THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA

AT MENGO

(CORAM: ODOKI, CJ, TSEKOOKO, KANYEIHAMBA, KATUREEBE AND OKELLO, JJ.SC.)

CIVIL APPEAL NO. 15 OF 2007

B E T W E E N

GEORGE TUHIRIRWE: :::::: :::::: :::::: :::::: APPELLANT

A N D

CAROLINA RWAMUHANDA: :::::: :::::: :::::: :::::: RESPONDENT

(An appeal from the Judgment and Orders of the Court of Appeal at Kampala (Mukasa-Kikonyogo, DCJ, Kitumba and Kavuma, JJ. A), dated 12th September 2006, in Civil Appeal No. 38 of 2005.

JUDGMENT OF G. M. OKELLO, JSC:

This appeal is against the judgment and orders of the Court of Appeal which reversed the judgment and orders of the High Court in a suit instituted by the appellant.

The appellant is the grand son of the late Paul Ngorogoza, the father of his mother, late Anastanzia Tiwangye, and of the respondent's late husband,

Ponsiano Rwamuhanda. He owned the suit land, Plot No. 138 and the adjacent Plot No. 4. Both of which are located at Mwanjari in Kabale Municipality.

In his lifetime, Paul Ngorogoza made a gift of Plot No. 138 to Anastanzia and transferred it into her name. He also gave Plot No. 4 to Ponsiano. He later re-affirmed these gifts in clause No. 9 of his Will (Exh. D1). The appellant later inherited from his mother Plot No. 138 and became the registered proprietor thereof. The respondent occupied Plot No. 4 and a portion of Plot No. 138, while the appellant occupies only the remaining portion on Plot No. 138.

Subsequently, the appellant gave notice to the respondent to vacate the portion of plot 138 that she occupied, which notice the respondent ignored. When the respondent ignored the appellant's notice to vacate the portion of Plot No. 138 occupied by her, the appellant instituted in the High Court Civil Suit No. 64 of 1992 (HCCS No. 64/92) claiming, *inter alia*, a declaration that Plot No. 138, the suit land, was his and an order of eviction against the respondent, mesne profits plus costs of the suit.

In her amended written statement of defence, the respondent denied the appellant's claims and pleaded that the suit land had belonged to her late husband Ponsiano by bequest. In the alternative, she claimed that she and her family have been customary tenants on the suit land which they lived and developed since 1955.

At the trial, three issues were framed as follows:

(1) ***Whether the defendant is a lawful or bona fide occupant on the land under dispute;***

(2) ***Whether the plaintiff is entitled to evict the defendant from the land under dispute;***

(3) ***Remedies.***

The trial judge answered the first issue in the negative and the second issue in the affirmative and declared that Plot No. 138 belongs to the appellant. He accordingly granted an order of eviction against the respondent from the suit land with costs.

On appeal by the respondent, the Court of Appeal reversed that judgment and orders of the High Court and entered judgment for the respondent, hence this appeal to this Court.

The Memorandum of Appeal comprised the following grounds of appeal, namely:

(1) ***The learned Justices of Appeal erred in law and fact, in that they wrongly relied on a document not tendered in at the trial, misdirected themselves on that document and on Exh. D2 and Exh. D1 and failed to declare the appellant the owner of the suit land.***

(2) ***The learned Justices of Appeal erred in law and fact when they made a finding in favour of the respondent on both her substantive and alternative claims when both had been abandoned at the trial and also erred in giving her the remedy of a lawful and bona fide occupancy.***

At the hearing of this appeal, Mr. Tibaijuka Atenyi appeared for the appellant while Mr. Blaise Babigumira represented the respondent. Both counsel filed written arguments in accordance with rule 94 of the Rules of this Court. Mr.

Babigumira had given a notice to raise a verbal objection to the rejoinder filed by Mr. Tibaijuka. His reason was that the rejoinder was filed unreasonably late. It was filed 46 days after the respondent's reply.

