

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
HOLDEN AT MBALE**

**HCT-04-CV-CA-0085-2011
(ARISING FROM PALLISA CIVIL SUIT NO. 0053 OF 2009)**

**SAANA MADINA.....APPELLANT
VERSUS
JOSUNI MATONO.....RESPONDENT**

BEFORE: HON. MR. JUSTICE HENRY I. KAWESA

JUDGMENT

Appellant in the memorandum raised three grounds of appeal.

Appellant sued the Respondent in the Chief Magistrate's Court of Pallisa for recovery of a piece of land which had been mortgaged to the Respondent's father by the late **Gemugemu Munyolo** who she claims was her nephew.

Respondent on the other hand claimed that the suit land belonged to his late father who purchased the same in 1987. The lower court found in favour of the Respondent hence this appeal.

Following *Pandya v. R (1957) EA 336* as a first appellate court I will have to review the evidence and subject it to a fresh scrutiny so as to draw new conclusions therefrom.

I notice from the evidence on record from the lower court that, **PW.1- Saana Madina** told court that she sued defendant for resisting her utilisation of the land redeemed from **Yolonimu Matono** his late father who had gotten the land from his nephew **Munyolo Gemugemu** as a mortgage.

PW.2 –Mulyagonja David- said the land in dispute was mortgaged to **Manuel Kasaijja** by **Gemegumu** in 2004. When his father fell sick he sent for plaintiff to redeem the land which plaintiff did. (He however said he was not present when the original mortgage happened).

PW.3 Manuel Kasajja (was found by court to be a liar; and unreliable and later testified as PW.4, stating that plaintiff is daughter to his aunt, having said at first she is his real daughter.

He said that before **Gemugemu** died he had mortgaged the land to him for 4 goats in 2000. **Gemugemu** died before redeeming the suit land.

PW.4 also mortgaged to **Matono** (defendant's father) for 2 goats. In 2008 plaintiff gave him 4 goats, he refunded 2 goats to **Matono's** father in order to redeem the land. This was in presence of LCs and clan members and land was handed back to him. **Matono** asked for time to harvest his crops and plaintiff accepted. **Matono** died, and when plaintiff went to cultivate the land, defendant refused her to use it.

PW.5 – Walawire Yomana, confirmed that **Gemugemu** mortgaged the land to **Kasaijja** who mortgaged to **Matono** (father of defendant). **Gemugemu** passed away and plaintiff got 4 goats and redeemed the land from **Manuel Kasaijja**.

PW.6 Lozio Wabwire confirmed that land belonged to the plaintiff, whose late father **Gemugemu** sold the land to defendant's father. He claimed he was present when the land was being redeemed.

DW.1 Jesun Martin Matono said the land in dispute was bought by the late father **Matono Yolanimu** in 1987, from **Jankina Musana** for shs. 350,000/= (See ID.1, ID.3 and ID.4).

DW.2 Kamugata- was witness to the fact that late **Yolanimu** handed the land to him to keep for defendant till his death which happened 1 ½ months later.

DW.3 didn't know the land in dispute.

DW.4 Maria Matono claimed that suit land belongs to Matono (defendant) who got it from his late father **Yolanimu Matono** who died in 2009. **Yolanimu** acquired it through purchase from **Yakobo** on 3.1.1987- and he attended the transaction.

DW.5 Sefoloza Byobona confirmed that the land in dispute belongs to her as an inheritance from her husband **Y. Matono**. **Matono** purchased it from **Yakobo Kalyebi** in 1987.

DW.6 Susan Nayaiza also confirmed that the land belonged to defendant by virtue of guardianship.

Having the above as the evidence on record and in view of the submissions by both counsel on the grounds of appeal, I resolve the grounds as below.

Ground 1: Learned trial Magistrate erred in fact and law when he dismissed the claim.

Appellants referred to section (2) (9) of the Succession Act to argue that appellant had *locus standi* to sue as a dependant relative. They referred to the case of *Israel Kabwa vs. Martin Banoba Musiga SCC No. 52 of 1995 (1996) 11 KALR 109* holding that;

“ a beneficiary of the estate of the intestate for their own benefit without having Letters of Administration.”

In reply the respondent first raised a preliminary objection that the appeal was incompetent. However this was misconceived because as pointed out by appellant in rejoinder, leave was obtained and the memorandum filed on time. The preliminary objection is therefore unsustainable.

However in arguing ground 1, the respondent found the Magistrate right to hold that appellant had no **locus standi** to sue since she did not offer any evidence to show that she was a dependant relative as per section 27 of the Act.

Appellants in rejoinder attempted to abandon their previous line of argument on this matter and came up with a proposal that court find appellant a beneficiary under section 27 of the Succession Act.

I am not impressed by the attempt by appellant’s Counsel to use the law conveniently to suit his arguments. The question is what relationship did the appellant have with the deceased so as to obtain *locus standi* to sue on his behalf? In his submissions appellant says she was a nephew hence a dependent relative. I however agree with respondents that appellant did not offer any plausible

explanation or evidence in the lower court to prove that. As pointed out by the respondent the evidence does not clearly show how her title to the land is related to the late in the entire mortgage transaction if at all. The assessment of the evidence by the learned trial Magistrate on this particular issue is therefore in my view not faulty. The learned trial Magistrate held,

“The plaintiff adduced no evidence to show under what capacity she was claiming for the suit land.....she adduced no evidence to show whether she was heir or the legal representative so as to have locus standi to sue in that behalf.”

(Page 3 of judgment).

I agree with the learned trial Magistrate. I find that evidence on the balance of probability never resolved the issue of *locus standi*, since the plaintiff was suing for property of a deceased person. This ground therefore fails.

Ground 2: Failure to properly evaluate evidence on record.

The appellant complains that there were contradictions and inconsistencies in the defence case, and the learned trial Magistrate ignored them and disbelieved plaintiff’s case- wrongly.

Respondents argued that the assessment of evidence by the learned trial Magistrate was proper.

I have examined the evidence. My own assessment of the evidence has led me to the conclusion that the plaintiff and her witnesses did not prove the case on a balance of probabilities. There was evidence from the defendant and his witnesses, collaborated by exhibits D.1, D.2, and D.3, showing that the defendant had

reasonable claim of right to the land. The land had been bequeathed by his late father to his sister **Kayendeke Cecilia** and he was her guardian. DW.4, DW.5 and D.6 all confirmed so. The land had been bought in 1987 by his father from **Jankima Musana**. Agreements were tendered in to prove so.

Plaintiff did not offer any evidence to prove independently that she had redeemed the land in presence of the clan and LCs, as claimed by PW.6. On Probability therefore, I find that the learned trial Magistrate properly evaluated the evidence before him and he reached a right conclusion. This ground also fails.

Ground 3: Miscarriage of Justice

By the findings under ground 1 and ground 2 above I find that the learned trial Magistrate's decision was correct. No injustice was occasioned.

This ground is not proved.

For all reasons above, I find no merit in this appeal. I accordingly dismiss it with costs to respondent.

I so order.

Henry I. Kawesa

JUDGE

13.01.2015