belatedly on 01/02/2010, instead of 17/09/2009 as I had ordered. The respondent's advocates, M/s Munulo & Co. Advocates, after complaining that the applicant's advocates had inordinately delayed to comply with my order, filed submissions earlier than the applicant on 27/01/2010. Regardless of the inordinate delay by the applicant's counsel to file submissions on his behalf, I considered the submissions filed for both parties in arriving at my order in revision.

In his submissions, counsel for the applicant argued that in 2002 when the trial magistrate entertained the dispute, s. 207 (1) (c) of the Magistrates Courts Act (MCA) limited the jurisdiction of Grade II magistrates to causes where the subject matter had a maximum value of shs 500,000/=. Counsel advanced his argument by stating that by 2002, the piece of land that was in dispute which measured 800 x 400 ft. must have had a value higher than shs 500,000/=. That as a result the trial magistrate entertained the dispute illegally and that his decision is a nullity.

He cited several decisions to support the latter argument including **Peter Mugoya v. James Makabaye [1991] HCB 63**.

Counsel for the applicant repeated the contents of the applicant's affidavit that the trial magistrate did not properly evaluate the evidence on the record and thus arrived at a wrong decision that the respondent was the owner of the land in dispute. In his view, the decision was wrong because the respondent did not adduce any evidence of ownership of the land. Counsel challenged the trial magistrate's finding that the respondent was a bona fide occupant of the land because the respondent did not plead it nor adduce evidence to support it. He also challenged the finding because it was made in respect of unregistered land. He further argued that there was no evidence that the respondent had occupied the land for more than 12 years for the principle of bona fide occupancy to apply.

Finally, counsel for the applicant challenged the propriety of the whole suit. He contended that there was no evidence that the UMSC authorised anybody to sue on its behalf. He advanced his argument by observing that none of the officials of the UMSC appeared in court to testify. He asserted that the persons who brought the suit on behalf of UMSC were pretenders and officious bystanders. He concluded that the trial magistrate exercised his jurisdiction with material irregularity when he entertained the suit and prayed that the proceedings be revised and the applicant be awarded costs of the suit and all monies spent in (averting) the illegal execution.

In reply, Mr. Munulo submitted that the value of the land was never mentioned in the pleadings nor adverted to anywhere in the proceedings in the lower court. That as a result it was not one of the issues that the court addressed and no evidence was led to prove it. Mr Munulo further argued that the burden of proof lies on the party who seeks to rely on a certain fact. That if the applicant wished to have the value of the land in dispute considered in the suit, he should have produced evidence in the lower court to support the fact that its value was higher than the pecuniary jurisdiction of the trial magistrate.

With regard to the jurisdiction of the court, Mr. Munulo submitted that the applicant who willingly submitted to the jurisdiction of the lower court could not wake up and challenge it after the completion of the lengthy trial of the suit on its merits. He cited s.16 of the CPA to support his argument which, in his opinion, estopped the applicant from challenging the jurisdiction of

the court after the trial had been completed. He added that the applicant had not suffered any injustice since the trial was fair and he was heard and called witnesses to support his case. He then asserted that this application was filed only to try and delay the course of justice.

Finally, Mr. Munulo challenged the application for revision for the reason that the applicant was trying to raise matters in it that should have been the subject of an appeal. In particular, he pointed out the contention that the trial magistrate did not properly evaluate the evidence on record and that he wrongly applied the principle of the bona fide occupancy. In his view these two issues ought to have been grounds in an appeal and not the subject of a revision. He added that wrong decisions of the lower courts after the judicious exercise of discretion are subjects of appeal; they do not amount to illegal or irregular actions of the court so as to form the basis of applications for revision. He concluded that this application was an attempt to smuggle in an appeal that was barred by time and it should be dismissed with costs to the respondents.

