

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT MASINDI**  
**CIVIL APPEAL NUMBER. HCT.12-CV-CA- 076 OF 2015**

**GAFABUSA CHARLES ..... APPELLANT**  
**VERSUS**  
**BAGIRE EDWARD ANSIMO ..... RESPONDENT**

**JUDGMENT BY JUSTICE GADENYA PAUL WOLIMBWA**

**1.0. Introduction**

Gafabusa Charles, hereinafter referred to as the Appellant sued Bagire Edward Ansimo, hereinafter called the Respondent for recovery of a plot of land measuring 100ft by 50ft located at Kakumba Cell, Kigorobya Town Council, Hoima district.

The appellant alleges that in 2004, he purchased this plot of land, hereinafter called the suit land from Muhumuza Langton for UGX. 500,000/= (Uganda Shillings Five Hundred Thousand). An agreement to this effect was made in the presence of four witnesses.

The appellant further alleges that the Respondent without any claim of right entered upon the suit land and forcefully built upon the land to his detriment. He says that as a result of the Respondents actions, he has suffered loss and damage for which he sought several remedies from court including evicting the Respondent from the suit land.

The Respondent on his part, claimed that the suit land was purchased by Nsisireka John, his late brother, in 1997 from Matogo Maka and that an agreement to witness the transaction was entered into. He says that his late brother built a foundation for a house on the suit land but unfortunately,

he passed away in 2004 before completing the house. The Respondent was appointed a caretaker of his late brother. He says that he built on the suit land seven rooms and out of these, three were complete at the time of filing a written statement of defense to the Appellant's claim.

Mr. Yetsie Charles, Senior Principal Magistrate Grade I gave judgment for the Respondent and dismissed the Appellant's action. The Magistrate based his decision on the following reasons:-

Firstly, that although the Appellant claimed to have bought the suit land from Muhumuza, Muhumuza, did not tell court how he got the suit land from his late father Babyesiza, whom he claimed owned the land. Secondly, that the Appellant never bothered to find out at the time of buying the suit land, who owned the foundation of a house on the suit land. Thirdly, that Muhumuza, who had been in prison, prior to the sale of the suit land, never bothered to find out who had built the foundation on the suit land. Fourthly, that the Respondent's brother bought the suit land first in 1997 and the Appellant later bought the land in 2004. Based on these four reasons, the Magistrate dismissed the action and ordered that the suit land belongs to the 'off springs of the late Nsisireka'.

## **2.0. Grounds of Appeal**

The Appellant was aggrieved by the decision of the Senior Principal Magistrate Grade 1 and filed this appeal. The grounds of appeal are:

1. That the learned trial Magistrate erred in law and fact when he failed to evaluate the evidence on the record thereby arriving at a wrong conclusion hence causing the Appellant to suffer injustice.
2. The learned trial Magistrate erred in law and fact when he wrongly judged the suit land belongs to the off springs of Nsisireki and yet, the off springs of the late Nsisireka where never a party to the head suit thereby occasioning a miscarriage of justice.



**NOTE:** At the beginning of the appeal, counsel agreed to reduce the grounds of appeal, namely to whether the trial Magistrate properly evaluated the evidence on record. I will therefore address only this ground when dealing with the appeal.

### **3.0. Representation**

The Appellant was represented by Mr. Ian Musinguzi, while the Respondent was represented by Mr. Willy Lubega.

### **4.0. Arguments of the Parties**

#### **4.1. Arguments of the Appellant**

Mr. Musinguzi submitted that the appellant called five witnesses during the trial, who all testified firmly that the Appellant bought the suit land and that the evidence of the Appellant remained firm both in cross examination and in rebuttal by the Respondent's testimony.

He submitted that the Respondent admitted to being a care taker of the estate of his late brother and that he did not have letters of administration to the estate of his late brother. He submitted that that a caretaker cannot own land.

He submitted that the court was wrong to order that the suit land belonged to the off springs of the late Nsisireka, when none of the off springs were called to testify in court.

He submitted that based on the evidence before the court, the court should hold that the Appellant proved his case on a balance of probabilities and decree the suit land to him.

#### **4.2. Arguments of the Respondent**

Mr. Lubega submitted that although the Appellant argued that all his five witnesses supported his claim, he owned the suit land. Witnesses such as PW5, said he did not know whether Muhumuza sold the suit land or not. PW3 said the Respondent bought the land from Muguruza's father.

On the contrary, Mr. Lubega submitted that the Respondent's evidence about how his late brother acquired the suit land in 1993 was unchallenged. He submitted that Nsisireki, built the foundation on the suit land and he was the one in possession of the suit land.

