

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT HOIMA**

**CIVIL APPEAL NO. 27 OF 2023**

**(Formerly MSD Civil Appeal No.18 of 2021)  
(Arising from Kibaale Civil Suit No.12 of 2018)**

**SENTALO CHARLES ::: APPELLANT**

**VERSUS**

**1. NAKABUGO FEDERESI**

**2. MUKISA FREDRICK ::: RESPONDENTS**

**Before: Hon. Justice Byaruhanga Jesse Rugyema**

**JUDGMENT**

[1] This is an appeal from the Judgment and decree of the Chief Magistrate's Court of Kibaale at Kibaale before **H/W Niyokwizera Emmanuel**, Magistrate Grade 1 dated the 18<sup>th</sup> day of March 2021.

**Background of the Appeal**

[2] The Appellant/plaintiff sued the Respondents/defendants for trespass on the piece of land located at Ruhara village, Kibaale Town Council and sought a permanent injunction to restrain the defendants and their agents from further trespass on the land, declaration orders that the disputed land belonged to him and that the defendants are trespassers thereon.

[3] On 10/10/1993 the Appellant purchased the suit land which originally belonged to a one **Majwara** from a one **Teresa Nansamba** and **Nyensi Nyamahunge**, a transaction that was witnessed by the chairperson among others. The vendors were the only surviving relatives of the said **Majwara** as sister and nephew respectively.

- [4] It was in the early 1998 that the 1<sup>st</sup> Respondent/defendant started laying claims on the suit land, he planted thereon trees and gardens and let out portions of the land to other people without the consent of the Appellant/plaintiff. In July 2018, the 2<sup>nd</sup> Respondent/defendant also constructed a house there on approximately 100ft x 150ft without his consent.
- [5] The Appellant contended that his cattle which used to graze on the land are under threat of being harmed and this gravely caused him loss, stress, mental anguish and fear for which he holds the Respondents for general damages.
- [6] The Respondents on the other hand denied the Appellant's allegations. The 1<sup>st</sup> Respondent contended that she is the beneficial owner of the suit land from her late father **Nakabaale Paul** who was the owner of the suit land and that she had lived on the land since she was born in 1962 and had been in possession long way before 1998. That the planted trees and the gardens have been on the suit land for over 20 years while the house under construction has been there for 3-4 years. She filed a counter claim for trespass alleging that the Appellant's purchase transactions of the suit land were illegal. As regards the 2<sup>nd</sup> Respondent, he contended that the suit land/kibabja belongs to him having acquired it as a gift inter vivos in 2006 from his Aunties, the 1<sup>st</sup> Respondent, **Namuli** and **Kutosi** who had also acquired it from their father, **Nakabaale Paul**. That upon acquisition of the land, he put up a permanent house which is now six years thereon.
- [7] Upon evaluation of all the evidence adduced before him, the learned trial Magistrate found that whereas it is not in dispute that the Appellant purchased land, the dispute was about the boundary between him and the Respondents. That the purchase agreements the Appellant was relying on were neither translated in English nor did they indicate the size and boundaries of the purchased land. One of the people who sold the Appellant land i.e, **Nyensi Nyamahunge** (DW2) testified that the land sold to him did not form part of the Respondents'/defendants' land but neighboured their land. As a result, on the balance of probabilities, the trial Magistrate found and held that the Appellant had not proved his case that

the suit land belonged to him but to the defendants/Respondents who inherited it from the late **Nyakabaale**, father of the 1<sup>st</sup> Respondent. That the demarcations made in 2012 when the Appellant disputed boundaries of his purchased land with **Nyakabaale** are the ones indicating the proper boundaries of his land and the Respondents. The Respondents/defendants were in the premises found not trespassers on the suit land.

[8] As regards the counter claim, the trial Magistrate issued a permanent injunction against the Appellant/plaintiff from interfering with the possession of the Respondents/defendants of the suit land.

