



that the plaintiff's allegations are not true as he purchased the suit land from the plaintiff and the plaintiff did not mortgage his land as he alleges in the plaint. That he later sold the suit land to 2<sup>nd</sup> defendant because he was the owner of the land.

[6] The trial magistrate decided the suit in favour of the defendants/Respondents and dismissed the plaintiff's case, that the land in dispute was rightfully sold by the **plaintiff/Appellant** to the **1<sup>st</sup> defendant/Respondent** who immediately took possession and later also rightfully sold it to the **2<sup>nd</sup> defendant/Respondent**. Being dissatisfied with the decision and orders thereof, the **plaintiff/Appellant** appealed to this court on the following grounds as reflected in his memorandum of appeal.

- 1. The Learned Trial Magistrate did not properly evaluate the whole evidence on record thereby reached erroneous decision.*
- 2. That the Learned Trial Magistrate erred in law and fact when he did not take into consideration the facts and circumstances proved and or admitted.*
- 3. That the decision of the Learned Trial Magistrate has occasioned to miscarriage of justice.*

### **Legal Counsel representation**

[7] The Appellant was at first represented by **Counsel D. Mugoda** and later by **Mr. Nicholas Agaba** of Ms. Mutembuli & Co Advocates, Mbale and the Respondents were represented by **Mr. Okwenye** of Kob Advocates & Solicitors, Kampala. The Appellant's submissions are not on record but the 1<sup>st</sup> Respondent's submissions are on record and the same shall be considered accordingly.

### **Preliminary Objections**

[8] Counsel for the 1<sup>st</sup> Respondent raised the following preliminary objections; that the Appellant's written submissions are out time; and that the grounds of appeal as contained in the memorandum are non-concise and contrary to **O.43 r.1(2) CPR**.

[9] Counsel submitted that the court issued time schedules within which the parties were to file their respective written submissions but that to date, the appellant has not complied with the directive. He prayed that court rejects any written submissions from the appellant that are brought out of time.

- [10] In agreement with the above submission of counsel, I find that from the **10<sup>th</sup> of December 2020** when court directed the parties to file their written submissions, indeed the Appellant did not comply and as a result, he is outside the scheduled time within which to file his written submissions. In any event, he never bothered to file his submissions yet the time schedules for filing submissions were given in his presence and his representative counsel.
- [11] As regards the second objection, the 1<sup>st</sup> Respondent's counsel submitted that the Appellant employed blanket and generic grounds which particularize the matters of law and fact in regard to which the court appealed from is alleged to have erred. He relied on the authority of **MUTEMBE S/o RUTEHENDA Vs R (5) 1953 20 EACA 276** cited by Lady Justice Catherine Bamugemereire in **UGANDA Vs OKONGO DENIS & ANOR H.C.CRIM.APPEAL.No. 6/2011** where she dismissed the appeal preliminarily and held; *“that the court frowns upon the use of blanket and stereotype memoranda which are laid out in terms so general as to be valueless...that more thought needs to be applied to the drafting of memoranda in order to avoid un intelligent, blanket and stereotype forms filed in a hurry.”*
- [12] Considering the above submission and the appeal at hand, I note the fact that the memorandum of appeal was drafted by the litigant/appellant himself and he is definitely not an advocate. The general principle is that the rules of procedure are intended to serve as the hand maidens of justice not to deter it; **IRON & STEEL WARES LTD Vs C.W. MARTYR & CO [1965] 23 EACA 175 at 177.** Therefore, court may rightfully exercise its discretion to overlook the failure to comply with rules of procedure, upon such conditions as it may deem fit intended to guard against the abuse of its process.
- [13] In view of the fact already noted above and the provisions of **Article 126(2)(e) of the 1995 Constitution** which dictate that courts administer substantive justice without undue regard to technicalities, I find the instant case as such that requires this court to proceed and determine the appeal on the basis of the unintelligent, blanket and stereotype memorandum of appeal for purposes of conclusion and finality of the matter.

## **Consideration of the merits of the appeal.**

### **Duty of the 1<sup>st</sup> Appellate court.**

[14] It is the duty of the 1<sup>st</sup> appellate court to re-appraise the evidence adduced at the trial and subject it to a fresh and exhaustive scrutiny, weighing the conflicting evidence and drawing its conclusion from it. In so doing, however, the court has to bear in mind that it has neither seen nor heard the witnesses and should therefore make due allowances in that respect; **MILLY MASEMBE Vs S.C.O.U.L & ANOR CIVIL APPEAL NO.1 OF 200 (S.C).**

### **Grounds 1,2 and 3.**

[15] These shall be resolved together as they zero down to the trial magistrate's failure to properly evaluate the evidence on record which according to Appellant, led to a miscarriage of justice.

[16] **Sections 102-103 of the Evidence Act** are to the effect that he who alleges a fact must prove the existence of that fact.

