

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
[LAND DIVISION]
CIVIL APPEAL NO.HCT-00-LD-CA-0016-2022
(Appeal from the judgment of Her Worship Kabugho Elizabeth, Magistrate Grade One, Civil Suit No. 028 of 2017, Chief Magistrate's Court of Entebbe at Entebbe delivered on 17 February 2022)

1. MUYINGO GERALD
2. NASSALI ROSE
3. NAKIGUDDE ANNET
4. NAMULI MARGARET:.....APPELLANTS

VERSUS

KAKEMBO MICHAEL:..... RESPONDENT

BEFORE: HON. JUSTICE BERNARD NAMANYA

JUDGMENT

Introduction:

1. This case considers an important legal question: *Does a beneficiary who has no letters of administration have legal capacity to sell his or her beneficial interest in the estate of a deceased person?* The case was filed by Kakembo Michael, the respondent (who was plaintiff) in the Chief Magistrate's Court of Entebbe at Entebbe. It was heard by Her Worship Kabugho Elizabeth, Magistrate Grade One who delivered her judgment on 17 February 2022 in favour of the respondent. The appellants were dissatisfied with the judgment, hence this appeal.

Background:

2. The background to this appeal is that Peter Kiggundu died in 1988. After his death, his widow, Dezi Kiggundu took over the management of the estate despite lacking letters of administration. In 2001, Dezi Kiggundu sold part of the estate land to Alex Ochan. On the 16 April 2003, Dezi Kiggundu sold



title was fraudulently issued to the respondent on the 11 December 2014, and counterclaimed for an order cancelling it.

4. In the lower court, the following issues were framed for determination by the court:

- i) Whether the defendants trespassed and/or encroached on the suit land;
- ii) Whether the defendants are liable for any private nuisance on the suit land;
- iii) Whether the counterclaim should be allowed; and
- iv) What are the appropriate remedies?

5. In the lower court, the appellants called 4 witnesses: PW1 (Kakembo Michael), PW2 (Ssekandi Richard), PW3 (Okello Robert) and PW4 (Ssekawooya Arafat). The respondents called 3 witnesses: DW1 (Wampamba David), DW2 (Nassali Rose) and DW3 (Norah Mukuluma Tuhairwe).

6. In the lower court, the respondent adduced evidence of the following documents that were admitted in evidence:

- i). PEXH A – A copy of a certificate of title for Block (Road) Kasirye Road, Plot 3 at Nakiwoga Banga.
- ii). PEXH B – A copy of a sale agreement dated 16th April 2003 between the late Dezi Kigundu and the respondent.
- iii). PEXH C – A copy of a receipt dated 4th July 2003, issued to the respondent by Entebbe Municipal Council.
- iv). PEXH D – A copy of a freehold offer dated 11th February 2014, addressed to the respondent.

7. In the lower trial court, the respondents adduced evidence of the following documents that were admitted in evidence:

- i). DEXH “A” – A sketch map drawn showing the demarcations of Plot 84 at Banga Nakiwogo.
- ii). DEXH “B” – A copy of a sale agreement between the late Dezi Kiggundu and Ochan Alex.
- iii). DEXH “C” – A copy of a sale agreement dated 16th April 2003 between the late Dezi Kiggundu and the respondent.
- iv). DEXH “D” – A copy of a letter dated 2nd July 2003, addressed to the Town Clerk, Entebbe Municipal Council from Ssalongo Sekandi Richard, the LC1 chairperson of Lunnyo Central Ward.
- v). DEXH “E” – A copy of an application form for conversion from customary tenure to Freehold tenure/ grant of freehold by the respondent.
- vi). DEXH “F” – A copy of a letter dated 24th June 2013, addressed to the District Land Board, Wakiso District from Sekandi Richard (Chairperson of the Area Land Committee), regarding Plot 3 Kasirye Road.
- vii). DEXH “G” – A copy of a hearing and ruling of a Civil Case No. 042/11/2016 between Kakembo Michael and the appellants in the Central Ward, LCII Court at Entebbe Municipality; and
- viii). DEXH H – A copy of a letter dated 6th December 2016, addressed to the chairman LCII, Central Ward, Division “A” from the respondent.

- 8. The lower trial court, conducted a locus in quo visit to the suit land on the 15 November 2021.

Trial court’s findings:

- 9. The Trial Magistrate found that the respondent had proved that he was the lawful owner of the suit land since the appellants failed to prove that the sale

agreement between their late mother Dezi Kiggundu and the respondent (PEXH B) was forged. She further held that since she had found that the respondent was the lawful owner of the suit land, he rightly pursued the conversion of his land from customary tenure to freehold tenure.

