

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

CIVIL APPEAL NO. 055 OF 2014

(Arising from Lugazi Civil Suit No. 017 of 2012)

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SEMPIJJA JOHN ::
APPELLANT

10

VERSUS

SAMUENEYA STEPHANIA ::
RESPONDENT

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BEFORE: THE HON. JUSTICE GODFREY NAMUNDI

JUDGMENT

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This is an appeal from the Judgment and Orders of the Magistrate Grade I Natukunda Janeva sitting at Lugazi Court. Therein she entered Judgment in favour of the Plaintiff - now the Respondent and granted her the reliefs sought for in the
25 Plaintiff including General damages of shs.3,000,000/=.

The background to this matter is that the Plaintiff/Respondent sued the Defendant/Appellant for recovery of a kibanja, General damages and costs.

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She claimed that she bought the kibanja in 1995 and the agreement was made in the names of the Defendant who was in possession of the same. She claimed she had the agreement made in the Defendant's names because she
5 wanted to protect her property from the relatives of her husband (RIP).

When she wanted to reclaim the property, the Defendant refused claiming the property was his and only ceded to her a
10 plot of 50ft by 100ft after the intervention of the local authorities.

The Defendant/Appellant denied the claims and argued that the Plaintiff/Respondent had lent him shs.100,000/= which he
15 added to his shs.200,000/= to pay for the property. He later gave her a portion of the property when she had financial problems.

Four grounds of Appeal were filed by the Appellant but his
20 Counsel opted to argue only Grounds No. 1 and 2 abandoning the rest. I will accordingly only reproduce and deal with those argued, namely:

1. That the learned trial Magistrate erred in Law and fact when she failed to evaluate the evidence adduced on
25 record hence coming to an erroneous conclusion.

2. That the learned trial Magistrate erred in Law and fact when she failed to realize that the Respondent was one of the witnesses on the agreement while buying the suit land.

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The Appellant's submissions revolved around the two agreement dated 31/3/1995 when the purchase took place (exhibited as P.Ex.1) and 8/8/2010 in which the Respondent accepted a piece of land that was formerly a part of the
10 disputed land - (P.Ex.2).

The lower Court, it is argued relied on oral evidence which varied/contradicted the agreements and was hence inadmissible. That under Sections 91 and 92 of the Evidence
15 Act, introduction of oral evidence is prohibited if it has the effect of contradicting documentary evidence. P.Ex.1 was signed by the Respondent as a witness and she cannot be seen to deny it and neither can she deny P.Ex.2 when she freely accepted a piece of land from the Respondent.
20 Reference has been made to the cases of:

1. Michael Nuwagira Toyota Vrs. Bhavesh Kanabar - Commercial Division Misc. Application No. 207/2010
and

2. Hima Cement Vrs. Cairo International Bank - Commercial Division Court Civil Suit No. 13/2002.
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In the later case, it was held that oral evidence can only be acceptable in oral contracts where the person giving evidence was not party to the documents sought to be varied. It was also submitted that as a result of the two agreements, she
5 waived and abandoned her right to claim the suit land. Reference was also made to the case of **Threeways Shipping Services Vrs. China Chongai (Commercial Division Civil Suit No. 535/2005)**. Therein, it was held that if by conduct or importation, a party expresses an unambiguous
10 representation by granting the other party a concession with full knowledge of all material circumstances of the matter, the party making the representation abandons his/her right.

That in the instant case, the Respondent allowed the Appellant
15 to stay on the suit land for 19 years and accepted a small part of the same and she is accordingly estopped from coming back to claim the same land.

It is finally concluded that the findings of the lower Court are
20 not supported by the evidence before Court.

It was submitted for the Respondent that she bought the land in her brother (Appellant)'s names to protect her property.

25 She then relies on PW3 who claims he wrote the agreement knowing the Respondent was the one buying. She also relied

on PW4 a sibling to both parties and PW5 who claimed the land belonged to the Respondent.

It was submitted that the Appellant never produced a single
5 witness to prove that he purchased the land and that the evidence of DW2 and DW3 was mere hearsay.

It was also submitted that when the Court visited the locus,
two witnesses denied knowledge of the acquisition of the land
10 by the Appellant.

I have looked at the submissions by/for the parties. This Court
as a first appellate Court is duty bound to re-examine the
evidence before it and make its own conclusions. The Court
15 has the single handicap of not having had access to the witnesses and to observe their demeanour.

It appears the trial Magistrate believed the witnesses of the
Respondent and her own evidence, relying on her observations
20 during trial. She also concluded at the locus that the general impression she got was that the land belonged to the Respondent.

With due respect to the Magistrate, cases are not decided on
25 impressions but on evidence.

It is a fact that the agreement of purchase of the suit property was in the names of the Appellant. The Respondent was a witness to the sale. She was also a party to the P.Ex.2 where she accepted a plot from the Appellant.

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It is also true that the Appellant has had physical possession of the suit land for over 12 years without any challenge. **Sections 91 and 92 of the Evidence Act** are clear and it would be a mockery of the Law of Contract to admit oral
10 evidence that substantially destroys the documentary evidence adduced to which the Respondent did not object.

Further, what she raises cannot be covered by the exceptions provided in **Section 92 of the said Evidence Act.**

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I have had a look at the authorities cited by the Appellant and I do associate myself with the observations therein especially as regards **Sections 91 and 92 of the Evidence Act.** In line with the authority of **Threeways Shipping Services**
20 **(supra)**, the Respondent's own conduct estops her from claiming any rights on the Suit land especially having even gone to the extent of getting a piece from the Appellant.

No single authority or provision of Law was cited to support the
25 bizire/strange positions forwarded by the Respondent that she wanted to hide the property from her husband (who had died

earlier) or from the husband's relatives and therefore bought land in a strangers names without a single provision for safe guard.

- 5 I find that the Respondent claims are not supported by the Law and unfortunately, cases are not decided on the basis of sentiments.

This appeal accordingly succeeds on both grounds. The
10 Judgment and Orders of the trial Magistrate are set aside.

It is ordered that the Appellant is entitled to quiet and peaceful enjoyment of the suit property.

- 15 As to costs, I have considered the fact that the parties are siblings and as a way of promoting harmony, each party will bear their own costs.

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Godfrey Namundi

Judge

12/1/2015

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12/1/2015:

Asingwiire for Appellant

Both parties present

5 Respondent's Counsel absent.

Godfrey Namundi

10 **Judge**

12/1/2015

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