

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT FORT PORTAL

CIVIL SUIT NO. HCT-01-CV-CA-017 OF 2012

(Arising from KAS-00-CV-CS-LC-0 17 OF 2012)

KABUGHO VICTORIA.....APPELLANT

VS

MBAMBU FLORARESPONDENT

BEFORE: HON. MR. JUSTICE OYUKO. ANTHONY OJOK

JUDGMENT

Brief facts

The Appellant instituted a suit against the Respondent in the Chief Magistrate's Court of Kasese seeking for a declaration that the land in dispute belonged to the late Maria Biira, an order to have the said land distributed among the beneficiaries, an order stopping the defendant from wasting the land and costs of the suit. The Respondent filed a written statement of Defence claiming ownership of the suit land.

The plaintiff's brief facts

That the suit land belonged to her mother Maria Biira who died in 1990. That the defendant who is the plaintiff's sister is in occupation and has denied the plaintiff her share.

The defendant claims that the land in dispute belongs to her and does not form part of the estate of the late Maria Biira. That she has been in occupation of the suit land for a period of

over 50 years and the plaintiff started claiming it in 2011. That she only allowed her late mum to stay with her on the suit land.

3 issues were framed for determination.

1. Whether the land in dispute belonged to Maria Biira.
2. Whether the plaintiff is entitled to a share.
3. What remedies are available to the parties.

After listening to the evidence of both sides, the learned trial Magistrate came to the finding that the suit land was bought by the defendant as such it belongs to her. The plaintiff is not entitled to any share thereof and dismissed the plaintiff's claim against the defendant with costs, hence the appeal.

Three grounds were enumerated in the memorandum of Appeal, viz

1. That the learned trial Magistrate Grade I erred in law and fact when he failed to evaluate the evidence on record and come to a wrong decision.
2. That the trial Magistrate Grade I erred in law and fact when he decreed the suit land to the Respondent.
3. That the learned trial Magistrate Grade One misdirected himself when he failed to appreciate the fact that the suit land formed part of the estate of the late Maria Biira.

Counsel Bwiruka Richard appeared for the Appellant while Counsel Tayebwa represented the Respondent. By agreement, both parties filed written submissions.

At the onset, I should point out the above grounds are merely repetitive and upon careful consideration they can be summarised as follows;

1. That the Learned trial Magistrate Grade I erred in law and fact when he failed to evaluate the evidence on record and came to a wrong decision.
2. That the learned trial Magistrate Grade I misdirected himself when he failed to appreciate the fact that the suit land formed part of the estate of the late Maria Biira.

Ground I

That the Learned trial Magistrate Grade I erred in law and fact when he failed to evaluate the evidence on record and came to a wrong decision.

I am mindful, as a first appellate Court that, it is my duty to review the evidence in order to determine whether the conclusion originally reached upon that evidence should stand. But this justification should be exercised with caution. If there is no evidence to support a particular conclusion (and this is really a question of fact and law). The appellate Court will not hesitate so to decide. But if the evidence as a whole can reasonably be regarded as justifying the conclusion arrived at, at the trial and especially if that conclusion has been arrived at on a conflicting testimony by a court which saw and heard the witness, the appellate court will bear in mind that it has not enjoyed this opportunity and that the view of the trial court as to where credibility lies is entitled to great height **See Watt –V- Thomas (1947) AC, 484 and Peters Vs Sunday Post (1958) S.A 404.**

In the instant case, the learned trial Magistrate Grade I came to a finding that the suit land belonged to the defendant and did not form part of the estate of Maria Biira and as such the plaintiff was not entitled to a share and the matter was dismissed with costs.

According to the testimony of PW1 says that the land in dispute belonged to her late mother she sold her house (the plaintiff) at Katunguru and used the proceeds to buy the land in dispute for her mother, I find this testimony wanting in substance.

According to PWII, it is not clear and it seem PW II does not know who sold the suit land to Maria Biira nothing was tendered in court as sale agreement to prove purchase of the land nor any witness brought to court to confirm the same. According to PW IV still it seem PW IV does not know who sold the land to Maria Biira.

The fact that the defendant took possession and started using the land for over 50 years, planted sweet potatoes, coffee and banana plantation and eucalyptus trees and even built 6 semi permanent houses, leave alone the fact that the mother testified in court that the land in dispute was bought by the defendant who was looking after her and the fact that Kabugho Regina came to collect her balance of the purchase price, leaving no doubt that any reasonable court would believe so.

Counsel for the Appellant submitted that the land in question belonged to Maria Biira who bought it using the proceeds of the sale of the plaintiff's land at Katunguru, she never availed any sale agreement and all her witnesses PW II, PW III and PW IV was not of any help in as far as evidence of purchase of the land was concerned. It should be noted that he who alleges must prove his/her case.

Counsel for the Respondent maintained that the Appellant failed to prove on the balance of probability that the suit land was part of the estate of Maria Biira. He also submitted that counsel for the Appellant does not fault the trial Magistrate on the findings that the suit land belonged to the Respondent. He went on to say that the burden to prove anything was consistent in her defence and he maintained that the trial Magistrate was right to reach to this conclusion and rule in favour of the Respondent.

As matters stand therefore, the matter directly and substantially in issue is whether the trial Magistrate misdirected himself when he failed to evaluate the evidence on record and came to a wrong decision. In the process, I find the learned trial Magistrate came to the correct finding having evaluated all the evidence, visited the locus and had the opportunity of seeing the witness. Ground I therefore fails.

Ground 2.

That the learned trial Magistrate Grade I misdirected himself when he failed to appreciate the fact that the suit land formed part of the estate of the late Maria Biira.

Having answered ground I in the affirmative I see no fact in maintaining that the suit land does not form part of the estate of the late Maria Biira and as such she is not entitled to any share thereof.

Having considered all the factors of this case I am satisfied that the trial Magistrate properly evaluated the evidence and arrived at a correct decision.

In a nutshell, and for the reasons above given, this appeal fails and is accordingly dismissed with costs to the Respondent in this court and the court below. Appeal dismissed.

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OYUKO. ANTHONY OJOK

JUDGE

22/08/2016

Read in the presence of;

Counsel for the Appellant and the party

Both Respondent and Counsel absent

Precious court clerk

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OYUKO. ANTHONY OJOK
JUDGE
22/08/2016