

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

CIVIL APPEAL NO. 150 OF 2010
(ARISING FROM CIVIL SUIT NO. 060 OF 2007)

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MBIIRI

MAASE :::APPELLANT

10

VERSUS

1. OWERE ONYANGO

2. OBOTH

VICENT :::RESPONDENT

15

BEFORE: THE HON. JUSTICE GODFREY NAMUNDI

JUDGMENT

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This is an appeal against the Judgment and Orders of the Magistrate Grade I Lugazi – Ms. Suzan Abinyo. Therein she dismissed the Plaintiff now Appellant’s claim for recovery of a kibanja on grounds that the Appellant/Plaintiff had failed to prove his case on a balance of probabilities.

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The grounds of Appeal are that:

1. The learned trial magistrate erred in law and fact by holding that the first Defendant is the owner of the disputed land at Kauku.

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2. The learned trial magistrate erred in law and fact by holding that the first Defendant is a bona fide purchaser for value.

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The brief facts are that the Appellant and Respondent No. 2 entered into an arrangement for the Appellant to purchase the Respondent's land.

10 The 2nd Respondent claims the Appellant failed to pay the agreed price and he sold it to the 1st Respondent. The Appellant claims he paid for the land and used it but later found the 1st Respondent using it.

15 He relied on an agreement P.Ex.1 which the magistrate rejected as not being complete for lack of signatures by both parties therefore it was no agreement at all as required of contracts.

20 The Appellant submits that the said agreement had all the ingredients of an agreement and hence the Court erred in rejecting it. He claims:

1. The agreement was between the parties.

2. The subject matter was defined.

25 3. Consideration was furnished.

4. The Appellant took possession by payment of a kanzu to the landlord.

5. The agreement was signed by both parties and witnessed by Salongo Mulengera.

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It is further submitted that the trial magistrate erred in disproving the evidence of continuous use of the kibanja by the Appellant.

10 Thirdly that the trial magistrate erred in not visiting the locus in quo.

For the Respondent, it is submitted that the first Respondent lawfully purchased the suit kibanja.

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That the Appellant produced no witness to support his claim that he bought the kibanja.

20 That the 1st Respondent is a bona fide purchaser since he bought the land and the Appellant who claims he bought earlier came and found the 1st Respondent on the land.

25 It is also submitted that the agreement the Appellant sought to rely on did not have the signature of the vendor (who claims he had only agreed to sign a typed copy after full payment).

The Appellant had no plausible reason why the purported sale agreement was not signed.

5 That if he bought it in 1987, how come he only came to take possession in 1995?

The first Respondent instead had all the records of his transactions and witnesses who witnessed the transactions.

10 The duty of this Court in its first appellate capacity is to subject all the evidence to fresh scrutiny and may come to its own conclusions.

15 Considering all the submissions, and the evidence on record, it is clear that the Appellant only relied on the purported agreement of sale which he could not prove.

First his wife PW2 did not participate in the sale nor in the making of the questioned agreement.

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Secondly, the witness - Ssalongo Mulengera who is alleged to have witnessed and thumb printed was never called as a witness.

The Appellant claims he was introduced to the landlord (title holder) to whom he paid a kanzu to allow him to take over the land.

5 The said landlord was not called as a witness.

He claimed he was introduced to one Namwandu as the caretaker of the land. This one was also not called.

10 That leaves the only piece of evidence, the questioned agreement which he failed to prove.

It was upon him to prove his case on a balance of probabilities. It was incumbent upon him to satisfy the requirements of
15 **Section 101 of the Evidence Act Cap. 41** which places the burden to prove his claims.

Regarding the claim that the magistrate did not visit the locus in quo it was incumbent upon him to raise this in the trial Court
20 as an issue. This was never done and cannot therefore be raised on appeal. In any case would the locus visit prove the authenticity of the agreement which he relies up on?

Having failed to prove his case in the lower Court and to
25 support his grounds in this Court, it follows that the finding

that the first Respondent was a bona fide purchaser/lawful occupant was correct.

I find no fault with the Judgment of the trial Court. It is upheld
5 together with the orders therein. The appeal is dismissed for
lack of merit with costs.

Godfrey Namundi

10 **JUDGE**

19/3/2015

19/3/2015:

1st Respondent in Court

Appellant absent

15 Asiimwe for 1st Respondent

Court: Judgment read.

20 **Godfrey Namundi**

JUDGE

19/3/2015