After an exchange of views on the matter with the court, Mr. Babigumira abandoned the point as there appears to be a lacuna in the law regarding the time-frame for filing such a rejoinder. Mr. Tibaijuka apologized for that delay and the matter was closed.

The complaints in ground 1 are firstly that the learned Justices of Appeal wrongly relied on a document that was not tendered in evidence, at the trial. It was allegedly sneaked into the Record of Appeal by counsel for the respondent and that the unsuspecting Justices of Appeal regarded it as Exh. P1 and relied on it as such. Secondly, that the learned Justices of Appeal misdirected themselves not only on that document but also on the letter Exh. P2, written by late Paulo Ngorogoza on 20-03-1974, directing Ponsiano Rwamuhanda not to utilize both plots 138 and 4 and also on the Will of the late Ngorogoza dated 09-03-1982 (Exh. D1). Learned counsel argued that because of the said misdirections, the learned Justice of Appeal failed to declare the appellant the owner of the suit land.

Mr. Tibaijuka asserted that the document which was not tendered in evidence at the trial but which was wrongly relied on by the learned Justices of Appeal was a letter purportedly written by Paulo Ngorogoza in 1984, directing that Plot No. 138 be exchanged with Plot No. 4. The respondent had referred the letter to the appellant during cross-examination but the appellant denied its authenticity and it

was not tendered in evidence. No further evidence was adduced to prove the alleged exchange of the two plots.

However, when the Will of the late Pual Ngorogoza (Exh. D1) was shown to the respondent, she confirmed that her father in law left a Will in which he bequeathed a part of his land at Mwanjari, Kabale Municipality to one Kitariko, another part to her family and the third part to Anastanzia Tiwangye's family. Clause 9 of the Will confirmed that Plot No. 138 was given to Anastanzia Tiwangye and Plot No. 4 to the respondent's family.

According to Mr. Tibaijuka, the learned Justices of Appeal held that the letter constituted controverted evidence that Anastanzia's Plot No. 138 had been exchanged with Plot No. 4 which had been given to Rwamuhanda the late husband of the respondent.

Learned counsel contended that that was a wrong finding because the real Exh. P1 was the appellant's certificate of title to the suit land. The letter was not tendered in evidence and therefore constituted no evidence at all of the alleged exchange. He further argued that, even if the letter was exhibited, which is denied, it could not have effected the exchange because firstly, Anastanzia had since 1973 been the registered owner of Plot No. 138. Her certificate of title constituted conclusive evidence of her title to the suit land. The exchange could, therefore, only have been effected with her consent but not by order of that letter. He asserted that the respondent was estopped from denying the appellant's title to the suit land or the title of his predecessors in title to the land.

In support of that proposition, counsel cited section 115 of the Evidence Act Cap. 6, Laws of Uganda, section 193 of the Registration of Titles Act, ***Rodseth - vs - Show (1967) EA833 and 855 and Executrix of the Estate of the Late Christine Mary Namatovu Tebaijjuka & Another - vs - Noel Grace Shalita Stananzi, SCCA No. 2 of 1998.*** In the latter case, Wambuzi, CJ, as he then was, in a lead judgment, expressed reluctance to grant to a respondent who by suing his lessor in trespass, had in effect denied the lessor's title.

Secondly, counsel argued that even if the gift of Plot No. 138 to Anastanzia was by bequest, the letter could not have effected the exchange because the letter did not meet the legal requirements of a codicil.

In his view, the respondent's statement that she and her late husband were given Plot No. 138 in which they have lived since 1955 and built thereon their matrimonial home and other structures cannot be believed. Firstly, because it tended to challenge the appellant's title to the suit land and secondly, it is contradicted by the unchallenged (Exh. P2) showing that as late as 1974, the couple were still living in the homestead of and in the houses built by Ngorogoza.

