

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT FORT PORTAL
HCT – 01 – LD – CA – 0041 OF 2013

(Arising from FPT – 01 – CV – CS – LM – 017 of 2013)

1. MUWISA SAFUROZA
2. EDWARD NTUNGWA
3. HAPPY B. SALIM

}.....APPELLANTS

VERSUS

1. BIGUYI GODFREY
2. KISUKSU GIBERT

}.....RESPONDENTS

BEFORE: HIS LORDSHIP HON. JUSTICE OYUKO. ANTHONY OJOK, JUDGE.

Judgement

This is an appeal against the judgment, decision and orders of His Worship Mushabe Alex Karocho Magistrate Grade one at Bundibugyo delivered on 11/9/2013.

Background

The Respondents/Plaintiffs instituted a Civil Suit against the Appellants for recovery of land, declaration that the Plaintiffs are the rightful owners of the disputed land, an order giving vacant possession to the Plaintiffs, special damages, a permanent injunction, general damages and costs.

On 6th and 26th August 2003 the 2nd Respondent bought and paid for the 1st Respondent's two pieces of land situated at Bundikyora Mirambi Parish from the 1st Appellant at agreed sum of UGX 190,000/= and UGX 540,000/= respectively in the presence of the 3rd Appellant.

Subsequently, on 28th January 2004 the 2nd Respondent bought for the 1st Respondent another parcel of land adjacent to the parcels above from the 1st Appellant at UGX 200,000/=.

On 27th September 2008 the 2nd Respondent bought another piece of land from the 1st Appellant at UGX 450,000/=.

That in March 2013 the 2nd Appellant surfaced claiming ownership of the parcel of land bought at UGX 540,000/= and was told that the land had been purchased by the 1st Respondent through his father the 2nd Respondent. She then instituted a complaint in the L.C Court whereof she entered on the suit land and started harvesting the Respondents' cocoa and removed the boundaries. That she also went ahead and entered on also the undisputed pieces

of land which act caused the Respondents loss, inconvenience, stress for which they sought general damages.

The Appellants in their Written Statement of Defence denied the contents of the plaint and the 1st Appellant averred that it was true that land was sold to the 2nd Respondent but he was claiming ownership of the land that she had just hired to him. The Appellants prayed that the suit be dismissed with costs.

Issues raised for determination were;

1. Who amongst the Plaintiffs and Defendants owns the suit land?
2. Whether the Defendants are trespassers on the suit land?
3. What remedies are available to the parties?

The trial Magistrate on evaluating the evidence and visiting locus found that the suit land belonged to the Respondents, the Appellants as trespassers, a permanent injunction was issued, an eviction order issued and no costs were awarded.

The Appellants being dissatisfied with the above decision lodged this appeal whose grounds are;

1. That the trial Magistrate erred in law and fact when he held that the Respondents bought the suit land bonafidely when all the evidence showed that the suit land belonged to the 1st Appellant and 2nd Appellant would not sell it without the authority and consent of the 1st Appellant.
2. That the learned trial Magistrate did not evaluate the evidence on record which showed that the 1st and 2nd Appellants were given different pieces of land by their father as gifts *intervivos*.
3. That the learned trial Magistrate erred in law and in fact when he failed to find as a fact that the 3rd Appellant was a wrong party to the suit and the Respondents had no cause of action against him.

Counsel Bwiruka Richard appeared for the Appellants and Counsel Ahabwe James for the Respondents. By consent both Counsel agreed to file Written Submissions.

Resolution of Grounds:

The duty of the first Appellate Court is to re-evaluate the evidence on record to come to its own conclusion keeping in mind that it never saw nor heard the witness in the lower court. (See: **Peters versus Sunday Post Ltd [1958] E.A 424**).

Grounds 1 and 2 are discussed jointly and Ground three is discussed separately.

Grounds 1 and 2:

1. That the trial Magistrate erred in law and fact when he held that the Respondents bought the suit land bonafidely when all the evidence showed that the suit land

belonged to the 1st Appellant and 2nd Appellant would not sell it without the authority and consent of the 1st Appellant.

2. That the learned trial Magistrate did not evaluate the evidence on record which showed that the 1st and 2nd Appellants were given different pieces of land by their father as gifts intervivos.

In the instant case PW1, PW2, PW3, PW4, PW5 and DW1 all told Court that the 2nd Respondent bought land from the 2nd Appellant. However, the 2nd Appellant maintained that he only sold to the 1st Respondent two pieces of land and not the suit land that belonged to his sister.

The 1st Appellant told Court that the suit land was hers and was given to her by her father who also gave the 2nd Appellant his own share. That the brother (2nd Appellant) agreed with the 2nd Respondent to hire out her land for a period of five years where he would harvest cocoa and vacate the same but has failed to do so.

Counsel for the Appellant submitted that the evidence of DW1, DW2, and DW3 all show that the 1st and 2nd Appellants were all given land by their father. The same was never challenged by the Respondents. That it is also true that the 2nd Appellant sold land to the 2nd Respondent. That the 2nd Appellant also in his evidence stated that he only hired out his sister's land but never sold it to the 2nd Respondent.

Further, the 1st Appellant also proved to Court that she never authorised the sale of her land to the 2nd Respondent and if there was any sale then it was done fraudulently thus, the sale is null and void. The 2nd Appellant had no title to the suit land and therefore could not sale the same to the 1st Respondent.

In my opinion, it true that the 2nd Appellant sold the suit land to the 2nd Respondent and PW5 testified to that effect was present during the transaction and even drafted the sale agreement. However, the land the 2nd Appellant sold was not his therefore he could not pass on a good title to the 2nd Respondent since the land belonged to his sister.

The Respondents are therefore advised to seek redress from the 2nd Appellant. Thus, the trial Magistrate was wrong when he upheld the sale of the suit land to the Respondents when it belonged to the 1st Appellant.

These grounds succeed.

Ground 3: That the learned trial Magistrate erred in law and in fact when he failed to find as a fact that the 3rd Appellant was a wrong party to the suit and the Respondents had no cause of action against him.

Counsel for the Appellants submitted that the 3rd Appellant only witnessed the sale transaction as the Chairperson LCI and a person who had no interest in the land. That he only witnessed two of the transactions between the 2nd Appellant and the 2nd Respondent.

Further that he is protected by **Section 46** of the Judicature Act and **Section 43** of the Local Council Courts Act that gives him judicial immunity. He only participated in the planting of the boundaries on the land and this was because of his capacity.

I concur with Counsel for the Appellants that the 3rd Appellant was wrongly sued and it was wrong for the trial Magistrate to find him a trespasser on the suit land.

This ground succeeds.

This appeal succeeds and each party bears its own costs since it is not the fault of the Respondents that they were sold to land fraudulently by the 2nd Appellant. This is also to maintain harmony between the two neighbours.

Right of appeal explained.

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OYUKO. ANTHONY OJOK
JUDGE
20/12/2016

Delivered in open Court in the presence of;

1. Richard Bwiruka – Counsel for the Appellants
2. James Ahabwe – Counsel for the Respondents
3. Appellant
4. Respondent
5. Court clerk – James

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OYUKO. ANTHONY OJOK
JUDGE
20/12/2016