

HCT CIVIL APPEAL N0. 52/07
(ARISING FROM CIVIL SUIT N0. 75/07)

VERSUS

BEFORE: HON. LADY JUSTICE FAITH MWONDHA

This appeal that came before me by the appellant Gertrude Nakanwagi. The appellant was dissatisfied by the judgment of the Trial Magistrate, Her Worship Nkonge Agnes. She therefore appealed against the decisions and orders given at the delivery of the judgment on 23rd November 2007.

- 1) That the learned trial magistrate erred in law and in fact when she found that there was an agreement for settlement between the appellant and the respondent.
- 2) That the learned trial magistrate erred in law and fact when she found that the appellant was not a party.
- 3) That the trial magistrate erred in law and fact when she found that the appellant was bound by the signature of Lyukyamuzi Leonard who was not married to the appellant.

- 4) That the learned trial magistrate erred in law and fact when she ordered compensation and vacation of the suit property against the consent and will of the appellant.

The memorandum was silent on the prayers sought by the appellant.

At the hearing of the appeal, court directed the parties to file written submissions which they did. This court therefore started to peruse the record of evidence. The duty of the first appellate court has been emphasized in the law and decided cases as among others being to evaluate and scrutinize the evidence afresh to enable it to come to its own independent conclusion/decision.

Unfortunately for this case, the record was so jungled to the extent that claim 50 of 2007 and the proceedings thereon were not on record of evidence.

So I depended on the record of evidence as recorded by the trial magistrate, which in my view was leading also. The facts of the case from the judgment of the lower court were interalia as follows:-

That the respondent filed the suit for eviction and compensation of the appellant/defendant and vacant possession. He also prayed for costs. That the defendant/appellant who was a biological sister to the respondent/plaintiff built a house on the suit land. That he acquired the suit land from someone who had a registered interest and the same person allowed her to build a house on it prior to the registered owner's death in 1999. The registered owner was the mother of the appellant and respondent and she had allowed the respondent to build a house near her when she separated from her husband. That later the appellant had an accident and was flown to United Kingdom and left her husband Lukyamuzi behind. Further that the respondent entered into an agreement with Lukyamuzi (deceased) and compensated him with ½ acre of land.

After a careful perusal of the court file and particularly the record of proceedings from the lower court, I observed with concern the following:-

- 1) There was no full record of proceedings since the plaintiffs case was not there and it starts with the Defence case which was on 11th September 2007. Much as on that date counsel for the plaintiff is stated to have been present and the plaintiff is stated to have been present and the matter had been fixed for hearing, but that counsel for the defendant was appearing in the Commercial Court. The matter was given last adjournment to 21st September 2007 and it took off on that day and the defence closed its case.
- 2) I found it difficult to exercise the 1st appellate court's role of evaluating and scrutinizing the evidence on record to facilitate coming up with my independent judgment/decision.

From the record as stated about, comes out clearly that the decision of the lower court was reached upon inter party. It defeated my understanding why the plaintiff's case was not on record.

And as I stated before, there was no plaint and/or claim on the record of court. There was a written statement of defence on record of court. In short there was no proper record of appeal since the essential records were unavailable. This was a matter which originated as a claim from Wakiso Land Tribunal but the claim and the proceedings therein were not availed to this appellate court.

In addition, there was no vigilance by counsel for the appellant since she/he is an officer of court to ensure that the proper record was on court record. The Registrar ought have ensured that before this file was brought before me there was a proper record of appeal to facilitate speedy and fair hearing. Though both counsels made written submissions, without the relevant record, it becomes impossible for this court to evaluate and scrutinize the inadequate record of appeal.

In the circumstances, I find the appeal incompetent and the same is dismissed with no order to costs.

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Right of Appeal explained.

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Respondent present

Appellant present

Vincent Mutyaba for respondent present

Counsel for appellant absent.

Judgment delivered.

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J U D G E

12/02/10