THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT MPIGI

CIVIL APPEAL NO. 22 OF 2019

(Arising from Civil Suit No. 002 of 2015)

1. **MUKASA LIVINGSTONE**
2. **MAKANGA STAURT::APPELLANT**

VERSUS

KAVUMA FRED ::RESPONDENT

(ADMINISTRATOR OF THE ESTATE OF THE LATE KAVUMA NGOMANDAYI YOSIYA)

BEFORE: HIS LORDSHIP HONOURABLE JUSTICE OYUKO ANTHONY OJOK.

JUDGMENT

This appeal arises out of the judgment and orders of His Worship Muinda Tadeo, a Grade One Magistrate of Mpigi delivered on the 13th day of December 2018 in which the trial Magistrate gave judgment in favor of the Respondent. The appellant being dissatisfied with the said decision lodged this appeal on the following grounds;

1. The learned trial Magistrate failed to properly evaluate the land laws in existence in 1960s and as a result arrived at an erroneous decision against the appellants thereby occasioning a miscarriage of justice.
2. The learned trial Magistrate erred in law and fact in holding that limitation would not bar an action based on continued trespass.
3. The learned trial Magistrate erred in law and fact when he held that the appellants are trespassers on the suit land.
4. The trial Magistrate erred in law and fact when he used one Nathan Kabuye agreement to determine the purchase of the 2nd kibanja.
5. The trial Magistrate erred in law and fact when he held that it was an agreed fact that Nasani Kabuye was in possession of the kibanja in dispute.

6. The trial Magistrate erred in law and fact when he held that the defendant/appellants admitted during hearing that Nasani Kabuye existed on the suit land.
7. The trial Magistrate erred in law and fact when he held that the suit kibanja forms part of the estate of the respondent.
8. The trial Magistrate erred in law and fact when he held that the sale transaction between the appellants was illegal.

Background:

The respondent, filed a suit against the appellants for trespass on kibanja situate at Mpanga village, Mpenja sub county, Gomba District, seeking a declaration that the suit kibanja forms part of the estate of the late Kavuma Ngomandayi Yosiya, a declaration that the sale of part of the suit kibanja by the 1st respondent to the 2nd respondent was void, an order to set aside the sale of the suit kibanja by the 1st respondent to the 2nd respondent, an order of vacant possession, a permanent injunction restraining the defendants from further trespass on the suit kibanja, general damages and costs of the suit.

The matter was heard before the Chief Magistrates Court by His Worship Muinda Tadeo, Magistrate Grade one and both parties adduced evidence to support their case. Judgement was given in favor of the respondent hence this appeal to the High Court.

Representation:

M/S Kayongo Jackson & Co. Advocates represented the Appellants whereas M/S Denis Kakeeto Advocates represented the Respondent. Both parties filed written submissions as directed by this court.

Duty of the First Appellate court:

The duty of the first appellate court was also discussed in the case of **Attorney General V George Owor Constitutional Appeal No. 0001/2011** ''It is the duty of first appellate court to appreciate the evidence adduced in the trial Court, subject it to an

exhaustive scrutiny and to make its independent finding of fact, giving allowance to the fact that it had no opportunity to see and observe the demeanor of witnesses in which case the appellate court will rely on the notes made by the lower court.''

Resolution of the Grounds of Appeal:

I will discuss grounds 1, 4, 5,6 & 7 concurrently.

Ground 1: The learned trial Magistrate failed to properly evaluate the land laws in existence in 1960s and as a result arrived at an erroneous decision against the appellants thereby occasioning a miscarriage of justice.

It was submitted for the appellants that the law in 1969 when the respondent's father allegedly bought the suit Kibanja was the Public Land Act 1969 which had a legal restriction on customary tenure that for one to acquire fresh customary tenure, one had to apply to the prescribed authorities and obtain approval of his application. That in the instant case, there was no shred of evidence of such application to the prescribed authorities by the respondent's father for him to qualify as the legal owner of the suit bibanja. Furthermore, Counsel for the appellants further stated that under the Busulu and Envujjo laws of 1928, the respondent's father was under an obligation to pay Busulu to the mailo owner, before he could enjoy the right to cultivate the suit kibanja.