Learned counsel submitted that the learned Justices of Appeal also misdirected themselves on Exh. P2 and (Exh. D1). He pointed out that Ngorogoza gave to Ponsiano Plot No. 4 as a gift *inter vivos* and other testamentary gifts that made Ponsiano a co-beneficiary of at least three plots of land plus the residuary estate. Anastanzia on the other hand, was given only one, Plot No. 138, as a gift *inter vivos* out of all the property of Ngorogoza as shown by Exh. D1. Ngorogoza was, therefore, intended to ensure that no one in future would meddle with

Anastanzia's only gift. To that end, he took three parental steps to safeguard Anastanzia's interest in Plot No. 138. Firstly, he transferred the plot into her name in 1973 as shown by the appellant's certificate of title (Exh. P1). Secondly, in 1974, he directed Ponsiano in writing to stop utilizing that Plot, 138 (Exh. P2 para. 1) and thirdly, he declared in clause 9 of his Will (Exh. D1) that:

> ***"For avoidance of confusion and dispute, I hereby clarify and declare that I have during my life time granted my land at Mwanjari - - - comprised in Freehold Register Block 3 Plot No. 4 to Ponsiano Rwamuhanda and Block 3 Plot No. 138 to Anastanzia Tiwangye."***

Though under para. 1 of Exh. P2, Ngorogoza barred Ponsiano from utilizing both plots 138 and 4, in his Will, he altered his position with regard to Plot No. 4 but reaffirmed his gift of Plot No. 138 to Anastanzia in clause 9 of his Will .

Learned counsel, contended that the learned Justices of Appeal failed to appreciate Ngorogoza's above stated threefold parental efforts to safeguard the interest of his daughter Anastanzia in Plot No. 138 against her rapacious brother, Ponsiano. Counsel further contended that the learned Justices of Appeal, misdirected themselves on Exh. P2 when they opined firstly that Ngorogoza could not by Exh. P2 banish anyone from the suit land as he had already parted with it in Anastanzia's name. Secondly, because it was not stated in his Will and thirdly the banishment had the potential of affecting *"the shares of the beneficiaries of his estate."* He argued that the question of the shares of the beneficiaries of

Ngorogoza's estate being affected by the banishment did not arise as the Will had no legal effect on the gifts made *inter vivos* and on the banishment. Learned counsel argued that the banishment was not meant to take effect after Ngorogoza's death. It was intended to take effect on the date stated in the letter Exh. P2.

Counsel asserted that the learned Justices of Appeal again misdirected themselves when at page 49 of the Record of Appeal it was stated that Ngorogoza bequeathed Plot No. 4 to Rwamuhanda by a Will written in 1982, but that later by a letter written in 1984, Ngorogoza directed that Rwamuhanda should remain where they had built their matrimonial home and that Plot No. 4 be taken over by Tiwangye.

Mr. Babigumira opposed the appeal. He first denied that the letter of 1984 was sneaked into the RA as stated by Mr. Tibaijuka. He explained that because the former counsel for the respondent refused to cooperate with them, that Babigumira requested the Secretary of the trial judge to avail them the exhibits on the file. That is when the letter was given to them and they placed it in the RA. He opened that Mr. Tibaijuka should have objected under rule 86(4) of the Court of Appeal Rules, to the letter being included in the Record of Appeal, but did not.

Secondly, learned counsel denied that the letter was brought into the Record of Appeal to show that the respondent now owns Plot No. 138 as opposed to Plot No. 4. In counsel's view, the letter was brought to prove that the respondent and her late husband had been living on that plot 138 and had built thereon their matrimonial home and other structures. The letter was to show that if the

respondent and her late husband had not been living on the suit land, the question of exchanging it with an equal portion of Plot No. 4 would not have arisen.

Thirdly, counsel asserted that the issue before court was not ownership of Plot No. 138 but rather whether the respondent had lived on plot 138 long enough to qualify for being a lawful or bona fide occupant.

