

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)

CIVIL APPEAL NO. 31 OF 2008

1. BAGULA JOSEPH
2. KATO ROBERT
3. NALONGO KASULE } ::::::::::::::::::::::::::::::::::: APPELLANTS

VERSUS

LUBEGA GEORGE WILLIAM ::::::::::::::::::::::::::::::::::: RESPONDENT

BEFORE: HON. MR. JUSTICE RUBBY AWERI OPIO

JUDGMENT

This is an appeal arising from the Judgment and Orders of Magistrate Grade I Nakasongola dated 4th November 2008 in Nakasongola Civil Suit No. 31 of 2007. The matter was originally filed in Nakasongola District Land Tribunal as Claim No. 15 of 2004 and was later transferred to Nakasongola Chief Magistrates Court as Civil Suit No.15 of 2004 when government phased out Land Tribunals.

The brief background facts of the case were that the case were that the Appellants claimed to be the rightful owners of a piece of land at Mijera, Nakasongola, measuring appropriately 80 ft by 360 ft. The Appellants claimed to have inherited the same from their late father Mr. Didas Kasule who was granted a lease offer by the Uganda Land Commission under Minute 8/3/84 (a) 471 of February 1984. The Appellants sought to develop the suit land in 2002 but were blocked by the Respondent who claimed that the suit land belonged to

him. Accordingly the Appellants filed their claim seeking a permanent injunction against the Respondent for blocking them from developing the suit land and a declaration order that they were the rightful owners of the suit land where they had been staying as customary tenants since 1972.

The Respondent's response was that he acquired the same land measuring 80' x 360' in 1972 and on a friendly basis he donated half of it i.e. 40' x 360 ft to his friend, a one Kasule, the first and 2nd Appellants' father and 3rd Appellant's husband respectively. Thereafter he built on the disputed land and lived on it until the building collapsed but continued to use the disputed land as family property.

In the meantime the Respondent entered into an agreement dated 15/1/1991 with one Mukasa John a brother to the two Appellants and son of the 3rd Appellant allegedly through connivance, duress and undue influence, dividing the suit land into two.

The learned Trial Magistrate gave Judgment in the Respondent's favour and ordered that the suit land be divided along the lines of what had been decided in the agreement with Mukasa although he ruled that the said agreement was null and void for duress.

It was against the above decision that the Appellants appealed to this Honourable Court on the following grounds:-

- (1) The Trial Magistrate erred in law and fact when he misdirected himself on the effect of an agreement obtained or made under duress and wrongly held that it had no legal effect.

(2) The Trial magistrate erred in law and fact when he failed to evaluate the evidence regarding the rights of the parties to the suit, thereby coming to a wrong conclusion.

(3) The trial Magistrate erred in law when he held that the suit land be divided along the line of what had been decided in the agreement, which Agreement he declared to be void.

The Appellants' Counsel argued ground 1 and 3 together and ground 2 separately. With greatest respect; Counsel was right to do so as both grounds relate to a similar issue. The same option was adopted by the Respondent's Counsel.

As far as the 1st and 3rd ground is concerned, I do agree that the learned Trial Magistrate erred in law and fact when he misdirected himself on the effect of an agreement said to have been obtained or made under duress. During the trial a one Mukasa, a son to the deceased and a brother to two of the Appellants testified that he was threatened by the Respondent's son who was a soldier who forced him to divide the Plot and to accept that the land in dispute belonged to both parties. He stated that he was forced to sign on behalf of his siblings but it was never his intention to do so since the land belonged to his father and not the Respondent.

From the above evidence, it can be seen that the said agreement was made under duress and undue influence. At common law a contract or agreement obtained through use of force, threat of force, undue persuasion is avoidable because there is no consent on the part of the victim/party threatened. In **Issa & Co. v JERA Produce Stores [1967] E. A. 557**, the Defunct Court of Appeal for East Africa held that undue influence arises in contract where one of the parties

is in a position to dominate the will of the other and uses that position to obtain unfair advantage like in the instant case. It held that where a contract is obtained by duress or undue influence, it renders the contract made as a result thereof avoidable. In the instant case the trial Magistrate rightly found that there was duress making the agreement devoid of any legal effect but he relied on the same contract to decide that the suit land be divided along the lines of what had been in the agreement. That was a very serious contradiction and error.

Ground 2: The trial Magistrate erred in law and fact when he failed to evaluate the evidence regarding the rights of the parties on the suit land thereby coming to a wrong conclusion.

The most important task in a judicial function is to appraise issues and evaluate evidence in order to arrive at a just decision. The above function is exercised both in original and first Appellate jurisdictions. Thus in **Begumisa & Others vs Eric Tibebaga [2001 – 2005] HCB VOL 11 34** the Supreme Court held inter alia, that the legal obligation on a first Appellate Court to reappraise evidence was founded in the common law, rather than in the Rules of Procedures.

In the instant case, both parties testified and adduced evidence from a number of witnesses.

Apart from commenting on the Respondent's evidence and that of Kasule's widow, the learned trial Magistrate never referred to the rest of the evidence of the Appellants and the Respondent's witnesses. Upon perusing the record of proceedings, I find that there was overwhelming evidence to prove that the land in dispute was owned by both the Respondent and the late Kasule who was the

father and husband of the Appellants. The four had a dispute over ownership of the same which the local authorities resolved and parcelled between the two equally each getting 40' x 360 ft way back in 1991. I also agree with the Respondent that he built a house on part of the suit land which he lived on but fled during the war of 1980s. The Respondent's evidence was buttressed by that of Erinasani Mulindwa Dw2 who testified that he was one of those who sat in the dispute between the late Kasule and the Respondent about the suit land whereby the land was divided between the two. Peter Bukenya Dw3 corroborated Mulindwa's story. The next important evidence in favour of the Respondent came from Getrude Birungi Dw4. She testified that the Plot in question belonged to Kasule and the Respondent. That the Respondent built a Muzigo on the same and called her to take care of it during the war. That, the Respondent recognized Kasule's interest on part of the suit land. Interestingly, the Respondent's evidence also finds support from those of the Appellants. For instance Abubakar Mukasa Pw5 testified inter alia, that in 1991 he was Secretary LC I Migera when a dispute arose over the disputed property between the Respondent and people who were claiming interest from the late Kasule. That Mr. Mukasa who was one of the warring parties decided to settle the matter by dividing the suit land. However the rest of the claimants never accepted the settlement. Wasswa Senyange Salim Pw6 testified that his Chairman appointed him together with a one Mukasa Abubaker Pw5 to witness an agreement between Mukasa and the Respondent, which he did. After carefully analyzing the above evidence, it is clear that the land in question was disputed and in one way or the other, the local authorities tried and witnessed its settlement. Furthermore, it is clear on the balance of probabilities, that the land in dispute was shared by the Respondent and the late Kasule getting 40' x 360 ft. That is possible because the late Kasule died a sudden death and could not have time to tell his relatives of the above arrangement. By the above analysis this appeal is bound to fail.

The appeal is accordingly dismissed. The order of the Trial Magistrate dividing the land is upheld. Each party shall bear own costs to ensure harmony among the parties as they are neighbours.

HON. MR. JUSTICE RUBBY AWERI OPIO

JUDGE

27/6/2011

28/6/2011

Magala Court Clerk present.

Both parties absent though notified.

Judgment read in Chambers.

HON. MR. JUSTICE RUBBY AWERI OPIO

JUDGE

28/6/2011