THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT MUKONO

CIVIL APPEAL NO. 11 OF 2023

(ARISING FROM KAYUNGA CIVIL SUIT NO 0051 OF 2019)

KAGGWA PAINENTO::APPELLANT

VERSUS

MWANJA JOHN::RESPONDENT

BEFORE: HON. JUSTICE JACQUELINE MWONDHA-JUDGE

JUDGMENT

This is an appeal against the judgment and orders of Her Worship Kyoshabire Caroline, Magistrate Grade One attached to Chief Magistrates Court of Kayunga at Kayunga (hereinafter referred to as "Trial Court") delivered on 12/12/2022 in Civil Suit No. 0051/2019 that is; Kaggwa Painento Vs Mwanja John.

Introduction

The Plaintiff/Appellant (Kaggwa Painento) filed Civil Suit No.0051/2019 against the Defendant/Respondent (Mwanja John) seeking for; a declaration that the Defendant trespassed on the Plaintiff's Kibanja measuring 50ft X 150ft at Gombolola Zone at Nazigo Town Council (herein after referred to as the suit land), an Order for demolition of the Respondent's structure on the area trespassed upon, general damages, a Permanent Injunction as well as costs. The Trial Court found in favor of the Defendant/Respondent.

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as costs. The Trial Court found in favor of the Defendant/Respondent.

Being dissatisfied with the judgment and orders of the trial Court, the Plaintiff/ Appellant appealed to this Court on the following grounds.

1. *That the learned Magistrate Grade I erred in law and in fact when she failed to properly evaluate the evidence on record and thereby came to a wrong conclusion that the Respondent was not a trespasser on the Appellant's land.*
2. *That the learned Magistrate Grade I erred in law and in fact when she wrongly applied the principle of estoppel to the facts and thereby came to a wrong conclusion that the Respondent did not trespass on the plaintiff's land.*

Background of the appeal

The Plaintiff/ Appellant averred and contended that he purchased the suit land measuring 50ft x 150ft in 1985 from a one Nakafeero Mary at a consideration of Ugx. 250,000/=. That in 1991, he had architectural plans for his commercial building and the same was approved on 14/2/1991 the District Administration hence commenced the construction of the said commercial building. That while constructing, he deliberately left 6ft on either side of the building for sanitary lane and access the structure through either sides and thus that his building is 38ft on ground. That in 2019, the Respondent/ Defendant commenced construction of his commercial

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building on plot adjacent to that of the appellant and in so doing, that he encroached on the Appellant's 6ft hence the suit.

In Reply, the Defendant/Respondent filed his Written Statement of Defence together with a Counter Claim wherein he averred and contended that he purchased land comprised in Gombolola Zone, Nazingo TC Kayunga District on 13/04/2019 from a one Ssemuju Paul measuring 45ft by 120ft and that the land neighbors the Plaintiff's land. That he took possession of the said land and constructed a commercial building with approved plan. Further, that at the time of purchase, the neighbors present were Twaha Muganza, the family of the late Kalyoowa, Nazigo Noor Islamic School and the LC1 of the area. That the boundaries were verified by the neighbors and the Plaintiff was contacted on phone and that he stated his kibanja measured 40ft in width.

The Defendant also averred and contended that on 16/04/2019, the Plaintiff broke the Defendant's wall fence and extended it by 3ft. That on 26/10/2019, the Plaintiff tried to construct a verandah which the Defendant objected and matters were taken to LC1 Committee which resolved the matter by suggesting that the Defendant builds a concrete slate on the outer wall of the plaintiff.

In reply to the Defendant's Written Statement of Defence and Counter Claim, the Plaintiff contended that he was never present at the ground breaking/digging foundation and could not therefore have allowed the Defendant to construct on his land and that the Plaintiff

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has never commenced any matter in the LC1 Court but approached the Chairman LC1 to intervene in the trespass by the Defendant. That there is no case filed with the LC1 Court and that the said Court has never sat to receive evidence from the Plaintiff or anybody.

Legal Representation

The Appellant was represented by M/s KGN Advocates whereas the Respondent was represented by M/s Ekirapa & Co. Advocates.

