

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

CIVIL APPEAL NO. 022/2013

(Arising from Ruk. Civil Suit No. 55/2009)

BUYANJA GROWERS CO-OPERATIVE
SOCIETY LTD

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APPELLANT

VERSUS

BUYANJA SUB-COUNTY COUNCIL

RESPONDENT

BEFORE HON. MR. JUSTICE MICHAEL ELUBU

JUDGMENT

This is an Appeal against the Judgment and decision of the Chief Magistrate Rukungiri dated 17th August, 2012.

The background is that the appellants in this case, Buyanja Growers Co-operative Society Ltd, sued the Buyanja Sub-County Council, in the Chief Magistrate Court Rukungiri, over a plot of land situate at Buyanya Trading Centre.

The background to the appeal is that the appellants here were plaintiffs in the lower Court and had been registered as a Co-operative Society on 2nd June 1962. Subsequently they applied for a Plot of land from the Kigezi District Administration which was allocated to the Plaintiffs. They subsequently built a semi permanent structure which they used as a Coffee Store.

In 2008 the Defendants resolved to build a roadside market. By this time the plot appeared which was by the main roadside appeared unoccupied.

Shortly before this the Plaintiffs attempted to survey the land in a bid to have it registered. They paid the survey or and lodged the application. A blue print was produced.

The Defendants disputed the ownership of the Plaintiffs but went ahead to allocate them an alternative plot of land which the Plaintiffs rejected.

Being dissatisfied the Plaintiffs sued for a declaration that the land belonged to them and a finding that the Defendants were in trespass. They also prayed for an eviction and damages.

The trial Magistrate disbelieved the Plaintiffs case and found for the Defendants hence these proceedings.

Four grounds of Appeal have been lodged namely,

1. *The learned Chief Magistrate erred in law and on the evidence by finding and holding that the Appellant had abandoned the Suit land in 1977, which was contrary to the evidence on record and in the result entered a bad Judgment.*
2. *The learned Chief Magistrate erred in law and on the evidence by making a finding that by the time the Respondent resolved to erect a roadside market the suit land was vacant, which finding was not supported by the evidence on record.*
3. *The learned Chief Magistrate erred in law by holding that the Appellant did not acquire the Suit land in 1962, contrary to the evidence on record.*
4. *The learned Chief Magistrate erred in law and on the evidence when he reached a finding that the Respondent did not trespass on the suit land and in the result made a bad decision.*

At the hearing the parties were granted leave to file written submissions which are on record and I shall not therefore reproduce them here.

As this is a first appellate Court the entire body of evidence shall be subjected to a fresh scrutiny to enable this Court arrives at its own conclusions.

I shall deal with the grounds jointly as I consider the most crucial issue to be whether the land in question belonged to the appellants and consequently whether the defendants are in trespass.

Counsel attacked the learned trial Magistrates finding that the Appellants had ceased operations in 1977 and had only operated from that plot for 15 years.

I have carefully perused the Court record and can find evidence to the effect that the plaintiffs/appellants had been in occupation of the plot up to 1977 before abandoning it.

The Appellants contend they were allocated the land in 1960s. It is not clear exactly when in the 1960s that they were allocated the land.

PW 1 a member of the society stated the land was allocated to them in the early 60's by the Kigezi District Land Committee and their proof of ownership is a survey done in February 2008. **TIBASIMWA LAWRENCE PW 2** and **KATUMBA HENRY PW 3**, members of the plaintiff, also base the proof of ownership on the survey of the land done in 2008.

PW 4, CHARLES KANYIGANA, a former Chairman of the Plaintiff told the Court that the Land had been allocated to the Plaintiff when his own father was Chairman.

It is clear from all this evidence that the land originally belonged to the Kigezi District before, as the Plaintiff alleges, it was allocated to them.

There has been no evidence adduced by the Plaintiffs to prove this allocation. It is inconceivable that the district administration would have given the Plaintiffs an allocation without any documentation in proof of that allocation.

The Respondents have submitted that the Appellants would have at least evidence of an application or other proof of the tenure they had but all these are missing.

I therefore agree that since the Appellants claim ownership then the onus was on them to prove ownership as is provided in Section 10 (1) of The Evidence Act,

‘Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.’

Secondly the defendant, or respondent, is in possession of the land. The plaintiff should prove to this court that the respondents hold that possession unlawfully. Section 110 of the **Evidence Act** provides,

When the question is whether any person is owner of anything of which he or she is shown to be in possession, the burden of proving that he or she is not the owner is on the person who affirms that he or she is not the owner.

The Respondents relied on the erroneous holding of the trial Magistrate who found that the appellants had abandoned the site in 1977.

I have already found that it is not true that there is evidence of the Appellants abandoning the plot in 1977. There is however evidence from DW 1 that the plot lay vacant and both sides agree the defendant/respondent had built a market thereon.

It would appear that the Appellants revived their interest when it was seen that the Respondents had developed the plot into a roadside market.

I also find it strange for an entity that had held land from the district since the early 1960's had not brought it under The 1969 **Public Lands Act** or **The 1975 Land Reform Decree** thereafter.

Even if they had ownership which they abandoned 8 years before Doll (when this case was heard) what type of holding was it.

The contention is that the land was surveyed and a blue print made. However PE 3 the application for the leasehold by the Appellant clearly indicates that the application for a lease was never considered by the Land Board and there is no minute showing that the land board ever considered this particular land. Besides there is no official communication from the District authority, giving the Appellants authority to conduct the survey which resulted in the blue print tendered as PE No 5.

The Respondents have clearly indicated though DW 1, DW 2 and DW 3 and DE 1, DE 2 and DE 3 that the Appellants firstly abandoned the plot and secondly the plot belonged to the sub County.

I therefore find and hold that there is no proof of ownership by the appellants. I find and hold farther that they abandoned the suit land and only revived an interest when the respondent built a market. All this collectively dispels any contention of ownership by the appellants.

For these reasons the judgment and finding of the lower Court as to ownership are upheld and this appeal stands dismissed with costs.

DATED at Kabale this ..10th ..day of May 2016.

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MICHAEL ELUBU
JUDGE