

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

CIVIL APPEAL NO. 007 OF 2010

(ARISING FROM LUGAZI CIVIL SUIT NO. 039/2007 AND
MUKONO DISTRICT LAND TRIBUNAL CLAIM NO. 017/2005)

**MANWERI MANWA ANTHONY :::::::::::::::::::::::::::::::
APPELLANT**

VERSUS

**WABALAYI
JOHN :::
RESPONDENT**

BEFORE: THE HON. JUSTICE GODFREY NAMUNDI

JUDGMENT

The Plaintiff sued the Defendant for declarations that the
said Defendant is a Trespasser, permanent Injunction,
demarcation of boundaries, damages and costs.

The trial Magistrate dismissed the Plaintiffs claim who
appealed to this Court and filed three grounds of Appeal.
They are:

- 1) That the learned trial Magistrate erred in law and fact when she failed to apply the law on locus proceedings, thereby reaching a wrong decision.
- 5 2) The learned trial Magistrate erred in law and fact by giving a Judgment against the weight of evidence.
- 3) The learned trial Magistrate erred in law by giving a Judgment which does not allude to the matters in
10 issue or give reasons for the findings.

Ground No. 1:

It was submitted for the Appellant that the Court visited the locus in quo but failed to record proceedings at the
15 site. That she was not shown the boundaries of the kibanja or that it differed from that owned by the Plaintiff/Appellant.

In reply, Counsel for the Respondent submitted that the
20 record of the said locus visit is depicted in the handwritten proceedings of the Magistrate. That however, there are no hard and fast rules regarding locus and that it depends on what the Court is looking for.

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That the appeal should be looked at as a whole and not at the locus proceedings alone.

The practice is that visiting a locus in quo is not
5 mandatory and depends on the circumstances of each case. In **Yeseri Waibi Vrs. Edisa Lusi Byandala (1982) HCB 28**, it was held that the practice of visiting the locus in quo is to check on the evidence by the witnesses, and not to fill the gap for them or Court may
10 run the risk of making itself a witness in the case. If however, a Court decides to visit the locus **Practice Direction No. 1/2007** provides that during the visit to the locus the Court should;

- 15 a) Ensure that all the parties, their witnesses, and Advocates, if any are present.
- b) Allow the parties and their witnesses to adduce evidence at the locus in quo.
- c) Allow cross examination by either party, or his/her Counsel.
- 20 d) Record all the proceedings at the locus in quo.
- e) Record any observation, view, opinion, or conclusion of the Court including drawing of a sketch map if necessary.

In the instant case, apart from a sketch map, the record does not have any proceedings at the locus in quo.

5 The Magistrate however made little or no allusion to the said proceedings in her Judgment. Instead she relied on the evidence of DW2 who stated that each of the parties is in a distinct and separate kibanja and they only share a boundary. It then appears that with or without the visit to the locus, the Magistrate would have arrived at
10 the same conclusions.

Much as she should have recorded the proceedings at the locus, the Judgment reveals that failure to do so did not prejudice the Plaintiff's case. The Ground No. 1 accordingly fails and disallowed.

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Ground No. 2:

It was submitted on this ground that the Appellant bought the suit land and even paid Busulu. That this evidence was not considered by the Magistrate and gave
20 no reasons for her Judgment.

It is submitted that the evidence should be re-scrutinized.

For the Respondent, it was submitted that the Judgment was not against the weight of evidence. That it was the duty of the Plaintiff/Appellant to prove that he owned the kibanja. He had to prove the trespass. He called no
5 witness to support his case.

The Respondent on the other hand bought and took possession of land without any challenge. He called witnesses to support his case. The Plaintiff kept quiet
10 for 22 years. DW2 confirmed that the 2 parties are next to each other.

The LC. Chairperson testified and confirmed that he had ever handled the dispute between the two parties and
15 found the Plaintiff at fault. The said evidence was not discredited.

I have considered the evidence by the parties while the Plaintiff called no witness, the Defendant had 4
20 witnesses to support his case. They included the landlord/Title holder who confirmed that each party has their own kibanja.

The LC. Chairperson's evidence was unchallenged. The fact that the Respondent was only sued 22 years after he occupied the land also raises its own question marks.

- 5 Clearly, the Plaintiff had no evidence to support his claim. What his claim amounts to are mere allegations without any support and this Ground also fails and is disallowed.

10 **Ground No. 3:**

It is submitted on Ground three that the Magistrate did not consider the issues of ownership or trespass and came to the wrong conclusion.

- 15 In reply it was submitted that the Magistrate framed the issues and resolved them.

I have considered this ground. It appears to me that the Appellant thinks that because the Judgment was brief it
20 did not deal with all the issues involved.

I have looked at the evidence of the lower Court as a whole. A retrial as prayed for by the Appellant would not come up with any different findings given the nature of

evidence by both parties. This appeal lacks merit. It is dismissed accordingly and the Judgment and Orders of the trial Court are upheld. Costs to the Respondent.

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Godfrey Namundi

JUDGE

01/06/2015

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01/06/2015:

Appellant absent

Respondent present

Tuyiringire present

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Court: Judgment read.

Godfrey Namundi

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JUDGE

01/06/2015