[9] The Appellant was not satisfied with the judgment and orders of the trial Magistrate and lodged the instant appeal on the following grounds:

1. *The learned trial Magistrate erred in law and fact when he held that the plaintiff's documents which were attached on his statement were not translated in English.*
2. *That the learned trial Magistrate erred in law and fact when he held that the suit land does not belong to the plaintiff.*
3. *The learned trial Magistrate erred in law and fact when he held that the suit land belongs to the Defendants, they having inherited it from the father of the 1<sup>st</sup> Defendant, the late Nakabaale.*
4. *The learned trial Magistrate erred in law and fact when he held that the demarcations which were made in 2012 are the ones indicating the said boundaries between the land of the Plaintiff and not that of the Defendants.*
5. *The learned trial Magistrate erred in law and fact when he held that the Defendants did not trespass on the suit land.*
6. *The learned trial Magistrate erred in law and fact when he relied on the Document signed by the Plaintiff in 2012 drafted by the L.C1 as showing boundaries of his land.*
7. *The learned trial Magistrate erred in law and fact when he dismissed the Plaintiff's suit against the Defendants with costs and issuing a permanent injunction against the Plaintiffs.*
8. *The learned trial Magistrate erred in law and fact when he allowed the counter claim of the 1<sup>st</sup> Defendant against the Plaintiff.*

*9. The learned trial Magistrate erred in law and fact when he failed to adequately evaluate the evidence on record as a whole and as a result came to a wrong conclusion.*

## **Counsel legal representation**

[10] The Appellant was represented by **Ms. Nshekanabo Immaculate of Ms Ddamulira & Muguluma Edward Advocates, Kampala** while the Respondents were represented by **Mr. Arinaitwe Claude of Ms. KRK Advocates, Kampala**. Both counsel filed their respective submissions for consideration of this court in the determination of this Appeal.

## **Duty of the 1<sup>st</sup> Appellate Court**

[11] As rightly submitted by both counsel in this appeal, this being a 1<sup>st</sup> Appellate court, its duty is to re-appraise the evidence adduced before the trial court as a whole and subject it to fresh and exhaustive scrutiny, weighing conflicting evidence and drawing its inferences and conclusion. The 1<sup>st</sup> Appellate court has to bear in mind that it has neither seen nor heard the witnesses and should therefore make due allowances in that regard; **William Kisitu Ssengendo & Anor Vs Mukoni Farmers Ltd CACA No.53/2006** and **Mujuni Ruhembe Vs Skansa Jensen (U) Ltd CACA No.56/2020**.

[12] Upon perusal of the grounds of appeal, I find that **grounds 1,2,3,5,7,8 & 9** relate to how the trial Magistrate evaluated the evidence adduced before him and as a result, I shall deal with them together while **ground 4** and **6** shall also be dealt with together as a separate set for they relate to demarcations/boundaries of the suit land between the Appellant and the Respondents.

## **Grounds 1,2,3,5,7,8 & 9: Evaluation of evidence.**

[13] In civil suits, the burden of proof lies with the Plaintiff who has to prove his or case and the standard of proof is on the balance of probabilities; **Sebuliba Vs Co-op Bank Ltd [1982] HCB 130. S.103 of the Evidence Act**

is to the effect that the burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, unless it is proved by any law that the proof of that fact shall lie on any particular person. He who asserts must prove, see also **Jovelyn Barugahare Vs A.G SCCA No.28/1993**.

