

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

CIVIL APPEAL NO. 58 OF 2014
(FROM MAKINDYE CIVIL SUIT NO. 18 OF 2008)

1. NAWATI SARAH }
2. KAFEERO MUSA } ::::::::::::::::::::::::::::::::::: APPELLANTS

VERSUS

AISHA NAKAMANYA ::::::::::::::::::::::::::::::::::: RESPONDENT

Before: Hon. Mr. Justice J. W. Kwesiga

JUDGMENT

This appeal arises from the decision of Her Worship, ESTA NAMBAYO, the Chief Magistrate of Makindye. The original suit was commenced as a claim before Kampala district Land Tribunal Claim No. 127 of 2005. The record shows that it was subsequently given a Civil Suit No.18 of 2008 after the Land Tribunal stopped functioning.

The Plaintiff/Respondent sued the Defendants/Appellants as a beneficiary of the Estate of Late AZIDAH ZAWEDDE formerly of NKERE Zone, Makindye, Kampala. She alleged that the suit land belonged to her mother also the 1st Defendant's mother which had been purchased from Fatuma Nakiryowa Kasule and that the first Defendant (daughter of Late AZIDA ZAWEDDE) had been living in one single room part of the suit property.

In the Lower Court the Respondent sued the Appellants in her capacity as a beneficiary of the Estate of Late Azida Zawedde. The 1st Respondent and 1st Appellant are biological sisters and together with five others are children of Late Azida Zawedde while the second Appellant is the husband of 1st Appellant with whom they claim the suit land, that it belongs to their little daughter who shares a name with the Late Azida Zawedde and that they bought the land in the said child's name.

The trial Magistrate gave a Judgment for the Plaintiff/Respondent. Her Worship ESTA NAMBAYO, Chief Magistrate, Makindye granted the following reliefs:-

1. It was declared that the disputed land belonged to Hajjati Azida Zawedde the mother of the Plaintiff and not Azida "Zawedde" the daughter of the Defendants.
2. The Defendants are ordered to vacate the suit property forthwith.
3. The Defendants will pay costs of this suit.

The Defendants/appellants were not satisfied with the above decision and filed this Appeal with the following grounds:-

1. That the learned Chief Magistrate erred in Law and in fact when she held that the suit property was bought by Hajjati Azida Zawedde the Plaintiff's mother and not the Defendants' daughter.

2. The learned Chief Magistrate erred in Law and fact when she failed to evaluate the evidence on Court record and thus reached a wrong decision which occasioned a miscarriage of justice.
3. The learned Chief Magistrate erred in Law and fact when she ordered the Defendants to vacate the disputed property when the property belongs to the Defendants.

This Court as the first appellate Court has a duty to re-evaluate evidence and arrive at its own conclusion. It was held in SELLE Vs ASSOCIATED MOTOR BOAT & CO. [1968] EA 123 that **“... the duty of the first appellate Court is to rehear the case by considering the evidence on record, evaluate it itself and draw its own conclusion, in deciding whether the Judgment of the trial Court should be upheld, as well of course, deal with any question of Law raised on appeal.”**

PW1 Aisha Nakamanya testified that her sister and brother-in-law (1st and 2nd Defendants) wanted to sell her Late mother’s Plot and house at Nkere Zone, Makindye. Her mother, Azida Zawedde died intestate. The deceased sold her home at Nafuka on 20th July 2000 and bought the suit land on 20th July, 2000. PW1 was given a copy of the Agreement. The deceased purchased the suit property from Fatuma Nakiryowa Kasule. After Zawedde’s death the property was rented out and her children shared to rent money. Under cross-examination she revealed: The Defendants’ daughter was not AZIDA ZAWEDDE but Azida Namuddu.

PW2 Safi Kakonge 65 years old corroborated PW1 and confirmed the land belonged to Late Azida Zawedde and that her family lived on this land for 2 years before she died. He stated that KCC taxes for the land were paid in the names of Zawedde Azida. See exhibit P.1.

PW2 told Court that while 1st Defendant was registering as a Voter in 2001 stated that Azidda Zawedde was her Landlord. The Defendants' daughter (a minor) was called Azidda Namuddu.

PW3 Sekabanja Edward, 55 years. He was RDC when the dispute started that Fatuma Nakiryowa confirmed she had sold the suit property to Hajjati Zawedde when she was sick so she sent her daughter and son-in-law (1st and 2nd Defendants) to make the Agreement.

PW4 Nalubega Mariam, 40 years old, broker for selling Plots and houses confirmed she sold the Plot and house to Late Hajjati Zawedde.

DW1 Kafeero Musa, claims he bought the suit land and put it in his daughter's name; Azida Zawedde a minor, who derived her name from her grandmother. He denied knowledge of Azida Namuddu, as his child. He denied knowledge of medical records of Azida Namuddu.