The law

Duty of the first appellate court

Article 139 of the 1995 Constitution of the Republic of Uganda is to the effect that the High Court shall, subject to the provisions of this Constitution, have unlimited original jurisdiction in all matters and such appellate and other jurisdiction as may be conferred on it by this Constitution or other law. And subject to the provisions of this Constitution and any other law, the decisions of any court lower than the High Court shall be appealable to the High Court.

It is an established principle of law that the first appellate court has a duty to re-hear the case by subjecting the evidence presented to the trial court to a fresh and exhaustive scrutiny and re-appraisal before coming to its own conclusion. This was the decision ***Father Nanensio Begumisa & 3 Ors Vs Erick Tiberaga SCCA 17 of 2000 [2004] KLRA 236.*** In a case of conflicting evidence, the appeal court has to make due allowance for the fact that it has neither seen nor

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heard the witnesses, it must weigh the conflicting evidence and draw its own inference and conclusions (see ***Lovinsa Nankya v. Nsibambi [1980] HCB 81).***

Evaluation of evidence

In ***Uganda Vs George Wilson Simbwa SCCr. Appeal No. 37 of 1995*** where Supreme Court held that court is legally bound to have evaluated the evidence of both side and not to leave one in isolation. Similarly, in ***Odongo Ochama Vs Rajab Musa (Civil Appeal No. 119 of 2018 [2021] UGHCLD*** where court stated that evaluation of evidence must be approached as a whole. A court ought not to consider the Plaintiff's story in isolation of the Defendant's story and finally decide which of the two to prefer. The evidence must be considered on each contentious point in the trial on the balance of probabilities for the correct decision to be made.

The law on estoppel

Section 114 of the Evidence Act Cap 6, provides for estoppel and it is to the effect that when one person has, by his or her declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon that belief, neither he or she nor his or her representative shall be allowed, in any suit or proceeding between himself or herself and that person or his or her representative, to deny the truth of that thing.

Departure from Pleadings.

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Order 6 Rule 7 of the Civil Procedure Rules (as amended) provides to the effect that "No pleading shall, not being a petition or application, except by way of amendment, raise any new ground of claim or contain any allegation of fact inconsistent with the previous pleadings of the party pleading that pleading.

In ***Esso Petroleum Company Limited v. Southport Corporation [1956] AC 218***), Court held that the function of pleadings is to give fair notice of the case which has to be met, so that the opposing party may direct his or her evidence to the issue disclosed by them. Similarly, in the case of ***Havinder Jhass Singh Vs Rosemary Asea & Anor Civil Appeal No.0008/2016*** *Justice Stephen Mubiru* relying on the case *of* ***Opika-Opoka v. Munno Newspapers and Another [1988-90] HCB 91 and Lukyamuzi Eriab v. House and Tenant Agencies Limited [1983] HCB 74)*** held that Where departure from a pleading will cause prejudice, it is in the interests of justice that the other party should be entitled to insist that such evidence is not permitted unless the pleading is appropriately amended. Therefore, in the event of an inconsistency between the written statement of Defence and evidence adduced in court, such that the inconsistence is revealed in the course of hearing of evidence, the offending part of the evidence may be rejected or the offending part of the pleading may be struck out on application.

However, that where the departure from the pleadings causes no prejudice, or where for some other reason it is obvious that the court,

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if asked, is likely to give permission to amend the pleading, the other party may be sensible not to raise the point since not every departure will be fatal to the proceedings.

The evidence

Plaintiff's/Appellant's evidence in the lower court.

The Plaintiff who is now the Appellant in his witness statement stated that he purchased the suit land measuring 50ft x 150ft in 1985 from a one Nakafeero Mary at a consideration of Ugx. 250,000/=. That in 1991, he had architectural plans for his commercial building and the same was approved on 14/2/1991 the District Administration hence commenced the construction of the said commercial building. That while constructing, he deliberately left 6ft on either side of the building for sanitary lane and access the structure through either sides and thus that his building is 38ft on ground. That in 2019, the Respondent/ Defendant commenced construction of his commercial building on plot adjacent to that of the appellant and in so doing, that he encroached on the Appellant's 6ft

Further, the Plaintiff/ Appellant testified at page 7 & 8 of the Record of proceedings that he got to know of the Defendant's trespass on to his land in November, 2019. That he found the defendant building and had fenced off the same and that in April, 2019 when the Defendant started construction the Plaintiff was away as he has another home in Kyaggwe, Sagazi, Mukono District. That he reported to LC1 and action for Human Rights after finding that the Defendant

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had trespassed. That the Plaintiff also reported to the District Physical Planner, who later came on the suit land and told the Plaintiff that the Defendant had a plan but did not show the same to the Plaintiff. That the Physical Planners measured the land and found it was 50ft x 100ft. Further, that the Plaintiff knows Mr. Twaha Muganza as his neighbor. That he has never authorized him to represent the Plaintiff when measuring the Defendant's land. That he approached the landlord to sell him the kibanja in 2019 when the Defendant had started building.

