

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
[LAND DIVISION]
CIVIL APPEAL NO.HCT-00-LD-CA-0067-2023
(Appeal from the judgment of Her Worship Karungi Doreen Olga, Chief Magistrate, Civil Suit No.37 of 2021, Chief Magistrate’s Court of Kajjansi at Kajjansi delivered on the 15 May 2023)

1. MAKANGA IVAN
2. NAMAYEGA OLIVIA:..... APPELLANTS

VERSUS

ROBERT KINAALWA KAZIBWE:..... RESPONDENT

BEFORE: HON. JUSTICE BERNARD NAMANYA

JUDGMENT

Introduction:

1. In this case, an uncle of the appellants, who entered into possession of land owned by his late brother, after his death, later claimed the land is his own. Legal questions considered include – when is an implied trust presumed to exist between the beneficiaries and the possessor of land? What are the legal obligations of a parent or guardian to an infant in respect of land in their possession, but belonging to the infant? Does the Statute of Limitations apply at all, in respect of a beneficiary seeking recovery of land from a trustee?

2. The case concerns land and a house situated at Bunamwaya, Lubowa Zone (Kibanja), Wakiso District (hereinafter referred to as “the suit property”). The dispute can be traced way back to 1992 when the appellants’ father, Fred Makanga died. At the time of his death, the appellants (Namayega Olivia and Makanga Ivan) were infants, aged 1 to 2 years. Upon his death,



the appellants' uncle, Robert Kinaalwa Kazibwe, the respondent, entered into possession of the suit property. It is the appellants' case that when they attained majority age of 18 years, around the years 2009 to 2010, they demanded that the respondent, their uncle, hands over the suit property to them and he refused. The respondent continued to refuse to hand over the suit property to the appellants, prompting them to file a suit in the Chief Magistrate's Court of Kajjansi at Kajjansi in 2021. The matter was tried, both parties adduced evidence, and the learned Chief Magistrate held that the matter was time barred, and dismissed the suit. Being dissatisfied with her judgment, the appellants filed this appeal on the ground that the learned Chief Magistrate erred in law and fact, when she dismissed the suit for being time barred.

Representation:

3. At the hearing of the appeal, the appellants were represented by Mr. Musinguzi Rogers of M/s Luzige, Lubega, Kavuma & Co. Advocates, while the respondent was represented by Mr. Gilbert Niwagaba of M/s KGN Advocates.

Duty of the first appellate court:

4. This court is mindful of the duty of the first appellate court to subject the evidence presented to the trial court to a fresh and exhaustive scrutiny and re-appraisal, before coming to its own conclusion. While doing so, the first appellate court must keep in mind that, unlike the trial court, it had no chance of seeing and hearing the witnesses, while they testified, and therefore had no benefit of assessing the demeanor of the witnesses. To this effect, the first appellate court must be guided by the impression made on the judicial officer who saw the witnesses. *See the case of Fr. Narsensio Begumisa & 2 Others*



vs Eric Tibebaga, Supreme Court Civil Appeal No.17 of 2002 (Coram: Oder, Tsekooko, Karokora, Mulenga & Kato JJ.S.C).

Consideration and determination of the appeal:

5. The only issue for determination by this court is whether the suit filed by the appellants against their uncle, the respondent, is barred by the *Limitation Act (Cap 80)*. The learned Chief Magistrate considered this issue, and held as follows:

“I disagree with counsel for the plaintiff that this was trust property, [there] should have been a trust deed expressly making it hence this was not property governed by the Trustees Act Cap 164 for it to be covered by section 19 of the Limitation Act. As such I do find by virtue of the provisions of Section 5, 6 and 20 of the Limitation Act that this suit is time barred having been brought to court 29 years later after the right of claim had accrued which is an illegality under the Limitation Act and if a suit is brought after the expiration of the period of limitation and this is apparent from the plaint and no grounds of exemption are shown in the plaint, the plaint must be rejected...”

