

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
LAND DIVISION
CIVIL APPEAL NO.017 OF 2021
ARISING FROM NAKASONGOLA CIVIL SUIT NO.004 OF 2017

MUGABI JACKSON ----- APPELLANT

VERSUS

1. GAWEERA GERALD

2. NAKIVUMBI ROSE

3. NABULYA AGNES ----- RESPONDENTS

4. NAKAMYA FLORENCE

5. BABIRYE ALICE

6. NAKIWALA

JUDGMENT

BEFORE HON. LADY JUSTICE KANYANGE SUSAN

This is an appeal against the judgment of His Worship Tibayata Edgar – Tusiime – Magistrate Grade I Nakasongola Court.

The grounds of appeal are;

- i. The learned Trial Magistrate erred in law and fact to hold that the respondents did not admit that the appellant was a lawful occupant of the suit land since 1972
- ii. The learned Trial Magistrate erred in law and fact when he did not properly scrutinize and evaluate both the oral and documentary

evidence adduced on the suit before finding and holding that the appellant was a trespasser on the suit land

- iii. Alternatively the learned Trial Magistrate erred in law and fact to ignore the material contradictions in the respondents pleadings and evidence and hence reached a wrong conclusions of fact and law
- iv. By substituting the evidence of the witnesses in court with what the learned Trial Magistrate claims to have seen during his inspections of the disputed land, the learned Trial Magistrate erred in law and fact
- v. Alternatively the learned Trial Magistrate did not approach the visit to the locus judiciously and thus occasioned a miscarriage of justice to the appellant.

He prayed that the

- a. Appeal be allowed with costs to the appellant
- b. Judgment be entered in favour of the appellant in Nakasongola Civil Suit No.004/2017 with the reliefs as prayed in the plaint

Background

The plaintiff /appellant Mugabi Jackson sued the defendants in Nakasongola Magistrate's Court. He claimed that since 1972 he was a legal occupant of a kibanja on land described as Buruli block 206 plot 23 at Kasanga village Katuugo parish Kakooge sub-county Nakasongola District.

That the defendants from 21st July 2017 without his permission entered onto the suit land which was in his possession.

That as a result of the said trespass he incurred loss and damage. He prayed for declaratory orders, eviction orders, costs, general damages and permanent injunction. In their defence the defendants averred that the suit kibanja is a family land since 1890s when it was settled on by Mubi the father of the late Majara Alexander. Majara Alexander produced late Augustine Lutaaya and Kavuma who also settled on the land and they produced the defendants.

That the plaintiff is a son of late Kabogoza Eliasafu who had a neighbouring kibanja to late Augustine and Kevina. He by-passed 3 other kibanjas of their siblings to claim interests on their land. They denied being trespassers and have been an occupation and use of the land they inherited.

The trial Magistrate found that the defendants are not trespassers on the plaintiff's land and dismissed the suit of the plaintiff hence this appeal.

Representation

The Law Associates Advocates represented the appellants while M/s **Sibendire Tayebwa & Co. Advocates** and M/s **Abaine Buregyeya & Co. Advocates** jointly represented the respondents.

Resolution.

The duty of the appellant court was well exemplified in **Kifamunte Henry versus Uganda SCCA No.1 of 1997** where it was held that the first appellant court has a duty to review the evidence of the case and to consider the materials before the Trial Judge. The appellant court must then make up its own mind not disregarding the judgment appealed from but carefully weighing and considering it.