In re-examination, he stated that he had earlier bought 50ft x 150ft from Nakafeero but was cut by Nuru Primary School and he remained with 50ft by 100ft. That the LC1 did not make any report nor the Physical Planning Committee.

Defendant's/Respondent's evidence in the lower court.

On the other hand, the Defendant/ Respondent contended that he purchased land comprised in Gombolola Zone, Nazingo TC Kayunga District on 13/04/2019 from a one Ssemuju Paul measuring 45ft by 120ft and that the land neighbors the Plaintiff's land. That he took possession of the said land and constructed a commercial building with approved plan. Further, that at the time of purchase, the neighbors present were Twaha Muganza, the family of the late Kalyoowa, Nazigo Noor Islamic School and the LC1 of the area. That the boundaries were verified by the neighbors and the Plaintiff was contacted on phone and that he stated his kibanja measured 40ft in width. That on 16/04/2019, the Plaintiff broke the Defendant's wall

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fence and extended it by 3ft. That on 26/10/2019, the Plaintiff tried to construct a verandah which the Defendant objected and matters were taken to LC1 Committee which resolved the matter by suggesting that the Defendant builds a concrete slate on the outer wall of the plaintiff.

Further, during Cross-examination, the Defendant (DW1) testified that he bought his plot from a one Paul Semuju who also purchased the same from the children of Kakeeto in 1998 who also acquired from Lawrence Karyowa. That at the time, the agreement did not state the size of the land between Kakeeto and Semuju. That the agreement only stated boundaries that is, that in the East there is the late Lawrence Karyowa, West Painato Kaggwa the Plaintiff, South there is Twaha and Nuru Moslem School and the North Road. That at the time of purchase, the Defendant measured his land and it was 45ft x150ft. That it was the first time the plot was measured and that the Plaintiff was absent but the wife was present. That the Defendant had not seen the Plaintiff's agreement before the purchase nor did he know the Plaintiff's size of the land before purchase. That a one Twaha Mugazi informed the Defendant that the Plaintiff's land measures 40ft x 100ft.

In re-examination, the Defendant testified that the people who were present at the time of measurements were Twaha Mugazi, Lozious, representative from school, Paul Semuju. That the Plaintiff's wife was around but was not involved in the transactions. That the Plaintiff

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had broken the side of the building on the perimeter facing the gate of the school.

Further, Mr. Ssengendo Samuel (DW2) also testified that he was not around when the plaintiff purchased his land but saw the sales agreement and the size of the Plaintiff's land is 50ft x 100ft and that he never measured the land. That there is a difference between what the Plaintiff told him and what was on the sales agreement. DW3 (Muganza Twaha) testified that he participated in the measurements of the land as a neighbor and that they did not only measure the Plaintiff's land but also for the Defendant.

DW4 (Mr. Semuju Paul) testified that at the time he bought the land he did not measure it because he was just buying a house. That at the time he sold the land to the defendant, the measured the house which was 45ft x 120ft and that he did not have any complaint with the Plaintiff before. In re-examination, he testified that the measurement he sold to the Defendant was 43ft x 120ft. That the 45ft come by after including the veranda.

Submissions

Appellant's submissions

The Learned Counsel for the Appellant argued both grounds of the appeal concurrently that is; ***that the learned Magistrate Grade I erred in law and in fact when she failed to properly evaluate***

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the evidence on record and thereby came to a wrong conclusion that the Respondent was not a trespasser on the Appellant's land and that the learned trial Magistrate Grade I erred in Law and in fact when she wrongly applied the principle of estoppel to the facts and thereby came to a wrong conclusion that the Respondent did not trespass on the plaintiff's land.

