

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA.
CIVIL APPEAL NO.30 OF 2019
(Arising from Mengo Civil Suit No.5 of 2009)

1.STANLEY NSUBUGA

2. JANET NSUBUGA:..... APPELLANTS

3.LUBINGA ALI

KASOMA HASSAN

VERSUS

1.ROSE NSUBUGA


2. DAVID SSEBYALA:..... RESPONDENTS

3.MOSES KAAYA

BEFORE: HON JUSTICE JOHN EUDES KEITIRIMA

JUDGMENT

This Appeal arises from the judgment in Mengo Chief Magistrates Court Civil Suit No.05/2009 delivered on 14th March, 2019. The Respondents filed the above suit in Mengo Chief Magistrates Court against the Appellants herein seeking orders that; the impugned sale transaction between the defendants be nullified, a permanent injunction against the defendants stopping them from asserting ownership and


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entertaining any transaction of the suit land, general damages for trespass, inconvenience plus interest thereon at 25% from the date of award and costs.


The suit proceeded with both parties and after hearing, a judgment was delivered in the plaintiffs' favor; court declared the defendants as trespassers on the suit land, nullified the land sale agreement between the 1st and 2nd defendants on one hand and the 3rd and 4th Defendants on another hand in **Kibuga Block 16 Plot 964**, that the suit land belonged to the plaintiffs, issued a permanent injunction against the Defendants stopping them from asserting ownership, issued an eviction order against the 3rd and 4th Defendants.

The appellants being dissatisfied with the judgment of the Learned Trial Magistrate appealed to this Honorable Court.

Summary of the Respondents'(plaintiffs) claim.

The facts constituting the plaintiffs' cause of action as was set out in their plaint was that the plaintiffs at all material times have been the owners of the suit land comprised in **Kibuga Block 16 Plot 964**, having purchased the same, lived thereon and developed it. That they even instituted **Civil Suit No.1709/2020** against Hajji Juma Kintu who fraudulently registered his name on the title and sought cancellation of the same.

That the 1st and 2nd defendants before the conclusion of the case against the said Hajji Juma purported to sell the suit land to the 3rd and 4th Defendants who have since



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forced their way onto the land, tried to evict the plaintiffs and to demolish their structures.

Summary of the Appellants'(defendants') claim.

The defendants in their written statement of defence denied the facts in the plaint and contended that the suit land formerly belonged to the Late Stanley Nsubuga the father of the 1st and 2nd defendants and grandfather of the 1st Defendant .That the suit land was transferred by the widow of the late Nsubuga to Teo Kafeero and after negotiations between the two families, the administrator of the estate of Teo Kafeero agreed to sell it back to the family of the late Stanley Nsubuga who were represented by 1st plaintiff and the 2nd defendant. That a sale agreement was executed between the Teo Kafero as Vendor and Rose Nsubuga, Maria Nsubuga, Alozious Kalanzi and Steven Kayiwa as buyers on 8th June,2005 but the title was transferred into the 1st plaintiff's and 2nd Defendant's names to hold in trust for the family members of Stanly Nsubuga including the 1st plaintiff. That the family of the Late Nsubuga on 26th October 2008, held in a meeting and decided to sell part of the remaining family property so as to construct a new family home. That the plaintiffs never lived on the part that was sold to the 3rd and 4th Defendants and that the 2nd and 3rd plaintiffs are not beneficiaries of the estate of the late Stanley Nsubuga.

Three issues were raised at the scheduling conference for consideration of court, which were;


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- 1. Whether or not the 1st and 2nd defendants had capacity to sell the land comprised in Block 16 plot 964*
- 2. Whether or not the 3rd and 4th defendants were bona fide purchasers of the suit land or trespassers*
- 3. Remedies available to the parties.*

During the hearing, the plaintiffs' adduced evidence through two witnesses; the 1st and 2nd plaintiffs and the defence was built on evidence of the 1st, 3rd and 4th defendants since the 2nd defendant passed away before testifying.

Decision of the lower court.

The trial court on the 1st issue found for the Respondents (plaintiffs) and held that Stanley Nsubuga and Janet Nsubuga (1st and 2nd) defendants had no capacity to sell the suit property since it was clear that the sale agreement executed between Teo and the buyers as per PE1 was a sale to them and not to the family. Further, the trial magistrate held that even if he was to conclude that it was family property, still, the sellers had no letters of administration to sell to the 3rd and 4th defendants.