10. The learned Trial Magistrate entered judgment for the respondent, and declared that the appellants were trespassers on the suit land, ordered the appellants to pay general damages amounting to Ugx 5,000,000/=, a permanent injunction against the appellants, and awarded costs to the respondent and interest at the rate 24% per annum for the general damages from the date of judgment till payment in full.

Grounds of the appeal:

11. Dissatisfied with the judgment of the lower court, the appellants lodged this appeal on the following grounds:
 - i). The learned Trial Magistrate Grade One erred in law and fact when she failed to properly evaluate the evidence on record and as such arrived at a wrong decision;
 - ii). The learned Trial Magistrate Grade One erred in law and fact when she found that the plaintiff (now respondent) lawfully acquired title to the suit land;
 - iii). The learned Trial Magistrate Grade One erred in law and fact when she held that there was a legally executed land sale agreement dated 16th April 2003 that was signed between the plaintiff (now the respondent) with the appellants' late mother, Dezi Kiggundu;
 - iv). The learned Trial Magistrate Grade One erred in fact and law when she found that the appellants' late mother Dezi Kiggundu understood the English language and that she properly/legally

executed the land sale agreement dated 16th April 2003 with the respondent;

- v). The learned Trial Magistrate Grade One erred in law and fact when she found that the appellants were trespassers on the suit land;
- vi). The learned Trial Magistrate Grade One erred in law and fact when she found that the plaintiff (now respondent) is a lawful occupant and owner of the suit land;
- vii). The learned Trial Magistrate Grade One erred in fact when she failed to hold that the suit land forms part of the estate of the appellants' late father Peter Kiggundu; and
- viii). The learned Trial Magistrate Grade One erred in fact when she found that the appellant is legally settled on the suit land.
- ix). That the learned Magistrate Grade One erred in law when she proceeded to hear and determine the suit without jurisdiction.

Representation:

12. At the hearing of the appeal on 16 November 2023, the appellants were represented by Mr. Gad Batala of M/s Sowali Katamba & Co. Advocates, while the respondent was represented by Mr. Kabuye Lawrence of M/s Lukwago & Co. Advocates.

The appellants' submissions:

13. Regarding grounds 1, 2 and 4, counsel for the appellants submitted that the Trial Magistrate wrongfully ignored the evidence of DW2, which showed that the appellants inherited the suit land which was customary land from their late father, and had been in possession of the said land for a long period of time until 2013, when the respondent claimed the said land immediately after the death of the appellants' mother.



14. Counsel for the appellants further argued that the sale agreement that the respondent relied on to prove that the appellants' late mother sold the suit land to him (PEXH B) and the certificate of title, which includes the said land, have many discrepancies that the Trial Magistrate ignored: firstly, the sale agreement was written in English, and the late Dezi Kiggundu's thumb print was placed on the said agreement, and yet she was an illiterate. According to counsel, since it is trite that any contract that offends the provisions of the *Illiterates Protection Act* is unenforceable, if it lacks a certificate of translation, the sale agreement between the respondent and the late Dezi Kiggundu was void. Secondly, the sale agreement further indicates that it was executed before the Chairman LC1 of Lunnyo Central Ward, and yet the suit land falls under Nakiwogo-Banga Central Division. That since PW2, the chairperson of Luunyo Central admitted that the suit land was in Banga – Nakiwogo which had its own LC leadership, and neither of them participated in the sale transaction of the suit land, the sale was void; thirdly, counsel submitted that the appellants who are the customary tenants on the suit land were neither consulted nor informed about the respondent's application for conversion of the customary tenure to freehold. Counsel submitted that since the procedure for processing a certificate of title were flouted by the respondent, and the Area Land Committee chaired by PW2, the respondent unlawfully acquired the certificate of title for the suit land.
15. With regard to ground 3, counsel for the appellants submitted that the sale agreement between the late Dezi Kiggundu and the respondent is illegal because the late Dezi Kiggundu did not have letters of administration of the estate of the late Peter Kiggundu, and thus lacked the authority to enter into the sale agreement of property that was part of the estate of the late Peter Kiggundu.