It was submitted for the Appellant that the plaintiff did adduce evidence by way of a witness statement showing that he purchased land measuring 50ft in the front (width) by 150ft in length. That he left 6ft on each side of his building which sits on 38ft. That the Appellant further adduced an agreement of purchase from one Nakafeero at Ug. Shs. 250,000/=, dated 6/4/1983 which was admitted in evidence and exhibited PI and his building plan exhibited PEX 3.

Further, the Learned Counsel contended that it is not disputed that the Applicant purchased his land in 1985 long before the defendant purchased his from a one Paul Semujju on 13/04/2019. That it is also not disputed that at the time the Respondent bought his portion from Semujju, the measurements of his portion were not known and that at the time measurements were carried out, the Appellant was not present. That the learned trial Magistrate despite the clear agreement exhibit PEX 1 chose to believe the defendant's evidence that Appellant's land measured 40ft in width contrary to the provisions of Section 91 & 92 of the Evidence Act which clearly rule out oral evidence to contradict a written agreement or document. The

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Learned Counsel thus submitted that, what the learned Trial Magistrate ought to have done was to look at the measurements in the agreement then factor in the measurements of the building plan as approved by Mukono District Administration Exhibit P3. That all she stated in her judgment is that, the defence evidence was well corroborated in regards to what transpired which makes it more believable", and that "even if the Court was to rely on the agreement that provides that indeed the plaintiff purchased 50ft in width, the conduct of the plaintiff stops him from claiming that the defendant trespassed on his land relying on the principle of estoppel.

More so, that indeed, the learned trial Magistrate chose to rely on the principle of estoppel purporting that the Appellant had held out that his land measured 40ft by 120ft and that the defendant acted on that fact to measure his land and later started constructing until October, 2019." That the trial magistrate further stated that "the plaintiff was estopped by his conduct to later come back in October, 2019 and claim that his land measures 50ft x 150ft according to the agreement when the defendant has already acted on the assertions made by the plaintiff and built a permanent structure thereon". That it was DW3 who caused the Respondent to believe that the Appellant's land measured 40ft by 120ft and not the Appellant.

The Leaned Counsel for the Appellant also submitted that the provisions of Section 114 of the Evidence Act and the authority of ***Pan African Insurance Ltd VS International Air Transport***

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Association HCCS No 667 of 2007 relied upon by the trial Magistrate to impute estoppel by conduct did not apply in this situation especially where there was no interaction between the Appellant and the Respondent. That what is clear from the learned Trial Magistrate's Judgment is that the Respondent is on the Appellant's land and without the Appellant's consent. That this constitutes pure trespass and that the only justification the learned trial Magistrate used to sanitize the said trespass is resort to estoppel.

Further, that from the perusal of the Written Statement of Defence, nowhere was it pleaded by the respondent that the Appellant's conduct led the Respondent into constructing on his land and that he is as such, estopped by conduct. Counsel cited Order 6 r 7 of the Civil Procedure Rules which prohibits departure from one's pleadings. He further contended that equally, Courts are precluded from determining issues not raised in the pleadings or arguments by the parties. That the Respondent did not set up estoppel as his defence and cannot be permitted to succeed of what was not pleaded by him.

Counsel relied on the case of ***Interfreight Forwarders (U) Limited Vs East African Development Bank SCCA NO.33 OF 1992;*** where it was held as follows;

"Order 6 rule 1 of the Civil Procedure Rules provides that; "Every pleading shall contain and contain only, a statement on a precise form of the material facts on which the party pleading relies for claim

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or defence as the case may be but not evidence by which they are to be proved in Rule 2 provides that in all cases in which particulars are necessary, such particulars shall be given".

The system of pleadings is necessary for litigation. It operates to define and deliver it with clarity and precise in the real matters in controversy between the parties upon which they can prepare and present their respective cases and upon which the Court will be called upon to adjudicate between them. It then serves the double purpose of informing each party what is the case of the opposite party which will govern the interlocutory proceedings before the trial and which the Court will have to determine at the trial. See ***Bullen & Leak and Jacob's precedents of pleadings 12th edition. Page 3***. Thus, issues are framed on the case of the parties so disclosed in the pleadings and evidence is directed but the trial to the proof of the case so set and covered by the issues framed therein. A party is expected and is bound to prove the case as alleged by him and covered in the issues framed. He will not be allowed to succeed on a case not so set up by him and be allowed at the trial to change his case or set up a case inconsistent with what he alleged in his pleadings except by way of amendment of the pleadings. For the above reasons, if the plaintiff did not plead that the defendant was a common carrier, I think he cannot be permitted to depart from what clearly appears to have been his case as stated in the plaint, in fact, supported by that convention".

