

CIVIL APPEAL NO. 39 OF 2018

1. MRS. KAYANJA K
2. WALAKIRA PATRICK
3. BUGEMBE EMMANUEL:..... APPELLANTS

KIGGUNDU GERALD..... RESPONDENT

JUDGMENT

1. That the trial magistrate erred in law and fact when she failed to properly evaluate the evidence on record and came to the conclusion that the dispute was not about ownership but a boundary dispute.
2. That the trial magistrate erred in law and fact when she failed to properly evaluate the evidence on record and came to the conclusion that the respondent did not trespass on the appellant's land.
3. That the trial magistrate erred in law and fact when she failed to subject the entire evidence on record to a thorough and exhaustive scrutiny and hence reached an erroneous decision of dismissing the suit with costs to the defendant.
4. That the trial magistrate erred in law and fact when she proceeded to dismiss **Miscellaneous Application No. 231 of 2017** on the ground that it was overtaken by events without hearing the same.

June 2023

The appellant is now seeking for the following remedies:

- i. That the appeal be allowed.
- ii. That the judgment and orders of the trial court be set aside and /or quashed.
- iii. That the costs of the appeal be provided for.

BACKGROUND

The appellants/Plaintiffs instituted the said suit against the respondent /defendant seeking for declaratory orders that they were the rightful owners of the suit kibanja, they were also seeking for compensation to the tune of eight million shillings (8,000,000/=), a permanent injunction restraining the defendant from trespassing on the suit kibanja.

The defendant claimed that he was the son of Late Mukasa Yekoyasi who owned land comprised in Kyadondo Plot 103 currently Plot 2404 Block 195 situate at Sabaddu Sub-County Mengo at Kyanja. That since his father died he had been using the suit land for agricultural purposes and caretaking the same on behalf of the other beneficiaries. He claimed that the Plaintiffs had in 2011 trespassed on the suit land and that he was the rightful owner of the suit land.

After analysing the evidence that was adduced by the parties, the trial magistrate held that the Plaintiff had failed to prove their case against the defendant and dismissed the case with costs to the defendant.

Counsel for the appellants and counsel for the respondent then filed written submissions the details of which are on record and which I have considered in determining this appeal.

Preliminary Objections

The Respondent raised a preliminary objection to the effect that the appellants filed a supplementary record of appeal and that it was illegal and ought to be struck off with costs. Counsel contended that upon lodgement of a Memorandum of Appeal, it was the duty of the Court to send a notice to the Magistrate's Court which in turn would send all the papers as may be specifically called for as provided for under **Order 43 Rules 10(1) and (2) of the Civil Procedure Rules**.

The appellants never responded to this preliminary objection.


20/2/2023

Decision of Court on Preliminary Objection

Order XLIII Rule 10 of the Civil Procedure Rules provides that;

- (1) When a memorandum of appeal is lodged, the High Court shall send notice of the appeal to the court from whose decree the appeal is preferred.*
- (2) The court receiving the notice shall send with all practicable dispatch all material papers in the suit, or such papers as may be specially called for by the High Court.*
- (3) Either party may apply in writing to the court from whose decree the appeal is preferred, specifying any of the papers of the court of which he or she requires copies to be made; and the copies shall be made at the expense of, and given to, the applicant on payment of the requisite charges."*

It is true that the supplementary record of appeal was not certified by the Court which it purported to originate from and hence its authenticity is doubted.

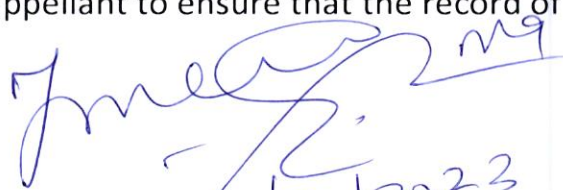
Section 60 of the Evidence Act Cap 6 provides that *"The contents of documents may be proved either by primary or by secondary evidence."*

Section 62 of the Evidence Act Cap 6 provides that Secondary evidence means and includes-

- a) Certified copies given under the provisions hereafter contained;*
- b) Copies made from the original by mechanical processes which in themselves ensure the accuracy of the copy , the copies compared with those copies;*
- c) Copies made from or compared with the original;*
- d) Counterparts of documents as against the parties who did not execute them;*
- e) Oral accounts of the contents of a document given by some person who has himself or herself seen it."*

The supplementary record does not fall within the ambit of **Section 62 of the Evidence Act Cap 6** and hence is inadmissible.

The record of appeal was equally not certified and hence its authenticity is equally doubted. It is the duty of the appellant to ensure that the record of the


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lower court is properly certified before it is submitted to the High Court for appeal purposes.

The entire appeal will therefore be struck out with costs on grounds that the lower court record was not certified.

The preliminary objection to that effect is therefore upheld.



Hon. Justice John Eudes Keitirima

20/02/2023