

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

**HCT-05-CV-CA-005-2004**  
(From BUS-OO-CV-CS-040-2002)

ISHARAZA MATHEW..... APPELLANT

VS

BEYUNGA DEUSDEDIT .....RESPONDENT

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

**JUDGMENT**

The memorandum of appeal contains two grounds. Those grounds are set out as they appear:

1. The learned trial magistrate despite the overwhelming evidence on court record arrived at a wrong conclusion that the disputed land belonged to defendant.
2. The learned trial magistrate misdirected himself on the law and evidence and as a result came up with a bad judgment which was against the weight of the evidence on record and this occasioned a miscarriage of justice.

Counsel for the appellant made a spirited effort to point out certain aspects he felt the trial court had not properly addressed. It was his view that in consequence a wrong decision had been arrived at. In reply counsel for the respondent pointed out that before the merits of the appeal could be looked into court's attention needed to be drawn to the memorandum of appeal itself which comprised grounds drawn in general terms.

Order 39 rule 1 (2) CPR is apt. It states:

'The memorandum shall set forth, concisely and under distinct heads, the grounds of objection to the decree appealed from----.' Emphasis added.

The Cambridge International Dictionary of English provides for the word concise:

‘---short and clear; expressing what needs to be said without unnecessary words--’

Looking at the grounds as set out in the memorandum, clearly more words need to be said and were indeed said to explain the particular grounds of objection. This was inevitable given that the grounds were set out in general terms. Yet this should not have been the case if rule 2 of Order 39 CPR is borne in mind. That rule in part provides:

‘The appellant shall not, except by leave of the court, argue, or be heard in support of any ground of objection, not set forth in the memorandum of appeal--.’

Once again the emphasis is added.

At the hearing of the appeal counsel for the appellant strove to argue points of objection that are not apparent in the memorandum of appeal. Yet he never sought leave to argue those grounds, this offending 0. 39 rule 2 CPR.

A position similar to the instant case obtained in Moro Okolla vs John Lalobo 119791 HCB 54. In that case court held that where the memorandum of appeal did not comply with the requirements of Order 39 rule I of the Civil Procedure Rules it was incurably defective and was to be rejected entirely. Court held further that an appellant cannot argue or be heard, except by leave of the court, in support of any ground of appeal not set out in the memorandum of appeal. In the result I find the memorandum of appeal defective and strike it out with costs.

P. K. Mugamba  
Judge

7th October 2004

Mr. Katembeko for respondent

Mr. Mwene-Kahima holding brief for Mr. Bazaare for appellant

Ms Tushemereirwe court clerk

Court: Judgment read in court

P. K. Mugamba  
Judge