

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF MPIGI AT MPIGI
CIVIL APPEAL NO 26 OF 2018

*(ARISING FROM THE CHIEF MAGISTRATE COURT OF MPIGI AT
MPIGI CIVIL SUIT NO. 119 OF 2015)*

1. NDALIKE LAMECK

2. MUWEMBA NUWA

3. SSEMBATYA

4. KADDU::::::::::::::::::APPELLANTS

VERSUS

MAZINGA STEPHEN::::::::::::::::::RESPONDENT

BEFORE HON: JUSTICE OYUKO ANTHONY OJOK

JUDGEMENT

BACKGROUND

The Respondent instituted a Civil Suit Vide No. 119 of 2015 against the Appellants for an eviction order, permanent injunction, damages for

trespass and a declaration that the Respondent is the rightful owner of the suit property. Judgment was entered in favor of the Respondent.

This appeal arises out of the judgment by **H/W IMALINGAT ROBERT G1** Magistrate Mpigi (herein after referred to as the trial Court) delivered on 18th April, 2018 on the following grounds:

- 1) That the learned trial magistrate erred in law and facts when he deliberately refused to consider the applicant's evidence thereby reaching to a wrong decision.
- 10 2) That the learned trial magistrate erred in law and fact when he relied on the contested sales agreement thereby reaching to a wrong conclusion.
- 3) That the learned trial magistrate erred in law and fact when he failed to ascertain the measurements of the disputed land during locus visit, thereby reaching to a wrong decision.

Representation

During the hearing of this application, the Appellants were represented by M/s Musoke Suleiman & Co Advocates while the Respondent was
20 represented by M/s Lutakome & Co. Advocates

Submissions

Both parties never filed their written submissions

Resolution by Court.

Duty of the first Appellate Court

It is the duty of the first appellate Court to appreciate the evidence adduced in the trial Court, subject it to exhaustive scrutiny and re-evaluate evidence in order to reach its own conclusion. Take into account the fact that it did not see the witness nor visit the locus. In the case of **Begumisa & others Versus Tibabaga (2004)2 EA 17 Fredrick Zaabwe Vs Orient Bank SCCA NO.4 of 2006.**

- 10 **Ground One:** according to the judgment of H/W Imalingat Robert Grade One page 3 of his judgment he refused to take in the evidence of the second Appellant oral evidence because **S.91 and S.92 of the Evidence Act** provides that; “no oral evidence is permitted to be adduced to contradict the evidence of a document pertaining to a transaction, varying, adducing or subtracting its terms”.

There was an agreement marked PE1 which was uncontested and unchallenged. Therefore the defendant's arguments that the Plaintiff encroached on the 50ft by 30ft was baseless.

- 20 At the locus, the Plaintiff tried to show court the triangular nature of the plot, and there was evidence that the defendant had constructed a pit latrine

on the disputed property and some parts had shops. Therefore the issue of saying that the second appellant oral evidence was not considered is baseless. This ground fails.

Ground Two: The plaintiff narrated to court how he acquired the land on the 14th September 2010 and how he developed it. He said he bought this land from the defendant's father at 1.7M (One Million Seven Hundred Thousand Shillings) measuring 89ft by 92ft, a sale agreement was tendered in court and marked PE1. This agreement was unchallenged and even DW1 and DW2 alluded to the same, and the signature was not contested.

10 The people who signed the sale agreement were called in as witnesses in Court that is, PW2 and PW3.

Ground two also fails.

Ground Three: According to the judgment of His Worship, Page 3 second last paragraph, indeed it's true the trial Magistrate did not ascertain the measurements and yet it was the gist of the problem. It was wrong for the trial Magistrate not to do so, he would have gone with the surveyor to determine the measurements on the disputed land and therefore I fault him.

I agree that, not ascertaining the measurements was fundamental and as such a government surveyor should go on the disputed land and ascertain
20 whether the plaintiff is on his land, that is 89ft by 92ft, and if he's beyond he is a trespasser but if he is within he is not a trespasser.

This ground therefore succeeds partially.

I therefore order that within one month from the date of delivery of this judgment, court shall visit the disputed land in the presence of the parties and their lawyers with the help of the government surveyor to ascertain the measurements. Since this appeal partly succeeds, each party bear its own cost.

Right of Appeal explained.

I so order

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HON. JUSTICE OYUKO ANTHONY OJOK

JUDGE

Dated this 31st day of March 2021.

Right of appeal explained to the parties

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HON: JUSTICE OYOKU ANTHONY OJOK
JUDGE

Dated this.....day of.....2021