6. I will start by laying out the various applicable provisions of the law from various legal resources, before discussing the same, in relation to the evidence adduced in the matter.

7. *Article 257(1)(c) of the Constitution of Uganda (1995)* provides that:

“child” means a person under the age of eighteen years”

8. *Section 2 of the Children’s Act (Cap 59)* provides that:

“Definition of child



A child is a person below the age of eighteen years.”

9. Section 1(1)(n) of the Limitation Act (Cap 80) provides that:

“trust”, “trustee” and “trust for sale” have the same meanings respectively as in the Trustees Act.”

10. Section 1(r) of the Trustees Act (Cap 164) provides that:

*““trust” does not include the duties incident to an estate conveyed by way of mortgage, but with this exception, “trust” and “trustee” extend to **implied and constructive trusts**, and to cases where the trustee has a beneficial interest in the trust property, and to the duties incident to the office of a personal representative, and “trustee” where the context admits, includes a personal representative, and “new trustee” includes an additional trustee;”*

11. Section 1(3) of the Limitation Act (Cap 80) provides that:

“For the purposes of this Act, a person shall be deemed to be under a disability while he or she is an infant or of unsound mind.”

12. Section 5 of the Limitation Act (Cap 80) provides as follows:

“Limitation of actions to recover land

No action shall be brought by any person to recover any land after the expiration of twelve years from the date on which the right of action accrued to him or her or, if it first accrued to some person through whom he or she claims, to that person.”

13. Sections 19(1) & (2) of the Limitation Act (Cap 80) provide as follows;

“Limitation of actions in respect of trust property

(1) No period of limitation prescribed by this Act shall apply to an action by a beneficiary under a trust, being an action—

(a) in respect of any fraud or fraudulent breach of trust to which the trustee was a party or privy; or

(b) to recover from the trustee trust property or the proceeds of the trust property in the possession of the trustee, or previously received by the trustee and converted to his or her use.

(2) Subject to subsection (1), an action by a beneficiary to recover trust property or in respect of any breach of trust, not being an action for which a period of limitation is prescribed by any other provision of this Act, shall not be brought after the expiration of six years from the date on which the right of action accrued; but the right of action shall not be deemed to have accrued to any beneficiary entitled to a future interest in the trust property until the interest fell into possession.”

14. In the case of *Kabagambe v. Kabagambe (Civil Suit No. 44 of 2011) [2013] UGHCCD 60 (per Justice Bashaija K. Andrew)*, the defendant argued that the suit was time barred having been brought 42 years after the right of action arose. The plaintiff relied on *Section 19(1) (a) and (b) of the Limitation Act (Cap 80)* to counter argue that no period of limitation shall apply to an action by a beneficiary under a trust, being an action, *inter alia*, in respect of recovery from the trustee, trust property or the proceeds of the trust property in the possession of the trustee or previously received by the trustee, and converted to his or her use. The Court agreed with the plaintiff and held that:

“It is, nonetheless, noted that as per the evidence..., an implied role of a trustee was duly conferred upon the Defendant in

relation to the suit property; his attempts to deny the same notwithstanding. This is borne out by the deceased's categorical statements that he had the Defendant's name put on the lease to the suit property so that the Defendant would hold the same as caretaker for the benefit of his siblings... It would follow, therefore, that this being a suit instituted by one of the beneficiaries in respect of the trust property for the recovery of the same from the trustee, provisions of Section 19(1) of the Limitation Act would come into play with full force... The net effect is that the twelve - year limitation period prescribed under Section 5 ceases to apply to the instant case to the extent that it is sought to recover the suit property from a trustee. This puts the suit within the time prescribed by law."

15. In the case of *Kabagambe v. Kabagambe (supra)*, the Court considered the defendant's argument that the issue as relates to the suit property being held in trust by the defendant was neither pleaded nor proved by the plaintiff, and dismissed it holding that:

"...Section 19(1) of the Limitation Act encapsulates principles of law as they relate to trusts, which once raised in any proceedings have to be addressed regardless at what stage and whether they had been pleaded or not...evidence abounds on record which proves existence of an implied trust, and one need not mention the word "trust" for it to be considered established. Court must carefully transcend the narrow interpretation of the evidence and infer existence of a trust and pronounce upon it accordingly. The first preliminary point of law based on limitation of the action must fail."