The trial Magistrate further held that the 3rd and 4th defendants were malfide purchasers of the suit land as these apparently knew about the case in court concerning the suit land; **Civil Suit No.1709/2000**. That if they had cared to know the facts of that case they would have known that Rose Nsubuga was one of the plaintiffs in that case, and one of the family member and her participation in the


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execution of the sale agreement was necessary. The 3rd and 4th defendants were found to be trespassers.

On the third issue of the available remedies; the court held that the sale agreement between the 1st and 2nd defendants and the 3rd and 4th defendants be nullified to the extent that it affects the land occupied by the plaintiffs, that the suit land belongs to the plaintiffs, issued a permanent injunction against the defendants and ordered that the 3rd and 4th defendants be evicted from the suit land.

Dissatisfied with the judgment of the lower court, the Appellants lodged an Appeal listing the following grounds; -

- 1. The learned trial magistrate erred in law and fact when he failed to properly evaluate the evidence on record thereby arriving at a wrong decision.*
- 2. The learned trial Magistrate erred in law and fact when he declared that the suit land belongs to the Respondents.*
- 3. The learned trial Magistrate erred in law and fact when he held that the 3rd and 4th Appellants be restrained from asserting ownership of the suit land or entertain any dealings therein.*
- 4. The learned trial Magistrate erred in law and fact when he held that the 3rd and 4th Appellants are trespassers on the suit land.*

Counsel filed submissions with supporting authorities which I have considered in determining this appeal.


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Duty of the court.


The legal obligation of a first appellate court is to reappraise evidence adduced in the lower court. The parties are entitled to obtain from the appellate court its own decisions on issues of fact as well as of law. The appellate court has to make due allowance of the fact that it has neither seen nor heard the witnesses. See *Fr. Narcensio Begumisa & Others V Eric Tibebaga SCCA No.17/2002; Banco Arabe Espaniol V Bank of Uganda SCCA No.008/1998.*

Preliminary Objections.

Counsel for the Respondents raised preliminary objections to the effect that there are grave errors and irregularities orchestrated by the appellants and their counsel which can dispose of the appeal without delving in its merits.

It was submitted by Counsel that **there exists two memorandum of appeal, fixed for different dates but originating from the same file.** That the current appeal came up for hearing on 7th November, 2019, court made directives regarding submissions. That however, the Appellants had earlier on served unto the respondents a hearing notice of the same fixed for 3rd April 2020.


I have seen the two hearing notices for the same appeal but with varying hearing dates fixed. This irregularity was occasioned by the court and should not be visited on the parties.


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However, what I find strange is that the memorandum of appeal on record was received by court on 18th February, 2019, yet the same was signed by the appellants on 16th April 2019! This memorandum of appeal is for a judgment delivered on 14th March, 2019!

This same memorandum bears the signature of Nsubuga Janet yet the same had died even before the hearing and determination of the suit in the trial court. The record also bears another memorandum of appeal; this is said to have been said signed by the appellants excluding the late Janet Nsubuga but the signatures of the other appellants look quite different from the ones who signed on the other memorandum of appeal.

The decree tha was signed on **4th July, 2019** indicating that the judgment was delivered on **14th March, 2019** whereas not; the judgment was delivered on **4th March, 2019**. **Section 79 (1) (a) of the Civil Procedure Act** is to the effect that every Appeal from the Magistrates courts to the High Court is supposed to be entered within thirty days from the date of the decree or order of the court. The Trial Magistrate passed judgment on 4th March, 2019 and the Appellants should have appealed by 3rd April, 2019. There is no explanation at all given why the memorandum of appeal on record was filed on 18th February, 2019 before the judgment was delivered! This is an impossibility that has not been explained. This is an anomaly which in my view is fatal to this appeal as it was not explained. The


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time frame in which an appeal is filed is of utmost importance as it determines whether the appeal was properly filed or not as there is a limited time frame to file an appeal. This coupled with the irregularities that were pointed out by the respondent with regard to the memoranda of appeal which interestingly had one signed by a deceased person makes this appeal defective.

I thereby uphold the preliminary objections in the said respect and the appeal will be dismissed with costs to the respondents.



Hon. Justice John Eudes Keitirima

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