

The 1st Appellant, **BAGIRUSHAKA BEN** is a nephew of the late husband of **MABONA IRENE**, the 2nd appellant.

Mabona's late husband was called Bulimbwa and was a brother of the 1st Appellant's father, Ntarwanda.

The Suit Land is currently in the possession of the Respondent. It is alleged that the Respondents received it as a gift from the father of the 1st appellant in 1963.

The 1st Appellant on the other hand states that as a boy he lived with his grandfather Ntamukunzi who was Ntarwanda's father and who passed away in 1978.

It is also his evidence that in 2007 as the 1st Appellant repaired a kitchen that originally belonged to Ntarwanda (his father) he came across a wooden suitcase in which he found a document stating that Ntamukunzi had bequeathed him (the 1st appellant) the Suit Land in 1967. This is the basis of this Claim.

The trial Magistrates disbelieved the Appellant's case and dismissed the suit. She held that the Suit Land belonged to the Defendant (the respondent here).

The aggrieved Plaintiffs filed three grounds of appeal namely:

1. That the learned trial Magistrate erred in law and in fact when she evaluate the entire evidence thus reaching a wrong decision interala:

(a) Defence exhibit marked DE XI was a janine document and not a forged one.

(b) The L.C. II Court lacked jurisdiction hence its decision was null and void.

2. The learned trial Magistrate erred in law and in fact when she advanced her own fanciful theories, conjecture and arrived at conclusions not based on facts before her.

3. The learned trial Magistrate erred in law and in fact by relying on a forged document to conclude that the Suit Land belongs to the Respondent and not the Appellant.

At the hearing of this Appeal the parties were granted leave to file written submissions. These are on record and will not be reproduced here.

As this is a first appeal this court shall subject the entire body of evidence to a fresh review and reach its own conclusions mindful that it has not seen the witness testify.

The plaintiffs (appellants) were under a duty to prove their claim in the lower court on a balance of probabilities.

Learned Counsel Mr. Wilfred Murumba appeared for the Appellants while the learned Rev. Ezra Bikangiso represented the Respondents.

I shall deal with the grounds of appeal jointly in resolving this matter.

The submission for the Appellant is that the trial Court erroneously relied on DEx 1 to make a finding that the land belonged to the Respondent. The document is an agreement in which one Ntarwanda E (father of the Appellant) is giving the Suit Land to the Respondent in 1963. DEx 1 was drafted by DW 1, RUKABURA EDWARD. It is the submission of Counsel that the trial Court expressed doubts as to whether this document was genuine.

She should not thereafter have relied on it as the basis for making a finding for the Respondents.

It is the contention of Counsel that the DW 1 was only 10 years in 1963 and could not have possibly drafted the document.

A quick review of the evidence adduced during the trial shows that the appellant is alleged to have discovered a document on which he was given a gift of this land in 2007 in his late father's kitchen. He also states that he litigated against his father, over this land, in 2007 in the LC II at Mugandu Chaired by PW III. There is no evidence from him (1st Appellant) or PW III that the appellant made reference to this newly discovered document in his suit. It would, to my mind, have been the basis of his claim before the LC II Court.

It is the evidence of the 1st Appellant that his grandfather Paul Ntamukunzi had given him the land in appreciation of looking after Ntamukunzi's animals. The gift was allegedly made in 1967 when the 1st appellant was 5 years old. Ntamukunzi allegedly made the bequest in which the 1st Appellant shares the land with his father (Ntarwanda) and uncle – Burimbwa (husband of the 2nd Appellant).

From the record it would appear that neither Ntarwanda nor Burimbwa ever made mention of the bequest in their life time. It would seem that for all the time that the 1st appellant lived with Ntamukunzi, he too never at any time stated he had given land to the 1st Appellant, Ntarwanda and Burimbwa. There was nobody who ever mentioned it to the 1st appellant that he had been given this land. The first appellant did not adduce evidence of any witnesses to the agreement giving him land or any person who had knowledge of this gift to him by his grandfather.

The evidence of PW 3 is that he was told by Ntarwanda that the Suit land was leased by Ntarwanda to the Church. It would also seem that through the life time of Ntamukunzi, the church was using this land as a playground for the Church School. There is no evidence that Ntamukunzi ever challenged the occupation of the land by the school or the Church during his life time.

DW 2 is Benon Tirwomwe. He is an elder brother of the 1st appellant. The 1st Appellant said he was with him when the gift agreement was discovered in their father's kitchen in 2007. DW 2 denied finding any such agreement and disputes the ownership of the land by the 1st appellant.

I have also considered the evidence of DW 1. Looking at the agreement giving the Church the land by Ntarwanda, the handwriting on the document cannot possibly be that of a 10 year old as DW 1 would have been aged in 1963. He states he drafted the agreement. He could not have possibly written this agreement as he says he did in 1963.

There is evidence however of the respondent's uninterrupted and unchallenged occupation of the land for more than 30 years.

Therefore from the totality of the above evidence, there is considerable doubt cast on the alleged ownership of the land by the appellants.

The scale of evidence tilts towards the Respondents, and this Court holds that on a balance of probabilities, the evidence leans towards the suit land belonging to the respondent.

For these reasons the appeal stands dismissed with costs to the Respondents.

Dated at Kabale this ...**10th**.....day of November 2015

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MICHAEL ELUBU

JUDGE