

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MBARARA

HCT-05-CV-CS-0031-2001

TWESIGYE EDRINE KATEIGAPLAINTIFF

VS

ELDAD TIBESASADEFENDANT

BEFORE: THE HON. MR. JUSTICE P. K. MUGAMBA

JUDGMENT

Twesigye Edrine Kateiga brought this action against Eldad Tibesasa. She seeks the following reliefs:

- (i) An order for the equal sharing of the joint property.
- (ii) An order for payment of mesne profits.
- (iii) Costs of the suit.

Both parties to this suit are atone that from 1984 until 1998 or 2000 they lived together and produced five children in consequence. At first the couple lived in premises provided by the father of the defendant, who later told them to settle and cultivate at Kanyinampeta, Ibanda. This was one of his pieces of land. There a coffee garden, a banana grove and a eucalyptus plantation were developed by the couple. It is also not disputed that a piece of land was later acquired at Mpiira Street, Ibanda Town. That land was in the names of the defendant as was the purchase agreement. Suffice it to say that on that piece of land a commercial building in permanent material was subsequently erected.

The parties agreed the following issues:

1. Whether there was a legal relationship between plaintiff and defendant.
2. Whether there is any property acquired jointly by the two parties during their relationship.

3. Whether the relationship between the two parties has completely broken down.
4. Whether the plaintiff is entitled to a share of the property.
5. What remedies are available.

What plaintiff and the defendant told court concerning the first issue is that they lived together for about 15 years. No evidence was adduced that they were married. Indeed both admitted that no rites had been performed with a view to marriage. Insofar as this issue relates to marital relations my answer to it is in the negative.

I must go on to consider the second issue. The evidence on record shows that the land at Kanyinampeta belonged to the father of the defendant. No evidence was given to show that the father of the defendant had relinquished his claim to it in favour of either the defendant or of both the defendant and the plaintiff. They had however been permitted to grow coffee, banana and eucalyptus on it but this to my mind is no proof that they had jointly acquired the land at Kanyinampeta.

As for the land at Mpiira Street, Ibanda Town, evidence adduced shows that the property was acquired solely by the defendant. There was no evidence to support the plaintiff's claim that she contributed either to the purchase or to the development of the property. In any case the burden is on the plaintiff to prove her assertions.

See: Sections 101, 102 and 103 of Evidence Act, cap. 6 of the Laws of Uganda. As I find the plaintiff has fallen short of the requisite standard my answer to this issue is in the negative.

From the evidence available to court from the two litigants I have no doubt the answer to the third issue should be in the affirmative.

Following my findings in this judgment the fourth issue ought to be answered in the negative. As for the final issue, I find no merits in this suit which I dismiss with costs.

P. K. Mugamba
Judge

23 September 2004

Mr. Katembeko for plaintiff

Mr. Mwene-Kahima for defendant

Parties absent

Ms Tushemereirwe court clerk interpreter

Court:

Judgment read in open court.

P. K. Mugamba

Judge