Learned counsel submitted that the statement of the Deputy Chief Justice at page 49 lines 19 - 26 regarding the letter was blown out of proportion and interpreted out of context by Mr. Tibaijuka to mean that the court was making a finding that plot 138 had been exchanged with plot 4 and that the respondent now owns Plot No. 138. Learned counsel contended that, that was an erroneous conclusion. He submitted that the conclusion of the DCJ that *"the respondent was not a trespasser on the suit land having been thereon lawfully"* is the only point in issue.

Learned counsel stated that even if that letter was ignored, there was overwhelming independent evidence relied on by the Court of Appeal proving to the satisfaction of the court that:

(1) ***The respondent and her late husband entered upon and lived on the suit land with the consent of the respective landlords.***

(2) ***It was not proved that the respondent refused to vacate the suit land when required.***

(3) ***The issue of banishment was not proved.***

Counsel finally submitted that courts are supposed to administer substantive justice and not indulge in technicalities. He stated that the letter of 1984, did not occasion any miscarriage of justice. Court could ignore it when considering this appeal since the same conclusion would be reached without it. He urged the court to ignore the authorities cited by counsel for the appellant in support of the appellant's ownership of Plot No. 138 because they are irrelevant since there was no finding that Plot No. 138 now belongs to the respondent through exchange.

In passing, I wish to observe that I would have expected the suit coming as it did, before the coming into force of the 1995 Constitution and the land Act of 1998, to have been founded and decided on the laws in force before those dates. However, the record shows that by the tacit consent of the parties, the suit was heard and decided under the current relevant laws and on different issues even though the pleadings were not amended.

Be that as it may from the arguments of counsel for the parties, ownership of Plot No. 138 is no longer in dispute as the respondent concedes that the plot belongs to the appellant. The dispute is on whether the respondent entered upon the suit land, remained on it and built their matrimonial home thereon with the consent of the then respective registered owners. The complaint emerging from the arguments of counsel for the appellant is that the learned Justices of Appeal wrongly relied on a document that was sneaked into the Record of Appeal, misdirected themselves not only on that document but also on Exh. P2 and Exh. D1 and that they thereby wrongly found that the respondent had been on the suit land lawfully.

It is trite that a court's decision on an issue of fact, unless admitted, must be based on the evidence properly before it but not on matters outside the evidence before court.

In the instant case, the document allegedly sneaked into the Record of Appeal was a letter purportedly written by the late Paulo Ngorogoza on 21-02-1984, directing that Plot No. 138 be exchanged with Plot No. 4. The learned Deputy Chief Justice in her lead judgment, with which the other two learned Justices of Appeal agreed, regarded the document as Exh. P1 and relied on it as such. She said on page 49 of her judgment:

> ***"However, in his letter written in 1984, also admitted in evidence as Exh. P1, the said late Paulo Ngorogoza stated that*** *"late Rwamuhanda"* ***should remain where he had built his matrimonial home and exchange it with Plot No. 138, he had given to the late Anasitanzia Tiwangye. Tiwangye had been given block 3 Plot No. 4 which was adjacent to the disputed land. This piece of evidence was not controverted."***

Clearly, the statement contains errors. The document that was received in evidence at the trial and marked Exh. P1 was not the said letter allegedly written by the late Paulo Ngorogoza on 21-02-1984 directing exchange of Plot No. 138 with Plot No. 4. It was a Certificate of Title to the suit land in the name of the appellant.

Mr. Babigumira denied that the letter was sneaked into the Record of Appeal as argued by Mr. Tibaijuka. He explained that the letter was brought into the Record of Appeal when it was availed to him by the Secretary of the trial Judge. He stated that when the former counsel for the respondent refused to cooperate with him, he requested the Secretary of the trial Judge to avail him exhibits on the file. That was how he got the letter and he included it on the Record of Appeal.

