THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA
LAND DIVISION

CIVIL APPEAL NO. 2043 OF 2016
(Arising from the Chief Magistrate's Court of Entebbe at Entebbe ENT/00/LD/Civil Suit No. 0202 of 2012)

NALULE HADIJJA (Administratrix of the estate of the late Kyeyune Abdul) :::::::::::::::::::::::::::::::::::: APPELLANT

VERSUS

1. YAHAYA DOKA
2. IBRAHIM DOKA ::: RESPONDENTS

BEFORE HON. JUSTICE NAMANYA BERNARD

JUDGMENT

Introduction:

1. This is an appeal against the decision of the *learned Trial Magistrate Grade One, Juliana Kimono, Chief Magistrate's Court of Entebbe at Entebbe*, delivered on the 15th September 2015, in which she dismissed the appellant's suit with costs.

2. The background is that the appellant filed a suit in the Chief Magistrate's Court of Entebbe at Entebbe against the respondents seeking the following reliefs: an order of eviction of the respondents from the land comprised in Busiro Block 439

Plot 618 situated at Kabale, Bunono and Katabi (hereinafter "the suit land"); a permanent injunction restraining the respondents; general damages; interest of 20% on general damages from the date of judgment till payment in full; and costs of the suit. The learned Magistrate dismissed the suit, hence this appeal.

3. The following are the essential facts, as set out in the judgment of the Trial Magistrate:
    1. The registered proprietor of the suit land (Kyeyune Abdul) died intestate on or about 1998. He was married to the appellant.
    2. The deceased had a relationship with a woman known as Nalumu Rehema, with whom they had children.
    3. Upon his death, Nalumu Rehema applied for, and got letters of administration for the estate of the deceased vide *High Court Administration Cause No. 163 of 2004*. Her name was entered on the certificate of title of the suit land as an administrator.
    4. The respondents purchased a portion of the suit land from Nalumu Rehema on a date that is disputed by the parties. The appellant claims that the sale took place in 1999 while the respondents claim that the sale was in 2006 or 2010.
    5. On the 28th November 2007, Ssenyonga Ali lodged a caveat on the suit land (Busiro Block 439 Plot 618 Kabale, Bunono & Katabi).

6. On the 17th December 2010, the Court revoked letters of administration granted to Nalumu Rehema vide *H.C.C.S No. 53 of 2008 (Family Division)*.
7. On the 26th September 2011, the Court granted letters of administration of the estate of the late Kyeyune Abdul to the appellant, vide *H.C. Administration No. 594 of 2011*.
8. On the 4th May 2012, the appellant lodged a caveat on the suit land (Busiro Block 439 Plot 618 Kabale, Bunono & Katabi).

4. The appellant appealed to this Court on the following five grounds:
   1. The Trial Magistrate erred in law and fact when she held that Nalumu Rehema had authority to sell, and enter into a transaction in respect of the land whether the sale took place in 1999 or 2006.
   2. The Trial Magistrate erred in fact when she held that the respondents bought the land in 2006.
   3. The Trial Magistrate erred in law and fact when she held that plot 1260 the subject of the sale agreement between Doka (the respondents) and Nalumu was curved out of plot 618.
   4. The Trial Magistrate erred in law and fact when she ignored the well-established positions of the law on the subject of the suit and dismissed the suit.

5. The Trial Magistrate erred in law and fact when she failed to evaluate the evidence and thereby came to the wrong conclusions.

5. The appellant prays that the appeal be allowed; the judgment of the Trial Magistrate be set aside, and substituted with orders as prayed in the plaint; and that the appellant be awarded the costs of the appeal and the suit.

6. The appellant was represented by *M/s. Ayigihugu & Co Advocates* while the respondent was represented by *M/s. Ajungule & Co Advocates*. Both parties filed written submissions which I have considered.

Consideration and determination of the grounds of appeal:

7. The role of the first appellate Court is to re-appraise the evidence and subject it to fresh scrutiny, and draw its own decision on issues of fact as well as of law (see the case of ***Mariam Nanteza & Others v. Nasani Rwamunono & Another, Court of Appeal Civil Appeal No. 28 of 2013***). I shall keep the above principle in mind while resolving the grounds of the appeal.

8. For purposes of coherency, I will consider all the five grounds of the appeal together.

9. Counsel for the appellant faulted the Trial Magistrate for coming to the conclusion that it was immaterial that the transaction for sale of land was in 1999 or 2006. He submits that the actions of Nalumu Rehema could not be validated under ***Section 193*** of the ***Succession Act (Cap 162)*** because her actions were detrimental to the estate of the deceased.

10. Counsel for the appellant further submitted that no interest in the suit land passed to the respondents under the provisions of ***Section 92*** of the ***Registration of Titles Act (Cap 230) ("RTA")***.