Several issues arise from the submissions above for determination by this court as follows:

i) Whether the circumstances of the case justified a revision of the proceedings.
ii) Whether the trial magistrate had jurisdiction to entertain the suit.
iii) Whether the members of Namukoge Mosque Committee had the authority to bring this suit on behalf of the respondent.
iv) Whether the trial magistrate failed to evaluate the evidence before him and thus came to a wrong decision against the applicant.
v) Whether the trial magistrate wrongly applied the principle of bona fide occupancy.

i) *Whether the circumstances of the case justified a revision of the proceedings.*

Black's Law Dictionary (9th Edition) defines revision as *"a re-examination or careful review for correction or improvement"* or *"an altered version of work."* In **Mabalanganya v Sanga [2005] 2 E.A. 152**, the Court of Appeal of Tanzania held that in cases where it exercises its revisional jurisdiction under s.4 of the Appellate Jurisdiction Act, its duty entails examination by the Court of the record of any proceedings before the High Court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, order or any other decision and the regularity of any proceedings before the High Court. I think that the parameters set by that court would properly apply to the High Court of Uganda in its revisional jurisdiction which is set out in s.83 of the CPA as follows:

"The High Court may call for the record of any case which has been determined under this Act by any magistrate's court, and if that court appears to have—

a) exercised a jurisdiction not vested in it in law;
b) failed to exercise a jurisdiction so vested; or
c) acted in the exercise of its jurisdiction illegally or with material irregularity or injustice,

the High Court may revise the case and may make such order in it as it thinks fit; …"

This is of course all subject to the provisos that no order shall be made in revision unless the parties in the cause are heard, and that such orders are not to be made if they would occasion serious hardship to the parties involved.

In **Hitila v. Uganda [1969] 1 E.A. 219**, the Court of Appeal of Uganda held that in exercising its power of revision the High Court could use its wide powers in any proceedings in which it appeared that an error material to ***the merits*** of the case or involving a miscarriage of justice had occurred. It was further held that the Court could do so in any proceedings where it appeared from any record that had been called for by the Court, or which had been reported for orders, or in any proceedings which had otherwise been brought to its notice. Similarly, in **Fatehali v. Republic [1972] 1 E.A. 158 (CAD)** the Court of Appeal sitting at Dar-e-salaam held that a judge of the High Court has power, on his own motion, to call for and revise any proceedings in the magistrate's court, in whatever manner the proceedings came to his knowledge.

It appears to me that in Uganda, the powers of the High Court in revision of the proceedings of the magistrates' courts are not limited. The appellate jurisdiction of this court in many cases involves revision of the matters before it even when they have not been drawn to its attention by the parties to the appeal. The court revises the proceedings, judgments and orders of the magistrates' courts at any opportunity that it gets, i.e. whenever their records come before it. It is also clear from the provisions of s. 83 (c) CPA that the judicial discretion of magistrates does not escape this court's revisional power. Decisions are revised whenever the trial magistrate fails to exercise his/her jurisdiction or where he/she acts illegally or with material irregularity or injustice. It is my humble opinion that that is no different from the powers of this court on a first

appeal where the court re-evaluates the whole of the evidence and comes to its own findings/decisions on all matters of fact and law that were before the lower court.

I therefore find that the issues raised by the applicant that Mr. Munulo complained about are properly before this court for revision or correction as is required by s.83 CPA. However, unlike a decision of this court on appeal, orders of this court in a civil revision cannot automatically be appealed against to the Court of Appeal for it is not one of the orders laid down in s.76 CPA from which appeals lie. In that way, a person who neglected to appeal against a decision of the magistrates' courts in a matter such as the one before me now forfeits his automatic right to further appeals.

ii) ***Whether the trial magistrate had jurisdiction to entertain the suit.***

The jurisdiction of magistrates' court is at present provided for by s. 207 of the MCA. At the time that the suit was filed, s. 207 of the MCA provided that a magistrate grade II would have jurisdiction where the value of the subject matter in dispute did not exceed five hundred thousand shilling. The plaintiff's suit was in trespass and they claimed that in February 2002 the applicant entered onto the land in dispute, cut down three *mivule* trees and started cultivating the land. They sought a declaration that the land, which had been given to the mosque in 1929, was the property of UMSC. It was in evidence that the land was held under customary law and jurisdiction over it was determined accordingly.

Section 207(2) provides that notwithstanding subsection (1), where the cause or matter of a civil nature is governed only by civil customary law, the jurisdiction of a chief magistrate and a magistrate Grade I is unlimited. S. 208 goes on to provide that every magistrate's court shall, subject to the Act, have jurisdiction to try all suits of a civil nature excepting suits of which its cognisance is either expressly or impliedly barred; but every suit instituted in a magistrate's court should be instituted in the court of the lowest grade competent to try and determine it.