23. The appellants bear the burden of proof, and this being a fraud case, the standard of proof is heavier; it is beyond a mere balance of probabilities. See the case of *Kampala Bottlers Ltd v. Damanico (U) Ltd*, *Supreme Court Civil Appeal No.22 of 1992 (coram: S.W.W. Wambuzi, C.J., A. Oder, J.S.C., H. Platt, J.S.C)*.
24. Firstly, I will deal with the appellants' argument that, because their late mother, Dezi Kiggundu, did not have letters of administration to administer the estate of the late Peter Kiggundu; she had no legal capacity to sell the land to the respondent.
25. The late Peter Kiggundu died in 1988. Despite the lack of letters of administration, there is evidence that the appellants' late mother, Dezi Kiggundu, dealt with the estate of the late Peter Kiggundu, without any objection from the appellants. For example, on the 15 December 2001, in her capacity as the widow of the late Peter Kiggundu, the late Dezi Kiggundu sold land to Alex Ochan. The sale agreement is written in English. The appellants do not dispute the sale by their late mother, Dezi Kiggundu, to Alex Ochan. In fact, the sale agreement between their late mother and Alex Ochan was witnessed by Nassali Rose (2nd appellant), Nakigudde Annet (3rd appellant) and Namuli Maggy (4th appellant).
26. The late Dezi Kiggundu was never issued with letters of administration of the estate of the late Peter Kiggundu who died in 1988, and therefore, when she made a sale to Alex Ochan in 2001, she must have done so in her capacity as the widow and beneficiary of the estate, and with the approval of her children, the appellants.
27. With regard to the sale to Alex Ochan;

Paragraph 3(f) of the appellants' counterclaim avers that:



“In 2001, way before selling part of Plot 84, the Counter Claimants had sold another Plot/Kibanja to Mr. Ochan Alex and the said agreement was dully witnessed by the counterclaimants’ late mother and the counterclaimants as beneficiaries of this family land in the presence of the local council officer of Banga-Nakiwogo Entebbe Municipality where Plot 84 is located.”

DW2 (Nassali Rose) testified that:

“That later in 2001, I and my siblings with our late mother Dezi Kiggundu sold part of Plot 84 to Mr. Ochan Alex and the said agreement was dully consented to and witnessed by the 2nd to 4th defendants/Counter Claimants as beneficiaries to this family land with the 1st defendant’s knowledge and we handed over the original copy of the agreement to Mr. Ochan Alex.”

28. Having dealt in the estate of the late Peter Kiggundu and sold some of the estate land, in their capacity as beneficiaries of the estate, for about 25 years; are the appellants legally entitled to turn around, and assert that, some of the sales effected during that period, are invalid because they had no letters of administration?
29. The general position of the law is that without grant of letters of administration, no person has any right whatsoever to sell or otherwise deal with property of a deceased person (*See John Kihika & Another v. Absolom Tinkamanyire, Court of Appeal Civil Appeal No.86 of 2014*).
30. However, there are exceptional cases where the pursuit of the ends of justice, demands that a sale of land by a beneficiary be upheld as valid and enforceable. This is necessary to advance the course of justice. This is

Bernst Hauey

especially so, where the conduct of the parties is such that a sale of land by the beneficiary is generally acknowledged to have taken place, but the beneficiaries of the estate, turn around to deny the validity of the sale, on grounds of lack of letters of administration.

31. In the instant case, there is abundant evidence that the appellants' mother, Dezi Kiggundu, who did not have letters of administration, dealt in the estate of her deceased husband, Peter Kiggundu, in her capacity as the widow and beneficiary, from 1988, when her husband died, up to 2013, when she also died. That was for a period of 25 years. For all this time, the appellants never challenged their mother's authority to deal in the estate of their late father. There is in fact, evidence, that their late mother's dealings were approved by the appellants, such as the sale of the land to Alex Ochan. The appellants' late mother sold the land to the respondent in 2003, and the respondent took physical possession of the land, and constructed a house on the land in 2005/2006. The respondent enjoyed quiet possession of the land until 2013, 10 years later, following the death of the appellants' mother, when his ownership of the land was challenged. The appellants do not challenge the entire sale transaction; they only dispute the measurement of the land sold to the respondent. In their written statement of defence, the appellants admit that their late mother sold another plot of land to a one Ochan Alex, which sale was also witnessed by the appellants and the local council official of Banga – Nakiwogo, Entebbe Municipality. If the appellants did not challenge the sale to Ochan Alex, which was also done by their late mother, Dezi Kiggundu; how can they assert that their late mother had no authority to sell land to the respondent on account of lack of letters of administration? The appellants cannot selectively claim that their late mother did not have authority to sell land to the respondent but had authority to sell land to Ochan Alex. If the appellants were serious about challenging the sale, why did they

wait until their mother had passed on, in order to challenge the respondent's interest in the land? Should the appellants be allowed to challenge the sale of the land to the respondent on account of lack of letters of administration, when for 10 years, they did not do so? What ends of justice would be enabled by invalidating such a sale?

