

REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KABALE

HCT CIVIL APPEAL, NO.Q17 OF 2011

(From Ruk. Civil Suit No.143 of 2008

1. **SAMWIRI KAREKYEZI i**
2. **MANUEL TWESIGYE:::APPELLANTS**
3. **NGABIRANO BOAZ J**

VERSUS

THE REGISTERED TRUSTEES
OF CHURCH OUGANDA:::RESPONDENT

BEFORE HON. MR. IJSTICE I.W. KWESIGA IUDGMENT

This is an Appeal from the Judgment and decree dated 1st March, 2011 made by His Worship Twakyire Samuel, Grade I Magistrate in Rukungiri Civil Suit No. 143 of 2008.

The Plaintiff/Respondent sued the Defendants in their individual capacities over a piece of land at Katobotobo seeking Declaration that this suit land belonged to the Plaintiff and that The Defendants were trespassers on this land, further sought permanent injunction against the Defendants, special damages, general damages, punitive damages and costs of the suit. The Defendants, in the written statement of Defence denied liability and averred that the suit land was public land exclusively preserved for Nyabiteete community and was never granted to

This court being the first appellate court has the duty to evaluate the evidence as a whole and arrive at its own conclusion. The first appellate

court does re-evaluation on record of the trial court as a whole weighing each party's evidence keeping in mind that the appellate court, unlike the trial Magistrate had no chance of seeing and hearing the witnesses while they testified therefore this court had no benefit of assessing the demeanor of the witnesses. See: **UGANDA BREWERIES LTD VS UGANDA RAILWAYS CORPORATION 120021 E.A and PANDA VS REPUBLIC 119571 E.A 336.**

Evaluation of the evidence must be approached as a whole and not to consider the plaintiffs story in isolation of the Defendants story and finally decide which of the two to prefer. The evidence must be considered on each contentious point in the trial and finally on the balance of probabilities the correct decision to be made. The issues to be determined were settled by the trial court namely:

1. Whether or not the suit land belonged to the Plaintiff.
2. Whether or not the Defendants trespassed on the suit land.
3. What are the remedies available to the parties?

I will examine the evidence to seek the answers to the above issues and whatever final conclusion I will make, shall, in my view, take care of the above grounds of appeal.

The Respondent is The Trustees of Church of Uganda, a body corporate capable of owning land in its names, capable of suing and being sued. The Appellants are members of Kyabiteete Parish and specifically Samuel Karekyezi first Appellant and Ngabirano Boaz are members of LC II Committee of Nyabiteete Parish, Buyanja Sub-County.

The Appellants have since 1950s used the land in dispute for community purposes such as public projects and had built a structure thereon which was

a club house that was used for literacy trainings, youth activities, human and livestock immunization and other government functions. The Respondent conceded that this land belonged to the Government, the Church applied for it in 1984. Before being granted the land, the church planted trees on the land and started a Church School which later failed and was phased out that because it used the land since 1984 the land belonged to the Church. (See: Plaintiff exhibit P I and P.2).

The Plaintiff/Respondent further relied on the application for Rural land form dated 11th July, 1984. This form did not disclose any pre-existing interests on the land such as the fact that there was a club house or camp site used by the community. The application acknowledges it is PUBLIC LAND. The applicants appear to have engaged a surveyor to produce the area sketch map of the area. (See: Plaintiff's exhibits 2 and 2 (a)). There is no evidence that this application was ever received by Uganda land commission or if it did, whether any grant was made. There is no indication that The District Land Committee of Rukungiri recommended this application which, procedurally, it was supposed to do after being satisfied that there were no objections and the applicant could be granted a lease for the land. There is no evidence that proprietors of the neighbouring pieces of surveyed land were invited by the inspection committee pursuant to the application. The Plaintiff/Respondents evidence is that a Minister, Hon. James Rwanyarare granted them land. The unanswered question is whether Rwanyarare had the capacity to donate any piece of land merely by virtue of being a minister. It is not contested that this was public land and the controlling authority should have been Uganda land commission that could legally grant the application and not any minister. In my view the application form dated November 1984 and the sketch map are no proof of ownership unless supported by evidence of actual ownership before the

application and survey. I will now examine the status of this land before the 1984 application. As stated above, it is not contested that it was at all material times public land. The Defendants/Appellants had no personal interests or claim of ownership in individual capacity. Was this land under use of any body else and if so how did Church of Uganda come to the land, set up a Church School and plant trees? All the principal Respondents witness evidence is derived from the first Reverend that initially was in charge of the Respondents leadership in this parish or area.

