

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

**CIVIL APPEAL NO. 080 OF 2011**

5

(Arising out of Kamuli Civil Suit No. 019/2006)

1. **DAVID KYEYAGO**  
2. **JESSICA TAFUMBA BASIRIKA**  
3. **MUDHASI**  
10 **KYEWALYANGA::::::::::::::::::::APPELLANTS**

**VERSUS**

1. **YOKANA KYEYAGO**  
15 2. **JACKSON KYEYAGO**  
3. **YOVANI**  
**KYEYAGO::::::::::::::::::::RESPONDENTS**

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

**JUDGMENT**

25 This is an Appeal from the Judgment and orders of the  
Magistrate Grade 1 at Kamuli passed on 7<sup>th</sup> November 2011.

Therein he entered Judgment for the Plaintiffs and ordered  
Defendants 2 and 3 to vacate the suit land in favour of the  
30 Plaintiffs.

The back ground to this matter is that the Plaintiffs/Respondents sued the Defendants/Appellants for recovery of land which the 2<sup>nd</sup> Defendant/Appellant claimed to have purchased from the Respondent/plaintiff's father one  
5 David Kyeyago.

The Defendants/Appellants denied this claim.

The Appellants have raised 3 grounds of Appeal claiming  
10 that:

- 1) The trial magistrate erred in law and fact when he failed to properly evaluate the evidence on record thereby arriving at a wrong decision.
- 15 2) The trial magistrate erred in law and fact when he made a finding that the suit land constituted family land requiring the consent of the vendors' family and clan members at the time of sale without any legal basis or evidence thus occasioning injustice.
- 20 3) The trial magistrate erred in law and fact when he ruled that there was no valid sale of the suit land to the 1<sup>st</sup> Appellant against the over overwhelming evidence to the contrary, thus resulting in a miscarriage of justice.

It has been submitted for the Appellants on ground 2 that  
25 there was no dispute that the suit land originally belonged to

Defendant No. 1 who was sued with the 1<sup>st</sup> and 2<sup>nd</sup> Appellants in the lower Court.

Secondly, the sale of the suit land was not disputed.

5

However, that it was wrong for the magistrate to hold that the sale of the suit land required consent since it was family land. The land it was submitted was sold in 1982.

10 The law on land at the time was the public Lands Act 1969 which was ammended by the Land Reform Decree 3/2975. The said law did not define what family land constituted and there were no restruictions like consent by the family or clan in respect of sale of land.

15

It was submitted that the said restruictions were introduced in the 1998 Land Act and Ammendment 1/2004 thereof. That the said provisions could not be applied retrospectively to a sale of 1982.

20

Grounds 1 and 3 were argued together.

The sum total of the submission on the above grounds is that there was a valid sale. The first Defendant sold the land to  
25 get money for treatment. The agreement got lost but the

vendor gave the purchaser another document as proof which was admitted as D.Ex. 'A'.

5 The Respondents replied that the Judgment of the lower Court should be upheld. That there was no sale agreement as it was not produced in Court.

10 Further that Defendant No. 1 David Kyeyago was satisfied with the Judgment of the lower Court and that is why he never appealed.

15 In rejoinder, Counsel for the Appellants stated that he had to amend the Memorandum of Appeal as he had no contact with David Kyeyago and that the said Kyeyago signed the original Memorandum of Appeal.

20 A perusal of the record reveals that the Respondents are siblings and are biological issues of David Kyeyago who sold the suit land to Appellant No. 2.

25 While they claim the Appellants No. 2 and 3 are trespassers, they in the same breath claim their father David Kyeyago sold the land without the consent of the family as the said Kyeyago got the land from his father as clan land.

Their protest seems to stem from the belief that their father had as of right to pass on the land in dispute to his sons, or seek their consent if he wished to sell.

- 5 They also claim in their Pleint the land was given to them by their said father before he disappeared from the area. The evidence on record however reveals no such occurrence.

The trial Magistrate in his Judgment held that David Kyeyago  
10 had no capacity to sell the suit land to anybody as it was family land and therefore required the consent of the family.

He did not cite the law giving credence to that position.

- 15 If it is Customary Law and or practice, this had to be proved by evidence of the existence of such custom in that community. There is even no claim that if such custom exists, it is so notorious that the Courts have taken Judicial Notice of its existence.

20

The other aspect is that if at all such custom existed, then it must not conflict with any written law in force.

It was argued for the Appellants that the law applicable to  
25 this case at the time the transactions challenged took place

(1982) was the Public Lands Act 1969 as ammended by the Land Reform Decree of 1975. Under the provisions cited above, family or spousal consent was not required in issues of land transactions. That the trial Magistrate relied on a  
5 later provision of law, the 1998 Land Act as ammended in 2004. That is the law that introduced the requirement for consent before transacting in land by spouses.

It is accordingly clear that the magistrate misapplied the law  
10 in so far as he did so retrospectively, to a situation that occurred before the law he relied on was promulgated.

In the circumstances I find that the trial magistrate's findings were wrong both in fact and law. I find for the Appellants on  
15 all the grounds of Appeal. The Appeal is allowed, the Judgment and orders of the trial Court are set aside. The Appellants will have uninterrupted access and use of the suit land, the Respondents having failed to prove their interest therein.

20

Costs to the Appellants.

**Godfrey Namundi**

25 **JUDGE**

**3/7/2015**