16. When a parent or guardian of an infant is in possession of land, the Statute of Limitations will not operate in favour of the parent or guardian so as to defeat the infant's interest in the land. According to *Halsbury's Laws of England, Fourth Edition, Lord Hailsham of St. Marylebone, Lord Chancellor of Great Britain, Volume 28 Butterworths London, 1979:*

“874. possession on behalf of minor or person of unsound mind.

If a parent is in possession of land belonging to a child who is a minor, the parent will, in ordinary circumstances, be presumed to have entered on it as the minor's guardian or bailiff, and the parent's possession during the minority is one on which the statute of limitation will not operate in his or her favour. The entry on and possession of a minor's land by some person other than a parent may make the same rule applicable to the entry and possession. Where the person so held to be guardian or bailiff continues in possession after the minority has ceased, he is supposed to continue in possession in the same capacity as before, unless something is done to change the character of the possession, and the statute will not run even after the minority has ceased until the character of the possession is changed. The same principle applies in the case of persons of unsound mind, and a person who enters on the land of a person of unsound mind, with knowledge of the infirmity and of that person's rights, becomes a bailiff in respect of that person's estate in the land.”

17. In the case of *Kalidindi Seetaramaraju v. Vegesana Subbaraju and Ors (1922) 42 MLJ 262, AIR 1922 Madras 12*, it was argued for the appellant quoting O'Brien, L. C in the case of *Smyth v. Byrne 1 Irish Reports 53 Irish Reports 53* that:



“...it was a well-known rule that if under certain circumstances, a person enters upon a minor's property, he becomes clothed with such a fiduciary relationship towards the minor that he cannot acquire the minor's estate for his own benefit.”

18. In the case of *Thomas v. Thomas* [1855] 2K. & J. 78. 701, where a father entered into possession of land belonging to infant children, and upon an action by the minor children, and the defendant setting up the defence of limitation, The Vice Chancellor Sir W. Page Wood held that:

“In this case a father who had several children entitled to estates on the death of his wife, all the children being under age at that time, entered upon the estates. I am of opinion that, prima facie, unless there were strong evidence to the contrary, his entry must be taken to be on behalf of his infant children and as their natural guardian...but considering the...practice of this Court in making allowances for maintenance, he having entered and received the rents and profits, and there being no evidence of his not having discharged the obligation imposed upon him of maintaining his children, remembering the fact that they were all under his own charge and were infants, I think that I must reasonably infer that the entry was an entry on their behalf and as their guardian, and was totally different from the case of a mere stranger entering upon property under similar circumstances. Then it is said that, though the entry might have been lawful in its inception, the retention of the property after the children attained twenty-one barred their right under the Statute of Limitations; but I think the better and sounder view here is that, if this gentleman entered as a guardian, this Court would never allow him to set up any other title to the estate. However, if it were set up, he would be in a

different position as to the statute from a stranger who had so entered. Then, assuming that he ceased to continue in the position which up to that time he had held as a father receiving the rents for his children, still the rights of the children would accrue for the first time when they respectively attained twenty-one, and each would have twenty years from such time to assert his rights, and therefore the statute has not barred such rights.”