The uncontested evidence is that there was, in 1960s a camp site which was constructed while the government was constructing a road. A club house was constructed by the parish and in 1980 there was a community school which the Respondent took over and ran it as a Church School but was abandoned in 1993. Before 1980 this land was under community of Nyabiteete Parish on it there were developments and projects namely; Bee keeping for the parish, community club activities such as adult literacy clubs, human and live stock immunization, young farmers training and village assemblies dating as far back as 1960s. As recent as 1996 The government put above hole for the public. See testimony of DW 1 Ngabirano. My understanding of this evidence is that notwithstanding the presence of the Respondent on the suit land, the suit land remained available for community project. DW 1 Ngabirano under cross-examination testified that there was a community Hall, Road camp, bee keeping project, Tree Nursery bed, a school Eucalyptus trees and a borehole put in 1996. Therefore from 1969s up to 1996 and 2007 when the community leaders objected to cutting trees by MAIBA the agent of the church the community had never relinquished their rights over the land and the church had not acquired occupancy or possession of the land to the exclusion of the community members referred to in evidence as Bataka. The first community school was on the land in 1970 headed by Turyabahika Yeremia.

DW' 5 Byamugisha, 67 years old confirmed that the suit land was reserved for government projects after all the surrounding pieces of land were alienated and surveyed for individual ownership between 1958 and 1961. He confirmed he participated in planting the trees under supervision of Turyahahika Yeremiya. Under cross-examination he confirmed that there used to be a parish headquarters but the buildings were removed in 1980s . DW 4 Turyahabahika Yeremiya 87 years old corroborated evidence of DW 1 and DW 5 above that he was a parish Chief in charge of the suit land and he supervised peasants to plant the trees on the suit land. He built the club house, the church had no land although it had a Church school on the land for sometime. DW 3 Karekyezi Samuel, 83 years old told court that due to conflict of interest he was chased from the church leadership in 2007 because he could not tell lies in favour of the Respondent that it owned the land. He stated that the Church of Uganda is separate from the land in dispute. Under cross-examination, he clarified he had no personal or individual interest in this land and that despite the fact that there was a church school on the suit land it remained government land. The Respondents contention

as reflected in its Advocates submission is that “..... *what is clear and what was not disputed was that the application was made, granted, boundaries were opened, survey stones planted and a survey sketch map made.*” *With due respect the stated position is not supported by the evidence on record for the following reasons:-*

- (a) There is no evidence that the application form relied on was ever submitted to Uganda land commission through the district land committee which would have confirmed that the land was available for leasing.

- (b) There was no acknowledgment or offer given by the controlling authority to evidence the claimed grant of the application.
- (c) There is no evidence that the alleged survey and planting mark stones was officially authorized.
- (d) There is no evidence that any of the neighbours or persons claiming interest as the Appellants were given a hearing before the survey was done if it was ever done. There should be no objection to the application.

The Respondents claimed, through the Advocates submissions that they were “Lawful occupants” by virtue of Section 29 (2) of The Land Act. That they used the land from 1981 to 2007. On the contrary, the evidence shows that the Respondent came to the land to occupy the club house belonging to The community, which had a school and it established a church school which was taken over by government and was phased out. The government ownership did not elapse by virtue of this temporary use of the land to run a church school in the land already preserved for government activities and developed as described by witnesses. The church school project was a community service like the club activities that included immunization, NUYO or young farmers project and the adult literacy activities, public meeting venue and camp site as proved by the Appellants evidence.

With due respect, the trial Magistrate did not evaluate the evidence as a whole and missed the proof of the fact that this was public land reserved for community activities which included education which the church contributed for a limited period and the church school was phased out. The Community had planted trees which they protected in 2007 leading to this case. The Respondents’ purported application for the lease appear not to have been with the knowledge and consent of the community which had a right of claim

over the land and above all the Application was not granted and the application perse would not confer supremacy over the Respondents interest, over the parish, and the community which had projects on the land stretching from 1950 up to 1996 and beyond. The plaintiff/Respondent's evidence does not prove ownership of the land for the reasons given above. The Appellants, as leaders of the community, adduced evidence that establishes public interest and claim over the land running from 1950s to date. The Appellants in my view did not commit any act of trespass because they had the duty as community leaders to enter on the land and prevent cutting of the trees that were planted under community projects as proved by the Appellants evidence. The Defendants/Appellants clearly had no personal or individual claims over the suit land and the actions for which they were sued had been done in pursuit of public interests. It was unfair to condemn them personally to pay damages and costs. In final analysis I find the Respondents failed to prove ownership of the suit land and the Appellants committed no acts of trespass, the Appeal against the Judgment of the Magistrate Grade I dated 1st March, 2011 is wholly allowed. The orders of the trial court are hereby set aside and the Appellants are allowed costs in this Appeal and the Lower court.


.....
J.W. KWESIGA
JUDGE
7/8/2012

Mr. Rukundo Fred for the Appellants.

Appellants not in court.

Respondents absent.

Mr. Joshua Musinguzi Court Clerk.