

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

CIVIL APPEAL NO. 006 OF 2009

(From Mpigi LM No. 2 of 2005)

ST. BENEDICT BUWAMA S.S. LTD. ::::::::::::::: APPELLANT

VERSUS

MARY NAYITA MUKASA ::::::::::::::: RESPONDENT

Before: Hon. Mr. Justice J. W. Kwesiga

JUDGMENT

The Respondent sued the Appellant before the then Mpigi District Land Tribunal under land claim LM 2 of 2005. She claimed she was the owner of a KIBANJA on land comprised in Mailo Register BLOCK 301 Plot 122 at Teketwe, Buwama in Mpigi. She alleged she had acquired the Kibanja as a play ground for her school called UGANDA MARTYRES DAY AND BOARDING PRIMARY SCHOOL.

She had deposited 10,000 bricks for construction of buildings. The Appellant on the other hand claimed to be in possession a lease (Registered interests) over that land on which the alleged Kibanja was and sued her for trespass.

The Appellant's original defence stated that it was the registered proprietor by virtue of LRV 3119 Folio 6 obtained in July 2008 from Uganda Land Commission. Denied existence of any Kibanja.

The trial Court stated two issues for disposal of the suit, namely:-

1. Whether the Plaintiff (Respondent) had any rightful Kibanja holding on the suit land.
2. Whether the Plaintiff is entitled to any remedies sought.

The learned Chief Magistrate, His Worship S. C. OKULLU gave his Judgment on 27th January, 2009 where he held that the Plaintiff (Respondent) was the rightful owner of 2 acres of land, Block 301 Plot 122 at Teketwe Buwama.

The Judgment contained the following orders:-

- (a) That the Defendant (Appellant) vacates or be evicted from the two acres.
- (b) That illegal structures erected on the land be demolished.
- (c) That a permanent injunction was issued restraining the Defendant or its agents from claiming the suit land.
- (d) General damages of Shs.5,000,000.= with interest at 20% p.a. from 27/1/2009 until payment in full.
- (e) That lease for Defendant/Appellant which had expired not to be renewed.

The Appellant (Defendant) was aggrieved by the learned trial Magistrate's Judgment and filed this appeal with the following grounds of appeal:-

1. The learned trial Magistrate erred in law and fact and misdirected himself when he failed to properly evaluate the evidence before him as a whole thereby coming to a wrong conclusion.
2. The learned trial Magistrate erred in law when he misapplied and misinterpreted the relevant sections of the Registration of Titles Act.
3. The learned trial Chief Magistrate erred in law and in fact when he failed to make any proper finding on the existence of a High Court Civil suit involving similar issues like he framed and decided.
4. The learned Chief Magistrate erred in law when he failed to apply the correct principles governing the award of general damages.
5. The trial Chief Magistrate contradicted himself by finding that the acquisition of the Kibanja in 1996 and purchase of land in 2002 were irregular and illegal and proceeded to hold that the transfer of 2005 was proper.

I will not follow the grounds of appeal as presented and it may not be necessary to address all the grounds.

Ground No. 3: The learned trial Chief Magistrate erred in law and in fact when he failed to make any proper finding on the existence of a High Court Civil suit involving similar issues like he framed and decided.

I have read the trial Magistrate's Judgment and it is true that he did not make any reference to existence of a High Court Civil suit filed later than the suit before him from which this appeal arises.

The summary of the Defendants case does not mention existence of this alleged suit. The proceedings as a whole do reflect any existence of a High Court Civil suit. The existence of a similar suit in the High Court appears as an isolated claim in the final written submissions of the Defendant's advocate who argued that this casts doubt on whether the Plaintiff had any Kibanja or land on the suit land. I have found this third ground of appeal as baseless for the following reasons.

There was no issue or sub-issue that was raised or tried on the fact of the existence of a High Court civil suit and the similarity of the issues or remedies sought. The Defendant should have raised this matter at the trial to afford opportunity for production of evidence on the issue. The learned trial Magistrate had no issue to try and there was no evidence to evaluate. For example what were the pleadings and when were they filed? This is a point of law why was it not raised during the trial.

Section 6 of the Civil Procedure Act settles circumstances under which stay of suit would arise in the following words:-

“No Court shall proceed with the trial of any suit or proceedings in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceedings between the same parties... where that suit or proceeding is pending in the same or any other Court having jurisdiction in Uganda to grant the relief claimed.”

There is no evidence adduced to show that before this suit was filed or heard there was a pending suit in a Court of competent jurisdiction. There must be evidence that previous to this suit there was another suit pending between the same parties, over the same subject matter and seeking same reliefs. My

finding is that this situation did not exist and therefore the trial Magistrate committed no error in proceeding with the trial. Therefore ground three of this appeal has failed.

Ground one of Appeal: *“That the learned trial Magistrate erred in law and fact and misdirected himself when he failed to properly evaluate the evidence before him as a whole thereby coming to a wrong conclusion.”* My understanding of this ground of appeal is that it seeks this Court, as an appellate Court, to re-evaluate the evidence as a whole and arrive at its independent conclusion. I will not be tied to examining the manner in which the evaluation was done because there is no established fast and hard rule as to how evaluation of evidence is supposed to be done. What is important is that the Court should consider the evidence that was adduced, establish its credibility, apply the law and decide what was proved or not proved by the evidence. The trial Magistrate in his Judgment considered Pw1 Mary Mukasa’s evidence. That she was allowed by the family of Matoyo Kiragga, the proprietors of Mailo land tenure comprised in Mailo Register, Mawokota Block 301 Plot 122 to use the suit land and that subsequently she bought the land in 2002 by paying a consideration of Shs.2,000,000/= to the Administrator of the Estate of the Late Matayo Kiragga. That the transfer of the land has been delayed by this suit. Pw2 Buwule Joseph, the Administrator of the Estate of Matayo Kiragga confirmed the Plaintiff’s claim of ownership.