With all due respect to learned counsel, I find this explanation unsatisfactory. Firstly, the right person to contact for matters like that is the Registrar of the relevant court but not the Secretary of the trial Judge. She or he may not even know what an exhibit is. Secondly, all documents that are received in evidence are marked as exhibit and numbered. The said letter bears neither any mark as an exhibit nor any number. The absence of these features on the letter should have put any diligent counsel on his notice and made more inquiries about it before putting it on the Record of Appeal.

In my view, while the letter might not have been sneaked into the Record of Appeal for any improper motive, it was clearly negligently and wrongly introduced into the Record of Appeal. Its presence on the Record of Appeal misled the learned Justices of Appeal to regard it as Exh. P1 when it was not. Consequently, the learned Justices of Appeal erroneously found that it constituted *"uncontroverted evidence"* that the respondent and her late husband lived and built their matrimonial home on the suit land and that Plot No. 138 was exchanged with Plot No. 4 when in fact the letter constituted no evidence at all of these facts.

Mr. Babigumira argued that even if the letter was ignored, there was overwhelming independent evidence showing that the respondent and her late husband entered on the suit land since 1955, remained on it and built their matrimonial home thereon with the consent of the respective registered owners until the appellant became the registered owner and instituted this head suit.

The evidence of the respondent (DW1) and of John Itumeineho (DW2) indeed supports that view but the evidence of these witnesses was greatly dented by Exh. P2 which supports the evidence of the appellant (PW1), Mugisha Elias (PW2) and of Henry Tumwesigye, (PW3). All these witnesses stated that the late Rwamuhanda returned from his banishment in 1981 and begged their mother, late Anastanzia, to allow him stay on the disputed part of Plot No. 138 for one year to enable him treat his sick children and build on his plot No. 4.

The learned Justices of Appeal rejected the evidence of banishment because it was not included in the subsequent Will of Paulo Ngorogoza written ten years later in 1984.

The learned Deputy Chief Justice in her lead judgment said:

> ***"Besides, the claim of the banishment of the late Rwamuhanda from the suit land was not mentioned in the late Ngorogoza's Will which supports the appellant's case that her husband was never banished. I find it hard to believe that the late Ngorogoza would have left out such an important point in his last Will which, no doubt would have affected the shares of the beneficiaries of his estate."***

I respectfully disagree with the reasoning in the above passage for rejecting the evidence of banishment of the late Rwamuhanda from the suit land. Firstly, it is a misdirection that the banishment should have been included in the Will of the late Ngorogoza. He did not intend that the banishment takes effect after his death, therefore it could not be included in the Will. Secondly, the banishment was effected by the letter Exh. P2 to take effect from 01-04-74. The Will (Exh. D1) had no legal effect on either the banishment or the gifts made *inter vivos*. Therefore, the banishment had no effect on the shares of the beneficiaries of the estate of the late Ngorogoza. The legal effect of the banishment regarding Plot No. 138 which had already been registered in the name of Anastanzia, however, might have been doubtful.

However, banishment was a parental demonstration of indignation at the reculcitrant behaviour of the son, Ponsiano, and an attempt to protect the interest of the vulnerable daughter, Anastanzia, in Plot No. 138 against the said Ponsiano. The evidence of PW1, PW2 and PW3 that the late Rwamuhanda returned in 1981 and begged their mother, Anastanzia, to allow him to stay temporarily on the disputed part of Plot No. 138, as he treated his sick children and work to build on his Plot No. 4, impliedly shows that the banishment was complied with. If Rwamuhanda had never left the disputed land as stated by DW1 and DW2, why did he have to beg Anastanzia to stay on the suit land in 1981?

In my opinion, failure of the late Paulo Ngorogoza to include the fact of the banishment in his Will, written ten years later, was not a good reason for rejecting the very cogent Exh. P2 as evidence of banishment.

