

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT ARUA**  
**CIVIL APPEAL NO. 0010 OF 2019**

*(Arising from the Judgment of H/W Nsaire Proscovia, Magistrate Grade 1 in Moyo Civil Suit No. 002 of 2017)*

5                   **ASIA SAFI** ..... **APPELLANT**

**VERSUS**

**AYIGA ELIAS** ..... **RESPONDENT**

**BEFORE: Hon. Justice Isah Serunkuma**

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**JUDGEMENT**

**Background**

15   The appellant instituted a suit against the respondent seeking for a declaration that the appellant is the lawful owner of the suit land, an order of grant of vacant possession, demolition and eviction order. The appellant’s case was that the appellant owned the suit land as her marital property since 1989 and after the death of her husband Safi Gingo in 2007, she has been living on the land with her children to date.

20   For the respondent, it was alleged that the respondent is a customary owner of the suit land and that the suit land belonged to his grandparents, the late Imba Kenyi, who was also given the land in 1946 by their Rendike chief. During the insurgency in Moyo, Moyo Town Council allocated some land for temporary settlement for those who did not go into exile. Safi Gingo, a friend of the appellant did not go into exile and was allocated the suit land temporarily and left the land for the appellant.

25   The trial Magistrate dismissed the suit with costs to the respondent and declared the respondent the lawful owner. The appellant, being dissatisfied with the decision of the Magistrate Grade 1, filed an appeal to this court on the following grounds;

1. The learned trial Magistrate erred in law when she found that the respondents (defendants) are customary owners of the suit land when customary ownership of land in urban areas was by law abolished.
2. The learned trial Magistrate erred in law and fact by failing to evaluate the evidence as a whole thereby arriving at an erroneous decision.
3. The learned trial Magistrate erred in law and fact when she held that the appellant's husband from whom she derives title was a licensee.

### **Representation**

At the hearing of the appeal, Counsel Kepo Alfred appeared for the appellant while Ezadri Michael Onyafia appeared for the respondent. Both parties filed written submissions.

### **Appellant's submissions**

Counsel submitted that the suit land had been allocated to the appellant's husband in 1986 by Moyo Town Council under the Public Lands Act which was later repealed by the Land Reform Decree. That the suit land formed part of public land subject to the Public Lands Act which abolished customary ownership of land in urban areas. When the land was allocated to the appellant's husband, it extinguished all customary interests of the respondent's father on the suit land.

Counsel argued that even though the respondents were found to be customary owners of the land, the appellant's husband was a bonafide occupant under Section 29 (2) (b) of the Land Act. Moyo Town Council is an agent of government and had authority to bring the appellant as bonafide occupant whose title cannot be impeached.

Counsel argued that the appellant is not a licensee under Section 29(2) (b) of the Land Act. A licensee has authority to enter another's land for a specific purpose and does not create interests in land. Counsel reiterated that the suit land was allocated to the

appellant's husband by Moyo Town Council in 1986 and they lived on the land up to 2014 when the respondent started claiming the land. Counsel relied on **Article 237(8)** of the **Constitution** and **Kampala Chemical Distributors Vs National Housing and Construction Corporation; S.C.C.A No. 2 of 2007** in which it was held that a  
5 bonafide occupant was given security of tenure and his interest could not be alienated except as provided by law.

### **Respondent's submissions**

Counsel submitted that the learned trial Judge rightly held that the respondent is the customary owner of the suit land. According to the Public Lands Act 1969, the Uganda  
10 Land Commission had the mandate to grant leases of designated areas to urban authorities. The grant of statutory leases did not take away the customary interests of the customary owners of the land. The suit land was temporarily allocated to the husband of the appellant by Moyo Town Council who left the land in 1990 and never used it again till his death in 2007. Further, that the appellant does not have locus standi  
15 to commence such a suit for reasons that the land had been temporarily allocated to her husband who later moved back to his ancestral home in Adjumani.

Counsel submitted that the suit land was given to the respondent's grandfather in 1940s and it was inherited by the respondent's father. In 1979, the respondent and his family went into exile in Sudan and when they returned, they found Safi Jingo on the land. On  
20 inquiry, he said he had been allocated the land temporarily and would leave when the situation stabilizes and by 1990, Safi Jingo had left the land and abandoned his wife.

