

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT KABALE**

**CIVIL APPEAL NO. 008 OF 2008**

*(From Kisoro Grade I Court Civil Suit No. 12 of 2002)*

1. NZITATIRA CHRISTOPHER }  
2. NZITATIRA EVARISTA } ..... APPELLANTS

**VERSUS**

FOIBI SEBISOGLI ..... RESPONDENT

**BEFORE HON. MR. JUSTICE J.W KWESIGA**

**JUDGMENT**

The respondent, a woman of advanced age stated to be more than 90 years old sued the first Defendant/first Respondent her biological son and his wife the second respondent for trespassing on her land since 2001. The Trial Grade One Magistrate, His Worship Ssejjemba Deo, on 23<sup>rd</sup> September, 2008 gave Judgment in the plaintiff's favour in the following terms:-

1. The land in dispute (Suit land) belonged to the plaintiff.
2. The Defendants were trespassers on the land.
3. The Defendants were ordered to vacate the land and hand it over to the plaintiff.
4. A permanent injunction was issued prohibiting the Defendants/Appellants from use of the land.
5. The Defendants were ordered to pay costs of the suit.

6. (See Decree in the original Suit dated 22<sup>nd</sup> October, 2008)

On 6<sup>th</sup> October, 2008, M/S Bikangiso & Co. Advocates filed this Appeal with only one ground:-

“1. The trial Magistrate erred in Law and fact when he evaluated the Defendants evidence in isolation of the plaintiff’s overwhelming evidence thus arriving at a wrong decision.” The memorandum stated further that further grounds would be formulated after the Lower Court file was forwarded to the High Court Registry.

There is no evidence that the Appellants or their Advocates took any effort to pursue this Appeal. This Appeal was fixed for hearing by the Court in the process of weeding out cases which had overstayed and the parties Advocates chose to file written submissions to expedite the disposal of this Appeal. This Court had set 19<sup>th</sup> May, 2011 as the Judgment date but the presiding Judge was assigned urgent Election Petitions in another circuit, which by Law, take precedent over all other pending Court hearings. The above background explains the delay of disposal of this simple appeal.

Turning to the memorandum of Appeal, from its wording it is difficult to follow what the Appellant’s complaints are since it clearly states the

plaintiff adduced overwhelming evidence, if the overwhelming evidence is in support of the plaintiff's case then this Appeal is a waste of time, if it is in favour of the Defendant's case, the Appellant does not seem to say so. Be that as it may I will examine the evidence afresh. This being a first appellate Court, I have the duty to retry this case by subjecting the evidence on record to fresh evaluation make findings of facts and draw inferences from the facts keeping in mind that I neither saw or heard the witnesses to consider the demeanor of the witnesses. What the trial Court had to determine can be summarised as follows: Whether the suit land belongs to the plaintiff and if so whether the Defendants trespassed on the suit land. What remedies are available to the parties if any. The Plaintiff (PW 1) SEBISOZI FOIBI testified that she gave the suit land to her grandson DUSABIMANA PETER, to build a house thereon because he was under the threats of the first Defendant's son who wanted to eject him. The grandson died intestate and unmarried and she took back her land, removed the useless house and resumed to cultivate the land. This was corroborated by DW2 NTEZIYARENYE AMOSI, the son of the Plaintiff. These two witnesses confirmed that DUSABE was cohabiting with one Mukanjera. They were not married, they did not know where he got her from and there was no marriage and therefore this land was not a marriage gift given to DUSABE or Mukanjera Imerida.

**DW1 NZITATIRA CHRISTOPHER** corroborated the plaintiff's evidence when he stated that he did not know where Imelda came from or how she came to live with DUSHABE. He confirmed that he did not know of their marriage. The evidence of PW 1, PW2 AND DW 1 confirmed that there was no valid recognised marriage between Mukanjera Imerida and Dusabe Peter. Therefore the claim by DW 2 NZITATIRA EVASTA that she bought the land from Imelda because she knew it was her land acquired as a marriage gift from the plaintiff has no basis both in fact and Law. DW 2 and DW 3 were strangers to this family of the Plaintiff their presence could not validate the transaction of sale of family land without involving PW 1 and PW 2 or at worst DW 1 who was the second son of the Plaintiff. This transaction was tainted with fraud, namely, DW 2 bought it well aware of the plaintiffs claim of ownership since she had repossessed the land after the death of DUSABE she handled the transaction without involving her husband, her brother in law and the mother-in-law despite that they lived so closely, she did not involve the immediate neighbours. Therefore the transaction between Imerida Mukanjera and Nzitatira (DW2) was invalid. Possession of letter of Administration by either the Plaintiff or Imerida Mukanjera is no conclusive evidence of ownership, what is important is that the Plaintiff's evidence proves that she had granted a licence to Dusabe Peter her grandson for the reasons she explained and this licence was

extinguished by the death of the said Dusabe Peter. For the reasons given above I have found no merit in the appeal to justify interference with the findings and orders of the learned Grade I Magistrate. This Appeal is hereby dismissed with the following orders.

- (a) The Defendants/Appellants shall immediately stop trespassing on the Plaintiff's/Respondent's land, the subject of this Appeal.
- (b) The Respondent or her agents and /or successors are entitled to vacate possession of the suit land.
- (c) A permanent injunction prohibiting the Appellants from use occupation or in any other way dealing with the suit land is hereby granted.
- (d) The Appellants shall jointly and severally pay the Respondent the costs incurred in the Lower Court and this Appeal.

Dated this 3<sup>rd</sup> day of August, 2011.

.....  
J.W KWESIGA  
JUDGE  
3/8/2011

Read in presence of :-

Mr. Muhangi Justus holding brief for Mr. Beitwenda for Respondent.

The parties are not present..

Mr. Turyamubona Milton – Court Clerk.