Counsel for the appellant also argued that the respondent's father could not have legally bought the suit kibanja from Nasani Kabuye without the written consent of the mailo owner which was a requirement of the law in force at that time. Counsel supported his argument with the case of **Kisseka Saku V Seventh Day Adventist Church SCCA No. 24 of 1993** where court held that any transfer of bibanja or customary holding without giving notice to the prescribed authority as registered owner renders such transfer void. Counsel concluded his argument by stating that the respondent's father having illegally acquired the suit kibanja cannot use court to lend itself to their illegality.

Counsel for the respondent on the other hand agreed with the submission of Counsel for the appellant when he stated that the law in force at the time the Respondent's

father bought the suit kibanja was the Busulu and Envujjo law of 1928 and that under that law the respondents father was under obligation to pay Busulu to the mailo owner but this could not vitiate a valid sale and failure to pay did not render one's ownership extinguished. That Section 3 of the said law stated that in default of payment of busulu, the tenant shall be sued before the competent court which remedy was never pursued by the mailo owner.

Counsel also argued that the aspect of written consent is far- fetched under the law, that Section 8(2) of the law only disallowed transfer or sublet of the kibanja but never preconditioned the same with the written consent. That consent of the registered owner alluded to by the appellants arises out of a custom. Counsel supported his argument with the case of **Tifu Lukwago V Samwiri Mudde Kiiza & Others SCCA No. 13 of 1996** where Justice Mulenga observed that ''the nearest evidence that the mailo owner recognize a buyer of kibanja when the latter is introduced and given him a kanzu that, however is not the same thing as to say that on otherwise valid sale of kibanja is rendered voidable if subsequently the buyer is not introduced and or doesn't give a kanzu to the mailo land owner. It was not suggested in evidence that there was any time frame within which the introduction had to be made and the kanzu to be given. If therefore, as appears to have happened in the instant case, a person purchases as kibanja and wants to be introduced before giving a kanzu, does the custom not protect him until introduced? Who, according to the custom is entitled to treat such as a sale as voidable?'' That the customary practice of introduction and giving a kanzu was for the purposes of soliciting such consent.

Counsel for the respondent further argued that the respondent enjoys a prolonged occupancy as stipulated by Section 29(2)(a) of the Land Act, Cap 227 which states that" Bona fide occupant" means a person who before the coming into force of the Constitution —(a)had occupied and utilized or developed any land unchallenged by the registered owner or agent of the registered owner for twelve years or more; or(b)had been settled on land by the Government or an agent of the Government, which may include a local authority.'' That this positon of the law was exhaustively discussed in

the case **of Kampala District Land Board & Anor V Babweyaka & 3 Ors Civil Appeal No. 2 of 2017.**

Counsel for the appellants in rejoinder reiterated and emphasized his earlier submissions and stated that the onus is on the respondent to prove that he acquired consent of the mailo owner before purchase and not the appellant. He relied on the case of **Muluuta Joseph V Katama Sylvan Civil Appeal No. 11 of 1999** where Supreme court observed that an agreement purporting to sell and transfer a kibanja holding was not sufficient proof of acquisition of a lawful holding without the consent of the mailo owner.

Ground 4: The trial Magistrate erred in law and fact when he used Nathan Kabuye's agreement to determine the purchase of the 2nd kibanja.

Counsel for the appellants argued that under paragraph 4 (b) of the amended plaint, the respondent stated that the late Kavuma Ngomandayi Yosiya purchased part of the suit kibanja from the late Nasani Kabuye on 8th May 1969. That under paragraph 4 (c) of the amended plaint, he states that in 1970 the late Kavuma Yosiya purchased the adjacent kibanja from Katta. Counsel submitted that at page 6 of the judgment the, trial magistrate stated that the plaintiff's evidence is reliable because he has a sales agreement between Ngomandayi Yosiya and Nasani Kabuye, he concluded by stating that this was a gross misdirection of the law and interpretation by the trial Magistrate to determine that the respondent's late father bought the suit bibanja using one agreement.

In reply, Counsel for the respondent stated that paragraph 4(c) of the amended plaint is in respect of the adjacent kibanja purchased from Kata not the suit kibanja for all intent and purpose, the 2nd kibanja was not subject to the suit.

Counsel for the appellants in rejoinder stated that it is clear from the respondent's pleadings that the bibanja for adjudication were two, namely one kibanja allegedly bought from Nasani Kabuye and another allegedly bought from Katta. That it is the two bibanja that were merged according to the respondent's pleadings to create the suit kibanja.

Ground 5: The trial magistrate erred in law and fact when he held that it was an agreed fact Nasani Kabuye was in possession of the kibanja in dispute.

