

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT JINJA**

CRIMINAL APPEAL NO. 006 OF 2011

5 (Arising from Mukono Criminal Case No. 564/2009)

KIMULI STEPHEN

SEMBWA ::: APPELLANT

10

VERSUS

**UGANDA :::
::::: RESPONDENT**

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BEFORE: THE HON. JUSTICE GODFREY NAMUNDI

JUDGMENT

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The Appellant filed this appeal against the conviction and sentence by the Magistrate Grade 1, Ms. Ruth Nabaasa on Charges of Criminal Trespass, contrary to Section 302 (a) of the penal Code Act.

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It is based on 4 grounds of Appeal namely:

1. The learned trial magistrate erred in law and fact when she failed to properly evaluate the evidence hence reached a wrong decision.

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2. The learned trial magistrate erred in law and fact in deciding that PW1 was the owner in lawful possession, not taking into account her dishonest dealings in purchase which were tainted with fraud.

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3. The trial magistrate erred in law and fact when she failed to consider the fact that the convict was in lawful occupation of the land as the Administrator and the land had not been distributed by the beneficiaries.

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4. The trial magistrate erred in law and fact when she proceeded to hear the matter and convicted the Appellant when ownership was still in contention in the High Court.

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This Court as a first Appellate Court from Judgments of Magistrate Grade 1 and Chief Magistrate has the mandate to subject the evidence before the lower Court to fresh scrutiny, and may come up with its own findings. **(Pandya**
20 **Vrs. R (1957) EA. 336).** The Court however has the disadvantage of not having observed the demeanour of the witnesses **(Also Uganda Vrs. Nandaula).**

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I also observe that in cases of Criminal Trespass, the prosecution must prove the following ingredients:

1. Entry into/upon land in possession of the complainant.

2. Entry by the accused.
3. Entry with intention to annoy the complainant.

The proof must be beyond reasonable doubt and the burden
5 to do so does not shift.

Ground No. 1:

It is the contention of the Appellant that the offence was not
proved. That there was no evidence that the complainant
10 was in possession.

That instead, it is the Appellant who was in occupation and
has been using the land since the death of their father.
They rely on Section 302 (2) P.C which looks at who is in
15 actual possession.

In reply, the learned State Attorney Kulusum Mariam
submitted that the trial magistrate properly relied on the
evidence.

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The complainant was in possession. She fenced it off when
she bought it. The accused/Appellant was found slashing the
land without the consent of the complainant.

While the complainant had Title and Agreements of sale, the accused had no Certificate of Title.

I have considered the evidence on record and submissions.

5

What is clear on record is that the complainant had a Certificate of Title. She had fenced off the suit land.

10 The accused was found slashing the same without consent of the complainant. All these were born out by the evidence of PW2, while PW3 and PW4 provided proof of ownership by the complainant.

15 On Ground No. 1 alone, I find that all the ingredients of the offence were proved to the expected standard.

Ground No. 2:

20 It was submitted that the magistrate should have taken into account the dishonest and fraudulent actions of PW1. That she bought fully knowing that the Appellant was in possession. That she surveyed the land with the assistance of security personnel.

In reply, it was submitted for the prosecution that the Title has never been revoked and that the Appellant was not in possession.

- 5 The record in the lower Court reveals that the dispute was over 2 different pieces of land with different titles.

These were 2 different Estates as per the evidence of PW3 and PW4.

10

The accused/Appellant had no proof of interest in the Estate from which the complainant acquired interest.

15 A further observation by this Court is that these aspects of this case are really outside the requirements for proving a case of Criminal Trespass. The disputes over the Estates should have been resolved in Civil Court proceedings.

Grounds No. 3 and 4:

- 20 I have also observed the arguments in respect of Grounds 3 and 4 of the Appeal.

These are matters that should be resolved in Civil Court proceedings. I am satisfied that Ground No. 1 in this Appeal

adequately covered the requirements of proving a case of Criminal Trespass.

Grounds No. 3 and 4 must also fail.

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Counsel for the Appellant tried to smuggle into these proceedings a 5th Ground. This was not in the Memorandum of Appeal. There was no leave of Court sought to amend the Memorandum of Appeal. That Ground cannot stand. It is

10 dismissed as having no basis.

This Appeal is dismissed for lack of merits. The Judgment of the lower Court is upheld. The conviction and sentence are upheld.

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Godfrey Namundi

JUDGE

01/04/2015

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01/04/2015:

Birungi for State.

Appellant present

5 Court: Judgment read.

Godfrey Namundi

JUDGE

10 **01/04/2015**