I, therefore, find that the learned Justices of Appeal erred in relying on a document that was not tendered in evidence at the trial and misdirected themselves not only on that document but also on Exh. P2 and Exh. D1. I would therefore, allow ground 1.

Ground 2 - is that the learned Justices of Appeal erred in law and in fact when they made a finding in favour of the respondent on both her substantive and alternative claims when both had been abandoned at the trial and also erred in awarding her the remedy of a lawful and bona fide occupant.

The complaint in this ground are twofolds: Firstly that the learned Justices erred in law and in fact when they found in favour of the respondent on her both substantive and alternative claims all of which had been abandoned at the trial. Secondly, that the learned Justices of Appeal also erred in declaring the respondent to be a lawful and bona fide occupant.

On the first leg of his complaint, Mr. Tibaijuka criticized the learned Justices of Appeal for declaring the respondent the owner of the suit land through an exchange with plot 4. The claim of ownership through exchange was her substituted substantive claim. Learned counsel further criticized the learned Justices of Appeal for entering judgment for the respondent that she was the customary tenant on the suit land. He argued that besides the finding and the judgment being contradictory and producing an absurd result of one being a tenant on her own land or a tenant without a landlord, the claims had been abandoned at the trial.

Mr. Babigumira conceded that the finding and the entry of judgment in favour of the respondent on both claims were errors which he described as *"slips of the pen"* and could not support them.

In my view, Mr. Babigumira rightly conceded to these errors. The respondent had, at the trial, abandoned the defences contained in the amended written statement of defence which also had a counterclaim. In the amended written statement of defence, the respondent had raised a claim of ownership by bequest over the suit land and in the counterclaim, she claimed to be a customary tenant over the land in dispute. These claims were abandoned though without amending the pleadings and both counsel did not address the court on them. Instead, they addressed court on the newly set issue of whether the respondent was a lawful and bona fide occupant on the disputed land.

Surprisingly, in her lead judgment, the learned Deputy Chief Justice said:

> ***"However, in his letter written in 1984, also admitted in evidence as Exh. P1, the said late Paulo Ngorogoza stated that "****late Rwamuhanda"* ***should remain where he had built his matrimonial home and exchange it with Block 3 Plot No. 138, he had given to late Anasitanzia Tiwangye. Tiwangye had been given block 3 Plot No. 4, which was adjacent to the disputed land. This evidence was not controverted."***

The above passage embodies a finding that the respondent is now the owner of the suit land through exchange. This is clearly an error because the claim had

already been abandoned at the trial and was no longer before court. Moreover both counsel did not submit on it.

At the end of her judgment, the learned Deputy Chief Justice said:

> ***"- - - I would enter judgment for the appellant on the counterclaim with costs in this court and in the court below."***

Again that entry of judgment for the respondent on the counterclaim that had already been abandoned was an error. Had the substantive and alternative claims not been abandoned, the finding on substantive claim in favour of the respondent and the entry of judgment on the counterclaim in her favour would have produced an absurd result of one being a tenant on her own land or a tenant without a landlord.

I would set aside the finding that the respondent is the owner of the suit land by exchange and the judgment that she is also a customary tenant on the same land.

I now turn to consider whether the respondent was a lawful and bona fide occupant on the suit land. To answer this question, it is important to understand the meaning or what constitutes a lawful and bona fide occupant.

Section 29(1) and (2) of the Land Act 1998 respectively, defines the term "lawful occupant" and "bona fide occupant" as follows:

"(1) "Lawful occupant" means:

(a) ***A person occupying land by virtue of the repealed:***

(i) ***Busulu and Envujjo law of 1928;***

(ii) ***Toro Landlord and Tenant Law of 1937;***

(iii) ***Ankole Landlord and Tenant Law of 1937.***

(b) ***A person who entered on the land with the consent of the registered owner and includes a purchaser; or***

(c) ***A person who had occupied land as a customary tenant but whose tenancy was not disclosed and compensated for by the registered owner at the time of acquiring the leasehold certificate of title.***