Ground 6: The trial Magistrate erred in law and fact when he held that the defendant/appellants admitted during hearing that Nasani Kabuye existed on the suit land.

In respect to ground 5, Counsel for the appellants argued that on page 6 of the judgment, the trial magistrate stated that it was an agreed fact that Nasani Kabuye was in possession of the kibanja in dispute, which was not true as the 1st appellant informed court that he was planting yams on the part of the kibanja and the remaining part was a forest.

In respect to ground 6, Counsel for the Appellants did not submit on this ground.

Counsel for the respondent in reply jointly submitted on grounds 5 and 6 and stated that all the plaintiff's witnesses alluded to the occupation of Kabuye on the suit land, the fact and as above alluded to must have moved to the conclusion.

Ground 7: The trial Magistrate erred in law and fact when he held that the suit kibanja form part of the estate of the Respondent.

Counsel for the appellants argued in determining this issue, the trial magistrate on page 6 of the judgment stated that the plaintiff's evidence is reliable because he has a sale agreement between Ngomandayi Yosiya and Nasani Kabuye. Counsel reiterated his earlier submission and stated that the trial magistrate cannot legally use one purchase agreement of the kibanja from Nasani Kabuye to determine and conclude the purchase of the 2nd kibanja from Katta. Counsel further stated that the purchase of the suit kibanja in 1969 and 1970 did not follow the legal regime at the time which provided that a transfer without the mailo land owner's consent was a nullity and passed no interest in the transferee and the non- payment of Busulu by an occupant on a mailo land rendered him a trespasser thereon. That without proof of the consent

from the registered owner, the said bibanja could not legally pass to the estate of the late Kavuma Yosiya.

Counsel for the respondent in reply submitted that the 2nd kibanja purchased from Katta was not subject to adjudication as it had no dispute thereon. That under the Busulu and Envujjo law of 1928, the respondent's father was under obligation to pay Busulu to the mailo owner but this could not vitiate a valid sale agreement and failure to pay did not render one's ownership extinguished.

Counsel for the appellants in rejoinder reiterated his earlier submissions and stated that without proof of the consent from the registered owner, the said bibanja could not legally pass to the estate of the late Kavuma Yosiya.

Analysis of Court on Grounds 1, 4, 5, 6 & 7.

In respect to ground 1, both Counsel for the appellants and the respondent agreed in their submissions that the law applicable at the time the purported sale agreement between Nasani Kabuye and the late Kavuma Yosiya was the Busuulu and Envujjo law of 1928. I agree with this submission.

Section 8 of the Busuulu and Envujjo law of 1928 stated that (1) Nothing in this law shall give any person the right to reside upon the land of a mailo owner without first obtaining the consent of the mailo owner upon except -

1. The wife or child of the holder of a Kibanja; or
2. A person who succeeds to a Kibanja in accordance with native custom upon the death of the holder thereof.

(2) Nothing in this law shall give to the holder of a Kibanja the right to transfer or sublet his Kibanja to any other person."

Sections 101 and 102 of the Evidence Act put the burden on the respondent to prove the alleged facts which he failed to do. Counsel for the respondent did not adduce any evidence during the trial in the Magistrates court to prove that the respondent's father got consent of the mailo owner before buying the suit kibanja. I am bound by the authority cited by Counsel of **Kisseka Saku V Seventh Day Adventist Church**

SCCA No. 24 of 1993 where court held that any transfer of bibanja or customary holding without giving notice to the prescribed authority as registered owner renders such transfer void.

I agree with the submission made by Counsel for the appellant that failure to present the consent from the mailo owner was clear proof that the purported sale of the suit kibanja was tainted with illegalities hence void. I am fortified by the decision of court in **Makula International Ltd V His Eminence Cardinal Nsubuga Civil Appeal 04 of 1981** where court held that ''a court of law cannot sanction an illegality once brought to the attention of court it overrides all questions of pleading, including any admission made thereon.''

Furthermore, under the same Busuulu & Envujjo law, the respondent's father was under obligation to pay Busuulu to the mailo owner which he did not do. The respondent did not present any proof of evidence or receipt to show that his father paid any Busuulu to the mailo owner. This court cannot act on mere speculations.

The trial Magistrate did not at any point in his judgment refer to the Busuulu and Envujjo law, 1928 which is clear proof that he failed to evaluate the same. If he had addressed himself to the above laws he would have reached a different conclusion.