The trial Magistrate evaluated this evidence with the Defence evidence that the Defendant acquired a lease over the said property from Uganda Land Commission.

The uncontested evidence stands that Pw1 Mary Mukasa occupied the suit land in 1996 when it was vacant with the consent of the family of Matoyo Kiragga,

the Mailo land registered proprietors. In 2002 she bought that piece of land she had utilized as her school grounds for 6 years. Pw2 Joseph Buwule, the Administrator of the estate gave the following evidence:-

Matayo Kiragga, his grandfather, died in 1951. He obtained Letters of Administration to Matayo Kiragga's estate in 2003. The family sold to the Plaintiff under agreement admitted as exhibit P.1 2 acres on Mawokota Block 301 Plot 122. A certified copy of the land Title was admitted as P.2. Pw2 got Letters of Administration on 26th March 2003 admitted as P.4. Under cross-examination Pw2 testified that he concluded the agreement before he got Letters of Administration and signed the Transfer forms after getting Letters of Administration and that the land belongs to the Plaintiff and not Uganda Land Commission.

I have considered the evidence from both parties first on the type of tenure to determine whether Uganda Land Commission could validly grant a lease over the suit property.

The certified copy of original Certificate of title (PE III) shows that MATAYO KIRAGGA became the registered proprietor on 12th July, 1961 under Instrument KLA 32359. On 21st March 2005, under Instrument KLA 271597 Joseph Buwule was registered as the administrator of the estate of Matayo Kiragga under Administration Cause 0087 of 2002 granted on 26th March 2003 by the Chief Magistrates Court of Mpigi. These registrations are on MAILO REGISTER, Mawokota Block 301 Plot 122.

There is no doubt that the suit land was a private Mailo tenure. This is not a category of land that Uganda Land Commission could deal with as a controlling

authority in 2002 when it gave the Defendant a lease offer dated 17th October, 2002.

I have noted that LRV 3119 Folio 6 Plot 2 Mawokota block 301 does not indicate the area or size of land leased. The lease was for 5 years with effect from 1st November, 2002. For the Uganda Land Commission's offer to be valid the following circumstances must be fulfilled:-

- (a) That the land in question is public land, managed under the Public Lands Act with Uganda Land Commission as the controlling authority.
- (b) The land must be available for leasing. There should be a due process to rule out existence of other people's claim of ownership or unregistered interests.
- (c) The land should not be already under the Registration of Titles Act; which the Mailo Register was as proved by exhibit P.3

The Defendant/Appellant in its Written statement of Defence paragraph 4 (a) stated its case as follows:-

“(a) The land comprised in Mawokota Block 301 Plot 122 at Teketwe does not belong to Matayo Kiragga but Uganda Land Commission which leased it to the Defendant.”

In view of the evidence of Pw2 above summarized and the certified Certificate of Title with entry of ownership dated 12th July, 1961 in favour of Matayo Kiragga as proved by Plaintiffs exhibit P.E.III. The above quoted defence is dismissed for not being true. As long as the private Mailo registered proprietor is the lessor, there cannot be a valid lease from any third party.

I have considered the fact that the transaction of sale of the two acres to the Plaintiff by the beneficiary of the estate of Matoyo Kiragga was before obtaining Letters of Administration and the fact that none of the beneficiaries of the estate challenges this sale. It is not in dispute that after obtaining the Letters of Administration Joseph Buwule signed the transfer of Title for the Plot sold before getting the grant of Letters of Administration. This amounted to doing what he would have done earlier therefore I accept the Plaintiff's contention that this authenticated the sale of the Plot. All the arguments of the Defendant to defeat this sale are founded on its claim that this was land falling under Uganda Land Commission which is not the case and these arguments cannot defeat a transaction over a sale of part of the Mailo land to which the Defendant is not a party and has no proven rights and where the seller and buyer have no dispute.

Considering the appeal as a whole I uphold the trial Magistrate's decision and decree in the original suit and to remove any doubt it is hereby Decreed as follows:-

1. The Plaintiff/Respondent is the lawful owner of the suit land measuring 2 acres, part of Mawokota Block 301 Plot 122 at Teketwe, Buwama, Mpigi.
2. A permanent injunction is hereby granted restraining the Defendant, its agents and any other person claiming under it from further trespass to the suit land.
3. The Defendant/Appellant is ordered to vacate the suit land and to remove all its illegal structures from the suit land not later than (30) thirty days from the date of this Judgment and in default the Defendant/appellant shall be evicted.

4. The general damages of Shs.5,000,000/= awarded by the trial Court is upheld save that it will attract interest of 6% p.a. from 27th January, 2009 until payment in full.
5. The Defendant/Appellant shall pay the Plaintiff/Respondent taxed costs of this appeal and the lower Court's proceedings.
6. Any order for consequential actions of the Registrar of Titles are not granted and shall be considered once specifically applied for.

Dated at Kampala this 25th day of October, 2013.

J. W. KWESIGA

JUDGE

25/10/2013

In presence of:

Ms Namutebi Nyanzi for Appellant present.

Mr. bugembe Patrick for Respondent present.

The director of Respondent present.

Mr. Magala S. Court Clerk present.