32. This legal question was considered by the Court of Appeal of Uganda in the case of *Dr. Diana Kanzira v. Herbert Rwachwende and Another (Civil Appeal 81 of 2020) [2023] UGCA 286 (2 November 2023) (Coram: Bamugemereire, Kibeedi & Gashirabake JJA)*. The brief facts of the case are that Herbert Rwachwende is the registered proprietor of land measuring 161.162 acres in his capacity as the administrator of the estate of the late Ericsson Rwachwende. Robert Rwachwende, one of the beneficiaries of the estate sold his beneficial interest of land measuring 30 acres to Dr. Diana Kanzira. Herbert Rwachwende filed a suit challenging the sale on grounds that Robert Rwachwende had no authority to sell any part of the estate without his consent as the administrator of the estate. The High Court held that the sale was invalid, arguing that Robert Rwachwende had no authority to sell any part of the estate, without the consent of the holder of letters of administration, Herbert Rwachwende. On appeal to the Court of Appeal, the Court held that, by his conduct, Herbert Rwachwende had acquiesced to the sale, and further held as follows:

Per Justice Catherine Bamugemereire (JA as she then was):

“A beneficiary has legal capacity to validly dispose of his/her beneficial interest without the notice or prior consent or authorisation by the holder of letters of administration..”

Per Justice Muzamiru Mutangula Kibeedi (JA):

“The instant appeal raises a very important matter of public importance...can a beneficiary sell or otherwise assign his or her

beneficial interest without the consent or authorisation of the trustee or holder of letters of administration? ...a beneficiary has legal capacity to validly dispose of his/her beneficial interest without notice or prior consent or authorisation by the holder of letters of administration.”

33. Accordingly, it is my conclusion that this is one of the exceptional cases where a court of law must be prepared to uphold a sale of land by a beneficiary of an estate of a deceased person without letters of administration. The appellants, who are beneficiaries of the estate of the late Peter Kiggundu, acquiesced to the sale of the land by their late mother, Dezi Kiggundu, to the respondent. They are estopped from denying that their late mother, Dezi Kiggundu, had authority to sell the land to the respondent, Kakembo Michael. *Dr. Diana Kanzira v. Herbert Rwanchwende (supra) applied.* The facts in the *Rwanchwende* case are slightly different from those of the instant case. In the *Rwanchwende* case, there was an administrator with letters of administration. In the instant case, no letters of administration had been issued to the appellants' mother. Despite this, I find that the legal principles regarding the legal capacity of a beneficiary to sell his or her interest in the estate of a deceased person, espoused by the Court of Appeal are relevant to the determination of the case before me.
34. Secondly, I will deal with the appellants' argument that their late mother, Dezi Kiggundu, did not sign the sale agreement for the land.
35. DWI (Wampamba David) testified that he was the former chairman of Central Ward L.C.2. That he knew the parties who were neighbours. That the appellants and the late Dezi Kiggundu sold a piece of their land to the respondent. That when wrangles broke out between the parties, the

Bernard Harcourt

respondent reported the matter to the LC2 Central Ward at Entebbe vide Case No. 042 of 2016. That the matter was heard and resolved in the appellants' favour. According to DW1, when the respondent embarked on the survey of the land, he included land owned by the appellants and which was not part of the land sold to him. DW1 claimed that the measurements of the land sold to the respondent were distorted.

36. DW2 (Nassali Rose) testified that in the 1990s, the respondent occupied part of the estate land comprised in Plot 84 measuring 20.6 by 16 metres as a tenant of the late Dezi Kiggundu. That in 2006, the late Dezi Kiggundu sold to the respondent land measuring 15 by 21 meters. This was in her presence and that of other beneficiaries of the estate of the late Peter Kiggundu. That the appellants were shocked when the respondent started claiming the suit land based on a forged sale agreement between the late Dezi Kiggundu and the respondent. That the said agreement was entered without her knowledge and consent or that of the beneficiaries of the late Peter Kiggundu (the appellants). That the sale agreement was executed before Lunnyo Local Council Officials whose mandate does not extend to Banga Nakiwogo, where the suit land is situated. That the respondent encroaches on the land of the late Peter Kiggundu by 6 metres along Kasirye Road and 7.2 metres on the lower part. That the appellant used Local Council Officials led by a one Bikaba M. Charles to fraudulently process the certificate of title for the suit land, and also caused the measurements from the survey to exceed the boundary by 6 to 7.2 metres, thus increasing the acreage for his parcel of land from 15x21 metres to 21x28.2 metres. That the late Dezi Kiggundu was illiterate, and wrongfully influenced into signing an illegal sale agreement written in English, a language she did not understand which eventually led to the size of the land being falsified.

