

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT MPIGI  
CIVIL APPEAL NO. 32 OF 2019**

5 (Appeal from the judgment of His Worship Muinda Tadeo, Magistrate Grade 1 of  
Mpigi delivered on the 4<sup>th</sup> day of July 2019 arising from Civil Suit No. 143 of  
2015)

1. KIBUKA ALPHONSE  
2. NJOGERA ZABETI } .....APPELLANTS

**VERSUS**

10 MUKASA CHARLES.....RESPONDENT

**BEFORE: HIS LORDSHIP HON. JUSTICE OYUKO. ANTHONY OJOK, JUDGE**

**Judgment**

15 This appeal is against the decision of His Worship Muinda Tadeo, Magistrate  
Grade 1 of Mpigi delivered on the 4<sup>th</sup> July 2019. The appellant being dissatisfied  
with the said decision lodged the instant appeal whose grounds are as follows;

1. The learned trial Magistrate erred in law and fact when he held that the Respondent had a legal interest in the suit land.
2. The learned trial Magistrate erred in law and fact when he held that the Respondent was a licensee coupled with interest.
- 20 3. The learned trial Magistrate erred in law and fact when he awarded the Respondent damages of UGX 4,000,000/= without any legal basis for the same thereby occasioning a miscarriage of Justice.
- 25 4. The learned trial Magistrate erred in law and fact when he held that the plaintiff and his family shall continue to use the suit kibanja whereas the plaintiff did not adduce evidence of kibanja ownership on the suit land.

**Background:**

30 The respondent filed a civil suit against the appellants seeking for a declaration that he has a kibanja interest in the suit land comprised in Block 155 Plot 74 Kafumu, Kisaliza, Mawokota, Mpigi District on the basis that he acquired his interest from his late aunt Kayuuyo Maria in 1975. And that by the time of her death in 1985 he was already occupying the suit land and utilizing an acre of the same.

The respondent claimed that his late aunt Kayuuyo Maria had appointed his father Rulenti Sempa Kasumba as the caretaker of the suit land with the task of ensuring that it is used as ancestral burial ground. That he had enjoyed undisputed possession of the suit land for over 30 years. That the respondent  
5 acquired permission from his aunt the late Maria Kayuuyo to cultivate about an acre of the suit land and has been doing so.

The respondent also sought for a permanent injunction, restraining the appellants, their agents, servants or anybody acting through them from entering upon the suit land and from interfering with his quiet possession and utilization of the suit land, general damages, costs and any other relief court deems fit.  
10

The appellant's case was that they are administrators of the late Kayuuyo, who died intestate in 1985 leaving property comprised in Block 155 Plot 74 Kafuma, Kisaliza, Mawokota, Mpigi District. That upon the late Kayuuyo's demise Sempa Rulenti presented a Will purportedly for the late claiming to be a beneficiary to  
15 her estate, whereas the purported Will merely stated that he was to care take the land. That Rulenti was given land by Joseph Kezaala and it is only the only land he is entitled to. Judgment was entered in favour of the respondent.

**Representation:**


M/s Bwengye & Associated Advocates represented the appellants whereas M/s  
20 Baale, Lubega & Co. Advocates represented the respondent. Both parties filed written submissions.

**Duty of the first appellate court:**

The duty of a first appellate court was laid out in the case of **Fr. Narsensio Begumisa and 3 Others v. Eric Kibebaga SCCA No. 17 of 2002** (unreported) as  
25 follows:

*"The legal obligation of the 1<sup>st</sup> appellate court to reappraise the evidence is founded in the common law rather than rules of procedure. It is a well settled principle that on a 1<sup>st</sup> appeal the parties are entitled to obtain from the appeal court its own decision on issues of fact as well as of law. Although in case of conflicting evidence, the appeal court has to make due allowance for the fact that it has neither seen nor heard the witnesses."*  
30

**Resolution of the Grounds of appeal:**

All the grounds of appeal are discussed separately. 