Originally, s. 219 (2) of the MCA 1970 provided that magistrates up to the level of grade II had unlimited jurisdiction to entertain matters of a civil customary nature because by the provisions of s. 220 of the MCA, every suit instituted in a magistrates court has to be instituted in the court of the lowest grade competent to try and determine it. Therefore, in **Peter Oweka v. Dominiko Achaye [1976] HCB 292**, it was held that the Chief Magistrate and Grade II magistrates had

concurrent jurisdiction in civil matters of a customary nature under s. 219(2) (a) MCA. It was further held that the provisions of s.220 which is now s. 208 MCA were mandatory. The same was held in the case of **Kahurutuka & Another v. Mushorishori & Co. [1975] HCB 12**, where a Grade II magistrate heard and disposed of a suit in respect of land over which a lease had been registered under the Registration of Titles Act. The rationale was that though the title could be subject to cancellation, the suit had been disposed of by a competent court. The court held that it was then up to the party requiring the title to be cancelled to apply to the High Court for appropriate orders by virtue of its powers under then s.185 RTA. I think that the decisions made in the two cases is still good law on the jurisdiction of magistrates Grade II.

By the year 2002, the jurisdiction in disputes over customary land could also be exercised by the Local Council Courts under the provisions of s.5 (1) (a) and Part II of the First Schedule to the Executive Committees (Judicial Powers) Act. It would therefore be incorrect to assert that the jurisdiction of magistrates Grade II was limited more than that of LCI Courts at the time that the matter was disposed of by the trial magistrate. In addition, the value of the land was never in dispute. In that regard, I noted that s. 207 (3) provides that whenever for the purposes of jurisdiction or court fees it is necessary to estimate the value of the subject matter of a suit capable of a money valuation, the plaintiff shall in the plaint, subject to any rules of court, fix the amount at which he or she values the subject matter of the suit; but if the court thinks the relief sought is wrongly valued, the court shall fix the value and return the plaint for amendment. However, that exercise was not called for in a claim over trespass to land. I therefore find that the Grade II Court was competent to entertain the suit at hand and properly did so.

iii) ***Whether the members of Namukoge Mosque Committee had the authority to bring this suit on behalf of the respondent.***

On the 15/04/2002, The Chairman Namukoge Muslim Supreme Council purported to file Civil Suit No. 0033 of 2002 in the Chief Magistrates Court at Jinja. The parties to the suit were therefore originally The Chairman of Namukoge Muslim Supreme Council and Muhamad Munobwa. Following an appeal against an order that the plaintiff be substituted by UMSC, the Chief Magistrate confirmed the order that UMSC be the plaintiff in the suit, and that the case file be transferred Kaliro Court for the suit to proceed. UMSC then became the plaintiff in the suit.

The record of proceedings also shows that on the 14/06/2002, the Secretary General of UMSC, who was then Sheik Musa Mayanja Luyombya, wrote to M/s Munulo & Co. Advocates

authorizing them to file a suit on behalf of the Muslims at Namukoge in the names of UMSC. He apologized for the delay in communicating the authority and stated that he had been approached by the Chairman of the Mosque Committee in May 2002 for the necessary authority to file the suit. As a result, on 4/09/2002, Munulo & Co. Advocates filed an amended plaint naming UMSC as the plaintiff in the suit. It is therefore not true that the suit was brought by pretenders and officious bystanders, as was alleged by counsel for the applicant.

iv) ***Whether the trial magistrate failed to evaluate the evidence before him and thus came to a wrong decision in favour of the respondents.***

The main decision that the trial magistrate made in the suit was that the land measuring about 800 x 400 ft long with a mosque thereon situated at Nakabale village, Namukooge Parish, Namugongo sub-county in Kamuli District belonged to the plaintiff. He also ordered that the defendant and his relatives, agents and employees be evicted from the land within 30 days of the date of his judgment and that vacant possession be delivered to the plaintiff. The record of proceedings shows that the trial magistrate arrived at this decision after a lengthy evaluation of all the evidence adduced by 8 witnesses who testified on behalf of the plaintiff, as well as the testimonies of 10 witnesses who were called by the defendant/applicant.

