

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

**CIVIL APPEAL NO. 049 OF 2012**

5 (Arising from Lugazi Court Civil Land Suit No. 039/2008)

**SINALABAGGALI  
VICENT:.....APPELLANT**

**KIREVU**

10 **VERSUS**

**1. NULIAT NANSAMBA  
2. ZAINA  
NANJEGO:.....RESPONDENTS**

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

**JUDGMENT**

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This was a dispute over the ownership of a piece of land in which the Plaintiffs sought a declaration of ownership of the said suit property. The Plaintiffs claimed that their parents bought for them a plot on which they built a house. The Plaintiff's father abandoned their mother and she brought another man who chased them away from the house.

The Defendant who is now the Appellant claimed he bought the land from one Everina Nyindombi in 1999 and took

possession. The trial magistrate decided in favour of the Plaintiffs/Respondents.

The Appellant filed 6 grounds of appeal as follows:

- 5 1. The trial magistrate erred in law and fact when she struck off and/or disregarded the admission of the Respondents' father that the land belonged to the Appellant and that he has never bought land for the Respondent thus arriving at a wrong decision.  
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2. The trial magistrate erred in law and fact when she relied on a document not tendered nor referred to during proceedings nor giving the Appellant the opportunity to access it or cross examining on it to the  
15 detriment of the Appellant.
3. The trial magistrate erred in law and fact when she based on a document/agreement not tendered in Court by either party.  
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4. The trial magistrate erred in law and fact when she disregarded the Appellant's agreement and relied on a non-existing agreement.
- 25 5. The trial magistrate erred in law and fact when she failed to properly evaluate the evidence.

6. The trial magistrate erred in law and fact when she disregarded the admission by two of the Respondents' witnesses that the land belonged to the Appellant.

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It is the duty of this Court as a first appellate Court to re-evaluate the evidence before it on record and may come to its own conclusions, much as it had no opportunity to observe the witnesses first hand and to study their demeanour. **Ref: Pandya Vrs. R. and NPART Vrs. Nkabula and Sons Ltd (2007) HCB 1.**

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The Appellant argued grounds No. 1, 2, 3, 5 and 6 together. It is submitted that PW6 **Abdu Matovu** the father of Plaintiffs in his testimony in Court stated that the suit land belonged to the Appellant/Defendant and did not know how the Appellant had acquired it. He did not even know who constructed the house. This according to the Appellant was an admission that should have been relied on by the magistrate. Reference was made to **Haji Asuman Mutekanga Vrs. Equator Growers (U) Ltd - SCCA 7/1995.**

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The record reveals that the trial magistrate instead just disregarded the evidence of PW6 as unreliable. The

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Respondents argue that the magistrate having disregarded the said evidence, no weight should be given to it.

5 It is my finding that this whole case revolved around the claim that the suit land was bought by Abdu Matovu - the Plaintiffs' father together with their mother. It is even noteworthy that the Plaintiffs even first sued their mother as co-defendant but at a later stage, they withdrew the claims against her and she became their witness.

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I find that once PW6 denied any knowledge of the suit land, the whole claim remained unsupported and should have collapsed accordingly.

15 It is submitted on grounds 1 and 4 that the Appellant tendered a sale agreement - DE1 and DE2 indicating purchase and receipts for property taxes, and a Criminal Summons that were not challenged on cross examination.

20 On the other hand the Plaintiffs/Respondents did not produce any documentary evidence of ownership of the suit property.

A perusal of the record reveals that the Plaintiffs produced several witnesses, none of whom testified to have  
25 participated in the sale of the suit property as a witness.

They all just claimed to have known the Plaintiffs' mother for a long period and that she purchased the suit property.

I must say that it is not the number of the witnesses that  
5 determine the credibility of a claim, but the quality and  
credibility of such evidence.

It is my finding that the Plaintiffs had no evidence to support  
their claim. The trial magistrate should not have allowed it.  
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I accordingly allow the appeal and set aside the Judgment  
and Orders of the trial magistrate. Costs to Appellant.

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**Godfrey Namundi**  
**JUDGE**  
**7/9/2015**

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7/9/2015:

Appellant Present

Abas Bukenya for Appellant

5 Respondents absent

Bukenya: Last time Respondents were in Court.

Court: Judgment delivered.

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**Godfrey Namundi**

**JUDGE**

**7/9/2015**

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