

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

CIVIL APPEAL NO. 092 OF 2008

5 [ARISING FROM MAYUGE CIVIL SUIT NO. 001 OF 2007]

KANENE

TITO:.....

APPELLANT

10

VERSUS

BIRIBAWA

FLORENCE:.....RESPON

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DENT

BEFORE: THE HON. JUSTICE GODFREY NAMUNDI

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JUDGMENT

The Respondent BIRIBAWA FLORENCE sued the Appellant KANENE TITO over a piece of land at Maumu village in Kityerera Subcounty. She claimed the Appellant had
25 trespassed on land she obtained jointly with her husband the late BESWERI KANENE. She claimed the Appellant trespassed on the land by way of renting it to some tenants and yet he had his own land given to him by the late Kanene Besweli.

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The Appellant/Defendant denied the claim and contended that he was only managing land bequeathed to the late Kanene's grandsons by a Will made by the said Kanene before he died.

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The trial magistrate decided the case in favour of the Plaintiff/Respondent.

The appellant filed 3 grounds of Appeal namely:

10 1) That the trial magistrate erred in law and fact to hold that the suit land belonged to the Respondent and her children alone.

15 2) The trial magistrate erred in law and fact when he failed to evaluate the evidence before him and as such arrived at a wrong decision thereby occasioning a miscarriage of justice.

3) The trial magistrate erred in law and fact when he relied on the evidence of Letters of Administration that were tendered for identification.

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The Appellant was represented by Mr. Erias Habakurama while the Respondent was represented by Mr. Okalang.

Counsel for the Appellant decided to handle all the grounds
25 of appeal under one heading namely **“that the trial**

magistrate failed to properly evaluate the evidence before him which if he had done would have found that the suit land belongs to all the beneficiaries of the late Kanene Besweri and not the Respondent and her children alone.”

I have a problem with the way the Appellant decided to reframe the grounds for consideration by the Court. In his defence and testimony in the trial Court, his case was that the land was bequeathed to the deceased's grandsons namely Edison Kanene, Mugabi Kanene, Joshua Kanene, and Ngobi Kanene. That this was by way of a Will which was exhibited in Court.

There was nothing in the defence about the suit land being for all the beneficiaries of the Estate of the late Besweri Kanene.

Secondly, the said Will was rejected for not being compliant with the requirements of a valid Will. His claims under the Will having collapsed, he cannot now go on a fishing expedition by including matters which were not in issue. There was no claim that the Respondent being in possession of Letters of Administration, must now share her part with the rest of the beneficiaries. The dispute was in respect of

the Respondent's share which the Appellant grabbed. The evidence on record also reveals that the Appellant got his own share of their father's property, and is now only using the grandsons as a **Trojan Horse** to get access to the
5 Respondent's share.

The appellate Courts will only adjudicate on issues that were before the trial Court and not those clandestinely introduced on appeal.

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The other submission was that the Appellant's mother was buried on the suit land and that this proves that this land was jointly owned by the surviving beneficiaries of Besweri Kanene.

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For the Respondent, it was submitted that the Appeal was incompetent because it was initiated by a Notice of Appeal instead of a Memorandum of Appeal. That in any case the Memorandum of Appeal was filed out of time. I will deal with
20 this issue first.

The record shows that there was an appeal commenced by way of a Notice of Appeal. That was Civil Appeal No. 31/2008. That Appeal was abandoned, the Appellant applied

for leave to appeal out of time and was allowed to do so on 16/10/2008 in Misc. Application No. 127/2008.

Subsequently the instant Appeal No. 192 of 2010 was filed.

5 The point of law accordingly has no relevance.

In respect of the grounds of Appeal, it was submitted that the magistrate properly evaluated the evidence and reached a correct conclusion.

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It was submitted that the Appellant left his own land at Musubi village 2 years after the death of his father and forcefully grabbed the Respondent's land.

15 It is submitted further that the evidence in the lower Court revealed that the late Besweri Kanene left the Respondent and her children on the suit land and that he had previously given out shares of his Estate to his elder children including the Appellant.

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Further that the Will which was the bedrock of the Appellant's case was discredited for being no Will at all. Hence the basis that the property be distributed according to the Will was of no consequence.

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This Court has already observed that the basis of the Appellant's claim was a Will. The Will was found to be no Will at all. Trying to build a case around other factors cannot amend the fact that that Appellant's claims collapsed
5 with the collapse of his purported Will.

I find no merits in this appeal. It is dismissed and the Judgment and Orders of the trial Court are upheld. The Appellant will meet the costs of this Appeal and those in the
10 lower Court.

Godfrey Namundi

JUDGE

27/05/2015:

15 Appellant present
Respondent absent
Ssekide for Respondent

Court: Judgment read.

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Godfrey Namundi

JUDGE

27/05/2015

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