

UGANDA / JUDGMENT

Angunia & 2 Others v Joma (Civil Appeal 18 of 2022) [2024] UGHC 969 (3 October 2024)

[2024] UGHC 969

COURT

High Court of Uganda

BEFORE

Acellam, J

CASE / FILE NUMBER

Civil Appeal 18 of 2022

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT ARUA

CIVIL APPEAL NO: 018 OF 2022

(Arising out of Civil Suit No. 010 of 2018)

1 ANGUNIA GASPER

10 2. JOHN YOVANNI

3. JOSEPH YOVANI::::::::::::::::::::::::::::

VERSUS

JOMA BAZIL::::::::::::::::::::::::::::

15 Introduction

This is an Appeal arising from the judgement of the Grade 1 Magistrate of Arua, Her Worship Adong Susan delivered on 28th of January 2022 in Civil Suit No. 10 of 2018 wherein she entered judgement for the Respondent and against the Appellants on terms that; a declaration that the Plaintiff/ Respondent was the lawful owner of the suit land, a declaration that the defendants/

- 20 Appellants trespassed on the suit land, a permanent injunction restraining the defendants, their agents, servants, employees or persons claiming under him from trespassing on the suit land, an order that the defendants vacate the suit land or be evicted, general damages of Ugsh. 3,000,000/ \$=\$, interest on the award the general damages at the rate of 8% per annum from the date of judgement until payment in full, costs of the suit. The Appellants being dissatisfied with
- \$25\$ the decision of the lower court lodged this Appeal for orders that; the Judgement, decree and orders of the trial court be set aside, judgement be entered for the Appellants declaring them the owners of the suit land, the costs of this Appeal and in the trial, be awarded to the Appellants.

Background

The Respondent/ Plaintiff brought a Suit against the Appellants/defendant vide Civil Suit No. 30 0010 of 2018 seeking for a declaration that he is the customary owner of the suit land as well as an order of eviction, a permanent injunction, general damages and costs of the suit. The Respondent's / Plaintiff's case in the civil suit was that at all material times him and his family were the material owners of the suit land measuring approximately 30 acres and situated at Wilifi and Aluga villages, Yidu Parish, Omugo Sub County in Arua District (Now Terego District). 35 That the Plaintiff and other family members used the land peacefully until 2011 when the 1st Defendant/Appellant and his brothers started to forcefully cultivate the land. That the 1st Defendant/1st Appellant then lodged a complaint against the Plaintiff/Respondent with the Police whereupon the Respondent was charged, prosecuted and convicted. That while the

Respondent was serving his sentence in prison, the 1st Appellant and his brothers assumed 40 ownership of the entire suit land while the 2nd and 3rd Appellant encroached on about 5 acres of the suit land. The Appellants/Defendants on the other hand in their joint written statement

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of Defence contend that they are the rightful customary owners of the suit land having inherited S from their forefathers and that its the Respondent/ Plaintiff who trespassed on their land.

In the lower Court, the parties raised three (3) issues for courts determination of the matter and that is;

- 1. Whether the Plaintiff is the rightful owner of the suit land?
- 2. Whether the defendants trespassed on the suit land?
- 3. What remedies are available to the parties?

The trial Court answered the first two issues in the affirmative and thereon awarded the Plaintiff/ Respondent the appropriate remedies as can be discerned from the judgement of the lower Court.

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Representation and Hearing

The Appellants were represented by \$M/s\$ Odama & Co. Advocates while the Respondent was represented by *M/s Legal Aid Project of the Uganda Law Society*.

Both parties filed written submissions as was requested by this Honourable Court. The Appellants filed their written submissions on the 31st of August 2022 while the Respondent 20 filed his submissions on 16th September 2022.

Duty of the 1st Appellant Court

The duty of the 1st Appellate Court was well stated by the Supreme Court of Uganda in its land 25 landmark decision of Kifamutwe Henry vs Uganda, SC, (Cr) Appeal No. of 2007 where it held that;

> "The appellate court has duty to review the evidence of the case and to reconsider the materials before the trial judge. The appellate court must make up its own mind not disregarding the judgement appealed from but carefully weighing and considering it."