Counsel argued that the appellant's husband was a licensee who had been allowed to be on the land by the respondent's grandfather. That the appellant was only left on the land by the father of the respondent so that she would be compensated for the grass  
25 thatched houses thereon but the respondent turned down all invitations for a meeting by the respondent.

## Consideration of the appeal

I have carefully studied the court record, considered the submissions of both counsel, the law applicable and the authorities cited in the determination of this appeal.

5 This is a first appeal and the principles on first appeal are as follows:

On a first appeal, the law enjoins this court to review and re-evaluate the evidence as a whole, closely scrutinize it, draw its own inferences, and come to its conclusion on the matter. This duty is recognized in **Rule 30 (i) (a)** of the Rules of this Court.

*30. Power to reappraise evidence and to take additional evidence.*

10 *(1) On any appeal from a decision of the High Court acting in the exercise of its original jurisdiction, the court may—*

*(a) reappraise the evidence and draw inferences of fact; and*

*(b) in its discretion, for sufficient reason, take additional evidence or direct that additional evidence be taken by the trial court or by a commissioner.*

15 The cases of **Pandya v R [1957] EA 336** and **Kifamunte Henry v Uganda SCCA No. 10 of 1997** have also succinctly re-stated this principle. The main issue for this court to determine in this appeal is the issue of ownership of the suit land.

The appellant's case is that she got married to Safi Gingo and the land was allocated to her husband in 1986 by Moyo Town Council. That in 2014, Moyo Town Council  
20 summoned people living within the town council and authorized them to develop the land and that whoever could not put up standard structures was given the option of disposing of the land. That Safi Gingo was given two plots and that the appellant's attempts to dispose of the same have been interrupted by the respondent. She stated

that her husband gave her a certified copy of the register book of Moyo Town Council for temporary occupancy.

For the respondent, DW1 testified that their customary land was inherited by the grandfather of the respondent. A war broke out in 1979 and the respondent's grandfather was among the people that went into exile. When Paulino Inyani, the respondent's grandfather, returned in 1987, he found a man called Safi Gingo settled on the land and he said he had been allocated the land temporarily and would leave the land when political stability was restored. Later, Safi Gingo left the land in 1990 and went to Adjumani from where he died in 2005. However, the appellant was still staying on the land.

DW2, Goi Goi Maurino testified that he acquired land in Moyo in 1958 and on acquiring his land, the respondent's father was already staying on the disputed land together with his family and upon demise, the respondent inherited the land from him. PW1 stated that her husband gave her a document pertaining to the disputed land but no such document was produced in court. From the evidence on record, it appears to me that the land was owned and occupied by the respondent's grandfather before the family went into exile in 1979. On returning in 1987, Paulino Inyani found a man called Safi Gingo, the appellant's husband had been temporarily allocated the land by Moyo Town Council. No evidence was led as to the procedure for allocation of the land by the town council. The respondent's grandfather let the appellant's husband stay on the land till he left for Adjumani in 1990, but left the wife on the suit land till date.

Owing to the above, I find no reason to disagree with the finding of the trial Magistrate that the appellant is a licensee on the suit land. A license is defined to be '*... a permission given by the occupier of land which without creating any interest in land, allows the licensee to do some act which would otherwise be a trespass*'. See **Thomas Vs Sorrell (1673) Vaugh. 330 at pg. 351** quoted in Megarry's Manual of the Law of Real Property 6<sup>th</sup> Edition by David

**J. Hayton at pg. 370.** A license grants permission to use another's land for the authorised purpose and effectively prevents that act from being a trespass. It is therefore my considered view that the appellant's husband was a licensee on the suit land whose right extinguished when he left the land in 1990.

5 I must note that the appellant has brought this appeal and the civil suit in the Magistrates Court without letters of administration of the estate of her late husband. If Moyo Town Council had in fact allocated the suit land to the appellant's husband, the appellant would have to first obtain letters of administration before bringing this suit to court.

I find no merit in this appeal and accordingly dismiss it with costs to the respondent.

10 The respondent is hereby granted vacant possession of the suit land.

**I so order.**

**Dated and Delivered this 31st day of March 2023.**

15 .....  
**Isah Serunkuma**  
**JUDGE**

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