

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

**CIVIL APPEAL NO. 052 OF 2009**

5 (Arising from Kamuli Land Civil suit No. 038/2006)

**IBANDA**

**RICHARD:.....AP**

**PELLANT**

10

**VERSUS**

**1. MONICA WANUME**

**2. HARRIET WANYAMA**

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**3. BITU WAGOLERA**

**4. MIRABU**

**BAGANAKI:.....RESPO**

**NDENTS**

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

**JUDGMENT**

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This Appeal arises out of the Judgment and Orders of the Magistrate Grade 1 sitting at Kamuli, Her Worship Nabafu Agnes delivered on 23/2/2009.

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Therein she ordered as follows:

- (i) That the Plaintiff was the sole owner of the disputed property and home.

(ii) The other Plaintiffs were entitled to a share in the disputed land together with other female children of the late Sosi Wanume.

5 (iii) Awarded Shs.1,000,000/- to each Plaintiff as General damages.

The Appellant being dissatisfied filed the instant appeal citing the following grounds:

10 1. That the trial magistrate erred in law and fact when she failed to find and hold late Sosi Wanume had distributed his land while still alive amongst his wives thus each wife's children had shares under such distribution.

15 2. The learned trial magistrate erred in law and fact when she held that the daughters of the late Sosi Wanume had been segregated during the distribution of late Wanume's land, thus ordering that their shares were in the suit land.

20 3. The trial magistrate failed to identify the main issues before her thus arriving at a wrong decision.

25 4. The trial magistrate erred in law and fact in awarding a total of Shs.4,000,000/- in General damages when no evidence was led to warrant such award.

5. In the alternative, the award of Shs.4,000,000/- was excessive in the circumstances.

At the hearing of this appeal, Counsel for each party was  
5 advised to file written submissions not later than  
22/10/2014.

However, as at the time of writing this Judgment, only  
Counsel for the Appellant had filed submissions. This Court  
10 has therefore invoked the provisions of Order 17 r. 4 CPR  
and proceeded to write and deliver Judgment.

**Grounds No. 1 and No. 2:**

These were argued together.

15 It was submitted as opposed to the evidence of the Plaintiffs  
and their witnesses, the evidence for the Defendants was  
that Sosi had 4 wives and many children. He divided the  
land among his wives and their children and shortly  
thereafter died. That this evidence corroborates that of DW1  
20 and DW3. The Plaintiffs want to claim all the land to the  
prejudice of the other widows and their children.

It is submitted that the evidence of DW5 was independent.  
That he testified as LC.1 Chairperson.

25 In 1995, the land was divided in 4 equal parts. He was the  
Secretary of the Clan and wrote those minutes of the

meeting. The land was then given to the wives i.e. Ephranse, Josephine, Nabwire and Gubika.

It is submitted that this evidence corroborates that of DW1  
5 and DW3 and should be believed.

It is submitted that this witness was independent and had no stake in the Estate.

10 DW6 and DW7 also supported the position that Sosi Wanume divided the land among his four wives before he died.

The Plaintiffs are one set of children from one of the wives  
15 who want to grab the disputed land meant for the other widows and their children. It is therefore submitted that there was no basis for the magistrate to hold that the daughters of Wanume had been segregated.

20 A look at the Judgment of the magistrate reveals that she only recognised Plaintiff No. 1 as the only widow since the other widows had left the home before Sosi Wanume died and that one had died. That being the case, the remaining widow takes possession and ownership. She then went  
25 ahead to find that the Defendants interfered with the 1<sup>st</sup> Plaintiff's rights on the land at the matrimonial home.

I find these findings strange in law when compared with the evidence that the late Wanume distributed his land among his four wives and their children.

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Does that therefore mean that the children of those widows are disinherited from their shares as beneficiaries on the land given to their mothers?

10 I find that the magistrate wrongly evaluated the evidence and came to the wrong conclusions. Grounds No. 1 and No. 2 of the appeal are accordingly allowed.

**Ground No.3:**

15 It is submitted that the trial magistrate was wrong to draw up and decide on whether the Plaintiffs had a cause of action as an issue.

20 That this is because the issue for determination was whether the late Sosi Wanume had divided his land to his four wives before he died.

The trial magistrate in her Judgment found that a cause of action was formulated by the Plaintiffs against the  
25 Defendants. That this is because D1 is in unlawful possession of the suit land, and that the suit arises out of the

mismanagement of the Estate by D1 as heir of their father as elected.

On this issue, I find that the dispute is about the beneficial  
5 interests of the parties in the Estate of the late Sosi Wanume. The magistrate was right to formulate as an issue whether there was a cause of action. Ground No. 2 fails and is disallowed.

10 **Grounds No. 4 and No.5:**

It is submitted that much as the claim for General damages was indicted in the Plaint, there was no evidence led to support this prayer. It is also submitted that in the alternative, the award of Shs.1,000,000/- at the time (2009)  
15 was excessive and should have been Shs.100,000/-.

General damages are usually granted by the Courts to compensate a litigant for the inconveniences suffered, and are meant to place the litigant in the position he/she was  
20 before the said inconvenience.

This means Courts should award general damages after evidence has been led to justify such an award. In the instant case, I do agree with Appellants that there was no  
25 basis for the award and that the figure of Shs.4,000,000/- was arbitrarily awarded by the magistrate without basis.

In any case, Grounds No. 1 and No. 2 of the Appeal having been allowed, the award of General damages in the circumstances would be academic.

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This appeal is allowed, the Judgment and Orders of the trial magistrate are set aside. The Respondents will meet the costs of this Appeal and those in the lower Court.

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**Godfrey Namundi**

**JUDGE**

**15/04/2015**