

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT FORT PORTAL
HC CV CA NO. 0070 OF 2008

BYAMUKAMA
EDWARD:::APPELLANT

VERSUS

KABONESA MARIA
:::RESPONDENT

BEFORE HON. MR. JUSTICE MIKE J. CHIBITA

JUDGMENT

This is an appeal against the judgment and orders of the Magistrate Grade 1, Kamwenge, His Worship John Kategaya, delivered on 4th December, 2008.

At the hearing both parties were present and represented. They requested court to allow them file written submissions. The Appellant's submissions were written and filed by M/s Ngaruye Ruhindi, Spencer & Co. Advocates.

Learned Counsel James Ahabwe filed written submissions for the Respondent.

There were two substantive grounds of appeal, to wit, that:

- 1. The learned trial Magistrate erred in law and fact when he decreed that the land belonged to the Respondent.***

2. The learned trial Magistrate erred in law and fact when he ordered the Appellant to pay costs of the suit.

On ground 2 learned Counsel for the Respondent averred that costs follow the event. He referred court to section 27 of the Civil Procedure Act.

Thankfully, learned Counsel for the Appellants abandoned the ground thereby saving time.

That leaves only the first ground of appeal to contend with. The Appellant, in this ground, set out to show that the learned trial Magistrate erred in law and fact when he decreed that the land belonged to the Respondent.

There is nothing in the written submissions of learned Counsel for the Appellants to show what error of law or fact that the learned trial Magistrate committed. Instead learned Counsel embarks on a fresh voyage of re evaluating the evidence adduced.

I agree with the submissions of learned Counsel for the Respondent that the Appellant did not in any way challenge the way the learned trial Magistrate evaluated the evidence.

An appeal is not a re trial and therefore court should not be expected to re evaluate evidence not pleaded in the Memorandum of Appeal. Court will be guided by the Memorandum of Appeal in delving into the appeal.

Consequently I find no merit in ground one of appeal. Ground two of appeal having been abandoned the appeal therefore fails and is accordingly dismissed with costs to the Respondent.

The judgment and orders of the lower court are hereby upheld.

Dated at Fort Portal this 7th day of December, 2012

JUSTICE MIKE J. CHIBITA

JUDGMENT IS TO BE READ AND DELIVERED BY THE ASSISTANT REGISTRAR.

MIKE J. CHIBITA

JUDGE