I re-evaluated the whole body of evidence on record and at the end of it, I formed the opinion that the witnesses who testified for the respondent/plaintiff seemed to be more conversant with the history of ownership of the land than the applicant/defendant's witnesses. The salient pieces of evidence were from Amisi Kamanya (PW1) who testified that he was present when Juma Isooba, his uncle formally donated the land to the mosque and had it demarcated. He said that before that his uncle Isooba had only loaned the land to the Muslims of Namukooge and that was as far back as 1927. He also told court that the Kisoko Chief called Njugu gave the land to Isooba at a time when the Mutala Chief was Talenga.

According to Hussein Kintu (PW2) who was the Imam of the mosque at the time, Asani Njaye was an attendant at the mosque and not the owner of the land in dispute. PW2 also told court that before 2000 the land was let out to various tenants and the proceeds would be paid to mosque staff. That it was in 2000 when the applicant began to make incursions on the land by felling three *mivule* trees and cultivating it. Also that it was after that that the applicant and his relatives began to build grass thatched huts on the land. PW2 further testified that the Muslim community

protested by reporting the matter to the police upon which the applicant was arrested but he was released on a police bond.

The testimony of John Ziraba (PW3) was particularly important. He told court that Asani Njaye, the applicant's father told him that Juma Isooba donated the land in dispute to the Muslims at Namukooge in 1927. That in 1975 he (PW3) was the Gombolola Chief of Namugongo sub-county and, he was invited by the Imam at the time, one Hussein Kintu to go and settle a dispute over the land. He said that the dispute involved the Muslims at Namukooge and the Parish which neighbours the land in dispute. PW3 testified that he went to Namukooge and settled the dispute. Also that he participated in the planting of *birowa* to demarcate the land and according to him, those *birowa* still existed by the time he testified.

When the applicant cross-examination him PW3 told court that he met Asani Njaye at the mosque in 1975 when he went to settle the dispute over the mosque land. Further that Asani Njaye told him that his father, Zaidi Mangi, was one of the first Imams at the mosque and he stayed near the mosque in order to serve the Muslims at the mosque. The testimony of PW6, Abuneri Nsaija, corroborated that of PW3. He too testified that Asani Njaye was present when the Gombolola Chief planted *birowa* to demarcate the land and settle the dispute between the Muslims and the Parish.

Walya Muhammad (PW4) was a relative of the applicant. He referred to Asani Njaye as his brother because Zaidi Mangi, the applicant's grandfather, was his father too. He told court that his father Zaidi Mangi served as an Imam at Namukooge mosque but the land did not belong to him. When he was cross-examined, he insisted that the late Asani Njaye just used to cultivate the land by planting food crops thereon but the land was not his. The testimony of Musa Balonde (PW5) corroborated that of PW2 that the applicant began to encroach on the land in 2001 after he (PW5) proposed to build a school on the mosque land. That it was then that the applicant felled three *mivule* trees and the Muslim community reported this to the police who arrested him.

On the other hand, the applicant testified that he lived in Butege village. He further testified that the land in dispute belonged to his grandfather Zaidi Mangi and it was he that built the mosque on it. Further that after his death, his father Asani Njaye was Mangi's heir and he inherited the land. Further that after Njaye died, he (Munobwa) was appointed the heir and given a piece of

land at Butege. That the land in dispute was given to his step mother Abiba and her children by the clan after his father died. It was also the applicant's testimony that during the year 2001 his step mother told him that the Muslim community wanted to take the mosque land from them and build a school. It was his testimony that when he approached the Chairman of the mosque about this he was arrested. He produced a will (DExh1) by virtue of which he claimed to have inherited the land.