**Ground one: The learned trial Magistrate erred in law and fact when he held that the Respondent had a legal interest in the suit land.**

5 It was submitted for the appellants that the respondent told court that he was given an acre to cultivate on the suit land by the late Maria Kayuuyo and it was the evidence of the Administrator General that he was not a beneficiary of the late Maria Kayuuyo's estate. That in the circumstances it is the appellants with interest in the suit land and burying people of the Nnte clan on the suit land does not create a legal interest thereon. Therefore, the Magistrate was wrong to hold that the respondent had legal interest in the suit land.

10 Counsel for the respondent on the other hand noted that the trial Magistrate rightly found that the respondent was a bonafide occupant of the suit land having obtained the same from his aunt as per **Section 29 (2)** of the Land Act. That burial grounds of the Nnte clan were found on the suit land dating 1949 and 1984 for relatives of the respondent. That the respondent has occupied the  
15 suit land for over 25 years and his interest is protected under **Articles 237 (8)** and **26 (2)** of the Constitution of the Republic of Uganda, 1995.

It is my considered view basing on the respondent's evidence that he obtained permission from his aunt the late Maria Kayuuyo to utilize the suit land in 1975 and that he has been cultivating the same ever since. The respondent did not  
20 adduce any evidence that he was ever given the suit land as a gift inter vivos. For the respondent to qualify as a bonafide occupant as provided under **Section 29** of the Land Act he ought to have occupied the suit land unchallenged by the registered owner for 12 or more years before the enforcement of the Constitution of the Republic of Uganda, 1995 and his occupation ought to have been one  
25 without the permission of the owner of the land.

**Section 29(2)(a)** of the Land Act defines a bonfide occupant to mean a person who before coming in force of the Constitution of the Republic of Uganda, 1995, had occupied and utilized or developed any land unchallenged by the registered owner or agent of the registered owner for twelve years or more.

30 In the instant case I find and hold that the respondent had no legal interest in the suit land nor was the same backed up by any evidence. This ground is hereby allowed.

**Ground two: The learned trial Magistrate erred in law and fact when he held that the Respondent was a licensee coupled with interest.**

35 Counsel for the appellants submitted that a license does not confer interest in the land (**See: Okello John v. Lalam Angella, HCCA No. 13 of 2019**) as it is a personal arrangement between the licensor and licensee as was held in the case of **Dina**



Okidi, Okidi Angel v. George Willy Odwongl, CACA No. 233 of 2015 p. 10. That in the instant case the purported license was revoked in 1984 upon the death of Maria Kayuuyo. Thus, the continued act of cultivating the suit land by the respondent was an act of trespass and that is why the appellant issued the notice of eviction.

That the respondent did not adduce any evidence to show that he had a contractual relationship with Maria Kayuuyo. Therefore, the Magistrate erred to find the respondent as a licensee at that coupled with interest.

Counsel added that where one claims to be a kibanja holder such a person under Section 29 (1) (a) (i) of the Land Act is recognized as a lawful occupant and a licensee is not a lawful occupant.

It was submitted for the respondent on the other hand that from the evidence of PW1 it is clear that he requested his aunt in 1975 to cultivate anywhere and he began to cultivate and is still using the said land. That the respondent is a licensee with interest because part of his crops cultivated is coffee which brings him income.

Having found that the respondent had no legal interest in the suit land and that it was his testimony that he was given permission to use the land for cultivation, the respondent was a licensee. It was argued for the respondent that he was a licensee with interest. A licensee with interest is one who goes on land with a purpose and this license cannot be revoked during the existence of the license. The licensee therefore only has right to execute the purpose for which the license was granted off the licensor's property.

In the instant case, the respondent was only allowed to dig and not to obtain any property or objects off the suit land, which would may be include harvesting of crops among others.

