

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT MUKONO**

**CIVIL APPEAL NO. 010 OF 2020  
(ARISING FROM MUKONO CHIEF MAGISTRATE'S COURT CIVIL  
SUIT NO. 117 OF 2015)**

**KYAMBADDE VICENT ::::::::::::::::::::::::::::::::::::::: APPELLANT**

**VERSUS**

**STEPHEN KYEWALYANGA BADAZA MUKAMA ::::::::::: RESPONDENT**

**BEFORE: HONOURABLE JUSTICE DAVID MATOVU**

**JUDGMENT**

**Introduction**

1. Kyambadde Vicent (hereinafter referred to as "the Appellant") being dissatisfied with the Judgment of Her Worship Koburunga Patience Magistrate Grade 1 Mukono delivered on 25<sup>th</sup> October, 2019 in favour of Stephen Kyewalyanga Badaza Mukama (hereinafter referred to as "the Respondent") lodged Civil Appeal No. 010 of 2020 in the High Court of Uganda at Mukono.

## **Background facts**

2. The Respondent (now) was the original Plaintiff who filed Civil Suit No. 177 of 2015 in the Chief Magistrate's Court of Mukono against the Appellant (now) who was the original defendant to Civil Suit No. 177 of 2015.
3. The Respondent's claim in the lower court was for a declaration that he was the lawful owner of the land at Kyaggwe Block 313 Plot 44 located at Misindye (hereinafter referred to "the suit land") and he wanted the Appellant evicted from this land.
4. The Appellant contended that he owned a Kibanja on the suit land having purchased the same from Godfrey Luzindana and Anatoli Sekitoleko in the year 1990 and 2000 respectively.
5. The Appellant contended that he was using his Kibanja peacefully with the knowledge and consent of the original landlord and that he should have been given the first option to buy the registered interest in the land but this option was not given to him.

6. The Appellant also filed a counter claim for his Kibanja and a claim for compensation for his trees, coffee, bananas and other crops destroyed by the Respondent.
7. There was an application for a temporary injunction filed by the Respondent vide Miscellaneous Application No. 082 of 2016 and on 13<sup>th</sup> September, 2016 a consent order was issued maintaining the status quo until the determination of Civil Suit No. 177 of 2015.
8. Civil Suit No. 177 of 2015 was heard on its merits and in her Judgment delivered on 25<sup>th</sup> October, 2019 the learned trial magistrate found that the Respondent was the lawful owner of the suit land and the Appellant was a trespasser, issued an eviction order against the Appellant and awarded general damages of Ug Shs 2,500,000/= (Two million five hundred thousand shillings) and costs of the suit.
9. The Appellant dissatisfied with the decision of the learned trial magistrate filed Civil Appeal No. 010 of 2020 with seven (7) grounds of appeal.

## **Legal representation**

10. Mr. Alex Ssekatawa represented the Appellant and Ms. Robinah Nagadya appeared for the Respondent.

## **Duty of first Appellant Court**

11. It is the duty of the first Appellant Court to review the evidence on the lower court record and also reconsider the materials before the lower court and make its own findings but it should not ignore the fact that the lower court had an opportunity to listening to the witnesses. **(See case of Kifamante Henry Versus Uganda)** Supreme Court Criminal Appeal No. 010 of 1997.

## **Grounds of Appeal**

12. The Appellant's memorandum of Appeal filed on 25<sup>th</sup> February, 2020 contained the following seven (7) grounds of appeal:-

- i) That the learned trial Magistrate erred in law and fact when she held that the Appellant is not a Kibanja**

**holder but a trespasser on the suit land hence occasioning a miscarriage of justice to the Appellant.**

- ii) That the learned trial Magistrate erred in law and fact when she held that the Appellant's possession of the suit land was un lawful hence occasioning a miscarriage of justice.**
- iii) That the learned trial magistrate erred in law and fact when she held that Luzindana did not have any interest in the suit land hence occasioning a miscarriage of justice to the Appellant.**
- iv) That the learned trial magistrate erred in law and fact when she failed to consider and recognize the custom of paying Kanzu as a form of the consent for the registered owner hence occasioning a miscarriage of justice to the Appellant.**
- v) That the learned trial magistrate erred in law and fact when she decided the case against the weight of evidence on record hence occasioning a miscarriage of justice to the Appellant.**

- vi) That the learned trial magistrate erred in law and fact when she awarded general damages, costs and interest against the Appellant contrary to the law and circumstance of the case hence occasioning a miscarriage of justice to the Appellant.**
- vii) That the learned trial magistrate erred in law and fact when he failed to consider the Appellant's evidence on the counter claim and dismissed the same hence occasioning a miscarriage of justice to the Appellant.**

#### **Arguments by Counsel for the Appellant**

13. In his written submissions filed on 13<sup>th</sup> April, 2023 Counsel for the Appellant opted to argue grounds 1, 2, 3, 4, and 5 together and this court will adopt the same order but with a finding that it was not necessary to duplicate all these grounds of appeal which were all centered around a failure to properly evaluate evidence by the lower court.
14. Court will also resolve grounds 6 and 7 of appeal separately as submitted by Counsel for the Appellants.