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37. DW3 (Norah Mukoloma Tuheirwe) testified that she is an immediate neighbour of appellants. That she was introduced to other people who bought part of the land from the late Dezi Kiggundu but was not introduced to the respondent. That after the late Dezi Kiggundu died, the respondent trespassed on the suit land and eventually acquired a certificate of title of the suit land. That when the LC2 heard the matter between the parties and found for the appellants, the respondent apologized to the appellants.
38. The testimony of DW2 (Nassali Rose) is remarkable to the extent that she admits that the late Dezi Kiggundu sold to the respondent land measuring 15 by 21 meters. Her only problem is that the respondent now claims land measuring 21x28.2 metres. The same admission is contained in paragraph 3(e) of the counterclaim filed by the appellants.
39. The question as to the measurements of the land purchased by the respondent is clarified in the sale agreement dated 16 April 2003 (PEXH B). According to this sale agreement, the dimensions of the land purchased by the respondent are shown as 21 x 28.2 metres.
40. The legal question to resolve is whether the oral evidence of DW2 (Nassali Rose) is admissible to contradict the express terms of the sale agreement. It is the law, that oral evidence contradicting the express terms of a contract offends the parol evidence rule, which is to the effect that any information that is not included in a written contract is inadmissible. *See Section 92 of the Evidence Act (Cap 6); and the case of General Industries (U) Ltd v. Non-Performing Assets Recovery Trust (Civil Appeal No. 5 of 1998) [1999] UGSC 8 (Coram: Oder, J.S.C., Karokora, J.S.C., Mulenga, J.S.C., Kanyeihamba, J.S.C., Kikonyogo, J.S.C)*. Accordingly, the appellants cannot be heard to contradict the express terms of the sale agreement dated 16 April

Bernard Haasey

2003 (PEXH B) which clearly provides that the respondent purchased land measuring 21 x 28.2 metres.

41. Thirdly, DW2 (Nassali Rose) made a serious allegation that the sale agreement dated 16 April 2003 (PEXH B) is forged. Now, did the appellants adduce evidence to prove this allegation? I have perused the evidence adduced by the appellants, and I have not seen proof that the sale agreement is forged. There is also evidence that the late Dezi Kiggundu, by agreement written in English, sold land to Alex Ochan in 2001.
42. Fourthly, the appellants alleged that the respondent fraudulently obtained a freehold certificate of title. According to PW1 (Kakembo Michael), having purchased the suit land as per the sale agreement dated 16 April 2003 (PEXH B), he subsequently hired a surveyor who opened the boundaries of the suit land. That he then ensured that all the legal requirements were met and with the permission of Entebbe Municipal Council, he converted the suit land from customary tenure to freehold and got a certificate of title. That the measurements of the suit land on the certificate of title are different from those in the agreement because the surveyor told him that his plot of land covers part of the appellants' parcel of land, and he instructed him to adjust the measurements so as to allow the appellants have access to the main road. That the suit land was under the control of Entebbe Municipal Council, and as such did not belong to the estate of the late Peter Kiggundu, because his tenure expired when he stopped paying rent, and the land reverted to Entebbe Municipal Council.
43. The respondent led additional evidence to counter allegations of fraudulent acquisition of the certificate of title:

Bernard Harcourt

47. In the case of *Kampala Bottlers Ltd v. Damanico (supra)*, it was held that
“...production of the certificate to title in the names of the
appellant is sufficient proof of ownership of the land in
question...”

48. Considering that the appellants failed to adduce evidence to impeach the respondent’s certificate of title, the learned Trial Magistrate was correct in holding that the respondent is the lawful owner of the suit land.

49. In conclusion, this appeal is dismissed. The judgment of Her Worship Kabugho Elizabeth, Magistrate Grade One, delivered on the 17 February 2022 is upheld. The respondent is awarded the costs of the appeal.

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read 'Bernard Namanya', with a stylized flourish at the end.

BERNARD NAMANYA

JUDGE

24 June 2024

24 June 2024 at 11:02am

Attendance for delivery of the Judgment

Nassali Rose	2 nd appellant
Nakiggude Annet	3 rd appellant
Namuli Margaret	4 th appellant
Appellants' counsel is absent	
Kabuye Lawrence	Counsel for the respondent
The respondent is absent	
Allena Kanyakire	Court Clerk

Nassali Rose (2nd appellant):

We are ready to receive the judgment.

Court:

Judgment delivered in open chambers.



**BERNARD NAMANYA
JUDGE**

24 June 2024