(2) ***"Bona fide occupant means "a person who before the coming into force of the Constitution:***

(a) ***had occupied and utilized or developed any land unchallenged by the registered owner or of the registered owner for twelve years or more or***

(b) ***had been settled on the land by the Government or agent of the Government which may include local authority.***

(3) **- -.**

(4) ***For the avoidance of doubt, a person who is on land on the basis of a licence from the registered owner shall not be taken to be a lawful or bona fide occupant under this section."***

The evidence of the respondent (DW1) and of John Itumeiheho (DW2) is that the respondent and her late husband had, since 1955, been living on the suit land and built thereon their matrimonial home and other structures. While (DW1) was

transferred to teach in Bunyoro in the 1970s, her late husband never left the suit land till his death. They had been living thereon with the permission of the respective registered owners. The evidence of the appellant (PW1), and of his two brothers, Mugisha Elias (PW2) and Henry Tumwesigye (PW3), however, shows that the respondent's husband returned from his banishment in 1981 and entered the suit land on the permission of their mother, Anastanzia, who allowed him to stay there for one year as he treated his sick children and work to construct his own houses on his plot 4. According to the appellant, Rwamuhanda did not leave after one year but kept giving lame excuses for his delayed departure until Anastanzia died three years later. Thereafter the appellant became the registered owner and instituted this suit in 1992.

The learned Deputy Chief Justice in her judgment believed the evidence of the respondent that her husband never left the disputed land and described the evidence as *"unchallenged."* That description, with respect, was misplaced. The letter written by the late Ngorogoza in March 1974 (Exh. P2) shows that as late as 1974, the respondent and her late husband, in fact, had been living on the homestead of and in the houses built by the late Paulo Ngorogoza, the father of the respondent's late husband. This piece of evidence supports the story of the appellant. In fact, the trial judge dismissed the respondent as "an unreliable witness" who so gravely contradicted herself in her evidence that according to the trial judge, *"left a question mark on her credibility."*

It is now a settled principle that when a question arises as to which witness is to be believed rather than another and the question turns on manner and demeanour, the appellate court always is, and must be guided by the impression

made on the trial Judge who saw the witnesses unless there are special circumstances that warrant differing from the trial judge. See ***D.R. Pandya - vs - R (1957) EA 336 at 338.***

In the instant case, I do not find, and the learned Justices of Appeal did not find any special circumstances to warrant differing from the impression of the trial judge regarding the credibility of (DW1).

The occupation of the suit land by the respondent and her late husband when they were living on the homestead of and in the houses built by the father of her late husband as a child living with his wife on his father's land, did not constitute a "lawful occupant" within the meaning of section 29(1) of the Land Act 1998.

Secondly, their occupation of the suit land between 1981 and 1992, when this suit was instituted was with a licence of Anastanzia, the registered owner, who allowed them only one year. Thereafter, they stayed in defiance of the notice to vacate giving lame excuses for their delayed departure until Anastanzia died three years later. That kind of occupation also does not qualify a person to be a lawful occupant as stated in section 29(4) of the Land Act, 1998.

Even if there were no challenge until 1992 when this suit was filed, that occupation could not qualify them to be *"bona fide occupants"* because they did not remain on the land unchallenged for twelve years before the coming into force of the Constitution of 1995. They were challenged in their eleventh year. Therefore, section 29(2)(a) is not applicable.

In my view, the learned Justices of Appeal erred to find that the respondent and her family were lawfully on the suit land. The respondent is neither a lawful nor a bona fide occupant on the suit land.

In the result, I would allow the appeal, set aside the judgment and orders of the Court of Appeal and substitute therefore judgment for the appellant with a declaration that he is entitled to an eviction order against the respondent from the Suitland. I would award costs in favour of the appellant, here and in the courts below.

Dated at Mengo this 20th day of January 2008.