[17] The plaintiff/Appellant contended that he never sold the suit land but only mortgaged it to the 1<sup>st</sup> defendant, in 2004 for 1 bag of maize. The 1<sup>st</sup> defendant however, stated that he purchased the suit land from the Appellant.

[18] The plaintiff/PW1 testified on pg.6 of the proceedings on record that he mortgaged the suit land to the 1<sup>st</sup> defendant for 1 sack/bag of maize during the famine season but acknowledged not making an agreement to that effect. He further testified that he informed his son, **Godfrey Hasahya**, about the alleged mortgage of his land (suit land).

[19] PW2, **Godfrey Hasahya** son to the plaintiff/PW1, led evidence and testified on pg.7 that his father told him that he had mortgaged his land to the 1<sup>st</sup> defendant for 1 bag of maize. He further testified that the plaintiff fell sick in 2004 and was mentally ill (traditional sickness) until 2013 when he recovered, and discovered that the 1<sup>st</sup> defendant had sold the suit land to the 2<sup>nd</sup> defendant without the plaintiff's consent.

[20] On the other hand, the 1<sup>st</sup> defendant/DW1 testified that the plaintiff sold to him the suit land at Ushs. 360,000/= and a sale agreement in respect of the same was executed but the agreement got lost when he lost his property in the house. That on 20<sup>th</sup>/01/2014, he made a report to the L.C.I and later to police (**D.Exh.1**).

- [22] DW3, **Munghu Yalide**, testified that he was the mayor of Nawanjofu trading centre and witnessed the sale agreement that was executed between the plaintiff and the 1<sup>st</sup> defendant. He testified that the 1<sup>st</sup> defendant purchased the suit land from the plaintiff at a consideration of Ushs. 360,000/= in 2004. He further told the trial court that PW2 was present but protested the sale and PW1 told him not interfere since he had already given him his plot. That the pledge of the land in dispute for 1 bag of maize by the plaintiff, is a lie.
- [23] DW4, **Hamba Swaib**, told court at pg.15 of the proceedings, that he was a witness to the sale agreement executed between the plaintiff and the 1<sup>st</sup> defendant in respect of the suit land. That a consideration of Ushs. 360,000/= was paid to the plaintiff as the purchase price. That the mayor(DW3), the plaintiff(PW1), and himself appended their signatures on the said agreement which was executed by a one **Ensinwiri Musa**.
- [24] From the above evidence of both the parties' Key witnesses, in agreement with the trial magistrate's findings, I find the defence witnesses truthful/credible because their evidence is coherent as to what transpired during that time and also corroborated DW1's evidence that he bought the suit land from the plaintiff at Ushs. 360,000/=. In addition, they were eye witnesses to the said lost sale agreement and one of them **DW3** is a leader in Nawanjofu trading centre where the suit land is situated. The plaintiff/Appellant and his son seem to deny ever selling the suit land just because the 1<sup>st</sup> defendant/Respondent lost the sale agreement and or they want to defraud the purchaser of the suit land, the 2<sup>nd</sup> defendant/Respondent.
- [25] In addition, considering **D.Exh 2**, a sale agreement executed in 2010 between the plaintiff and a one **Hadaya Muhammad**, to which the 1<sup>st</sup> **defendant** was a witness; **Hadaya's** plot neighbors the suit land in question which at the time was in the 1<sup>st</sup> **defendant's possession** a fact which the plaintiff did not contest during trial in the lower court. One wonders how a mentally sick person managed to sell part of his land to another yet he was allegedly considered mentally ill. This becomes strange because according to PW2's evidence on record, his father, the plaintiff fell sick in 2005 and recovered in 2013.
- [26] Further, the claims by the plaintiff/Appellant were not supported by any evidence or witnesses as to the sickness he was suffering from during the period between 2005-2013. One would have expected the plaintiff to adduce evidence that indeed he was mentally ill or if not,

call witnesses who could testify as to the truthfulness of the condition he was in at the time, but none of that was done. This negatively affects the credibility of PW1 and PW2's testimonies, which renders their evidence unworthy of consideration due to the discrepancies and inconsistencies therein.

- [27] From the foregoing, it is my finding that the trial magistrate properly evaluated the evidence on record and indeed arrived at the right conclusion that the 1<sup>st</sup> defendant was the lawful owner of the suit land. This was so because the 1<sup>st</sup> defendant had credible eye witnesses who with consistency, testified in court and their testimonies corroborated the 1<sup>st</sup> defendant's evidence as opposed to the plaintiff. The 1<sup>st</sup> defendant satisfied court as regards his side of the case.
- [28] In conclusion therefore, the grounds of this appeal fail and as a result, the trial Magistrate's decision and orders are maintained/upheld. The appeal is accordingly dismissed with costs.

**Byaruhanga Jesse Ruyema**

**JUDGE.**

**2<sup>nd</sup>/08/2021.**