He submitted that the Appellant, who later purchased the suit land in 2004, never took possession of this land from the Respondent and that as such, the Respondent cannot be a trespasser.

He submitted that it was true that the Respondent was a caretaker of the land. He never claimed ownership of the land and that this is the reason the Magistrate decided that the land belonged to the off springs of Nsisireka.

He also invited me to consider the evidence of Kabagambe William (DW2), an LCI Chairperson, who hand handled a case concerning the suit land between Nsisireka and Rwakaikara and found the case in favour of Nsisireka. I cannot deal with this point because, the record of this case was not adduced in evidence but I will take note of the fact that Nsisireka, ever litigated with Rwakaikara over the suit land.

The Respondent asked the court to confirm the judgment of the lower court and dismiss the appeal with costs.

#### **4.3. Appellant's Argument in Rejoinder**

Mr. Musinguzi, submitted that the Respondent cannot take benefit of the suit land because he did not have letters of administration to the estate of his late brother. He also submitted that even if the case went against his client, the Respondent cannot execute the judgment because the off springs of the late Nsisireki, were not party to the decree and are not mentioned anywhere on the record.

#### **5.0. Consideration of the Appeal**



The duty of the first appellate court is well stated in **Father Nanensio Begumisa and three Others vs. Eric Tiberaga SCCA 17 of 2000**, where the Supreme Court held that:

It is a well settled principle that on a first appeal, the parties are entitled to obtain from the appeal court its own decision on issues of fact as well as law although, in a case of conflicting evidence, the appeal court has to make due allowance for the fact that it has neither seen nor heard the witnesses, it must weigh the conflicting evidence and draw its own inference and conclusions.

There is no doubt that the appellant purchased land from Muhumuza Langton in 2004. The purchase was documented by a sales agreement marked exhibit PE 1. The purchase of the land was witnessed by Betty Gafabusa (DW2) and Muhumuza Langton, the seller was present. None of the neighbors and the Local Council authorities were present when the Appellant bought the land. Betty Gafabusa, (DW2), also told the court that no boundaries were planted to mark the land though it was indicated that the plot was in the corner or what the witness aptly called a corner plot.

Equally, there is no doubt that the late Nsisureki John, the brother to the Respondent bought a plot of land in 1997. Kabagambe William, DW2, was present when the late Nsisureki bought the land from Matogo. DW2, was present in his capacity as the Chairperson LC1 of Kikumba, where this plot of land is located. It is instructive that DW2 told court that prior to Nsisureki buying the land, Matogo had a land dispute over this land with a one Rwakaikara. The LCI Court chaired by DW2, heard the case and resolved it in favour of Matogo, who thereafter sold the land to Nsisureki. Rwakaikara, who had bought sand, to construct on this plot, sold the sand to Nsisureki, since he did not need it, having lost the land. It was also DW2's testimony that Nsisureki built a foundation on the land.

Magezi Robert (DW3), a neighbor to the land which Nsisureki bought testified that he was present when Matogo sold the land to Nsisureki. He was the secretary and drafted the sales agreement. DW3, identified the sales agreement and his signature in court. Like DW2, he told court that there was sand on the land that belonged to Rwakaikara. DW3, also told court that '... **I later heard**

**that the plaintiff had bought the same land from Muhumuza but I was surprised . I know Muhumuza, his father had land but I did not know the boundaries.'** The import of this testimony is that there were two pieces of land, one belonging to Nsisireki and another belonging to Muhumuza's father. According to DW3, the suit land belonged to the late Nsisireki.

I have laid out the testimonies of the different parties to trace the roots of the claims of the Appellant and Respondent to the suit land.

**Section 101 of the Evidence Act**, places an obligation on a party who asserts a fact to prove it. Equally, the burden of proof in a civil case is on the plaintiffs to prove his case on a balance of probabilities. In this case, the Appellant bears the burden of proof to establish that he has a better title to the suit land than the Respondent, since both parties have agreement to the suit land.

The root of the Appellant's claim is founded on Muhumuza's claim that the suit land belonged to his father and that somewhat after his father's death he acquired the property. Muhumuza, was supported in this regard by Bajenja Agatha Mugisa, who claimed to be a neighbor to the Appellant and Respondent. I had challenges appreciating Muhumuza's claim to the land for the following reasons.

Firstly, Muhumuza, never told the court how he acquired the land from his father. Did he get the land as a gift or was the land given to him in accordance with the Succession Act? No evidence was led to answer these two simple questions.

