

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT FORT PORTAL**  
**HCT – LD – CA – 006 OF 2019**  
**(ARISING FROM KYEGEGWA LD – CS – 019 OF 2015)**

5 **KIIZA SANASIYO ::::::::::::::::::::::::::::::::::::::::::::::::::::::: APPELLANT**  
**VERSUS**

**1. IRUMBA FRANCIS**

**2. KABALEGA PATRICK ::::::::::::::::::::::::::::::::::::::::::::::: RESPONDENTS**

**BEFORE: HON. JUSTICE VINCENT WAGONA**

10 **JUDGMENT**

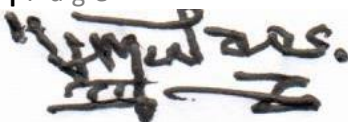
**Introduction:**

The appellant being aggrieved with the judgment of His Worship Byamugisha Derick, Magistrate Grade at Kyegegwa Chief Magistrate’s Court lodged this appeal asking court to set aside the judgment and the orders therein and issue a permanent injunction, general damages and costs.

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**Grounds of appeal:**

- 1. The trial Magistrate erred in law and fact when he failed to consider the evidence of the appellant’s witnesses which clearly indicated that the piece of land in dispute belongs to the appellant.
  - 2. The trial Magistrate erred in law and fact when he ignored the will left by the appellant’s father that was submitted in court by the appellant yet the same will is the one that describes the boundaries of the suit land each child’s share of the land.
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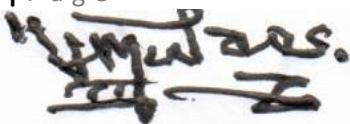
**Background:**

The respondents filed Civil Suit No. 18 of 2015 against the appellant seeking a permanent injunction restraining the appellant from harassing, intimidating and evicting them from land at Mutoma Butoke Village, Kibuye Parish, Kabweza Sub County, Kyegegwa District and interrupting with the respondent’s use of the same, a declaration that the suit land formed part of the estate of the late Nansanari Kyeyune, a declaration that he plaintiffs are beneficiaries under the said estate, general damages and costs of the suit.

10 The respondents jointly averred that the suit land formerly belonged to their late father. Nansanari Kyeyune who died intestate in 1977 and the appellant was appointed and installed as a customary heir. That all children remained in occupation and use of land that formerly belonged to the late Kyeyune and that the appellant later attempted to evict them from the suit land.

15 The appellant on the other hand denied the allegations by the respondents and contended that the 2<sup>nd</sup> respondent was not his biological brother as he was produced long after the death of Nansanari Kyeyune and as such he was not entitled to any share from his late father’s estate. That his late father Nansanari  
20 Kyeyune died testate and left a valid will.

The appellant asserted that some time back in 2005, he gave land to the 1<sup>st</sup> respondent as his share from the estate but he sold it to one Mugisha Augustus. That on 26<sup>th</sup> November 2005, the appellant again out of love allowed the 1<sup>st</sup>  
25 respondent to temporarily use his land and an agreement was made to that effect.



That as such the 1<sup>st</sup> Respondent was using the land as a licensee with permission from their mother and the appellant with no proprietary interest; that the suit land was his and as such he had the right to evict the respondents from the same. That the Respondents had not suffered any damages and thus asked court to dismiss the  
5 suit with costs.

The trial Magistrate after due consideration of the evidence and the observations at locus made judgment in favour of the respondents declaring the suit land as part of the estate of the late Nansanari Kyeyune and the Respondents as beneficiaries  
10 under the estate, a declaration that all the beneficiaries under the estate were entitled to a share out of the estate, a permanent injunction stopping the appellant from evicting the respondents and other beneficiaries from the estate, general damages of Ugx 2,000,000/=, costs and interests on costs at 10%. The appellant being aggrieved with the said orders lodged the appeal at hand.

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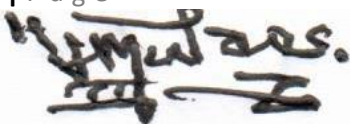
### **Representation and hearing:**

The appellant was self-represented. Court fixed the case for mention and none of the parties attended. I thus proceeded to determine the appeal on the basis of the memorandum of appeal and the record of proceedings of the lower court.

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### **Duty of the first appellate Court:**

This being a first appeal, my duty involves subjecting the evidence at trial to a fresh and exhaustive scrutiny and a re-appraisal of all the evidence on record before reaching my own decision. I will give due regard to the fact that I did not  
25 see the witnesses testify to observe their demeanor. I will thus weigh the evidence

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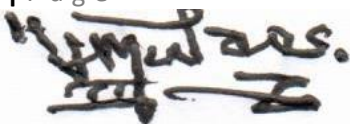
and the contradictions therein to draw my own inference. (See **Fr. Nanensio Begumisa & 3 others Vs. Eric Tiberuga, SCCA No. 17 of 2014 [2004] KALR 236**)

5 **CONSIDERATION OF THE APPEAL:**

The appellant's appeal is largely hinged on the manner in which the trial magistrate evaluated the evidence specifically that the evidence of the appellant's witnesses was not considered and the will which was presented and admitted. I will consider  
10 both grounds under one issue being; whether or not the trial magistrate rightly evaluated the evidence on record in arriving at the finding contested by the appellant.

Section 101 and 102 shoulders the burden of proof in civil cases upon the plaintiff.  
15 In this case the respondents had the legal burden to prove that the land in issue formed part of the estate of the late Nansanari Kyeyune.