- [14] In the instant case, the Appellant in his bid to prove his case that he is the lawful owner of the suit land, testified that in the 1990s, he was looking for land where to establish a local cooking oil factory. Around 1992, he found a one **Tereza Nansamba** and **Nyensi Nyamahunge** (DW1) who agreed to sell him their land that was originally owned by a one **Majwara**, their brother and uncle respectively. The Appellant purchased the suit land from them as per **P.Exhs.1 & 2**. He took over possession of the land through his brother a one **Lwanga** who stayed on the land for approximately 2<sup>1/2</sup> years before his house was burnt and property destroyed by unknown people.
- [15] It was later in around 2018 that the Respondents/defendants without the Appellant's consent, entered the land he purchased and started planting food crops and construction of houses by use of force. He reported the matter to the authorities and in 2012, the L.C1 Area chairman, **Mr. Kirabo Joseph** re-demarcated the boundaries of the suit land.
- [16] During cross examination, the Appellant described the land he purchased to had been located on the left side of the Road from Karuguza to Bubango while that of **Nakabaale** from whom the Respondents derive their interest, was opposite the Road on the right. According to him, **Nakabaale's** land of about 10 acres was located across the Road.
- [17] However, during further cross examination by counsel for the 2<sup>nd</sup> defendant, the Appellant revealed at **p.6 of the typed proceedings** thus;  
*"I know the land better than the L.Cs. I signed because there was a house (still there). They told me it belonged to the family of Nakabaale. Even that is where **Mukisa** has been sleeping. I was told there was a grandson of Nakabaale sleeping in the house. The 2<sup>nd</sup> Defendant is grandson of Nakabaale. He lives on the left side of the road near my land....It is true 1<sup>st</sup> Defendant is the daughter*

*of Nakabaale. Nakabaale had no land on the left side where I purchased.”*

[18] During the cross examination of **Kasaija Vicent** (PW2), at **p.8 of the typed proceedings** he emphasised that the

*“late Nakabaale had land on the left side of road near plaintiff’s land.”*

The fact that **Nakabaale** had land on the left side of the Karuguza- Bubango Road was further confirmed by **Nyensi Nyamahunge** (DW1), one of the vendors of the land to the Appellant. She explained that the suit portion of land belongs to the Respondents/defendants who are mother/Auntie and son having inherited it from the late **Nakabaale**. She asserted that the land she sold to the Appellant did not form part of the Respondents’ land.

[19] According to the 1<sup>st</sup> Respondent (DW2) and her “son”, the 2<sup>nd</sup> Respondent (DW3), their land derived from the late **Nakabaale** neighbour of the Appellant. They have their houses thereon and it is the Appellant who is attempting to encroach on their land.

[20] It is clear from the entire of the Appellant’s pleadings on record that at the time the Appellant purchased land from **Nyensi Nyamahunge** (DW1) and **Tereza Nansamba**, it was vacant and bushy since its original owner **Majwara** who had no child and wife had died. Indeed, none of the Respondents disputed the fact that the Appellant purchased the said land. It follows therefore the land that the Appellant purchased as per **P.Exh.1 & 2** cannot be the land in dispute/suit land because as per his own evidence during cross examination, he conceded that the land in dispute had the house of the family of **Nakabaale** i.e, the Respondents, and it was on the left side of the **Karuguza - Bubango Road**. It was therefore not correct as the Appellant stated that **Nakabaale** had no land on the left side of the road where the Appellant purchased. **Kasaija Vicent** (PW2) refuted the Appellant’s assertion on this aspect. The land he purchased was vacant and bushy and cannot therefore be that one he is now claiming that had a house occupied by the 2<sup>nd</sup> Respondent.

[21] In conclusion, I agree with counsel for the Appellant that the Appellant purchased land from **Nyensi Nyamahunge** (DW1) and **Tereza Nansamba**

as per **P.Exhs.1 & 2** which were exhibited with their English translations attached to the plaint but what is not correct is that the suit land formed part of the land the Appellant purchased.

[22] In the premises, I find that the trial Magistrate greatly erred when he maintained that **P.Exhs.1&2** were not translated in English language, yet the translations were attached to the plaint. The trial Magistrate however was justified, upon rightly addressing himself to the burden of proof as lying on the party who would lose if he or she did not adduce evidence to prove the truthfulness of his or her assertions and then, to find that the suit land belonged to the Respondents, they having inherited it from the father of the 1<sup>st</sup> Respondent, the late **Nakabaale**. At the time the Appellant purchased land from **Nyensi Nyamahunge** and **Teresa Nansamba**, the Respondents were already on the suit land enjoying quiet possession with their developments thereon. They could not therefore be found trespassers on their own land.

[23] As a result of the above, I find grounds **1,2,3,5,7,8 & 9** devoid of merit and these grounds accordingly fail.