Secondly, Muhumuza, appears not to be a very honest person. According to the evidence of Betty Gafabusa (PW2), she told court that after Muhumuza had sold her husband the land, she found him again trying to sell the same land to another person.

Thirdly, Muhumuza testified that he sued the Respondent over this land in the Land Tribunal. He says that he never followed up the matter and does not know whether a decision was rendered or not.



The actions and behavior of Muhumuza, are not actions of an honest man. It therefore means that when Muhumuza sold the suit land to the Appellant, he knew very well that he was selling land, which had a dispute and specifically that his claim to the land was being challenged by the Respondent.

I will now come to none involvement of Local Council authorities and neighbors in the land transactions between the Appellant and Muhumuza.

From the evidence on the record, no LCs and neighbors were involved in the transaction. The courts have observed that it is a standard practice in the community to involve Local Authorities in land transactions especially when dealing with unregistered land like in the instant case. Local Authorities are normally the first point of call when there are disputes on the land. They are also an invaluable source of information about the status of the land in question. They will obviously know who the owner of the land is and whether the land has or has ever had a dispute. In this case, the LCs were not involved and yet, given the history of this land- where Muhumuza was having issues with the respondent and Kiiza, the involvement of LCs would have greatly helped the Appellant.

The evidence as analyzed so far points to some gaps in the root of the Appellants claim to the suit land.

With regard to the Respondent, I noted that the evidence presented regarding how the late Nsisireki acquired the land was robust, consistent and believable.

Firstly, there was uncontroverted evidence from Kabagambe (Dw2) and Magezi Robert (DW3) that the late Nsisireki bought the suit land from Matogo. After buying the suit land, Nsisireki, built a foundation, in the land which the Appellant found in the suit land, when he was buying the same.

Secondly, all the witnesses of the Respondent were consistent about how the late Nsisireki , had been in uninterrupted possession and occupation of the suit land until he passed on.

Thirdly, Kabagambe (DW2), the Local Council Chairperson of the village, was an unbiased witness, who had a wealth of knowledge about the disputed land as opposed to Bajenja Agatha Mugisa (PW5) who claimed to be a neighbor to this land but knew very little about the land.

Fourthly, the Respondent was in possession of the land, at the time when the Appellant bought the land.

Considering the case for both the Appellant and the Respondent, I am not convinced the Appellant proved his case on a balance of probabilities that he obtained a good title to the suit land from Muhumuza. Muhumuza's claim to the suit land was questionable in addition to being a dishonest man. On the contrary, the evidence showed that the late Nsisireki, acquired good title to this land, much earlier than the Appellant laid claim to the land. In conclusion, I therefore agree with the learned Senior Principal Magistrate that the land in dispute does not belong to the Appellant.

Before, I take leave of this matter, I must deal with the declaration by the learned Senior Principal Magistrate that the suit land belongs to the off springs of the late Nsisireki.

The Respondent admitted that he did not have letters of administration to the estate of the late Nsisireki. He also admitted that he was a caretaker of this disputed property for the benefit of the estate of his late brother. As a caretaker, the Respondent has proprietary interest in the suit land because the Succession Act only grants executors and administrators powers to deal with the property of the deceased. And even as executors or administrators, they hold the property in trust for the beneficiaries of the estate. So instead of the learned Senior Principal Magistrate ruling that the suit property was for the estate of Nsisireki, he ruled that the suit property belongs to the offspring's of Nsisireki. He should have instead said that the suit property belongs to the estate of Nsisireki. The error by the Principal Magistrate, is however, minor and will therefore be overlooked.

I wish therefore to advise and warn the Respondent, who has invested heavily on the suit land that the property, all things remaining constant, is the property of the estate of the late Nsisireki. The




Respondent should at the earliest opportunity get the beneficiaries to apply for letters of administration to the estate of their late father

Last but not least, I note that the Senior Principal Magistrate made an error when he dismissed the suit but awarded costs to the plaintiff (Appellant). According to section 27 of the Civil Procedure Act, costs follow the event unless, the court for good reason orders otherwise. I do not see any good reasons which the Senior Principal Magistrate assigned for awarding costs to the Plaintiff (Appellant). I accordingly set aside the decision of Principal Magistrate awarding costs to the Plaintiff (Appellant) and substitute it with a decision awarding the costs to the Defendant (Respondent).

#### 6.0. Decision


In the final result, I dismiss the appeal with orders that the Appellant meets the costs in this court and the Chief Magistrates court.

It is so ordered.

  
Gadenya Paul Wolimbwa

**JUDGE**

28/4/2022  
All the parties are advised  
Mr Robert Dingo. cc  
Judgment read in open court.  
over.

  
28/4/2022