G. M. OKELLO

JUSTICE OF THE SUPREME COURT

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA

AT MENGO

(CORAM: ODOKI, C.J, TSEKOOKO, KANYEIHAMBA, KATUREEBE AND OKELLO, JJ.SC)

CIVIL APPEAL NO. 15 OF 2007

BETWEEN

GEORGE TUHIRIRWE:: APPELLANT

AND

CAROLINA RWAMUHANDA:: RESPONDENT

[Appeal from the judgment of the Court of Appeal at Kampala (Mukasa-Kikonyogo, DCJ, Kitumba and Kavuma J.J.A) dated 12th September 2006 in Civil Appeal No. 38 of 2005]

JUDGMENT OF ODOKI, CJ

I have had the advantage of reading in draft the judgment prepared by my learned brother, Okello JSC, and I agree with him that this appeal should be allowed. I concur in the order he has proposed as to costs.

As the other members of the Court also agree, this appeal is allowed with orders as proposed by the learned Justice of the Supreme Court.

Dated at Mengo this 20th day of January 2009.

B J Odoki

CHIEF JUSTICE

IN THE SUPREME COURT OF UGANDA

AT MENGO

[CORAM:ODOKI,CJ; TSEKOOKO, KANYEIHAMBA, KATUREEBE, AND OKELLO, JJSC.]

CIVAL APPEAL NO.15 OF 2007

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AND

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[Appeal from the Judgment of the Court of Appeal at Kampala (Mukasa-Kikonyogo, DCJ; Kitumba and Kavuma, JJA.} dated 12th September, 2006 in Civil appeal No. 38 of 2005]

JUDGMENT OF TSEKOOKO, JSC.

I have had the benefit of reading in draft the judgment prepared by my learned brother, Okello, JSC, and I agree with his conclusions that this appeal ought to succeed and that the appellant should have the costs of this appeal and in the two courts below.

Delivered at Mengo this 20th day of January 2009.

J. W. N. Tsekooko.

Justice of the Supreme Court.

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA

AT MENGO

(CORAM: ODOKI, C.J, TSEKOOKO, KANYEIHAMBA, KATUREEBE, OKELLO, *JJ.S.C.)*

CIVIL APPEAL NO.15 OF 2007

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(Appeal from the judgment of the Court of Appeal at Kampala (Mukasa-Kikonyogo, D.C.J, Kitumba and Kavuma, JJ.A.) dated 12th September, 2006, in Civil Appeal No.38. of 2005)

JUDGMENT OF KANYEIHAMBA, J.S.C

I have had the benefit of reading in draft the judgment of my learned brother Okello, J.S.C and for the reasons he has ably given, I agree with him that this appeal be allowed. I also concur in the orders he has proposed.

Dated at Mengo this 20th day of January 2008

G.W.KANYEIHAMBA

JUSTICE OF THE SUPREME COURT

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA

AT MENGO

(CORAM: ODOKI, CJ, TSEKOOKO, KANYEIHAMBA, KATUREEBE AND OKELLO, JJ. SC).

CIVIL APPEAL NO. 15 OF 2007

B E T W E E N

GEORGE TUHIRIRWE: : : : : : : : : : : : : : APPELLANT

AND

CAROLINA RWAMUHANDA: : : : : : : : : : RESPONDENT

[An appeal from the judgment and Orders of the Court of Appeal (Mukasa-Kikonyogo, DCJ., Kitumba and Kavuma, JJ.A) dated 12th September 2006, at Kampala in Civil Appeal No. 38 of 2005 from High Court Civil Suit No. 64 of 1992]

JUDGMENT OF KATUREEBE, JSC.

I have had the benefit of reading in draft the judgment of my brother Okello, JSC, and I fully concur that the appeal be allowed.

I also agree with the orders he has proposed.

Dated at Mengo this 20th day of January 2008.

Bart M. Katureebe

Justice of the Supreme Court