I find and hold that the respondent was a bare licensee who used the suit land for cultivation with the permission of his aunt Maria Kayuuyo and upon her death this license was revoked. The respondent was not a licensee with interest as was held by the trial Magistrate. I accordingly allow this ground of appeal.

**Ground 3: The learned trial Magistrate erred in law and fact when he awarded the Respondent damages of UGX 4,000,000/= without any legal basis for the same thereby occasioning a miscarriage of Justice.**

Counsel for the appellants argued that the respondent did not adduce any evidence to prove that he had suffered any loss by being deprived his inheritance. During the locus visit the respondent was found in occupation of the suit and his

wife was found cultivating the suit land. That the respondent did not prove any legal right therefore, he is not entitled to any general damages.

The respondent averred that the damages awarded for the inconvenience occasioned to the respondent in an attempt to chase him off the suit land.  
5 Therefore, the trial Magistrate used his discretion rightly in awarding the damages.

In the instant case the respondent was awarded UGX 4,000,000/= as general damages. I find and hold that the general damages were awarded in error because the respondent did not adduce any evidence that warranted the grant of  
10 the general damages. The respondent was even found in occupation of the suit land during the locus visit. If anything he was benefiting from the suit land and was not inconvenienced in any way. In the case of **Kibimba Rice Company Ltd v. Umar Salim, SCCA No. 7 of 1988**, it was held,

*“Evidence had to be led to prove claims for general damages for  
15 inconvenience, mental suffering and anguish. Counsel having been unable to show any particular evidence on this claim, it was correct to make no award.”*

In the case of **stroms v. Hutchinson [1905] A.C 515**, it was held that general damages are such as the law will presume to be the natural and probable  
20 consequence of the act complained of.

The trial Magistrate therefore erred in law and fact when he awarded the Respondent damages of UGX 4,000,000/= without any legal basis for the same thereby occasioning a miscarriage of Justice. The award of UGX 4,000,000/= as general damages is hereby set aside.

25 This ground of appeal is also allowed.

**Ground 4: The learned trial Magistrate erred in law and fact when he held that the plaintiff and his family shall continue to use the suit kibanja whereas the plaintiff did not adduce evidence of kibanja ownership on the suit land.**

30 Counsel for the appellants contended that the respondent did not adduce any evidence as to how he acquired the kibanga. The person from whom he claimed his interest was derived was simply left as a caretaker. And the said Sempa Rulenti who was left as a caretaker was still alive at the time the suit was being heard but he was not brought as a witness. The respondent did not have any kibanja agreement nor did he pay any busulu.

35 Counsel concluded that the respondent cannot be said to have acquired a kibanja interest in the suit land for having utilized the same over 30 years. That DW1

reported to Police the illegal planting of coffee and trespass to Police which proved that the respondent's occupation was being challenged. That nor does the respondent qualify as a bonafide occupant because he started occupying the suit land in 1984, 11 years before the coming into force of the Constitution of the Republic of Uganda, 1995.

Counsel for the respondent on the other submitted that bibanja holders are recognized under **Article 237 (8)** of the Constitution of the Republic of Uganda, 1995 as lawful and bona fide occupants. Thus, the respondent has an equitable interest in the suit land.

10 It is my considered view that the respondent was categorical about being granted permission to use the suit land by his aunt Maria Kayuyo which did not confer any interest to him. The respondent did not adduce any evidence as a kibanja owner and the person under whom he said that he obtained interest was left as a care taker of the suit land to preserve and protect burial grounds. The respondent's aunt left a will which did not give any interest in the suit land to the respondent. The trial Magistrate therefore erred in law and fact when he held that the plaintiff and his family shall continue to use the suit kibanja whereas the plaintiff did not adduce evidence of kibanja ownership on the suit land. This ground of appeal is also allowed.

20 This appeal is hereby allowed on all grounds. Costs are awarded to the appellants in this appeal and in the lower court. I so order.

Right of appeal explained.

.....  
25 **OYUKO ANTHONY OJOK**  
**JUDGE**  
**21/02/2022**