11. Counsel for the respondents supported the findings and conclusion of the Trial Magistrate, and asked the Court to uphold her decision. He relied on the cases of ***Khalid Walusimbi v. Jamil Kaaya & Anor [1993] KALR 20***; and ***Joseph M. Nviri v. Palma Joan Olwoc & 2 Others, H.C.C.S No. 926 of 1998***.

12. The recent decision in the case of ***Mariam Nanteza*** (supra) summarises the law on the subject in as far as the facts of this case are concerned.

13. The subsequent revocation of letters of administration or probate does not affect the actions done by an administrator while holding the letters.

14. Hence, the title of a registered proprietor of land, pursuant to transfer from an administrator, whose letters are subsequently revoked will be upheld by the Court. This is because a person who acquires title from such an administrator is deemed to be a *bonafide purchaser* for value without notice of any wrong doing on the part of an administrator, provided that the purchaser is not privy to any fraud or wrong doing by the administrator. In other words, once a person is registered as a proprietor of land, his title is indefeasible except for fraud. (see the case of ***Mariam Nanteza*** (supra)).

15. In this appeal, a question arose as to the validity of actions taken by the administrator before the grant of letters of administration. The learned Trial Magistrate (*p7 of the judgment*) held as follows:

> *"It is immaterial that the sale transaction between the defendants and the Nalumu Rehema took place in 1999 or 2006. This is because a reading of Section 192 of the Succession Act shows that letters of administration entitle the administrator to all rights of the intestate as effectually as if the administration had been granted at the moment after his death [...] Court understands S.192 of the Succession Act to mean that the authority of the administrator applies retrospectively."*

16. Courts have considered the meaning of ***Section 192*** of the ***Succession Act (Cap 162),*** and come to the conclusion that actions done by an administrator prior to the grant of letters of administration are validated upon the grant. In the case of ***Joseph M. Nviri*** (supra), it was held that:

> *"This provision invariably makes the grant of Letters of Administration in respect of actions of the administration to relate back to the time of death of the deceased. The effect is that the grant validates the actions of the administrator taken prior to the grant of the Letters of Administration in respect of the estate of the intestate. In other words, actions which would ordinarily amount to intermeddling under the law are validated and hence ratified as having been legally done."*

17. The Court of Appeal, in the case of ***Saul Kirisibombo Rumanda v. Emmy Tumwine & 6 others, Civil Appeal No. 53 of 2017***, while considering the effect of grant of letters of administration, on actions of an administrator before the grant, held as follows:

> *"The vesting of the property occurred as if the letters of administration were granted immediately after the death of the intestate according to section 192 of the Succession Act."*

18. However, there are exceptions to the actions that can be validated under ***Section 192*** of the ***Succession Act (Cap 162),***

and under ***Section 193*** of the Act (supra), for an action to be validated, it must be one that is not detrimental to the estate of the deceased person. In other words, if it can be proved that before the grant of letters administration, an administrator engaged in actions that are detrimental to the estate of the deceased person and its beneficiaries, then those actions cannot be validated by the subsequent grant.

19. It is also the law, that before the grant of letters of administration or probate, there are certain actions that cannot be taken by the 'would be' administrator. For example, the 'would be' administrator cannot initiate court proceedings in respect of the estate of the deceased person, and the subsequent grant of letters of administration cannot validate an action commenced without them. An administrator's right to bring court proceedings runs from the date of grant of the letters, and any court action before the date of the grant is invalid. (see ***Emily Rose Hilton v Sutton Steam Laundry [1984] 3 All ER 1***).

20. Counsel for the appellant submitted that the actions of Nalumu Rehema could not be validated under ***Section 193*** of the ***Succession Act (Cap 162)*** because her actions were detrimental to the estate of the deceased. However, the appellant's evidence to prove this allegation is unsatisfactory. This means that on the basis of the evidence on record, ***Section***

193 of the ***Succession Act (Cap 162)*** cannot come to the aid of the appellant.

21. I agree with the learned Trial Magistrate that Nalumu Rehema, owing to the subsequent grant of letters of administration, was legally empowered to deal in the affairs of the estate of the deceased. The grant of letters of administration validated her earlier actions, rendering the timing of the transaction immaterial, in so far as the actions of the administrator are concerned. Even if the Court were to arrive at the conclusion that the transaction in question took place in 1999, this would have no bearing on the conclusion of the Court (see the case of ***Joseph M. Nviri*** (supra)).

22. It is the law that in order for a purchaser of land to be protected from the subsequent revocation of letters of administration, he/she must obtain registration as registered proprietor of the land in accordance with the ***Registration of Titles Act (Cap 230)*** (see the case of ***Mariam Nanteza*** (supra)). Provided such a purchaser is not involved in fraudulent conduct, he/she will be protected.

23. The facts of this case are that the respondents did not succeed in getting their name entered on the title deed as registered proprietors during the period of the validity of letters of administration. Nalumu Rehema's letters of administration

were revoked by Court on the 17th December 2010, vide *H.C.C.S No. 53/2008 (Family Division*).

