

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

CIVIL APPEAL NO. 027 OF 2010

5 (ARISING OUT OF MUKONO LAND CIVIL SUIT NO. 245/2007)

NAKIYINI PROSSY ::::::::::::::::::::::::::::::::::
APPELLANT

10 **VERSUS**

KIGGUNDU DAVID ::::::::::::::::::::::::::::::::::
RESPONDENT

15 **BEFORE: THE HON. JUSTICE GODFREY**
NAMUNDI

JUDGMENT

20 This is an Appeal against the Judgment and Orders of
the Magistrate Grade 1, His Worship Karemani
Jamson sitting at Mukono Chief Magistrate's Court.

25 The Plaintiff's claim was dismissed on grounds that
she did not have any registerable interest in the suit
land.

The fact of this matter are that the Appellant sued the Respondent claiming that she is a kibanja holder by virtue of holding Letters of Administration for the
5 Estate of Manjeri Nakiyini who had been staying on and using the suit land whose registered owner was Kato Kiggundu.

When she tried to survey the land and process a
10 Title, the Defendant trespassed on the land, fenced it off and built a house on it.

The defence on the other hand claimed the late Nakiyini was only allowed to stay on the suit land
15 until her death and had no transferable interests.

The Appellant filed 4 grounds of Appeal as follows:

1. The trial Magistrate erred in fact and in law and misdirected himself when he failed to properly
20 evaluate the evidence as a whole and thereby came to the wrong conclusion.
2. The trial Magistrate erred in law and in fact when he found that the late Nakiyini Manjeri was a

Licencee and not a kibanja holder or bona fide occupant.

5 3. The trial Magistrate erred in law and in fact when he failed to take into consideration the time within which the Appellant's predecessor in Title had been on and using the land.

10 4. The trial Magistrate erred in law and fact when he failed to find that the Appellant had a registerable interest under the Land Act as bona fide occupant.

15 The first three grounds of Appeal were argued together by Counsel for the Appellant as Ground No.1.

Ground No.1:

20 It was submitted, which is not disputed by the Respondent that the deceased Manjeri Nakiyini had been on the suit land since the 1950s, a period of over 40 years. She was even buried on the suit land.

This is again not disputed. The funeral rites were performed there and this is also not disputed.

What is in dispute is whether she was a bona fide
5 occupant within the meaning of the Land Act Section 29 (2).

It is submitted that having stayed on the land since 1955 to 1994 without disturbance she was therefore
10 a bona fide occupant and the Magistrate was wrong to hold that she was a mere Licencee.

It was submitted that there was no evidence that she was a Licencee.

15

For the Respondent, it was submitted that the Appellant does not show the errors of law made by the trial Magistrate.

20 That the Magistrate concluded that the late Manjeri was a licensee and not a bona fide occupant. This was because the Appellant and her witnesses did not know how the said Manjeri came on to the land.

That this was as compared to the evidence of DW1 – the registered proprietor who stated that Manjeri requested him to stay on the land until she died and
5 this he accepted. That this evidence was not controverted. That it was the Appellant’s duty to show that her grandmother had an interest in the land as a bona fide occupant. **Section 29 (2) of the Land Act** defines “**Bona fide**” occupant as a
10 person who before coming into force of the constitution:

- a) Had occupied and utilised or developed any land unchallenged by the registered owner or agent of the registered owner for 12 years or more.

15

Under **Section 29 (4) of the Land Act:**

It is provided ***“for the avoidance of doubt, a person on land on the basis of a Licence from the registered owner, shall not be taken to be***
20 ***a lawful or bona fide occupant under this Section.”***

Under **Sub-section (5)** thereof, any person who has purchased ***or otherwise*** acquired the interest of the person qualified to be bona fide occupant under this Section shall be taken to be a bona fide occupant for
5 purposes of this Act.

It is these provisions of law that the Appellant is relying on to claim interest in the suit land, by virtue of her Letters of Administration.

10

The trial Magistrate evaluated the evidence (or lack thereof) of the Appellant and her witnesses as to how Manjeri derived interest in the suit land.

15 The only constant factor was her longevity of occupation. He weighted this against the evidence of the registered proprietor who stated that he only allowed her to stay on the land up to her death.

20 This evidence was not discredited on cross examination.

The Magistrate concluded that the only interest the late Manjeri had was that of a Licencee (i.e.) a person who is granted the right to use premises without becoming entitled to exclusive possession of them or
5 that the circumstances and conduct of the parties show that all that was intended was that the grantee should be granted a personal privilege with no interest in the land.

10 I find no fault with the findings of the Magistrate in the absence of any evidence to establish the terms under which the late Manjeri occupied the land other than her longevity of occupation. She was a mere Licencee which Licence expired with her death.

15

The Appellant has no transferable interest accruing to her in the circumstances. Grounds No. 1, 2 and 3 of the appeal accordingly fail.

20 **Ground No. 2 (4):**

It is submitted under this ground that as a result of acquiring Letters of Administration, the Appellant

acquired a registerable interest in the suit land by virtue of Section 29 (5) of the Land Act.

For the Respondent, it is argued that having been
5 found to be a Licencee, the late Manjeri had no transferable interest to pass on to the Appellant.

I agree obtaining Letters of Administration entitles one to administer a deceased's Estate. Even debts
10 are part of an Estate. However, if there is no transferrable interest to pass on then the said Letters of Administration are of no consequence in the circumstances. This ground also fails.

This Appeal is accordingly dismissed for lack of merit.
15 The Judgment and Orders of the trial Court are upheld. Costs to the Respondent.

Godfrey Namundi

20 **JUDGE**

23/4/2015

23/4/2015:

Both parties absent

Katumba Geoffrey (Appellant's Nephew) in Court.

Says he can receive the Judgment on her behalf and
5 she is sick but can receive the Judgment on her
behalf.

Respondent's Counsel absent and no reason is given
for the said absence.

10 Court: Judgment delivered.

Godfrey Namundi

JUDGE

15 **23/4/2015**