

THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT MBARARA

**HCT-05-CV-CA-005-2003**

(Arising from Original Civil Claim No. KIS/00/07/2003 of Kabale District Land Tribunal)

JOSEPHINE KARIHUNGU .....APPELLANT

VS

BYIMANA JAMES..... RESPONDENT

**BEFORE:** THE HON. MR. JUSTICE P. K. MUGAMBA

**JUDGMENT**

This is an appeal from the decision of the District Land Tribunal of Kisoro made on 14th November 2003. Three grounds of appeal appear in the Memorandum but the gist of them all is that the District Land Tribunal erred in law when it held that the appellant's claim should be dismissed for being res judicata.

There was a suit in the L.C.1 Court of Kanyabukungu village, Gisorora Parish, Nyakabande Sub-county, Kisoro District. The complainant was James Byimana and the defendant was Fideri Karihungu. The complaint was that Fideri Karihungu had built on James Byimana's land without the complainant's consent. The land was said to be at Chapa in Nyakabande and it was contended by the complainant that he had been given that land by his late parent Simon Sebahigi and late Kanizio Karihungu who co-owned it. Judgment was delivered on 9th May 1995 in favour of James Byimana, the complainant.

In the year 2002 the mother of Karihungu Fideri, Josephine Karihungu, secured letters of administration to the estate of her late husband, Kanizio Karihungu. On 25th May 2003 Josephine Karihungu filed a claim with the Kisoro District Land Tribunal against James Byimana. On 14th August 2003 the claimant testified and mentioned that she had given land to her son around the year 1995 to build a house on it hut that when he started putting up a structure

he was sued before the L.C.1 Court in case number 004/95. It was at this stage the Tribunal stopped further proceedings and later held that the case before it was res judicata.

What is res judicata is described by section 7 of the Civil Procedure Act. Cap 71 of the Laws of Uganda. Basically it provides that no court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try the subsequent suit or the suit in which the issue has been subsequently raised, and has been heard and finally decided by that court.

In the case before me the appellant was never before the L.C.1 Court. It was the respondent who was. At the time of her claim before the District Land Tribunal the appellant herein relied on letters of administration to her late husband's estate which she secured in 2002. Needless to say those letters were not in existence in 1995 nor did her son claim to sue under them. The claim in the L.C. 1 Court was for trespass. The respondent here had brought it against Karihungu Fideri who he claimed was a trespasser. The claim in no way concerned nor did it effect the appellant herein. In sum the claim in the L.C. 1 Court did not bear on the rights of the property in litigation before the District Land Tribunal. In the result I find that the matter before the .District Land Tribunal of Kisoro on 14th August 2003 was not res judicata.

In consequence this appeal succeeds. The decision of the District Land Tribunal is quashed and the orders made are set aside. The Tribunal is to hear the claim de novo. Since none of the parties is to blame for the earlier decision costs will be borne by respective parties.

P. K. Mugamba

Judge

18th August2005