

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MASAKA
CIVIL APPEAL NO. 27 OF 2021
(ARISING FROM LAND SUIT NO. 66 OF 2019)

KABUGO MANISOOR ::: APPELLANT

VERSUS

MUGANGA ABIAZ ::: RESPONDENT

Before the Hon. Lady Justice Victoria N.N. Katamba

JUDGMENT:

BACKGROUND

The Respondent sued the Appellant for trespass on land measuring approximately 25 acres vide Civil Suit No. 33 of 2018.

The Respondent’s case was that on the 2nd day of April 2009, the administrators of the estate of the late Jumba Khalid sold to him 50 acres of land which he occupied and utilised. The Respondent currently occupies and utilises 25 acres having sold off the other half to a third party.

The Appellant’s case was that the land in dispute forms part and parcel of his share as a beneficiary to the estate of the late Jumba Khalid. It was also the Appellant’s case that HCCS No. 07 of 2012 nullified Letters of Administration obtained vide Admin. Cause No. 510 of 2005 and therefore a re-distribution of the estate was agreed upon by way of consent.

The Trial Court held that the Appellant was a trespasser on the suit land.

The Appellant being dissatisfied with the decision and orders of the Learned Trial Magistrate has appealed against the same on the grounds stated below.

- a) The Trial Magistrate erred in law and fact when he ignored the Consent Judgment in Civil Suit No. 07 of 2012 and held that the sale of the land in dispute to the Respondent was lawful.

- b) The Learned Trial Magistrate erred in law and fact in holding that the Appellant is a trespasser.

The Appellant argued grounds 1 & 2 jointly.

The Appellant submitted that whereas the Respondent (PW1) testified that he bought the suit land in 2009 from the then Administrators of the estate of the late Juma Khalid, PW2 testified that he was sued by the Appellant vide HCCS No. 07 of 2012 for revocation of letters of Administration under which a consent was entered nullifying the grant and a redistribution was ordered.

The Appellant further submits that while PW2 also testified that an understanding was reached to validate transactions entered into by him and other Administrators which included the one involving the Respondent's, this testimony was not backed up by evidence to support such validation. That the consent judgment doesn't suggest validation of previous illegal transactions by the Administrators, either.

The Appellant also submitted that the learned Trial Magistrate at page 5 of his Judgment concurred that indeed the High Court nullified the initial distributions of the estate to the beneficiaries, the authority having been obtained fraudulently yet still omitted to address the illegality of the transactions entered into by the administrators prior to the said Consent judgment.

The Plaintiff cited the case of *Makula International Ltd v His Eminence Cardinal Nsubuga & Anor (Civil Appeal No. 4 of 1981 [1982] UGSC 2* in which it was held that an illegality once brought to the attention of Court cannot be ignored. Basing on the authority, the Appellant invited this Honourable Court to look into the validity of the transactions carried out prior to the nullification and re-distribution order in HCCS No. 07 of 2012.

The Appellant defined a trespasser as one who intentionally and without consent or privilege enters onto another's property and referred this court to **Black's Law Dictionary 8th Edition, West Publishing Company limited at Page; 1543**

In conclusion on trespass, the Appellant argued that before court can determine whether a person is a trespasser on land, it should first determine whether such person has an interest in the land and once he proves having any interest in the suit land then he cannot be regarded as a trespasser on such land or property. That the Appellant is a beneficiary of his late father's estate of which he has an interest in the same and had all the rights to occupy and utilise the same as testified by him.

Ground 3

The Appellant relied on the authority of **Kampala District Land Board & Another V Venansio Babweyaka (supra)** Supreme Court cited with approval the decision of **Byabalema & 2 Others vs UTC Ltd.** Civil Appeal No. 10 of 1993 (SC): where it was held that;

“It is now a well settled principle that an appellate Court may only interfere with an award of damages when it is inordinately high or low as to represent an entirely erroneous estimate. It must be shown that the Judge proceeded on the wrong principle or that he misapprehended the evidence in some material respect and so arrived at a figure which was inordinately high or low.”

He submitted that the Trial Magistrate awarded Ugx. 7,000,000/= to the Respondent on grounds that the Appellant had denied the Respondent use of the suit land for five years. He contended that this award is too excessive in the circumstance of this case because the suit land does not create income for the Appellant.

In conclusion, he prayed that the appeal be allowed.

RESPONDENT'S SUBMISSIONS

On ground one; The Respondent submitted that S.191 and 192 of the Succession Act Cap. 162 empower Administrators to all rights belonging to the intestate.

He submitted that at the time of purchase of the suit land, the Administrators that sold to him the suit land had valid Letters of Administration to the estate of the Late Jjumba Khalid.

The Respondent argues that DW2's testimony that they sued the Administrators for selling the estate's property demonstrates that the Respondent and his joint Plaintiffs in HCCS No, 07 of 2012 were aware of the sale to the Appellant yet they did not sue him in the said suit.

That the consent Judgment of the family members to which suit he was never a party cannot be used to affect his right in the estate property and that construing it against him would be to condemn him unheard. *The* said consent did not even nullify the Respondent's transaction with the then Administrators.

He also submitted that the nullification of Letters of Administration was done one year after his transactions with the then Administrators of the estate.