In respect to Ground 4, the trial magistrate on page 6 of his judgment relied on the agreement between Nasani Kabuye to determine the purchase of the 2nd kibanja. He stated that the sale agreement presented by the respondent was reliable evidence to prove purchase of the 2nd kibanja.

I have already determined the issue on validity of the sale transaction between Nasani Kabuye and Kavuma Ngomandayi Yowasi in Ground 1 and found the same to be illegal. Therefore, it was wrong for the trial Magistrate to rely on a sale agreement that offended the Busuulu and Envujjo Law of 1928 which was the applicable law at the time.

In respect to Ground 5, the learned trial Magistrate on page 5 of his judgment stated that when he visited locus, the 1st appellant showed them where Nasani Kabuye was residing on the suit kibanja. The learned trial magistrate found Nasani Kabuye in

possession of the said land basing on the sale agreement between him and the respondent's father Ngomandayi Kavuma Yowasi. The said sale agreement has already been declared invalid in both Grounds 1 & 4 for failure to fulfill the requirements that were stipulated in Section 8 of the Busuulu and Envujjo Law which was the applicable law at the time. Therefore, I find that Nasani Kabuye was not in possession of the suit kibanja at the time.

In respect to Ground 6, the Trial Magistrate erred when he held that the appellants admitted during hearing at locus that Nasani Kabuye existed.

The appellants raised this ground in their memorandum of appeal but failed to submit on the same and I wonder why they raised it then. The trial magistrate in his judgment on page 7 stated that the 1st appellant helped them identify that Nasani Kabuye was on the suit land during the locus visit on 17th October 2018. This confirmation is what the learned trial magistrate based on to hold that Nasani Kabuye existed on the land.

It might be true from the judgment and record of proceedings during locus that Nasani Kabuye existed on the suit kibanja at the time but his existence is immaterial as it offended the laws at that time i.e. the Busuulu and Envujjo law considering he did not obtain consent from the land owner and even went ahead and illegally sold it to the respondent's father still without consent of the registered proprietor.

With reference to ground 7, the learned Trial magistrate on page 4 of his judgment held that the suit kibanja forms part of the estate of the respondent. Similarly, to Grounds 1 & 5, the trial magistrate made this finding based on the sale agreement between Nasani Kabuye and Kavuma Ngomandayi Yosiya who is the respondent's father.

I have already resolved the issue of the sale agreement in grounds 1 & 5 where I found the same to be invalid since it contravened the Busulu and Envujjo Laws which were the governing laws at the time. Therefore, the suit kibanja does not form part of the estate of the respondent's father.

Therefore, it is my considered finding that Grounds 1, 4,5,6, & 7 of the appeal are upheld.

I will go ahead and determine Grounds 2 & 3 concurrently as they also involve a similar issue.

Ground 2: The learned trial Magistrate erred in law and fact in holding that limitation would not bar an action based on continued trespass.

Counsel for the appellant argued that the respondent claimed that he was born in 1974 which meant that in 1998 or 1999 when his father requested the 1st appellant to vacate the suit kibanja, the respondent was of age to file a suit which he did not do then but decided to sue the appellant in 2015 which was beyond the 12 years stipulated in the Limitation Act. That the respondent did not plead disability as required by the law. That the trial magistrate misdirected himself while resolving this issue when he relied on the case **of Veronica Nakiyingi V Michael Nsabami CACA No. 44 of 2008** in which the judge held that because the prayer was for a declaratory order and not recovery of land, then limitation cannot be pleaded. Counsel argued that in the instant case, the trial magistrate made an order for vacant possession against the appellants, an order that is tantamount to recovery of land which is barred by S.5 of the Limitation Act.

Counsel for the appellant further submitted that limitation is applicable to all suits in which the claim is for possession of land based on title or ownership i.e. proprietary title as distinct from possessory rights as stipulated in Section 11(1) of the Limitation Act. Counsel cited the case of **FX Miramago V Attorney General [1979] HCB 24** where court held that the period of limitation begins to run against the plaintiff from the time the cause of action accrued until when the suit is actually filed. That in the instant case, the cause of action accrued in 1998 but the suit was filed in 2015, almost 17 years after. That the nature of the right the respondent sought to enforce on the suit were of a proprietary nature and not a possessory nature, therefore court should consider the essence of the cause of action rather than the nomenclature adopted by the parties.

