

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

CIVIL APPEAL NO. 0031 OF 2009

(From Rukungiri C.S 004 of 2007)

TINDYEBWA AGNESS:::APPELLANT

VERSUS

BAKEITWAKO CHRISTINE:::RESPONDENT

BEFORE HON MR. JUSTICE J.W. KWESIGA

JUDGMENT

This Appeal arose from the decision of His Worship Mr. Twakyire Samuel, Grade I Magistrate at Rukungiri where on 11th June, 2009 he dismissed Appellants suit for lack of evidence.

The Plaintiff/Appellant filed the following grounds of Appeal:-

- (a) That the Trial Magistrate erred in Law and fact in holding that the Appellant had failed to prove her case on balance of probability despite overwhelming evidence on record in favour of the Appellant.

(b) That the Trial Magistrate erred in Law when he failed to make proper evaluation of evidence on record and as such reached a wrong decision. The Appellant prayed that the Lower Court Judgment be set aside, Judgment entered in her favour and be granted costs of the proceedings in both courts. Although there are two grounds of Appeal set out, there is only one basic criticism against the trial Court's Judgment, that there was an error in evaluation of the evidence leading to a wrong decision. It is now settled Law that this court as a first appellate court is under duty to subject the entire evidence on record to an exhaustive scrutiny and re-evaluate it and make its own conclusion while bearing in mind the fact that the court did not observe the witnesses under testimony and cross-examination to test their veracity. Reference has been made to decisions in the cases of ;

1. PANDYA VS R. [1957] E.A 336

2. SELLA VS ASSOCIATED BOAT CO. [1968] E.A 223

3. SANYU LWANGA MUSOKE VS SAM GALIWANGO (1997)

K.A LR 49

The Suit land is a customary holding which is un surveyed but the description and dimensions of land are not in issue. What is in issue is ownership of the land and at the trial the agreed issue for the courts determination was and is who among the parties has a lawful claim over the suit land? The brief facts, as gathered from the proceedings, the appellant claims that the suit land belonged to her late husband EUGINE TINDYEBWA who died in 2003, she claims that the Late Tindyebwa and herself rented out the suit land measuring less than 1 Acre to the Defendant at Sh. 10,000/= per month. The Defendant defaulted and refused to leave the land. The Respondent's case is that in 1994 the family of her mother-in-law together with Bataka distributed the family land and the share of her brother-in-law, MBETA, who had disappeared was put in care of her husband BAKEITWAKO. Her husband later disappeared and left her in charge of this land. The land was first rented out to MUGISHA JOMO but reverted to her and from 1995 she has been in occupation, possession and use of this suit land. The Plaintiff led evidence of PW 1, PW 2, PW 3 and PW 4. It is interesting to note that PW 3 YOHANA RWENPARANA told court that the late Tindyebwa told him he had bought land which belonged to MBETA who had disappeared to Bunyoro. DW 1 the Respondent testified the

land belonged to Mbeta who disappeared to Bunyoro. She started harvesting tea on the land since 1995. Her husband had previously rented it to MUGISHA JOMO. DW 3 MPORA summarized the status of the land as follows; ***“On 5th May, 1994 the family called us to distribute land among them, 2 sons were present 2 others not but we distributed to all. We gave Mbeta land where he had tea plantation. But since Mbeta was absent we gave his share to Bakeitwako.”*** This evidence was supported by DW 4 Mugisha Francis and further corroborated by DW 6 Timbyetaho John in the following words ***“.....The land at Nyakambu with tea plantation was given to Mbeta who had planted it. Bateitwako was put in charge because Mbeta was not there. When Beitwako left his wife was left in charge, that is all.”*** In my view the above evidence clearly depicts the status and ownership of the suit land and I have not found the overwhelming evidence to the contrary as pleaded in the memorandum of Appeal. I have further considered the following as circumstantial evidence in favour of the Respondents case;

Whereas distribution was done as far back as 1994 and her husband was given Mbeta's share to keep in trust, she took over use of land in 1995 and the Plaintiff's husband died in 2003 before

he complained about this land. The Plaintiff alleged that her husband had rented the land to the Respondent/Defendant, but no cogent evidence was adduced in proof of this fact. The Plaintiff pleaded that she has Letters of Administration to the estate of Tindyebwa and that she has an agreement where Tindyebwa purchased the suit land.

The Letters of Administration entitles the Plaintiff/Appellant to sue for and recover whatever belonged to her late husband. There is no evidence that she proved the agreement of the alleged purchase. She had a duty to prove that her husband was party to the agreement by proving his signature. He should have called the author or witnesses to the agreement, she should also have proved that whoever was the seller had the capacity to sell land which legally belonged to Mbete whom the Defendant/Respondent keeps the land for.

In view of the above I find that the trial Magistrate arrived at the correct decision that the Plaintiff failed to prove her claim on balance of probabilities. In the circumstances this Appeal is hereby dismissed with costs to the Respondent. For the reasons given by

the Trial Magistrate in his Judgment no costs ordered in the Lower Court Proceedings.

Dated at Kabale this **28th** day of **February, 2012.**

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J.W. KWESIGA

JUDGE

28-2-2012

Read in presence of :

All parties present.

Mr. Byarugaba John for Respondent present.

Mr. Beitwenda Dan for Appellant absent.