The Respondent further submitted that the re-distribution of the estate land was done by DW2 without the attendance of PW2, a joint Administrator in the later grant and for this, it was nullified in High Court Civil Appeal No. 24/2016 by Justice John Eudes Keitirima as illegal and contrary to the consent Judgment. That court's Judgment nullifying the redistribution was tendered in court as PEX3. That no other re-distribution has been made since then.

Ground two;

The Respondent submitted that Pw2 denied having re-distributed the suit land to any one thus the Appellant cannot claim to be the beneficial owner of the suit land.

The Respondent also argues that since his purchase from the then Administrators has never been challenged in courts of law, it is a valid purchase from persons that were Administrators long before a dispute ensued among the beneficiaries.

In conclusion, the Respondents contends that the Appellant admitted having entered onto the suit land without the Respondent's consent and has no proof of being a beneficiary of the suit land in a redistribution, he is a trespasser and the decision of the lower court should be upheld.

DETERMINATION OF COURT

I am alive to, and I have discharged the duty of this first appellate court which is to re-appraise the evidence and subject it to an exhaustive scrutiny and come to its own conclusions was as

stated in a plethora of authorities like *Uganda Revenue Authority versus Rwakasanje Azariu & 2 Ors; CACA No. 8/2007; Fr. Narsensio Begumisa and 3 Ors versus Eric Tibebaga; SCCA No. 17 of 2002 and Banco Arabe Espanol versus Bank of Uganda; SCCA No. 08 of 1998.*

Ground One; The Trial Magistrate erred in law and fact when he ignored the Consent Judgment in Civil Suit No. 07 of 2012 and held that the sale of the land in dispute to the Respondent was lawful.

The fact that the Respondent bought the suit land from the Administrators of the estate of the Late Khalid Jjumba is not in dispute. What is contested by the Appellant is the validity of the transaction of the sale of the suit land by the court appointed Administrators on the ground that the grant was obtained through fraud subsequent to which it was surrendered for cancellation and a new grant was issued.

The particulars of fraud against the earlier Administrators were neither stated in the defence nor brought by way of counterclaim in the Appellant's Written Statement of Defence filed on 30th November 2018 against the Respondent and the said Administrators. The particulars of fraud and illegalities have also not been brought to the attention of this court in the instant appeal, yet the Appellant is seeking to move this court to act on the said unknown illegalities to set aside a whole Judgment of court because the Letters of Administration were surrendered and nullified by consent of the parties under HCCS NO. 7 of 2012.

I am inclined to agree with the Respondent that the surrender/nullification of Letters of Administration vide Administration Cause No. 510/2006 did not have a retrospective effect on the Appellant's earlier purchase of the suit land. Moreover, the sale took place more than a year prior to the said nullification and the Appellant was never a party to the HCCS No. 7 of 2012.

As rightly submitted by the Respondent, declaring that the sale was illegal because of the subsequent nullification by the parties would amount to condemning the Respondent unheard.

In conclusion, the learned trial Magistrate was right to ignore the consent Judgment because it did not have a retrospective effect to the parties, more still to third parties to it.

Ground one is answered in the negative.

Ground two; The Learned Trial Magistrate erred in law and fact in holding that the Appellant is a trespasser.

The resolution of ground one demonstrates that the Respondent is the rightful owner of the suit land. The Appellant admitted that he had been using the land until he was stopped by the court in 2019 under a re-distribution scheme that was declared illegal. In the circumstances, the learned trial Magistrate was entitled to make the finding that the Appellant is a trespasser on the suit land.

I agree with the Respondent that the Appellant had to first successfully challenge in a court of the Respondent's ownership of the land in a court of competent jurisdiction before ascending onto it to enforce his beneficial share under the re-distribution which was declared illegal.

This ground is also answered in the negative.

Ground 3: That the learned trial Magistrate erred in law and fact when he awarded general damages of UGX. 7,000,000/= which is manifestly excessive?

The Appellant rightly submitted that courts should only interfere with an award of general damages *when* it is inordinately high or low as to represent an entirely erroneous estimate.

I however do not agree with him that the award of UGX. 7,000,000/= is inordinately high merely because he is not using the land for an income generating project. With respect to the Appellant, this reasoning is wanting because whereas he is not using the land to generate an income, he has denied the Respondent quiet enjoyment of the land through which he would have been able to use the land for income generating projects.

Secondly the award of general damages is not hinged on whether one is benefitting from the land financially or not but on the inconvenience occasioned to the Plaintiff and the psychological stress brought upon him for wrongful acts of the defendant.

I find that the award of UGX. 7,000,000/= was appropriate in the circumstances of this case and was rightly awarded to the Respondent.

This ground is also answered in the negative.

In conclusion, the appeal is rejected in whole and is hereby dismissed with no order as to costs.

Obiter Dictum: I urge the Administrators of the estate of the Late Jjumba Khalid to re-distribute the estate and file an inventory and ensure that the Appellant and other beneficiaries get their beneficial shares in the estate.

Orders:

1. The Appeal is dismissed with no order as to costs.

Dated this 16th day of February, 2023.

VICTORIA NAKINTU NKWANGA KATAMBA

JUDGE