I examined the will which was made in the form that is published by the Uganda Bookshop. It had several pages inserted into it that were not originally bound in the form. They were clearly of a different type of paper from the form which had distinct original page numbering. I agree with the observations made by the trial magistrate about the alterations and interlineations that were inserted in the will in a different hand from the writing in blue that appeared to be that of the person who originally wrote the will. Many of these alterations and interlineations were underlined with a red pen and there was no signature beside any of them contrary to the provisions of s.58 Succession Act which provides as follows:

> **"58. No obliteration, interlineations or other alteration made in any unprivileged will after the execution of the will shall have any effect, except so far as the words or meaning of the will have been thereby rendered illegible or indiscernible, unless the alteration is executed in like manner as is in this Act required for the execution of the will; except that the will, as so altered, shall be deemed to be duly executed if the signature of the testator and the subscription of the witnesses are made in the margin or on some other part of the will opposite or near to the alteration or at the foot or end of, or opposite to, a memorandum referring to the alteration, and written at the end or some other part of the will."**

Clearly the DExh1 was a forgery and the applicant should have been arrested and prosecuted for uttering a false document in court contrary to the provisions of s.351 of the PCA. The punishment for this offence is similar to that for forgery and forging a document such as a will attracts the maximum punishment of life imprisonment under s. 348 of the PCA which provides as follows:

"348. Forgery of wills, etc.

(1) Any person who forges any will, document of title to land, judicial record, power of attorney, bank note, currency note, bill of exchange, promissory note or other negotiable instrument, policy of insurance, cheque or other authority for the payment of money by a person carrying on business as a banker is liable to imprisonment for life.

(2) The court may, in addition, order that the forged document referred to in subsection (1) shall be forfeited to the Government."

Pulikeriya Nangobi (DW2) told court that she was told that the mosque on the land was constructed by one Zaidi Mangi. That she came to the village when the mosque was already on the land. PW2 testified that the applicant's grandfather, Zaidi Mangi constructed the mosque on the land in dispute in 1917. Further that the applicant's father inherited the land from Zaidi Mangi after he died. DW3 had his home neighbouring the land in dispute. He told court that the applicant's grandfather constructed a mosque on the land in 1917. He further testified that when Zaidi Mangi died in 1957, Asani Njaye inherited the land with the mosque. He also told court that the applicant resided in Butege, 3 kilometers away from the land in dispute. DW4 repeated what DW3 said and both were not cross-examined. DW5 also said that the mosque was constructed by the grandfather of the applicant, Zaidi Mangi but a permanent mosque was constructed in 1972 by the Muslims at Namukooge. DW6, DW8, DW9 and DW10 all said they were told that the mosque was constructed by the applicant's father, while DW7 said the land was not for the Muslims but it was for the mosque, which to me meant the same thing; he recognised the respondent's interest in the land.

From the testimonies of the defence witnesses, it was apparent that though they were many and they were hardly cross-examined, the majority of their testimonies (5 witnesses) were hearsay and had to be disregarded. With regard to the testimony of DW1, even if he were to be believed, he had no locus to claim the land since he also said the clan gave it to his stepmother Abiba with her ten children. If the land was given to Abiba and her ten children that would mean that the applicant who built the grass thatched huts on it did so against the interests of his stepmother and

her children. Nonetheless, according to the respondent's witnesses this land was adjacent to the mosque and quite distinct from that which was occupied by the mosque. In addition to that, the evidence that resulted from the visit to the *locus in quo* dispelled all claims made by members of the applicant's family that they had property on the land in dispute.

The visit which was conducted on 15/03/2004 in the presence of the representative of the respondent and the applicant confirmed the testimonies of PW2, PW3, PW5, PW7 and PW8 about the shape, size and neighbours to the disputed land. It also proved that the land in dispute had a permanent mosque building on it. The land had Namukooge Parish bordering it on the East, the applicant's family land on the north, and Maaka and Kabuli's land on the other two sides of it and that it measured 800 ft x 400ft. Also that adjacent to the land with the mosques was the applicant's land on which there were three grass thatched huts. The trial magistrate drew a sketch plan to depict his findings. There was therefore no doubt that the trial magistrate was correct when he ruled that the land in dispute was distinct and different from the applicant's or his family's land at Namukooge.

v) ***Whether the trial magistrate wrongly applied the principle of bona fide occupancy.***

The applicant's advocate submitted that the trial magistrate wrongly applied the principle of bona fide occupancy, and that it could not be applied in the absence of pleadings to that effect by the respondents or the existence of registered land. The principle of bona fide occupancy is provided for by s. 29 (2) of the Land Act as follows:

