

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT JINJA**

CIVIL APPEAL NO. 123 OF 2012

(ARISING FROM KAYUNGA CIVIL SUIT NO. 038 OF 2009)

5

ALUMA

WILLIAM:.....A

APPELLANT

10

VERSUS

SEBYALA

ZUBAIRI:.....RES

15

PONDENT

BEFORE: THE HON. JUSTICE GODFREY NAMUNDI

20

JUDGMENT

This Appeal arises out of the Judgment and orders of His Worship Samuel Munobe, Senior Magistrate Grade 1 in Civil Suit No. 038/2009 delivered on 4/9/2012.

The Plaintiff now the Respondent brought this action in the trial court based on trespass and hence sought remedies including a declaration that the Defendant/Appellant is a trespasser, a permanent injunction, special and general damages.

The Defendant/Appellant denied the claims and maintained that the Plaintiff/Respondent found him on the suit land as a kibanja owner, having bought the same from Nsajja Baloozi (DW2) and Kakumba Alifonsi.

5

The trial Court found that the Appellant/Defendant was entitled to only 2 acres out of the suit land.

Four Grounds of Appeal were drawn as follows: -

- 10 1. The trial Court erred in law and fact when he failed to properly evaluate the evidence on record and came to the conclusion that the land occupied by the Defendant was a kibanja lawfully acquired by him.
- 15 2. The trial magistrate erred in law and fact when he found that the lawful kibanja holding of the Defendant was only 2 acres.
- 20 3. The trial magistrate erred in law and fact when he failed to find that Defence Exhibit D1, D2 and D3 were independent agreements for acquisition of kibanja interests on 3 separate occasions.
4. The trail magistrate erred in law and fact when he found that the Defendant was a trespasser on the suit property beyond 2 acres.

25 **Grounds No. 1 and 3: -**

It has been submitted for the Appellant that he adduced overwhelming evidence to prove that he was the owner of the 3 bibanjas.

- 5 That he properly adduced as Exhibit D1, D2 and D3 that give a proper illustration on how he acquired his kibanja interest. The above evidence was disregarded by the trial Court.

That the trial magistrate relied on the oral evidence of
10 Respondent's witnesses and disregarded the documentary evidence of the Appellant without giving reasons.

References were: -

- 1. J.Y Obol-Ochola in the East African Law of Evidence.**
15 **2. Bon Holdings Vrs. Busoga Co-operative Union Ltd. - HCCS 281/2011.**

It was also submitted that the trial magistrate made findings that
20 were not supported by the pleadings and evidence e.g.

1. The Appellant being responsible for weather changes.
2. Burning of charcoal.
3. The Appellant being liable for environmental degradation.

25

Ground No. 2: -

That there was no evidence on record how the magistrate made a finding that the Appellant owns only 2 acres on the suit land or
5 of any measurements or survey. That he relied on observations from the Bench. He ignored the evidence of Kakumba Alifonsi who sold land to the Appellant for Shs.120,000/=.

It was therefore clear according to the Appellant that he only
10 bought bibanjas with the boundaries elaborated in the sale agreements.

Ground No. 4: -

It was also submitted for the Appellant that the trial magistrate
15 did not address himself on the evidence of the Appellant's ownership of the 3 bibanjas, or that he used the land exceeding the said 3 bibanjas.

That there was therefore no evidence of trespass. **Ref:**
20 **Uganda Posts and Telecommunications Vrs. Abraham Kitumba - SCCA 36/95**, where it was held that ***"If a person purchases an estate which he knows to be in occupation of another than the vendor, he is bound by all the equities which the parties in such occupation may have in***
25 ***the land."***

Submissions of Respondent: -

It was submitted for the Respondent that the trial magistrate ably evaluated the evidence on record and arrived at a proper
5 decision.

It is submitted that there were clear boundary marks that demarcate the 2 acres the Appellant was entitled to.

10 That if at all he purchased beyond the 2 acres then the boundary marks would have been changed to indicate so.

The magistrate considered the evidence on record, and observations at the locus to make its decision.

15

Further that Nsajja Baloozi who is alleged to have sold the Appellant 3 pieces of land denied doing so and maintained he only sold to him 2 acres of land.

20 It was submitted that PW3 the author of the Agreement confirmed the transaction between Baloozi and the Appellant and that this was only once. That he later wrote duplicates as the originals had got lost.

25 In spite of the above, the Appellant encroached on the Respondent's land thus becoming a trespasser.

Further that when the Plaintiff purchased the Mailo interest in the land, Baloozi the vendor introduced all the kibanja holders to him who were 9 in number and included the
5 Appellant/Defendant.

It was submitted further that the Appellant's own witness - Alifonsi Kakumba was not credible, as he did not know the amount of the transaction, could not identify his signature on the
10 agreement and could not point out the kibanja he sold.

It is therefore submitted that the Court decided the case on a balance of probabilities.

15 **Court's Resolution of Appeal: -**

I have considered the record of the lower Court and Judgment. I have also considered the submissions of the 2 Counsel for the parties.

20 What is clear is that: -

1. At the purchase of the Mailo interest by the Respondent, the kibanja holders thereon were introduced to the said Respondent.
2. The Appellant was very ambivalent/unclear in respect to the
25 land he claims, arguing that land under kibanja holding is

not measured in acres. It gives the impression that he was not being straight forward in respect of the area in dispute.

3. The person who sold to him - **Baloozi** was available and gave evidence, he was very clear and emphatic that he sold to the Appellant only once and it was only 2 acres.

4. The author of the sale agreement was also available and corroborated the evidence of Baloozi - the Vendor. He explained as had Baloozi the circumstances why there was more than one agreement that the Appellant had requested him to write substitutes having lost the originals.

In effect the Appellant's claim that he bought 3 pieces of land from Baloozi remain unsupported by evidence.

5. The Respondent bought the suit land from Baloozi well knowing the bibanja interests thereon and there is no evidence that he was evicting any other holder other than the Appellant who was now trying to acquire what was not entitled to him. In that respect he was a trespasser.

I find that the Appeal has no merits and that the trial magistrate properly evaluated the evidence and came to the right conclusions.

I accordingly dismiss the Appeal for lack of merits and uphold the Judgment and orders of the trial Court. The Appellant will pay the costs of this Appeal.

Godfrey Namundi

Judge

5 **24/11/2014**

24/11/2015:

Ngobi Balidawa on brief for David Were for Respondent

10 Both parties present

Court: Judgment read.

15 **Godfrey Namundi**

Judge

24/11/2014