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The Learned Counsel concluded by submitting that the Respondent did not set up a defence of estoppel by conduct. That he could not depart from his pleadings and the trial Court was not permitted to let the defendant succeed on the case not set up by him, hence that the learned trial Magistrate therefore erred in law and in fact when she failed to evaluate the evidence on record and wrongly applied the principle of estoppel in the proceedings before her thus came to a wrong conclusion that the Respondent was not a trespasser. Counsel prayed that the appeal be allowed and the decision of the learned trial Magistrate be set aside and Judgment entered in favor of the Appellant.

Respondent's submissions

Regarding the ***first ground*** of appeal that is; *that the learned Trial Magistrate Grade 1 erred in law and in fact when she failed to properly evaluate the evidence on record and thereby came to a wrong conclusion that the Respondent was not a trespasser on the appellant's land*, the Learned Counsel for the Respondent contended that they object to the First ground of appeal for being too general since it does not point out what aspect of evidence the trial magistrate failed to evaluate. He submitted that general grounds of appeal were struck out in the case of ***Katumba Nyaruhanga Vs Edward Kyewalabye Musoke; C.A.C.A No. 2 of 1998*** as offending the provisions of Order 43 Rule 1 (2) of the Civil Procedure Rules (as amended) SI 71-1.

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In arguing the merits of the appeal, the Learned Counsel implored Court to look at page 6 paragraph 5 of the Judgment where the Learned Trial Magistrate stated that *"I find the evidence adduced by the Plaintiff regarding the measurements inconsistent and full of contradictions, for example he stated that he had left 6ft on each side after constructing his commercial building as sanitary lane but upon measurement on locus, it was established that it was not true. It was established that the Plaintiff's structure in front on the side of the Defendant, left only 2ft not 6ft after calculating 50ft width. The length of the Plaintiff's plot of land on measuring 150ft extended into the neighboring school, the actual plot measured 107ft. This leaves court doubting the measurements indicated in the sales agreement by the Plaintiff and more so the fact that although it was duly executed, no witness who witnessed on the sales agreement or who were present when the Plaintiff bought and measured his land was brought in court to testify to its truthfulness and how the land was measured."* Counsel thus submitted that measurements on EXH P.1 proved false at locus and that the Trial Magistrate was right to disregard the same.

Further, Counsel directed Court to page 6 of the Judgment where the learned Trial magistrate observed that "the defence evidence was well collaborated in regard to what transpired which makes it more believable". He contended that during hearing, DW4- Twaha Muganza testified in Para 6 of his Witness Statement that before the Respondent purchased his land, DW4 called the Appellant who was away to ascertain the measurements of Appellant's land and that the

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Appellant informed DW.4 that his land measured 40ft X 120ft and that the Appellant's building sits on about 38ft leaving out 2ft on the side neighboring the Respondent. Further, that taking into account the measurements given by the Appellant, the Respondent's land was measured as 45ft X 120ft and when the Appellant returned home the Appellant thanked D.W4 for the good work the D.W4 had done for the Appellant while the measurement of the Respondent's land were being taken.

It was also submitted for the Respondent that the Trial Magistrate in her Judgment clearly indicated that at locus they measured the 50ft width indicated by the Appellant as per EXH P.1 and there was only 2ft left that the Appellant did not construct on contrary to the Appellant's assertion that he had left 6ft as a sanitary lane. That therefore, the Trial Magistrate rightly evaluated the evidence on record.

In handling the ***second ground*** that is;, *that the Learned Magistrate Grade 1 erred in law and fact when she wrongly applied the principle of estoppel to the facts and thereby coming to a wrong conclusion that the Respondent did not trespass on the Plaintiff's land,* it was contended for the Respondent that the Appellant faults the Trial magistrate for applying the principle of estoppel to the facts yet the same was never pleaded by the Defendant and that it is a departure from pleadings.

