

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
LAND DIVISION

HCT-00-LD-CA-0014-2013
(From Mengo Chief Magistrates Court
Civil Suit No. 758 of 2011)

MUKODHA HARRIET ::::::::::::::::::::::::::::::::::::::::::::::::::::::: APPELLANT

VERSUS

NAIRUBI ANGELLA ::::::::::::::::::::::::::::::::::::::::::::::::::::::: RESPONDENT

Before: The Honourable Mr. Justice J. W. Kwesiga

JUDGMENT

The Respondent sued the Appellant in Mengo Chief Magistrates Court and in the Amended plaint she sought Declaratory reliefs arising from the following brief facts:-

That the Appellant and the Respondents who are biological sisters are alleged (in the plaint) jointly purchased a Plot on Rubaga Road, Serwanga Road Kampala and a shop, No. KCC 39 at City Plaza, Kiyembe Lane and a dispute arose as to ownership. The trial Court made a Judgment delivered on 25th February 2013 and Decreed as follows:-

1. That the Plaintiff and Defendant co-own property at Rubaga Road, Serwanga Zone, Kampala District in equal shares.

2. That the Plaintiff be given and is hereby given (3) three rooms which are on her side out of the seven (7) rooms at Rubaga Road, Serwanga Zone, Kampala District.
3. No damages awarded.
4. Costs of the suit awarded to the Plaintiff.

The Appellant (Defendant) was dissatisfied and filed this appeal with the following grounds of appeal:-

1. That the learned trial Magistrate Grade I erred in law and fact when he failed to evaluate the whole evidence and came to a wrong decision.
2. The learned trial Magistrate erred in law and in fact when he refused to receive and record evidence of witnesses for the Appellant and decided the case in a biased manner.
3. The learned trial Magistrate erred in law and fact when he sent the two parties for a clan meeting and refused to consider the report of the clan and thereby occasioned a miscarriage of justice.
4. The learned trial Magistrate erred in law and fact and caused a mistrial when he refused the Appellant's plea to get legal representation and caused miscarriage of justice.

The obligation of this Court as a first appellate Court is to evaluate the evidence on record, thus conducting a retrial and arrive at its own conclusion.

From the outset I must observe that the proceedings, part of the record of appeal was so badly written in such bad English that it is difficult to follow. The sentences are so disjointed in some parts incomplete and the story does not properly come out. It is difficult to tell whether this is what the trial Magistrate recorded or whether the whole confused record was as a result of bad typing. These typed proceedings appear not signed or certified as required by the practice of Court and no doubt these were not proof read to confirm that this is a true record of the proceedings or evidence to be evaluated by this Court on appeal.

The bad language that runs throughout the proceedings is exemplified by part of the trial Magistrate's ruling refusing one of the parties the opportunity to engage services of an Advocate.

I will extract part of this ruling to show how bad the proceedings are recorded:-

"I have heard the Summons and Counsel Birungi for the Plaintiff that Court succeed proceed to hear the suit with Court the Defendant Counsel I have declares considered her reasoning for this application."

It would be dangerous to base any Judgment on this type of record. It leaves Court to speculate what the Magistrate was trying to say. This is a typical case that shows a miscarriage of justice. It is difficult for this Court to rely on this type of record to analyse the evidence and make conclusion for the following reasons:-

(a) The language in which the proceedings are recorded is so disjointed and incapable of being understood.

(b) The proceedings and Judgment were typed but not signed or certified as a true record of the trial Court.

(c) There is no systematic recording of testimony of the witnesses, in understandable language and there are no particulars of witnesses, no evidence showing what is evidence in Chief and evidence in cross-examination.

(d) There is no clear reasons to justify why the trial Magistrate denied one of the parties the right to be represented when she sought to engage a lawyer after being let down by the first lawyer she had engaged.

In my view the trial Court did not observe the principles of fair trial which include allowing each party reasonable opportunity to prepare and present his/her case.

In view of the above this was a mistrial as a whole and a miscarriage of justice was occasioned to the Appellant. This appeal is hereby allowed. The whole of the trial Magistrate's Judgment and decree are now set aside and a retrial is ordered before another Magistrate.

The success of the appeal is found on errors of the judicial officer who presided over the trial and the merits of the parties' respective cases have not been adjudicated, therefore it would not be fair to condemn any of the parties to costs.

I order that each party be responsible for her costs in the Low Court and in this appeal.

Dated at Kampala this 3rd day of October, 2014.

J. W. KWESIGA

JUDGE

Delivered in the presence of:-

Ms. Shiella Birungi for Respondent.

Respondent is in Court.

Appellant absent.

Mr. William Bwayo Court Clerk.