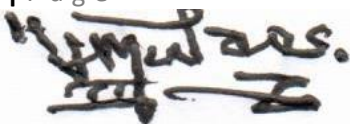
The 1<sup>st</sup> respondent (PW1) testified that the appellant was his blood brother and the 1<sup>st</sup> respondent chased him and the 2<sup>nd</sup> respondent from the suit land together with  
20 his sister called Tedora Nanyonga. That the suit land was left by his late father for all the family members the appellant inclusive. That the appellant was the heir since the respondents were still young. That his father died in 1977 and left the 2<sup>nd</sup> respondent in the womb and that they were occupying the suit land but the appellant was chasing them away and threatening to kill them. That the appellant  
25 stays on the upper part but now wanted to chase the respondents. That he reported



the case to the L.C and police who failed to handle the matter. That no one had letters of administration to the estate and the land formed part of the estate of their late father. In cross examination he stated that he inherited a share on the suit land. That the appellant did not give him any land. That what he sold was his share and the appellant also signed. That the appellant also sold part of his share and forced him to sign the agreement of sale. That in the will their late father left land for the family, he gave out other properties like goats and cows and not the land.

PW1's evidence was corroborated by that of the 2<sup>nd</sup> respondent (PW2) who testified that the defendant was chasing them from the suit. That he was born after their father had died but lived with his mother on the suit land. That when he grew up, his mother showed him land where to build a house and he put up a permanent house thereon and other activities and now the defendant was chasing him. The defendant did not cross examine the 2<sup>nd</sup> respondent on his evidence and as such it is taken to be truthful.

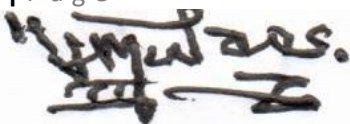
PW3 (Adah Kasaku), the mother to both the appellant and the respondents testified that the appellant was chasing away his brothers; that the suit land belonged to her husband Kyeyune who was a father to the appellant. That she had never distributed the estate and that by defendant chasing the respondents it implied that he was also chasing her away. In cross examination, she stated that her husband left her in the suit land when he died. PW4 (Tedora Nanyonga), the elder sister to both the appellant and the respondents also confirmed to court that the appellant was chasing the respondents from the suit land that belonged to their late father



Nasanari Kyeyune. That when he fell sick, she asked for land from the appellant and she returned to use it but the defendant refused saying she had no share there.

5 PW5 (Mugisa Ema), the area vice chairperson of Butooke L.CI informed court that he knew the appellant and the respondents as brothers and that the dispute was over family land. That he was called to settle the dispute because the defendant was chasing away his brothers. PW5 told court that as L.C.1 court they found that the appellant had never given the respondents their share and decided that the defendant could not chase them. PW5 stated that the appellant had sold a piece of  
10 land forming part of the estate and that the suit land belonged to the late Nasanari Kyeyune, the father to the parties. That he had looked at the will and it was not giving any one land. In cross examination he stated that they decided the case and the appellant refused and chased them and said he would handle the case himself.

15 On the other hand, the appellant who testified as DW1 stated that the respondents were his brothers but the 2<sup>nd</sup> respondent was his step brother as they did not share a father. He contended that he gave land to the respondents and even made agreements for them and that his mother was still living in the house his father left. That he also gave land to their sister Tedora and made an agreement for her and  
20 that all the other sisters died. The appellant contended that the land in dispute was his and the respondents wanted to grab it but that he had no document of ownership. That he had the will of his father and in the will the suit land is not mentioned; that the will mentions him as heir (Exhibit DEXL and its translation Exhibit DEXL II). In cross examination he stated that the will was kept by



Lawrence Bitamazire and it was read by the late Micheal Ndolerire in the presence of Naiga Musoline and Kirungi Yosam.

5 DW2 (Yosam Kirungi) stated that he knew the will was read and that is when he knew the late distributed his properties. That the will was saying the appellant was the heir. That the appellant was given the matrimonial home and cows as a heir and caretaker and that the family members have never sat to distribute the properties but the appellant had sold some. That he never heard that the 2<sup>nd</sup> plaintiff was given land.

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**Analysis of the evidence:**

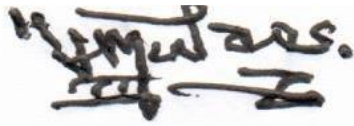
Regarding the validity of a will Section 50 of the Succession Act provides for the manner of execution of a will and requires that the will shall be attested to by two or more witnesses, each of whom must have seen the testator sign or affix his or her mark to the will and each of the witnesses must sign the will in the presence of 15 the testator. In this case the will bears no witnesses and it was not attested to as required. On this basis, I find that the late Kyeyune died intestate having left no valid will.

20 The evidence of the respondents clearly established that the suit land was part of the estate of the late Kyeyune and that it had never been distributed. In the purported will, the late never distributed the suit land. DW2's evidence supports the respondents that the suit land belonged to the late Kyeyune and that it had never been distributed among the beneficiaries. The appellant never presented in

court any evidence in support of his lawful acquisition and ownership of the suit land. He stated that he was only a caretaker.

I find that the trial magistrate properly evaluated the evidence on record and  
5 reached the correct decision. Both grounds of appeal fail. This appeal therefore fails and it is accordingly dismissed with no orders as to costs.

I so order



10 Vincent Wagona  
**High Court Judge**  
**FORT-PORTAL**

**DATE: 31/8/23**