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Counsel implored court to look at Page 7 Para 1 of her Judgement the Trial Magistrate stated that: -"*I find that even if the court was to rely on the agreement that proves that indeed the Plaintiff purchased of in width, the conduct of the Plaintiff stops him from claiming that the Defendant trespassed on his land relying on the principle of estoppel...I find that the Defendant exercised due diligence before purchasing and measuring his land. and relied on the Plaintiff's declaration that his land was 40ft in width to measure his land in the presence of the Plaintiffs wife and later started construction in 2019.... I find that the Plaintiff held out to the Defendant that his land measured 40ft by 120ft and the Defendant acted on that fact to measure his land and later started constructing until October 2019.*" It was thus submitted for the Respondents that nothing bars the Trial Magistrate from applying a particular principle of law as it is fit for the resolution of issues to make the ends of justice meet.

The Learned Counsel for the Respondent further directed court to Page 8 Para 2 of the Judgement where the Trial Magistrate stated that: - *"The Plaintiff was silent from May 2019 when the Defendant started construction up to October 2019 and was awakened by rainwater splashing on his building, there is no evidence that he ever complained or reported the same anywhere in May, when the Defendant started building."* Counsel submitted that Court should note that the Appellant does not dispute talking to DW4 on the phone on the day the Respondent's land was measured neither does he dispute telling DW.4 that his had measured 40ft X100ft. reached a

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right conclusion. He prayed the Trial Magistrate rightly applied the principle of estoppel and reached a right conclusion.

Further, that the Appellant submitted that the Trial Magistrate applying the principle of estoppel, the Respondent had departed from their pleadings and thus should not be allowed to succeed on the same. He submitted that such arguments are absurd and far-fetched as the Respondent did not at any point during the trial depart from his pleadings. Counsel cited Order 6 Rule 7 of the Civil Procedure Rules (supra) and submitted that the Trial Magistrate applying the principle of estoppel to the evidence adduced before her does not amount to a departure from pleadings by the Respondent especially if the evidence adduced at trial clearly supports that principle. He prayed that court finds that the appeal lacks merit.

Determination.

Having carefully scrutinized the evidence on record, the law applicable, and the submissions of parties regarding the appeal, it is the duty of this court to re-hear the case by subjecting the evidence presented to the trial court to a fresh and exhaustive scrutiny and re-appraisal before coming to its own conclusion. This is the law in ***Father Nanensio Begumisa & 3 Ors Vs Erick Tiberaga (supra).***

In its appellate jurisdiction, this court may interfere with a finding of fact if the trial court is shown to have overlooked any material feature in the evidence of a witness if the balance of probabilities as to the

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credibility of the witness is inclined against the opinion of the trial court In particular, this court is not bound necessarily to follow the trial magistrate's findings of fact if it appears either that he or she has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on demeanour of a witness is inconsistent with the evidence in the case generally.

However, before this court can set aside the judgment on account of the abovementioned irregularities, it must therefore be demonstrated that the irregularity occasioned e miscarriage of justice. A court will set aside a judgment, or order a new trial, on the ground of a misdirection, or of the improper admission or rejection of evidence, or for any error as to any matter of pleading, or for any error as to any matter of procedure, only if the court is of the opinion that the error complained of has resulted in a miscarriage of justice

Before court takes leave to delve into the merits of the appeal, I shall first dispose of the preliminary objection raised by the Learned Counsel for the Respondent that is, that the 1st ground of appeal is too general. The learned Counsel relied on Order 43 Rule 1 (2) of the Civil Procedure Rules (supra) and the case of ***Katumba Nyaruhanga Vs Edward Kyewalabye Musoke (supra)*** to base his objection.

In the case of ***Nyero Jema Vs Olweny Jacob & Ors (Civil Appeal No.0050/ 2018) 2020 UG HC,*** where counsel for the Respondent

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citing the provision of Order 43 Rule 1 (2) of the Civil Procedure Rules (supra) and the case of ***Katumba Nyaruhanga Vs Edward Kyewalabye Musoke (supra)*** raised an objection that the grounds of appeal were too general. *Justice Stephen Mubiru* in rejecting the objection stated, "that should have been the end of the appeal but I consider the general duty of this court to re-hear the case by subjecting the evidence presented to the trial court to a fresh and exhaustive scrutiny and re-appraisal to override shortcomings of this nature in pleadings. The law relating to pleadings has been undergoing changes in a bid to do substantial justice rather than uphold mere technicalities. By virtue of article 126 (2) (e) of The Constitution of the Republic of Uganda, 1995) courts are to administer substantive justice without undue regard to technicalities. It is thus not desirable to place undue emphasis on form, rather than the substance of the pleadings. Courts are not expected to construe pleadings with such meticulous care or in such a hyper-technical manner so as to result in genuine claims being defeated on trivial grounds. Courts have always been liberal and generous in interpreting pleadings.