In rehearing afresh, a case which was before a lower trial court, this appellate court is required to make due allowance for the fact that it has neither seen nor heard the witnesses and where it finds conflicting evidence, then it must weigh such evidence accordingly, draw its inferences and make its own conclusions. See: Lovinsa Nankya vs Nsibambi (1980) HCB 81. In considering this appeal, the above legal provisions are taken into account.

Grounds of the Appeal

1. The trial Magistrate erred in law and fact when she failed to properly evaluate the evidence on record and consequently came to a wrong decision that the suit land belongs to the Respondent.

I have carefully read and considered the pleadings, written submissions of both parties I have also read and advised myself on the laws cited by both Counsel. I have also considered other laws 45 though not cited by counsel but are relevant to this matter.

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Determination of Court.

Preliminary Objection

Counsel for the Respondent raised a preliminary Objection in their submissions which I will first consider.

Counsel raised a point of law to dismiss the Appeal since the ground raised by the Appellants' Counsel is too general, verbose and a fishing expedition as it offends Order 43 Rule (1) and (2) of the Civil Procedure Rules. He further stated that general grounds as in the instant case have been dismissed by courts of law for being too general. To fortify his submissions Counsel relied on Order 43 Rule 1 and 2 of the Civil Procedure Rules cases of *Katumba Byaruhanga vs Edward Kyewalabye Musoke*, C. A No. 2 of 1998 (1999) KALR 62T and *Attorney General vs Florence Baliraine* CA. No. 79 of 2003.* Counsel further prayed that the ground raised by the Appellants be struck out and the Appeal be dismissed with costs on the Appellant for offending Order 43 Rule 1 and 2 of the Civil Procedure Rules.

Counsel for the Appellants did not make any response in respect to this preliminary Objection.

I have read and considered the authorities cited by Counsel for the Respondent and I agree with them.

I have also considered other authorities wherein general grounds were raised and indeed Courts frown at raising general grounds of appeal for instance, in the case of **Celtel Uganda Limited* \$t/ a\$ Zain Uganda vs Karungi Civil Appeal No. 73 of 2013 (2021) UGCA 93* the wording of the

30 ground therein was;

"The learned appellate judge failed to evaluate the evidence on record and made an erroneous decision."

In resolving this this matter, Hon. Justice Remmy Kasule while relying on the principle articulated in *Rachobai Shivbhai Patel Ltd and Another vs Henry Wambuga and Another SCCA No. 006 of 2017*, where court pointed out a similar error as in the instant matter, went 35 on to strike off the grounds of appeal for offending the Civil Procedure Rules.

Further, in the case of *Okot and others vs Lamoo Civil Appeal No. 26 of 2018(2020)*, Justice Stephen Mubiru who was faced with a similar situation wherein the ground of appeal was framed as "..... the learned trial Magistrate erred in law and fact when he failed to properly 40 evaluate the evidence before him thereby arriving at an erroneous decision against the appellants thus occasioning a miscarriage of justice." went on to hold that the ground is too general and offends order 43 Rule 1 and 2 of the Civil Procedure Rules which require a memorandum of appeal to set forth concisely the grounds of objection to the decision appealed 45 against.

I therefore adopt both the holdings in the above authorities to the instant appeal where the only ground of appeal reads as;

The ground is indeed too general as it doesn't pinpoint the exact errors which this Court should fault the trial Magistrate by this appeal.

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That being the case, I find the ground of appeal so general intended to send this Court to a \$\mathsf{S}\$ fishing expedition I therefore strike it off.

Accordingly, since I have resolved the point of law in the affirmative, then this appeal is inhibited on the basis that it does not comply with the provisions of the law under Order 43 Rule 1 and 2 of the Civil Procedure Rules.

Appeal dismissed for reasons stated above and costs of the Appeal awarded to the Respondent.

I so order

Califer)..... day of 2024 Dated and signed this...

\$20\$ Acellam Collins

\$25\$ JUDGE

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Prepared on 13 October 2026 · Esheria