THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(LAND DIVISION)

CIVIL APPEAL NO.13 OF 2018

(ARISING FROM CIVIL APPEAL NO 91 OF 2016)

SAFINA NAMPIIMA::APPELLANT

VERSUS

1. **LUBWAMA ROBERT**
2. **PAUL GASSAKA KIRAGGWA**
3. **FRED MPANGA**
4. **BETTY NAMBI::RESPONDENTS**

BEFORE: HON. MR. JUSTICEHNRY I. KAWESA

JUDGMENT

This appeal arises from the judgment of the Chief Magistrates Court of Entebbe at Entebbe in a suit instituted by the Appellant against the Respondents for;

i) Recovery of a kibanja situate at Bwebajja-Kitende and;

ii) General damages.

The brief background of the appeal is that the Respondents are joint Administrators of the estate of the late Evirini Kimbowa on whose land the Appellant had a kibanja covering about 1.95

acres. It was the claim of the Appellant that the Respondents forcefully grabbed part of the said kibanja and destroyed the crops thereon and on the other hand, it was her claim that she, (Apelllant) complained of the Respondents' action on several occasions to the village Chairpersons, the Resident District Commissioner and the State House Land Protection Department, but received no help prompting her to sue them.

It was however the Respondent's contention that they entered into an understanding with the Appellant wherein she agreed to take a title deed measuring 0.75 decimals in lieu of part of her kibanja interest. The said title was deposited in Court during the trial. That they (Respondents) also volunteered to pay Ugsh.5,000,0000/- only (*five million shillings)* to the Appellant, which money they deposited at State House on top of the 75 decimals, but that she declined it preferring to take only the land title. The said understanding was however denied by the Appellant who alleged that she was coerced into signing transfer forms upon which the subdivision was effected.

Upon hearing both parties, the trial Magistrate concluded that there was an understanding pursuant to which the Appellant was only entitled to only 75 decimals of titled land. Further that the trial Magistrate also ordered the Respondents to pay Ugsh.5,000,000/- only (*five million shillings)* to the Appellant as general damages in compensation of the wrongful destruction of her crops on the said Kibanja.

Being aggrieved with the trial Court's judgment, the Appellant appealed to this Court on the following grounds;

1. That the learned trial Magistrate erred in law and fact when she entirely relied on the concept of non-existence of duress in isolation with the Appellant's testimony that it was the same transfer deed which was in issue that she was forced to sign, hence coming to a wrong conclusion.

2. That the learned trial Magistrate erred in law and fact when she failed to properly evaluate the evidence on record, hence coming to a wrong conclusion that there was no duress in signing the transfer deed.

3. That the learned trial Magistrate erred in law and fact when she found that there was an understanding between the parties upon which the transfer deed was signed in absence of any evidence to that effect thus coming to a wrong conclusion.

4. That the learned trial Magistrate erred in law and fact when she found that the Appellant was only entitled to 75 decimals in disregard of the fact that the rest of the 1.95 acres was forcefully taken by the Respondents.

5. That the learned trial Magistrate erred in law and fact when she failed to put in context the evidence of the Appellant on the events leading to grabbing her land, hence wrongly concluding that she testified that all her land was taken.

6. That the learned trial Magistrate erred in law and fact when she awarded damages in disregard of the wholesome inconvenience and mistreatment subjected to the Appellant.

7. That the learned trial Magistrate erred in law and fact when she wrongly evaluated the evidence as a whole thus arriving at a wrong conclusion that the Appellant was only entitled to 75 decimals.

Counsel for both parties filed written submissions in support of the respective cases which I shall consider in determination of the above grounds. This being a first appellate Court, it is the law that this Court has a duty to subject the entire evidence on record to an exhaustive scrutiny and to re-evaluate and make its own conclusion, while bearing in mind the fact that it never observed the demeanor of the witnesses. *See* ***Pandya versus R [1957] EA 336***. In determining the appeal, I shall handle grounds 1-5 and 7 together since they all relate to the same conclusion and ground 6 separately.

Grounds 1-5 and 7

According to the record, the trial Magistrate found that there was no evidence that effect that the Appellant signed the transfer forms under duress and that accordingly; there was an understanding between her and the Respondents wherefore she was only entitled to only 0.75

decimals of titled land. This conclusion has however been sharply attacked by Counsel for the Appellant who argues that there is sufficient evidence on the record to support the finding that the Appellant was under duress when she signed the transfer forms.

In their respective submissions, both Counsel acknowledge that duress vitiates consent so as to render any contractual arrangement voidable. To this end Counsel for the Appellant cited *Section 16 of the Contracts Act, 2010*, ***Steel Makers Ltd versus AB Steel Products (U) Ltd HCCS No.824 of 2003, Pao On versus Lau (1979) 3 ALL ER 65 and Sobetra (U) Ltd & Anor versus Leads Insurance Ltd MA No.454 of 2011***.

In furtherance of this view, Counsel for the Respondent relied on *Section 2, 3 and 10(2) of the Contracts Act, 2010 and the case of* ***Cotton Products (U) Ltd vs. Moses Olowo HCCS No. 366 of 2004*** to submit that the existence of a valid contract depends on the existence of free will of the parties to it. He further cited the **8th Edn. of the Black's Law Dictionary** which defines duress as a threat of harm made to compel a person to do something against his/her will. To this he added the case of ***Ruth Nanfuma Muyiisa versus Ruth Kijjambu HCCS No.651 of 2013*** wherein Court emphasised that for duress to vitiate a contract, it must have been the predominate reason that forced a party into signing the agreement.