24. Counsel for the appellant submitted that no interest in the land passed to the respondents under the provisions of ***Section 92*** of the ***RTA***.

25. According to *p18 of the record of the proceedings*, the 2nd respondent (*Ibrahim Doka, DW1*) testified as follows:

> *"I have no certificate of title for this land. I am in the process. Of late, I went to the Land Office to check [on] the land. I hired a lawyer. He informed me that there is a caveat on the land.* (underlining is mine for emphasis).

26. The finding of this Court is that the respondents are not the registered proprietors of the suit land, and yet letters of administration of Nalumu Rehema (the seller) were revoked by Court.

27. Applying the law to the facts of this case, it is my finding that the learned Trial Magistrate's conclusion that the impugned land transaction was legal and valid, is not supported by adequate evidence. The following three irregularities can be pointed out:

(a) Is the suit land plot 618 or plot 1260?

- The respondents were sued in respect of Busiro Block 439 Plot 618, and yet evidence shows that they purchased plot

1260. The 2nd respondent testified in court that *"…Rehema agreed to sell to me the suit land in 2006…She was selling plot 1260"* (*page 19 of the record of proceedings*). The parties are clearly referring to different pieces of land. If indeed the respondents purchased plot 1260 from Nalumu Rehema, then it would follow that they cannot claim interest in plot 618. The Trial Magistrate did not make a finding on the specific plot of land that the parties are litigating over (i.e. is it plot 1260 or 618?).

- The Trial Magistrate's finding that plot 1260 was curved out of plot 618 (*see page 10 of the judgment*) is not supported by evidence. Counsel for the appellant submitted that at the time of the trial, plot 618 had not been sub-divided. The only evidence on the sub-division of plot 158 (the original chunk of land owned by the deceased) was given by PW1– Ssenyonga Ali (*a motor vehicle mechanic*). Counsel for the appellant had intended to adduce evidence from the Registrar of Titles which might have helped to shed light on how plot 158 was sub-divided, and its relationship with plots 618 and 1260, but counsel dispensed with this important witness (*see page 15 of the record of proceedings*).
- In my opinion, there is need for an expert witness (for example, a registered surveyor or the registrar of titles) to testify on the sub-division of the original plot 158, and its relationship with plots 618 and 1260, which feature in the

court proceedings. This would enable the Court to make a proper determination of this issue. As it is now, there is no adequate evidence for Court to pronounce itself on the opposing arguments of the parties.

(b) Locus in quo:

- The 2nd respondent testified that he constructed a house on the disputed land. It is not clear from the evidence on record whether the house is on plot 618 or plot 1260. Evidence on record also shows that there are burial grounds on the disputed land. *DW1 (Ibrahim Doka)* testified that *"[…] I built the house around 2010. The grave is fenced within my plot. Rehema undertook to remove it. There was no time limit for her to remove it […]".* It is therefore, very necessary for the *locus in quo* to be conducted, so as to ascertain the facts on the ground.
- I have perused the record of proceedings, and did not come across proof that the *locus in quo* was conducted, which is a necessity in a land dispute of this nature. (see ***Order 11A rule 3(2)*** of the ***Civil Procedure (Amendment) Rules, 2019 and Practice Direction No. 1 of 2007;*** see also ***Dixon Ejakait Ekojot Isara v. David Okiru, HCT-04-CV-CA- 31 of 2016, High Court (Mbale)***).

(c) Did the respondents conduct a search on the land/due diligence prior to purchase?

- According to the record of proceedings, although the 2nd respondent claimed that he conducted a search on the land prior to the purchase of the land, no proof that a search was done is provided (*see page 21 of the record of proceedings*).
- Despite the lack of evidence of a land search report, the Trial Magistrate made a finding that the 2nd respondent conducted a search on the land (*page 10 of the Judgment*). In my view, the Trial Magistrate was wrong in making a finding that the 2nd respondent made a search on the land, and found it to be free of encumbrances, yet there is no evidence to support this finding.

28. Therefore, it is my finding that, owing to the lack of adequate evidence in this matter, the Trial Magistrate was wrong to decide the suit in favour of the respondents.

Conclusion:

29. In the result, I **ORDER** as follows:
    (a) The proceedings, judgment and orders of the learned Magistrate Grade One, Chief Magistrate's Court of Entebbe at Entebbe ENT/00/LD/Civil Suit No. 0202 of 2012 are hereby set aside.
    (b) The file is remitted back to the Chief Magistrate's Court of Entebbe at Entebbe, for a **re-trial** to be conducted before

another Magistrate with jurisdiction to hear the matter (see the case of ***Kilama Tonny & Anor v. Grace Perpetua Otim, Civil Appeal No. 031 of 2019, High Court of Uganda at Gulu***).

(c) The costs of this appeal, and in the Court below, are awarded to the appellant.

I SO ORDER.

NAMANYA BERNARD
Ag. JUDGE
9th September 2022