Counsel for the respondent on the other hand submitted that the appellants are concerned of the trespass committed in 1998 and 1999 and therefore the action of 2015 would be barred. Counsel cited the case of **Justine E.M.N Lutaaya Vs Sterling Civil Engineering Company Ltd SSCA No.11 of 2002** where the Supreme court held that the commencement date is also material where, in a continuing tort such as unlawful detention, the duration of the tort is a factor in the assessment of damages in other continuing torts, that date is of little significance, if is outside the time limit, such part of the continuing tort as is within the time limit, is severed and actionable alone, trespass to land is a continuing tort, when unlawful entry on the land is followed by its continuous occupation or exploitation.

Counsel for the respondent further stated that the alternative argument of the current respondent being of age in 1997 or 1998 seems redundant since the respondent's father was alive and had requested the appellant to vacate as also the alternative right to sue after the death of the respondent's father. That the father of the respondent was nonexistent from 2001 to 2015 when letters where granted, a cause of action accrued. He cited the case of **Lubowa & Ors Vs Makerere University SCCA No.2 of 2011** for the notion that a cause of action accrues when a person exists. He concluded by stating that he obtained letters of administration in 2015 and therefore a right to sue accrued and not otherwise.

Counsel for the appellant in rejoinder reiterated his earlier submission and stated that the right to sue was around 1999 but the same right was only exercised by the respondent in 2015, when the 12 years within which to sue had lapsed in line with section 5 of the Limitation Act yet the respondent did not plead any form of disability.

He submitted that since the nature of the rights the respondent sought to enforce were of a proprietary nature rather than of a possessory nature, for all intents, this was an action for recovery of land and the trial magistrate ordered for vacant possession as against the appellants.

Ground 3: The trial Magistrate erred in law and fact, that the appellants are trespassers on the suit land.

Counsel for the appellant argued that the respondent in his evidence stated that the 1st appellant was allowed to cultivate the suit kibanja by the respondent's father which means that the entry of the appellant on the suit kibanja was authorized and hence not unlawful. He stated that even the disputed bibanja do not belong to the respondent having submitted that the same was bought without the consent of the registered owner and the respondent's right to recover the bibanja having been extinguished under the Limitation Act. He faulted the trial Magistrate for making a finding that the appellants are trespassers on the suit bibanja.

In response the respondent's counsel submitted that the entry was lawful when authorized but immediately the entry is called off then it becomes unlawful if it is not adhered to. He referred court to paragraph 4 (f) and 4 (g) of the amended plaint and PW1's cross examination at page 5 and 8 of the proceedings.

Counsel for the appellant in rejoinder stated that the respondent's father having bought the suit kibanja without the consent of the land owner as required by Section 8(1) & (2) of the Busulu and Envujjo law, 1928, the respondent cannot claim lawful ownership of the suit kibanja. Hence the appellants cannot trespass on the suit kibanja which the respondent's father illegally purported to acquire.

Analysis of court on Grounds 2 & 3.

It is the case of the appellant that the action was time barred under the provisions in the Limitation act as it was commenced 17 years after. The learned trial magistrate on page 4 of his judgment stated that ''it is trite law that trespass on land is a continuous tort which implies that each day from 1998 & 1999 the 1st appellant was committing an act of trespass which isn't barred by limitation.'' With due respect to the learned trial, magistrate I disagree with this finding.

The law on limitation of actions to recover land is provided for in Section 5 of the Limitation Act which states that ''No action shall be brought by any person to recover any land after the expiration of twelve years from the date on which the right of

action accrued to him or her or, if it first accrued to some person through whom he or she claims, to that person.''

The respondent stated that between 1998 & 1999, his father requested the 1st appellant to vacate the suit land but he refused. The respondent further stated in cross examination during trial in the lower court that his father went ahead and reported the appellant to the LC1 of the area. This allegation was never supported with any proof of evidence to show that the respondent's father had reported to the LC1 and this makes it baseless. Even if it were true that the respondent's father reported to the LC1 and his complaint was never solved, he would have pursued a legal remedy in the Courts of law but he chose not from 1998 to 2002 when he died. I also wish to point out that by the time the respondent lost his father in 2002, he was of majority age and he could bring a suit as a beneficiary despite having no letters of administration at the time.

I am fortified by the case **of Israel Kabwa V Martin Banobwa SCCA No. 52 0f 1997 where Supreme** court held that a beneficiary of an Intestate doesn't need letters of administration to sue on an estate. The respondent however chose not to do so till 2017 which is 17 years after which is past the limitation time.