#### **Grounds 4 & 5: Demarcations of the suit land made in 2012 by the L.C1 chairman of the area.**

[24] Counsel for the Appellant submitted that the document dated 12/11/2012 (**D.Exh.1**) was out of a failed mediation when the local authorities were trying to resolve boundary issues between the Appellant and the 1<sup>st</sup> Respondent but that the Appellant was not contented with the decision of the local authorities. That its outcome was therefore not binding on any party to the dispute. Lastly, that the Appellant signed on **D.Exh1** as an attendance list just like anybody who had attended the mediation.

[25] Counsel argued that it was in the premises wrong for the trial Magistrate to entirely base his decision on **D.Exh.1**.

[26] Counsel for the Respondents on the other hand submitted and argued that the Appellant himself signed **D.Exh.1**, a boundary dispute settlement by

Kimeka A L.C1 chairman, thus corroborating the evidence of the Respondents that the suit land he purchased shared boundaries with those of the Respondents.

[27] I have carefully perused **D.Exh.1**. As rightly submitted by counsel for the Appellant, it does not amount to a consent to bind the parties in the suit. The Appellant like any other person who was in attendance merely endorsed it as one of the members who were present and not that he signed it to bind him.

[28] In the premises, I find that the trial Magistrate erred in law and in fact to rely on **D.Exh.1**, that it formed the basis of his interest as purchased from **Tereza Nansamba** and **Nyensi Nyamahunge** (DW1). Indeed, as clearly conceded by **Kasaija Vicent** (PW2), one of the signatories to **D.Exh.1**, the Appellant was not contented with it.

[29] However, the above notwithstanding, the Respondents having shown by evidence, especially the unchallenged evidence of the vendor **Nyensi Nyamahunge** (DW1) and the Appellant himself conceding in cross examination that the land he was claiming at the time of purchase had the home of the Respondents, the onus was on him to rebut such evidence which he miserably failed to do.

[30] The fact that the Respondents did not dispute that indeed the Appellant purchased land from **Nyensi** and **Tereza** rendered any deficiencies that seemingly appear in the purchase agreements (**P.Exhs.1&2**) immaterial. What counsel for the Appellant failed to grasp is that the Appellant himself conceded during cross examination that on the land he is claiming there was a home of the 2<sup>nd</sup> Respondent (on the suit land) as also clearly reflected from the evidence obtained at locus which is sufficient evidence that the Respondents had been in occupation of the land. This led credence to the particular evidence of the vendor **Nyensi** (DW1) that indeed, the land sold to the Appellant was the neighbouring land which apparently appear to be one as demarcated by the local authorities reflected in **D.Exh.1** which the Appellant rejected. The Appellant's witness **PW2**, confirmed that the Appellant's land neighbours that of **Nakabaale** from whom the Respondents derive their interest.



- [31] In conclusion, I find that there is ample evidence to the effect that the suit land as claimed by the Appellant in court is not the land referred to in his purchase agreements (**P.Exhs.1&2**). As a result of the foregoing, **Misc. Applcn. No.4/2019** for contempt against the Respondents which is pending ruling before the Chief Magistrate or of which no ruling was delivered as per the complaint of counsel for the Appellant stand overtaken by events.
- [32] The demarcations of land by the local authorities involving the L.C1 Chairperson though rejected by the Appellant appear to be a true reflection of the Appellant's purchased land. He himself at **p.6 of the typed proceedings** conceded that the land he was claiming had a house that is still there, as again confirmed by the locus finding, which belong to the family of **Nakabaale**, from whom the Respondents derive their interest. It is on the left side of the road near his land.
- [33] It follows therefore, the trial Magistrate was justified to hold that the demarcations made in 2012 (**D.Exh.1**) are the ones indicating the true boundary between the land of the Appellant/plaintiff and that of the Respondents/defendants. He could not find that the Appellant was entitled to the suit land that comprised the home of the Respondents.
- [34] The entire appeal is therefore in the premises found devoid of any merit. It is accordingly dismissed with costs to the Respondents.

Dated at Hoima this 29<sup>th</sup> day of **September, 2023**.

**Byaruhanga Jesse Ruyema**  
**JUDGE.**