## **Arguments by Counsel for the Respondent**

15. Court has also carefully read the submissions of Counsel for the Respondent filed on 26<sup>th</sup> April, 2023 and relied upon the same in resolving the instant appeal.

## **Decision of court**

16. As stated earlier court finds that grounds 1, 2, 3, 4 and 5 of appeal can be reduced into one ground that the learned trial magistrate erred in law and fact when she failed to properly evaluate the evidence on court record thus occasioning a miscarriage of justice to the Appellant.
17. Court has carefully perused the record of proceedings before the learned trial magistrate and also the proceedings at the locus in quo and paragraph 8 of the witness statement of PW1 Stephen Kyawalyanga Badaza Mukama expressly mentions the Appellant as a Kibanja claimant on the suit land whose claim was settled before the Local Council and Resident District Commissioner but unfortunately court did not find any evidence to support the purported settlement of the Appellant's Kibanja claims.

18. While under cross examination, the Respondent gave court the impression that he only came to know about the Appellant after he had bought the suit land when Sekatawa Thomas and Mugalula had been arrested but this does not in any way change the clear evidence in the Respondent's witness statement at paragraph 8.
19. Court also considered the evidence of PW2 Sekatawa Thomas who knew the Appellant for at least ten (10) years and the fact that the Appellant was using the suit land to plant maize. This witness knew Luzindana and the fact that Luzindana confirmed the sale of his portion of Kibanja to the Appellant.
20. Court perused the witness statement of the Appellant who confirmed to be using the suit land which he bought from Luzindana and Anatoli Sekitoleko in 1990 and 2000 respectively. According to him a one Kikonyogo was the landlord for Luzindana's portion and Faith Namayanja was landlord for Anatoli Sekitoleko's portion.
21. The evidence of DW2 Anatoli Sekitoleko confirmed that he sold two (2) Acres of Kibanja to the Appellant but he is not clear



as to whether the requisite consent of the landlord was granted prior to this sale.

22. Court found the evidence of DW3 a one Kyewala who was LC1 Chairperson from 1986-1997 useful and the fact that a one Kakwaya was the original owner of the Kibanja in dispute which he passed on to his children Luzindana and Rwagarinda. That the Appellant has been using the Kibanja since 1990 and he was not aware of any dispute arising out of this Kibanja before the LC1 Court.
23. DW4 Serunjogi Godfrey who was Chairman LC1 from 1997 confirmed the existence of the sale agreement between the Appellant and Luzindana where he was a witness and this is exhibit D1.
24. Court visited the locus in quo and found a permanent house belonging to the Appellant.
25. Upon careful evaluation of the evidence before the lower court it is clear that the Appellant bought a Kibanja interest from Luzindana in 1990 and at this time the registered owner of the suit land was Danieri Kikonyogo the father of Faith Namayanja and therefore the learned trial magistrate erred in

law and fact in finding the Appellant to be a trespasser on this portion of Kibanja bought by the Appellant in 1990 from Luzindana.

26. However, court finds merit in the lower court's finding that the sale of a Kibanja by Anatoli Sekitoleko in 2000 to the Appellant ought to have been blessed by the Landlady Faith Namayanja who became the registered owner of the suit land on 2<sup>nd</sup> January, 1995.
27. Therefore, grounds 1, 2, 3, 4 and 5 partially succeed as the Appellant is the lawful owner of a portion of Kibanja measuring approximately three (3) acres he bought from Luzindana and this is where he has his permanent house but for the two (2) acres he purportedly bought from Anatoli Sekitoleko this sale was a nullity as it lacked the consent of the landlady Faith Namayanja.
28. Grounds 1, 2, 3, 4 and 5 having partially succeeded court also hereby allows grounds 6 and 7 by setting aside the awards of general damages and costs as ordered by the learned trial magistrate.

29. In the final result, court partially allows this appeal by finding that the Appellant is the lawful owner of approximately three (3) acres of Kibanja he bought in 1990 from Luzindana but a trespassed on the two (2) acres he purportedly bought from Anatoli Sekitoleko in 2000 without the consent of Faith Namayanja the landlord.

30. Each party should bear their costs before this court and also the lower court.

Dated this 12<sup>th</sup> .....day of April .....2024.

  
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David Matovu

Judge