Counsel for the respondent stated that trespass can be a continuous tort, I agree with him but it can only be considered continuous if the owner of the land sought a legal remedy in time that was ignored by the trespasser. However, this is different in this case as the respondent's father and the respondent chose to sit on their right and did not pursue any legal remedy from 1998 when the issue on the suit land first arose. The respondent cannot claim that this trespass was continuous, Equity aids the vigilant. Therefore, I find that Section 5 of the Limitation Act applied in this case and the suit was already barred by limitation.

In respect to Ground 3, the learned trial magistrate on page 8 of his judgment held that the appellants are trespassers on the suit kibanja.

Trespass to land was defined in the Supreme Court decision of **Lutaaya v Sterling Civil Engineering Co. Ltd C.A NO.11 of 2011** where Mulenga JSC at page 8 held that;

"Trespass to land occurs when a person makes an unauthorized entry upon land and thereby interferes or portends to interfere, with another person's lawful possession of that land; it is committed against a person in possession. Needless to say, the tort of trespass to land is committed not against the land but against the person who is in actual and constructive possession of the land."

The learned trial magistrate's finding was based on the assumption that there was a lawful sale agreement and transaction between the respondent's father Kavuma Ngomandayi Yosiya and Nasani Kabuye. I have already deliberated on this issue in grounds 4,5 & 7 of the appeal and found the above sale agreement to be invalid as it contravened Section 8 of the Busuulu & Envujjo law that was the governing law then. Therefore, the appellants cannot be trespassers on land that was illegally sold to the respondent.

Furthermore, it is clear from Section 5 of the Limitation Act that no suit for recovery of land can be brought after the expiration of 12 years from the date which the cause of action arose. It is therefore my finding that the appellants are not trespassers on the suit kibanja by virtue of the fact that the suit was brought beyond 12 years and it was barred by limitation.

Therefore, in light of my findings, I similarly uphold Grounds 2 & 3.

Ground 8: The trial magistrate erred in law and fact when he held that the sale transaction between the appellants was illegal.

Counsel for the appellants argued that the trial magistrate did not adduce any fact, reasoning on the issue of illegalities of the purchase agreement between the appellants. That the magistrate should have weighed the evidence adduced by the appellants as against that adduced by the respondents which was never done. Counsel argued that it was erroneous for the trial magistrate to rule that the sale transaction between the appellants was null and void yet the 1st appellant had authority from the care taker of the registered owner of the land to sell the bibanja.

In reply, Counsel for the respondent submitted that the appellants during trial in the lower court tendered in the land title in the names of Isaya Balwana without power of

attorney authorizing the 1st appellant to deal with the suit land. Therefore, court could not grant the same to the appellant since this is registered land.

In rejoinder, Counsel for the appellant stated that the respondent in his reply has not provided proof of consent from the registered owner to warrant them to make any other rejoinder to this reply. That without consent of the registered owner, the respondent's father could not legally own the suit bibanja.

Analysis of Court on Ground 8.

The trial magistrate in his judgment held that the transaction between the appellants was illegal and his finding was based on the fact that the appellants did not present any evidence of authority to show that the 1st appellant was appointed care taker of the land where the suit kibanja is located and also authorized to deal with the suit land as claimed.

Counsel for the 1st appellant's during trial in the lower as shown on page 22 of the record of proceedings without any objection from the respondent adduced a letter dated 20th July 2005 from the lineal head of the Ngeye clan appointing him as caretaker and also authorizing the 1st appellant to sell bibanja on the suit land to anyone who had interest. The same was corroborated by DW5 a one Kakande Stephen, the lineal head of Isaya Balwana who is the registered proprietor of the suit land. The letter was marked as evidence during trial in the lower court and it was never objected to by the respondent which makes it sufficient evidence to prove that the 1st appellant had authority from the registered proprietor to enter into a sale transaction with the 2nd appellant.

Therefore, I find that the sale transaction between the appellants was legally done. Similarly ground 8 of this appeal is upheld.

Before I take leave of this matter, I respectfully condemn the way the learned trial magistrate handled the matter, the record of proceedings was disorganized, there were so many procedural irregularities and all this made his findings questionable.

This appeal therefore succeeds on all grounds. The respondent must pay costs to the appellants both in this court and in the lower court.

I so order.

Right of Appeal explained.

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Oyuko Anthony Ojok

Judge

21/03/2022