

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA

AT KAMPALA

CIVIL APPEAL NO. 22 OF 1997

CORAM: Hon. Mr. Justice G.M. Okello, JA. Hon. Lady Justice A.E.Mpagi Bahigeine,JA.& Hon. Mr. Justice S.G. Engwau, JA.

GEORGE V. KATONGOLE::::::::::::::::::::: APPELLANT

VERSUS

MARIAM NABYONGA & 2 OTHERS::::::::::::::::::::: RESPONDENTS

RULING OF THE COURT:

This appeal arose from the sale of land whereby the appellant claimed that the 1st Respondent had sold him a piece of land situated at Rubaga Hill in Kampala. The said sale was allegedly concluded and the transfer was effected.

The vendor, 151 respondent denied the sale when the purchaser, 1 appellant tried to enter the said piece of land. She also denied the execution of the transfer and the matter was taken to the High Court to resist eviction by the appellant.

During the trial an allegation of fraud was raised by the 1st respondent that the said signature on the Sale Agreement and the Transfer Deed were not hers and that her Title deed had been stolen from her.

At the trial, the learned trial Judge directed that the 1st respondent should write a specimen

signature for scrutiny and comparison with the signature on sale agreement which the trial judge relied upon in her judgment.

On appeal this specimen signature, D2 and ten others were missing. Both counsel agreed before us that D2 is very vital to the case. In view of that development, both counsel requested court to allow the 1st respondent to make a fresh specimen signature to substitute D2 under Rule 29(1) (b) of the rules of this court to enable to scrutinize and compare the signature. In the alternative both Counsel agreed that in the absence of D2, a retrial order be made.

In our view, we cannot allow the 1st respondent to make a fresh specimen signature to substitute D2 as that would be tantamount to manufacturing evidence. We would, therefore, order a retrial since the vital evidence is missing, and each party to bear costs of this appeal

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Dated at Kampala this 20th day of October, 1998.

G.M OKELLO

Justice of Appeal

MPAGI BAHIGEINE

Justice of Appeal

S.G. ENGWAU

Justice of Appeal