19. In the case of *Wall v. Stanwick* [1887] 34 Ch.D 763, a daughter sued her mother, to account for rents and profits from a public house devised to her by her late father when she was an infant. It was held that the mother was in possession of the public house as an agent of her infant children, and was therefore, a trustee and liable to account to her daughter, for the rents and profits. Kekewich, J held that:

*“It will, I think, be safer and more correct to treat the widow as having occupied and received rents and profits as the bailiff of her infant children. Not only is this character known to the law, but it is presumed to exist wherever circumstance require it that is, wherever it is proper to make a man accountable for the rents and profits of an infant’s estate, and he cannot be shewn to have been in possession in some other character. This is fully explained by Vice Chancellor Wood in *Thomas v. Thomas* and by the late Master of the Rolls in *Howard v. Earl of Shrewsbury*, where the old cases on the subject are cited. Having regard to the strictures on the Plaintiffs’ pleadings it is not unimportant to observe that such a bailiff occupies a fiduciary position, so that he may properly be styled a trustee, as a testamentary guardian may be (see *Mathew v. Brise*, where the Statute of Limitations was held inapplicable on this ground). He is accountable because he fills*

that character that is, because he is in possession, not on his own behalf, but as agent for some other person... Mrs. Stanwick cannot be heard to say that, having entered and received rents and profits as bailiff for Mrs. Wall and her other infant children, and being therefore accountable to them, she ceased to fill that character and ceased to be accountable merely because Mrs. Wall, one of those children, attained twenty-one, although she the widow continued in possession. The case of Blomfield v. Eyre was cited, to shew that the jurisdiction of the Court in such cases is not taken away by the infant attaining majority; but I do not think it is an authority for more than this that a bill would lie after majority for rents and profits received before. I doubt also whether Morgan v. Morgan carries the case further, but in Thomas v. Thomas, already cited, Vice Chancellor Wood distinctly held that where a man had entered as guardian (meaning bailiff), the Court would never allow him to set up any other title to the estate...she is accountable as bailiff, and will continue to be so accountable until the relation of principal and agent has been dissolved.”

20. In as far as the facts of this case are concerned, the position of the law on the issues under consideration may be summarized as follows.

21. A person ceases to be an infant upon attaining the age of 18 years. A person who is an infant is said to be under disability. The Statute of Limitations will not operate in favour of a parent or guardian who is possession of land belonging to an infant. When a child ceases to be an infant, the guardian will continue to hold the land as an agent of the child, and the Statute of Limitations may not begin to run, until after the guardian has claimed ownership of the land or done anything inconsistent with the child's

ownership of the land. The law is structured in such a way that a parent or guardian will not use the Statute of Limitations to defeat an infant's interest in the land, and aid such a parent or guardian in acquiring an infant's land for his or her own benefit, to the detriment of the infant. When a person enters into possession of an infant's land, he or she becomes clothed with such a fiduciary relationship towards the infant that he or she cannot acquire an infant's land for his or her own benefit. The law considers a person who enters into possession of an infant's land to be an agent of the infant. That person is accountable to the infant for the rents and profits received from the land. The guardian holds the land on behalf of an infant, and not for his own benefit. In the eyes of the law, there is an implied trust between the infant and the parent or guardian, with the result that the parent or guardian is under a legal duty to account to the infant. For this reason, the Statute of Limitations is not applicable to a suit seeking recovery of trust property.

22. The appellants are children of the late Fred Makanga. He died in 1992. Both appellants testified in the lower court that they were born between 1991 and 1992. At the time of their father's death, the appellants were about 1 to 2 years old. The appellants ceased being infants around the years 2009 to 2010, when they turned 18 years old. It is a proven fact that the appellants were infants at the time of the death of their father. The respondent, Robert Kinaalwa Kazibwe is the appellants' uncle. According to *Black's Law Dictionary, 4th Edition (1968)*, an implied trust is presumed to exist from circumstances. When the respondent (Robert Kinaalwa Kazibwe) entered into possession of the suit property, he held the suit property as an agent of the infants (the appellants), and an implied trust was thereby created between the appellants and the respondent (their uncle). Accordingly, the provisions of *Section 19(1) & (2) of Limitation Act (Cap 80)* apply to the plight of the appellants.