> **"(2) "Bona fide occupant" means a person who before the coming into force of the Constitution—**
> **(a) had occupied and utilised or developed any land unchallenged by the registered owner or agent of the registered owner for twelve years or more; or**
> **(b) had been settled on land by the Government or an agent of the Government, which may include a local authority."**

There is no doubt that the provision above refers to rights to land as against those of a registered proprietor. However, the principle can properly be extended to land other than registered land where the circumstances justify it. I say so because by virtue of Article 237 (3) (a) of the

Constitution of the Republic of Uganda and s.2 of the Land Act, a customary interest in land is a legal interest. By virtue of s.6 of the Land Act, the rights of a customary owner of land can be registered and a certificate of title issued in respect of it. In addition, s.9(1) of the Land Act provides that any person, family, community or association holding land under customary tenure on former public land may convert the customary tenure into freehold tenure in accordance with the Act. The rights of a customary owner of land can also be transferred in the same manner as the rights of a registered owner of land can be.

That being the position of the customary tenant, I next considered whether the land in dispute was truly held under customary law and whether the respondent had been on the land for more than 12 years. PW1 who was the nephew of Juma Isooba testified that Juma Isooba was given the land in dispute by a *kisoko* Chief called Njugu. According to the Encyclopaedia of World Cultures (2002 Supplement), a *kisoko* was the third level in the administrative structure in Busoga. One of its functions was the administration of land. The *kisoko* chief (headman) was approached by persons seeking land for daily use. He would take them through the steps required before land could be allotted to them. After they paid the required dues and fulfilled the customary obligations, they could claim tenure over a piece of land. Juma Isooba therefore enjoyed a customary tenancy over the land

PW1 testified that after he got the land, Isooba gave part of it to the Muslims at Namukooge in 1927. He further testified that Isooba demarcated part of the land for the Muslims in 1947 and reserved a piece for his family. In addition, PW2 testified that the Muslim community built a permanent structure on the land. PW3 testified that in 1975 there was a dispute between the Parish at Namukooge and the Muslim Community. He went to the land and participated in planting a boundary to demarcate the land using *birowa*. The *birowa* boundary was still existent and mature on 15/03/04 when the trial magistrate visited the land in dispute. He made the observation that the land boarded by *birowa* measured 800ft x 400 ft as the various witnesses had testified. The mosque was also present. The applicant's advocate's submission that it was not proved that the respondents were in possession of the land was definitely incorrect.

By 2002 when the respondent filed this suit, the mosque had been in existence for 75 years since Isooba gave the land to the Muslims. It was also 27 years since 1975 when the dispute between the parish and the Muslim community over the land was settled by PW3, in the presence of the

applicant's father. Given this evidence, I came to the conclusion that though it was not pleaded by the respondents, they adduced ample evidence that clearly established that they were bona fide occupants of the land in dispute because they had been in occupation of it for more than 12 years before the promulgation of the Constitution in 1995. I therefore find that the trial magistrate was correct when he arrived at the finding that the respondents were bona fide occupants of the land in dispute.

In addition to the above, the respondents were lawful occupants of the land under the provisions of s. 29 (1) (b) Land Act, which in my opinion also applies to land held under customary law. I say so because there is ample evidence that established that they entered into occupation with the consent of the customary owner, Juma Isooba. His predecessors in title acquiesced in their ownership of the land, including the applicant's father who attended the demarcation by the Gombolola Chief in 1975. Besides that, according to PW1 when Isooba donated the disputed piece of the land for the mosque, he reserved a distinct portion for use by members of his family. The family therefore had no valid reason to encroach on the land that had been donated for a mosque.

In the end result, the applicant did not prove that the trial magistrate exercised a jurisdiction not vested in him in law. Neither did he prove that he failed to exercise a jurisdiction so vested in him, nor that he acted in the exercise of his jurisdiction illegally or with material irregularity or injustice. The applicant is therefore not entitled to any of the remedies claimed in his application. His application therefore fails and is dismissed with costs to the respondent. The will that was tendered in evidence by the applicant shall be forfeited to the Government of Uganda under the provisions of s. 348 (2) of the Penal Code Act.

Irene Mulyagonja Kakooza
JUDGE
26/08/2010