

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KABALE

CIVIL APPEAL No. 003 of 2013

(Arising From Civil Suit No 95/2013 Kanungu Court)

1. RWAMUNAHE JACKSON

2. TUGUME GERALD

.....

APPELLANT

VERSUS

KOMUGISHA PRUDENCE

.....

RESPONDENT

BEFORE HON. MR. JUSTICE MICHAEL ELUBU

JUDGMENT

The appellants filed this appeal against the Judgement and orders of HW MFITUNDINDA GEORGE which was delivered in Kanungu on the 4th of January 2013.

The appeal arises out a suit brought by Komugisha Prudence who was the plaintiff in the lower Court and is the Respondent in this appeal and Rwamunahe Jackson and Tugume Gerald the Appellants who were the defendants in the lower Court.

The Second Appellant is a step brother of the respondent. They share a mother but have different fathers. The 1st Appellant is a brother of the respondent's mother, and therefore an uncle to both the 2nd appellant and the respondent.

The Respondent stated that both her parents are deceased. Her suit against the appellants was that her mother had left her a developed plot of land situate at Nyamakamba Trading Centre in Kanungu district. She stated that the first

appellant, her Uncle, had taken over the property and refused to hand it over to her. It was her case that he had called the second appellant from his home in Bunyoro ostensibly to share the property with her.

The appellants stated that the land which has a house and a boys quarters was bought exclusively by Oribanda Mabel. She had left it in the care of her brother Rwamunahde Jackson to hold in trust for her children. Now that the children are grown up he wishes to have the siblings, Tugume Gerald and Komugisha Prudence share the property.

The learned trial magistrate believed the plaintiffs' case and entered Judgment in her favour. He stated that the land belonged to the Plaintiff/Respondent; the defendants/appellants pay costs; and that the appellants should be restrained from interfering with the respondent's quiet possession of the land.

The respondents being dissatisfied with the holding of the trial court filed this appeal with four grounds namely,

1. The learned trial Magistrate erred in law and in fact in failing to evaluate the evidence on record and reached a wrong decision.
2. The learned trial Magistrate erred in holding that the respondent is the only rightful owner of the Suitland despite the overwhelming evidence on record.
3. The learned trial Magistrate erred in law on relying on extraneous factors in his Judgment and made a wrong conclusion.
4. The learned trial Magistrate erred in law erred in denying the appellant a fair hearing when the respondents documents marked 'A' and 'B' were tendered without cross examination by the appellant.

It is the duty of this court as a first appellate court to rehear the case by reconsidering all the materials which were before the trial court and make up its own mind ... Needless to say that failure by a first appellate court to evaluate the

material evidence as a whole constitutes an error in law (see **Kifamunte vs Ug UGSCA 10/97**). This was a criminal appeal but properly lays out the general principal on the duty of a first appellate court.

The appellants were represented by the learned Mr Dann Beitwenda. The respondent was unrepresented when she first appeared before this court. Later The Legal Aid Clinic of the Uganda Law Society took over her matter but did not file written submissions as directed by Court. In the result while the appellant's submissions are on record there are none for the respondent.

I shall consider the grounds of appeal jointly as the submissions of Counsel appear to cut across all the grounds.

It was argued for the appellants that as a first appeal this Court should subject the entire body of the trial evidence to a fresh scrutiny. Secondly that the trial magistrate considered evidence that was not properly on the record particularly a baptism card and immunisation chart produced by the respondent. It was also the contention that the trial Magistrate considered evidence of a baptism card allegedly presented by the defendants/appellants which was not tendered in court at any stage during trial. Counsel submitted that the trial Court ought to have considered the trial evidence as a whole and not in isolation.

I have considered these arguments of Counsel and cannot fault them based on the record. I therefore accept this part of his arguments.

With regard to the description of the suit land, it was argued that the evidence on record is contradictory and a deviation from the pleadings.

First of all a careful examination of the record will show that all parties in the lower Court were unrepresented. Due allowance should be made for that fact. Secondly it was never in any doubt on either side what the subject matter of the suit was. It was land which the first appellant had in his possession which he took over on the death of his sister Mabel Oribanda. The defendants were fully

aware of the case they were to meet and defend at the trial. There was never any doubt, as can be seen from the testimony of the witnesses on both sides, what the subject matter was.

Regarding ownership, the first appellant alleges in the written statement of defence that he was taking care of both children and looking after the land. That he also 'injected' money into the land and built a house.

During trial, it was the evidence of the first appellant that he was looking after the suit land left to him by his sister and would distribute it to both children. The second appellant stated that his Uncle, A1, was left the land by his mother and he and the plaintiff want a share of the land that has a house thereon.

The other two witnesses for the defendants state that a portion of the land was purchased by the deceased Mabel Oribanda from Rwabera Reuben and the rest from Kyomukama John whom the respondent claims is her father.

There was no evidence of proof of sale produced to the purchase alleged by the defendants/appellants. The Plaintiff/respondent on the other hand states that her mother left her a sale agreement which was tendered in Court and shows that John Kyomukama bought the suitland on the 7th of August 1992. The land was sold to Kyomukama by PW 3 Tiragana James and PW 4 Mishereko Benon. He purchased a second piece of land from PW3. Witnesses to the sale included PW 2. These witnesses testified to back up these claims. They stated in addition that Kyomukama was the father of the Plaintiff.

In my view the Plaintiffs evidence of purchase by her mother for her is more plausible than that of DW 3 where there was no agreement of sale or witness to the alleged sale produced. DW 4 states in her testimony that Mabel bought the land from John Kyomukama. Taking the evidence collectively this assertion does not seem credible and cannot be true. Not even the appellants stated so in their testimony.

It is therefore my finding that the suitland was purchased by John Kyomukama. All the respondents witnesses in the lower court states that her father was John Kyomukama. The appellants state it was Tumwekwase Richard. I did not believe them.

The respondent told the lower court that her mother gave her the land sale agreement on which the suitland was purchased. In my view she did this because the purchaser was her father as has been stated by all the witnesses who testified for the plaintiff.

In the result I find that John Kyomukama was the plaintiffs' father; he bought the suitland; her mother gave her the sale agreement; and her fathers land devolved to her on his death.

In the result all the grounds of appeal must fail and the appeal is dismissed with costs. The judgement and orders of the trial magistrate are confirmed.

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Michael Elubu

Judge

14.09.2017