23. I am satisfied that on the basis of the evidence before this court, there exists an implied trust between the appellants and the respondent. According to *Section 19(1) & (2) of Limitation Act (Cap 80)*, the period of limitation does not apply to an action by a beneficiary to recover from the trustee, trust property or the proceeds of trust property. The right of action to the beneficiary accrues upon the breach of the trust by the trustee. It is the appellants' case that the respondent refused to hand over the suit property to them in 2021. This is when the breach of trust occurred and the right of action accrued to the appellants. The appellants filed a suit in the Chief Magistrate's Court of Kajjansi at Kajjansi in the year 2021. Having regard to trustee/beneficiary relationship between the parties, and bearing in mind that the period of limitation does not apply to an action by a beneficiary under such a relationship, it is my decision that the suit brought by the appellants in the Chief Magistrate's Court of Kajjansi at Kajjansi in 2021 was not time barred. The learned Chief Magistrate was therefore wrong to find that the suit was time barred. See *Seetaramaraju v. Vegesana (supra)*, *Thomas v. Thomas (supra)*, *Wall v. Stanwick (supra)*, *Kabagambe v. Kabagambe (supra)* and *Halsbury's Laws of England (supra)*.

24. In the lower court, both parties adduced evidence to prove their respective cases. This court is therefore in a position to evaluate the evidence adduced by the parties, and resolve the question of ownership of the suit property.

25. The late Fred Makanga, the appellants' father, purchased the suit property on the 27 August 1990 from a one Francis Kitembo (See Exh.P1 and P1B as well as the testimonies of both appellants). The defendant, Robert Kinaalwa Kazibwe is a brother of the late Fred Makanga, and therefore, an uncle of the appellants.



26. The respondent admitted that the suit property was purchased by the late Fred Makanga. In paragraph 4(b) of the written statement of defence, the respondent avers that:

“That before his death the late Fred Makanga had bought a plot of land on which he started the construction of a house but unfortunately he died before completing the construction of the house.”

27. In paragraphs 6 and 7 of the respondent’s witness statement which was admitted as his evidence in chief by the lower court, on the 11 October 2022, he testified as follows:

“The late Fred Makanga bought the suit property in 1990 and I was present during the purchase but because I was deemed a young boy at the time, I did not sign on the agreement. Upon purchase of the land, the late Makanga commenced construction of the house but it stopped at window level as he became sick and there was no money to continue with the construction.”

28. Although the respondent admits that the suit property was purchased by the late Fred Makanga, he claims that he became the owner of the suit property after the death of his brother, the appellants’ father. In paragraphs 4(d) and 4(e) of the written statement of defence, the respondent avers as follows:

“That subsequently the defendant used his personal resources to complete the said house...That in the year 2011, the defendant bought a piece of land which he added to the late Fred Makanga’s plot...”



29. In what is clearly a departure from the respondent's written statement of defence, the respondent further testified (see paragraphs 9, 11, 12 and 35 of his witness statement) as follows:

“The late Makanga one time told me as he was on his death bed that he was leaving all his children under my care as he believed that he was not going to survive. He had a terminal illness. That he asked me whether I recalled the land he had purchased and when I answered in the affirmative, he picked out the agreement of purchase and gave it to me. That I then asked him whether he had given me the property as the basis of looking after the children upon which he answered in the affirmative...the property was given to me in 1990 by gift intervivos”

30. The respondent's claim that the suit property was given to him as a *gift intervivos* raises an important point for discussion, which is departure from a party's pleadings. It is the law that a party will not be allowed to succeed on a case that is not so set up by him or her in the pleadings, and be allowed at the trial to change his or her case, or set up a case that is inconsistent with what he or she alleged in his or her pleadings. A party cannot be permitted to depart from what clearly appears to have been his or her case as stated in the pleadings. See the case of *Interfreight Forwarders (U) Limited v. EastAfrican Development Bank [1993] UGSC 16 (per A.H.O. Oder, J.S.C., S.W.W Wambuzi, J.S.C., H.G. Platt, J.S.C)*.

31. The respondent did not plead in his written statement of defence that the suit property was given to him by the late Fred Makanga as a *gift intervivos* (meaning a gift between the living). The assertion by the respondent that the suit property was given to him as a *gift intervivos* was raised for the first time by the respondent at the trial of the suit. This occasioned injustice to

the appellants who were not accorded a fair opportunity to rebut this claim. The respondent's claim that the suit property was given to him as a *gift intervivos* is a complete departure from the respondent's pleading, and is against the law.