With the above in mind, this court is declined to grant the objection for lack of merit.

Be it as it may, the court shall now proceed to analyze the grounds of appeal as stipulated above. In determining the first ground regarding evaluation of evidence, it is trite law that, court is legally bound to have evaluated the evidence of both side and not to leave

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one in isolation. See **Uganda *Vs George Wilson Simbwa* SCCr. *Appeal No. 37 of 1995.***

At trial, the Plaintiff/Appellant adduced evidence of sales agreements one dated 6/4/1985 marked as P. Exhibit 1 which shows that the appellant purchased land measuring 50ft x 150ft and another dated 2/12/2019 marked P. Exhibit 4, which showed that the suit land measures 50ft x 100ft, a proposed building plan marked as P. Exhibit 3, and Consent of the landlord dated 11/4/1991 which were all admitted in evidence. These were corroborated with the Appellant's oral testimonies during cross examination as stipulated in the fore pages of this judgment. On the other hand, Respondent adduced a sales agreement dated 13/04/2019 marked as D Exhibit 1 but the same did not show the exact measurement of the Defendant's land and a building dated 27/6/2019marked as D Exhibit 3.

In her judgment, the trial court stated that since the Appellant did not bring any witness to testify to the truthfulness of the above documents, she rejected the same and instead relied on the oral testimonies of the Defendant and other witnesses especially DW4 who stated that he called the Appellant on phone and when asked the measurement of his land, he stated that the land measured 40ft x 100ft. She stated the Defendant having relied on the Appellant's statement to measure his land, the Appellant was estopped by his conduct from denying that his land was not 40ft x 100ft. The trial court also visited locus in quo to established to the truthfulness of the Plaintiff's story. That at locus, it was found that the Appellant's

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land measured 40ft x 100ft, a fact which she relied on to hold that there was no trespass on the Defendant's part.

In the circumstances, I find that the trial magistrate failed to properly evaluate the evidence on record as a whole and only considered the Defendant's evidence in total isolation of the Plaintiff's/Appellant's evidence hence occasioning a mischarge of justice. This court therefore upholds the first ground in affirmative.

In determining the second ground, it was submitted for the appellant that Section 114 of the Evidence Act and the authority of ***Pan African Insurance Ltd VS International Air Transport Association HCCS No 667 of 2007*** relied upon by the trial Magistrate to impute estoppel by conduct did not apply in this situation especially where there was no interaction between the Appellant and the Respondent. On the other hand, the Respondent contended that the Appellant did not rebut the fact that he spoke with DW4 on phone. The Appellant testified that at the Defendant measured his land, he was not around and did not he instruct DW3, his neighbor to help him measure his land. This was corroborated by the testimony of DW1 in cross examination when he stated that at the time he measured his land the Plaintiff was absent but only his wife who did not participate in the transaction and that it is DW4 who informed him that the Plaintiff's land measured 40ft x 100ft.

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The trial magistrate relied on the testimony of DW4 who informed court that he called the Appellant by phone and the Appellant stated that his land measured 40ft x 100ft. He also stated that the appellant stated the same at the LC1 Chairperson's office. However, minutes of the said meeting was not adduced in evidence to corroborate DW4's testimony. In her finding, she relied on the doctrine of estoppel to hold that the Appellant was estopped by his conduct from denying that he stated that his land measured 40ft x 100ft since the Respondent had earlier relied on the same to measure his land.

In the premises, I find that there was no departure from pleadings by the Respondent but rather the Trial Magistrate misdirected herself on the law on the doctrine of estoppel by holding that the Defendant relied on the words of the Appellant to measure his land and therefore cannot deny the same. Court also finds this ground in the affirmative and upholds the same.

In the premises, Court hereby makes the following orders.

1. The Appeal is allowed.
2. The orders of the Trial Court are here by quashed.
3. Each party to bear their own costs.

I so order.

Date at Mukono this..26th..day of..March.....2024.

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JUDGE