

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT MASINDI
CRIMINAL APPEAL NO.033 OF 2014

(Arising From Criminal Case No.696 of 2013)

ANATOLE RUGIREITIMA:..... APPELLANT

VERSUS

UGANDA:..... RESPONDENT

Before: Hon. Justice Byaruhanga Jesse Rugyema

JUDGMENT

[1] This is an appeal from the decision of the Chief Magistrate Hoima delivered at Hoima on the 28/11/2014.

Brief facts of the appeal

[2] The accused person was charged with the offence of **Forcible detainer C/ss 78 and 22 PCA**. It is alleged that between the months of February and December 2013 at Kacungiro village in Hoima District, the accused person being in actual possession of land without color of right, held possession of it in a manner that was likely to cause a breach of peace against **Pastor Kyebambe Stephen** (Kingdom official of Bunyoro Kitara) who was entitled by law to the possession of the said land.

[3] The accused person pleaded not guilty to the offence. The prosecution case was that by letter dated 3/1/2013, the PPS to the Omukama (of Bunyoro Kitara Kingdom) a one **Yolamu Nsambi** permitted and or authorized the complainant **Omubiito Stephen Kyebambe** who also doubles as a pastor to occupy and develop his estate at Kacungiru village, Kimogozi in Buhimba s/county Hoima District. The estate is on the cultural site of the Bunyoro-Kitara Kingdom.

[4] When the complainant, who is the 4th grandson of the late **King Kabalega** and therefore a prince in Bunyoro-Kitara Kingdom went to the cultural site in question in December 2013, he met resistance from the accused who had put a gate to restrain anyone from accessing the site that had come for the purpose, specifically to establish a school

thereon. The matter was eventually reported to police upon which the accused was arrested and consequently charged with the present charge of Forcible detainer.

- [5] On the other hand, the accused/convict claimed that the land in question which measures 150 acres, located at Kacungiro village belonged to his uncle a one **Eriya Bakwasa** who purchased the same from the kingdom of Bunyoro in 1943. That the said **Eriya Bakwasa** gave him the land which he occupied and grazed animals thereon. That in addition, he had purchased another piece of land from a one **Shaban Rwejunika** who had inherited it from his late father a one **Asuman Nyakwabubengura** and that he fenced the entire land with barbed wires to prevent his cattle from trespassing. He tendered in evidence a certificate of title where he and 4 others are proprietors in respect of 22 hectares of land. The other co-registered proprietors were the accused's children.
- [6] The trial Magistrate on his part found that the accused's certificate of title came into being on 16/7/2014 during the hearing of the case and therefore concluded that the certificate of title could not confer upon the accused rights over the land which he did not have by the end of December 2013 when the dispute arose. That the certificate of title could not work retrospectively and therefore, by virtue of the evidence of cultural sites like wells on the land as found by **D/Insp.Ivudia Eriga William** (PW6) where some rituals are always conducted, the land in issue belonged to the kingdom as it contained cultural sites which could not be owned by an individual like the accused. He found the accused guilty of the offence of **Forcible detainer C/ss 78 & 22 PCA** and convicted him accordingly.
- [7] The accused being dissatisfied with the decision of the trial Magistrate filed the present appeal on the following grounds;
1. *That the learned trial Magistrate erred in law and fact when he failed to properly evaluate the evidence and thereby arrived at a wrong decision that the accused were guilty of the offence charged.*
 2. *That the learned trial Magistrate erred in law and fact when he found that the accused were guilty of the offence of forcible detainer without considering the defences available to the accused.*

[8] On 28/4/22 when the appeal came up for hearing, there was no body for the Respondent. Court however, gave timelines for parties to file their respective submissions in the presence of counsel for the Appellants who was enjoined to serve the timelines upon the Respondent. Neither the Appellant nor the Respondent complied with the time lines given. There is no evidence on record that the time lines were served upon the Respondent. It appears the Appellant lost interest in the appeal. In the premises, the appeal is accordingly dismissed.

Dated at Masindi this 14th day of **June, 2022.**

.....
Byaruhanga Jesse Ruggyema
JUDGE.