32. I therefore, reject the respondent's claim that the suit property was given to him by the appellants' late father as a *gift intervivos*.
33. The respondent claims in his testimony that by the time he took over the suit property from the appellants' father after his death, the house was at window level and had no roof. He claims that he is the one who roofed the house and completed construction of the house. He further claims that he purchased a piece of land from a one Francis Kitembo which was added on the suit property. Finally, the respondent claims that the late Fred Makanga, the appellants' father, never lived on the suit property, and that by the time he died, he was living in a rented house in Najjanankumbi.
34. The above testimony is heavily contested by the appellants. PW1 (Namayega Olivia), also the 2nd appellant, and a daughter of the late Fred Makanga, testified that her father purchased the land and constructed a residential house that he lived in prior to his death. PW2 (Makanga Ivan), also the 1st appellant, and a son of the late Fred Makanga, testified that his father purchased the land and constructed a residential house that he lived in prior to his death. PW4 (Nakintu Josephine), a grandmother of the appellants testified that the late Fred Makanga lived in the house on the suit property, and that she paid visits to him on the suit property, and even attended functions at the suit property.
35. The most revealing testimony, and one that casts a cloud of doubt over the respondent's claims, comes from PW3 (Kitembo Francis) who sold the suit

property to the appellants' late father Fred Makanga, and is a neighbour. PW3 testified that after he sold the suit property to the late Fred Makanga, he immediately took possession of the land, and thereafter constructed a residential house which he went on to occupy with his other family members. In cross examination, PW3 further testified that by the time of his death, the late Fred Makanga was living in the house on the suit property together with three children who were very young. Finally, PW3 testified that the respondent started living on the suit property after the death of Fred Makanga to date, and that he later on sold to the respondent, a small portion of land measuring 10ftx10ft which the respondent annexed to the earlier portion of land that Francis Kisembo had sold to the late Fred Makanga.

36. I have carefully evaluated the evidence before this court. The testimony of PW3 (Kisembo Francis) is highly persuasive. Not only is PW3 a neighbour to the late Fred Makanga but he is also the one that sold him a plot of land on which he constructed a house. During cross examination, his evidence was not rebutted. PW3 was emphatic that the late Fred Makanga occupied the suit property prior to his death. If this is so, it is suspicious as to why the respondent would assert that the late Fred Makanga never occupied the suit property. Is it because the respondent wants to erase any form of association of the late Fred Makanga to the suit property?

37. In my opinion, the respondent is not a credible witness, and his evidence is a pack of lies. Here is a man who entered into possession of the suit property, supposedly to take care of the infant children of his late brother, the late Fred Makanga. The appellants were about 1 to 2 years old at the time. Not only did the respondent fail to look after the appellants (for example, Makanga Ivan testified that the respondent refused to educate him and even chased him from home; page 6 of the record of proceedings), but he also attempted

to grab the suit property, whose ownership clearly lies with the estate of the late Fred Makanga. It is also worth noting that the respondent's testimony was very disrespectful and disparaging of the children (the appellants) of the late Fred Makanga. For example, the respondent testified that the Makanga Ivan was a slow learner, and that this is the reason he did not proceed with his education. All of this, proves that the respondent did not act in the best interest of the infant children (the appellants). I therefore believe the evidence adduced by the appellants, that by the time of his death, the late Fred Makanga was living in the house on the suit property. The respondent's testimony before the lower court is so heavily discredited that he comes off as a person who was out to grab the suit property as soon as his brother died than to take care of the infant children of the late Fred Makanga (the appellants).

