

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)**

CIVIL APPEAL NO. 30 OF 2008

(Arising out of Luwero Chief Magistrate's Civil Suit N0. 96 of 2007)

SSENGUJJA BRUHANE

:.....

APPELLANT

VERSUS

KATUMBA SIMEYI

:.....

RESPONDENT

JUDGMENT BY HON. MR. JUSTICE JOSEPH MURANGIRA

The appellate, Bruhane Ssegujja, through his lawyers Makeera & Co. Advocates filed this appeal in this Court against the respondent, Katumba Simeyi on 15th December 2008. The respondent is represented by Kiyimba-Kisaka & Co. Advocates.

The appeal is based on the following grounds:-

1. The Honourable learned Trial Chief Magistrate failed to analyse the evidence before him hence reading a wrong decision.
2. The decision of the learned trial Chief Magistrate was against the weight of evidence.
3. The learned trial Chief Magistrate on reaching his decision relied on extraneous matters, conjecture, and/or imagination and /or evidence which was not available to court.
4. The learned trial Chief Magistrate erred in law when he ordered that the appellant's land title be transmitted to the High Court for cancellation.
5. The learned trial Chief Magistrate erred in law and in fact in reaching a decision without visiting the locus and/or calling evidence of a land surveyor.

The appellant prayed to Court for Orders that:-

- (1) The appeal be allowed.
- (2) The findings and orders of the lower court be set aside and be substituted with orders that:-
 - (a) The defendant is a trespasser on the suit land.
 - (b) The defendant be evicted.

- (c) The defendant pays general damages for trespass.
- (d) Costs of the appeal and the court below be paid by the defendant.
- (e) An injunction restraining the defendant from trespassing onto the suit land.

The Memorandum of Appeal dissatisfied with the judgment of the Chief Magistrate Luwero, His Worship Mutazidwa Moses Katorogo that was given on 29th October 2008. His dissatisfaction is expressed in the abovestated grounds of appeal. The appellant filed in court the Memorandum of Appeal on 15th December 2008. This fact raises the issue of whether there is a proper appeal before this court. From the Court record, this appeal was filed in court after forty seven (47) days from the date of judgment. Yet Section 79 (1) of the Civil Procedure Act, cap 71 provides for limitation for appeal. Section 79 (1) reads:-

“1) except as otherwise specifically provided in any other law, every appeal shall be entered.

(a) within 30 days of the date of the decree or order of the court, or.....”

The decree of this appeal was entered on 29th October 2008, as shown by the date therein. Therefore, there was no delay in the preparation of the decree that is being appealed from by the appellant. Further, Order 43 rule 1 (1) of the Civil Procedure Rules reads:-

“0.43 r 1(1) thereof;

Every appeal to the High Court shall be preferred in the form of a memorandum signed by the appellant and presented to the Court or to such officer as it shall appoint for that purpose.”

In the instant appeal, the memorandum of appeal was supposed to be lodged in this Court within 30 days from the date the decree being appealed from was passed. Wherefore, from documents on record, this appeal was filed out of time. The appeal, therefore, is a nullity.

In the result, this appeal is dismissed with costs to the respondent.

Dated at Kampala this 17th day of March, 2010.

JOSEPH MURANGIRA
JUDGE

DRAFT