Lastly, he cited the case of ***Pao On versus Lau*** *(supra)* which notes that in determining questions of duress, it is material to inquire whether the Appellant protested at the material time of the agreement and whether the Appellant did not have alternative course of legal remedy open to her, and whether she took any steps to avoid the duress thereafter.

I entirely agree with all these positions of law postulated in the authorities cited above. I wish also to add that in determining whether there was duress, ***Flavia J., in Singh Marwah Katongole versus Muzafaru Matovu No. 51 of 2015*****,** rightly observed that the following questions must be interrogated;

1. Did the victim of the alleged coercion protest before signing the agreement?
2. Was there any realistic practical alternative for the victim including an adequate legal remedy?

3. What steps were taken to avoid the agreement?
4. Was the victim independently advised?
5. Did the victim protest early, or take tangible steps to set aside the agreement (any act of affirmation may validate the contract) and act quickly (lapse of time may extinguish the right to rescind the contract)?

According to the record of proceedings, it was contended by the Appellant that she signed the said transfer forms on gun point while at the State House Land Protection Department. There is however, no evidence that she ever protested before signing the said transfer forms. In addition to this, the record does not indicate that the Appellant acted quickly after signing, by taking steps to avoid the agreement. Contrary to what she ought to have done, her evidence was that she went into hiding for about 3 weeks after signing the forms. This in my view is in itself indicative of validation of the agreement. In view of these circumstances, I am unable to fault the trial Court for finding that there was no proof of duress of the Appellant by the Respondents. I therefore disagree with the submission of Counsel for the Appellant that the trial Magistrate ought to have taken into account other circumstances surrounding the entire land dispute between the parties hereto, other than events immediately before and after the signing of the transfer forms.

Accordingly, ground 1-5, and 7 of the appeal hereby fail.

Ground 6:

That the learned trial Magistrate erred in law and fact when she awarded damages in disregard of the wholesome inconvenience and mistreatment subjected to the Appellant

In her judgment, the trial Magistrate awarded the Appellant Ugsh.5,000,000/- only as compensation for the wrongful deprivation of her crops on the Kibanja. Despite the Respondents' asserting that they deposited Ugsh.5,000,000/- at State House in compensation of the same, the learned trial Magistrate found this wrong on a ground that it was done before the

Respondents established the true market value of the destroyed crops. I have no reason to doubt her judgment on this.

It is now the Appellant's contention that the damages were inadequate having regard to all the events surrounding the parties' controversy. According to the submission of Counsel for the Appellant, the assessment should be adjusted to Ugsh.10,000,000/- only (*ten million shillings)*. This is however disputed by the Respondents who contend that the assessment by the trial Court was fair and just.

First on this, I agree with Counsel for the Respondents on the principle that general damages are discretional, and are not intended to enrich the innocent party nor punish the wrong party but are only intended to compensate the former. His view was well supported with the case of ***Margaret Tibulya versus Dibya Henry Wagaba HCCS No.101 of 2013*** *and* ***Meta Products (U) Ltd versus People Health Care HCCS No.83 of 2007***. Further, as rightly noted by Counsel for the Appellant, while relying on ***Katakanya & Others versus Raphael Bikorogo HCCA No.12 of 2010***; in assessing general damages, Courts are guided by the value of the subject matter, the economic inconvenience suffered by the injured party and the nature of the breach.

Having exercised her discretion and awarded Ugsh.5,000,000/- only *(fivmillion sillings)* as general damages to the Appellant; the question now is whether her assessment be interfered with. Both Counsel were also alive to the observations of the Supreme Court in ***ECTA (U) Ltd versus Geraldine Namurimu & Anor SCCA; No. 29 of 1994*** to the effect that;

> *"In order to justify reversing the trial judge on the question of the amount of damages, it will generally be necessary that this Court should be convinced either that the judge acted upon some wrong principle of law or that the amount awarded was extremely high or so very small as to make it in the judgment of this Court, an entirely erroneous estimate of the damage to which the plaintiff is entitled."*

The above observations are very key in determining whether this court should interfere with the trial court's asssment of damages. I have taken time looking at some of the photographs attached to the Appellant's witness statements depicting the damage caused by the Respondents, the

destroyed food crops. It clear from these photos that the crops were not grown on the entire suit kibanja, 1.95 acres. Considering all this, I find that the trial Court's assessment represents a fair compensation for the damage caused to the Appellant by the Respondents. In my considered opinion, therefore, awarding the Appellant more than the trial court's assessment would constitute unjust enrichment, and a punishment of the Respondents.

As the result in the abov findings, this ground also fails. That notwithstanding, I find it appropriate to exercise this Court's discretion pursuant to Section 26(2) of the Civil Procedure Act Cap 71 and O.43 r27 of the Civil Procedure Rules SI 71-1 to order that the Ugsh.5,000,000/- only carries an interest from the date of the trial Court's judgment until final payment. This is to protect the Appellant from the economic vagaries of inflation and depreciation of the currency in the event that this amount is not promptly paid.

Consequently, the trial Court's judgment is hereby upheld

I so order.

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Henry I. Kawesa

JUDGE

12/07/2019

Right of appeal explained.

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Henry I. Kawesa

JUDGE

12/07/2019

12/07/2019:

Naturinda Nagidde holding brief for Kabega for the Appellant.

Nkonge Jonatahan holding brief for Bumpenje for the Respondents present.

Appellant present.

Respondents present.

Court:

Judgment read to the parties above.

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Henry I. Kawesa

JUDGE

12/07/2019

Right of appeal explained.

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Henry I. Kawesa

JUDGE

12/07/2019