38. In the eyes of the law, when the respondent (Robert Kinaalwa Kazibwe) entered into possession of the suit property in 1992 after the death of the appellants' father, he became an agent of the appellants (the children of his late brother), and he is fully accountable to the appellants. Would it be an act of justice for this Court to turn a blind eye, to an uncle who set out to grab property of infant children, who lost their father when they were aged 1 to 2 years? I do not think so. The suit property is owned by the estate of the late Fred Makanga. The respondent is a trespasser on the suit property. The respondent must vacate the suit property, and hand it over to the appellants, who are beneficiaries of the estate of the late Fred Makanga. *See Seetaramaraju v. Vegesana (supra), Thomas v. Thomas (supra), Wall v. Stanwick (supra) and Halsbury's Laws of England (supra).*

39. Any improvements made by the respondent to the suit property, such as the purchase of the small parcel of land measuring 10ftx10ft, which was

annexed to the suit property, were done for the benefit of the appellants. The respondent should not expect any reimbursements from the appellants for such improvements.

40. As beneficiaries, the appellants are legally empowered to sue for protection of the estate of the late Fred Makanga, and need not have letters of administration to do so. *See the cases of Israel Kabwa v. Martin Banoba Musiga (Supreme Court Civil Appeal No. 52 of 1995) (Civil Appeal No. 52 of 1995)) [1996] UGSC 1 (per the judgment of Tsekooko J.S.C) & Hajat Nambi Lugwisa v. Sheik Hussein Ssendendo, High Court Civil Appeal No.4 of 2021 (per Lady Justice P. Basaza – Wasswa).*
41. The appellants are entitled to general damages for the inconvenience, pain, suffering, deprivation, betrayal and mental anguish, that they have suffered at the hands of the respondent, their uncle and supposedly, their protector. This is a man who promised his late brother, that he would provide care, education, shelter and food to the appellants (children of his late brother), in their infant age, but failed to do so; and instead set out to grab the property of their late father. *See the cases of Robert Cuossens v. Attorney General [2000] UGSC 2; and Impresa Ing Fortunato Federice v. Irene Nabwire [2001] UGSC 1.*
42. In conclusion, this appeal is allowed with the following orders:
 - 1). That the Judgment of Her Worship Karungi Doreen Olga, Chief Magistrate’s Court of Kajjansi at Kajjansi delivered on the 15 May 2023 is set aside.
 - 2). That the suit property situated at Bunamwaya, Lubowa Zone, Wakiso District (Kibanja) is owned by the estate of the late Fred Makanga.



- 3). That the respondent (Robert Kinaalwa Kazibwe) is a trespasser on the suit property.
- 4). That the respondent (Robert Kinaalwa Kazibwe) shall hand over the suit property to the appellants, in their capacity as beneficiaries of the estate of the late Fred Makanga.
- 5). That the respondent (Robert Kinaalwa Kazibwe), shall vacate the suit property by the 30 June 2024.
- 6). That if the respondent (Robert Kinaalwa Kazibwe) fails to vacate the suit property as ordered, he shall be evicted in accordance with *The Constitution (Land Evictions) (Practice) Directions, 2021*.
- 7). That a permanent injunction is issued restraining the respondent (Robert Kinaalwa Kazibwe), his agents, servants, workmen and all those claiming under him and/or deriving authority from him from trespassing, encroaching, interfering and/or in any way dealing with the suit property.
- 8). That the respondent (Robert Kinaalwa Kazibwe) shall pay general damages of Ushs 100,000,000 (Uganda shillings one hundred million) to the appellants.
- 9). That the respondent (Robert Kinaalwa Kazibwe) shall pay the costs of this appeal, and the costs of the suit in the lower court.

IT IS SO ORDERED.



BERNARD NAMANYA
JUDGE
24 May 2024

24 May 2024

Attendance for delivery of the Judgment

Musinguzi Rogers

Counsel for the appellant

Gilbert Niwagaba

Counsel for the respondent

Both appellants are in court

The respondent is in court

Allena Kanyakire

Court Clerk

Gilbert Niwagaba & Musinguzi Rogers:

We are ready to receive the judgment.

Court:

Judgment delivered in open chambers.



BERNARD NAMANYA

JUDGE

24 May 2024