DW2 gave some version story of DW1 that they purchased the suit land in Zawedde Azida's name, their minor daughter's name. She testified that her daughter's clan name is Namuddu does not appear in the Agreement of purchase of the suit land. She confirmed that in 2001 she had registered as a tenant of her mother in the suit property.

She confirmed that in 2000 she was living in the home of Hajjati Azida Zawedde with all her siblings. She sold the old home on 20th July 2000. That her siblings started staying at Nkere in 2000, in her house, the suit property.

When the evidence of DW1 and DW2 is evaluated together there are great inconsistencies that are not explained.

(1)The mother of the child said she bought the suit land. While her husband (DW1) states he bought it together with DW2) for a minor Zawedde Azida.

(2)DW1 stated he has no child called Namuddu, yet DW2 his wife stated Namudde Azida is their daughter. The inference drawn from this contradiction is an attempted covering up of the fact that if the suit property had been purchased for the minor, her clan name Namuddu would have been in the Agreement. The only explanation is that Azida Zawedde referred to the grandmother of Namuddu Azida who was the actual purchaser of the suit property.

The learned trial Magistrate properly evaluated this evidence in her Judgment on page 4 when she stated:-

“... why would a father tell Court that he has no daughter called Namuddu and yet the mother say their daughter clan name is Namuddu. It is common knowledge that Buganda is a patrilineal

**society where the father's side give clan names to their children.
Had the second Defendant forgotten his daughter's clan name."**

My understanding of this Judgment is that the second Defendant deliberately told lies to pervert the truthful purchaser of the suit land. The trial Magistrate properly considered the evidence of PW4 Nalubega, a broker to this transaction who said "I sold Hajjati a Plot that belonged to Fatuma Kasule for 5.5 million Shillings. Hajjati paid Shs.2,750,000/=. She bought the Plot in her own names. **"... from the Chairman's explanation, Azida Zawedde could have been the young girl or the old woman all he says is that he was told that the 2nd Defendant was buying on behalf of Azida Zawedde."**

I agree that the trial Magistrate was right to conclude that Hajjati whom the broker acted for or sold to the suit land can only be Hajjati Azida Zawedde and not the minor who was about 1 year old at the time of this sale. The basic grounds of Appeal No. 1 and No. 2 are criticisms of the trial Court's evaluation of the evidence on record. There is no fast and hard rule of how evaluation of evidence ought to be done. In the instant case the trial magistrate properly considered evidence of both parties and the major inconsistencies of the Defendant/Appellants' case. The sharpest of the contradictions are that the father (D2) denying the name of his child.

The trial Court further considered the following circumstantial evidence that favoured the Plaintiff:-

- (a) That Late Zawedde sold her house at Nafuka on 20/7/2000 and paid for the suit house/Plot on 20/7/2000. This supports the Plaintiff's claim that her late mother bought the suit land for the family.
- (b) The 1st Defendant/appellant, Nawati Sarah, the Plaintiff/Respondent's sister, told Court that when the mother sold the house at Nafuka, her mother, father and the siblings moved into the house at Munkere, suit property. She adds that her husband was not living with them. This points to the fact that the home at Munkere, suit property, belongs to Hajjati Zawedde and not Kafeero.
- (c) There is no explanation why the Agreement was put in the name of Zawedde Azida and not Namuddu Azida if it was purchased for Azida Namuddu.
- (d) The Appellants did not challenge the evidence of the Plaintiff and her siblings that after the death of Zawedde Azidi they collected rent from the suit property and that the cause of action arose when the Defendants attempted to sell the suit property.
- (e) I am satisfied that the second Appellant told lies in Court when he said he never had a child called Namuddu Azida. This falsehood in my view constitutes further circumstantial evidence against the Defendants/Appellants' claim of ownership of the suit property.
- (f) The evidence given by the Appellant is that at all material time he was a trustworthy son-in-law of the Late AZIDA ZAWEDDE. I agree with this in so far as she entrusted him with payments he did on her behalf and witnessing for her in similar transactions. The case under trial is

that after her death he appears to have stopped being trustworthy. He has told lies which prove that he became dishonest and together with his wife attempted to convert and sell the suit property which was intended to maliciously permanently deprive the Plaintiff and her siblings of their entitlements.

On the whole I have found that the learned Chief Magistrate properly evaluated the evidence available before her and she arrived at the correct decision. In view of the above this Appeal is dismissed with costs to the Respondent both in the trial Court and on appeal. To remove any doubt the following orders of the trial Court are confirmed.

1. That the suit property belongs to the Estate of Late Hajjati Azida Zawedde.
2. That the Appellants are ordered to vacate the suit property.
3. The Appellants shall pay the Respondent costs of the original suit and of this Appeal.

Dated at Kampala this day of May, 2015.

J. W. KWESIGA
JUDGE

