

UGANDA / JUDGMENT

Bamwine v Bamwine and Another (HCT-00-LD-CA 62 of 2022) [2024] UGHCLD 277 (9 December 2024) [2024] UGHCLD 277

COURT

HC: Land Division (Uganda)

BEFORE

Alividza, J

CASE / FILE NUMBER

HCT-00-LD-CA 62 of 2022

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<sup>5</sup> THT REPUBLIC OF. UGANDA

IN THE HIGH COURT OF UGANDA AT IAMPALA

ILAND DrVrSrONl

HCT-00-LD -CA-O62-2022

ARISING FROM CIVIL SUIT 0359 OF 20L2 MAKINDYE CHIEF MAGISTRATE'S COURT.

BAMWINE LILLIAN APPELLANT

VERSUS

ENOCK MAFEERA BAMWINE.1ST RESPONDENT FLAVIA NANSUBUGA2ND
RESPONDENT

BEFORE. HON. LADY JUSTICE ELIZABETH JANE ALIVTDZA 15

JUDGMENT

Representation

The Appellant is represented by PINNACLE Advocates while the 2"d Respondent is represented by M/S Andrew & Frank Advocates. Both Counsel filed written submissions which I have put into consideration.

Introduction

This is a first Appeal against the judgment and orders of Her Worship Basemera Sarah Anne, Chief Magistrate Grade, given at the Makindye Chief Magistrates' Court on the 05th day of July 2022 vide Land Civil Suit No.359 of 2012. The trial Magistrate found in favour of the Respondents hence this Appeal.

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³⁰ Background

In the lower Court, the Appellant sued the 1st Respondent for selling the suit property to the 2^d Respondent without her knowledge/consent as wife to the 1st Respondent. The suit property is situated at Ggaba Market stall no. 5 bought on 12th August 2003 from a one Pidson Wavamuno.

The Appellant and the 1st Respondent were legally married on 30th January 1994 and acquired the suit property in 2003. The Appellant asserts that she still resides there with her children. That the 1st Respondent sold off the property to the 2^d Respondent without the

40 Appellant's knowledge yet it was matrimonial property.

That after the said sale, the 1st Respondent disappeared and his whereabouts have not been known to date. She asked the trial Court to cancel the partial sell and eviction orders against her by the area LC 1 offices. She further stated that she has always lived in the suit property with her children since they bought it and was still in possession.

Substituted service was done on the 1st Respondent and he never appeared in Court. The case proceeded ex parte in his absence. The Appellant in the lower Court requested the Court to declare that the suit property was matrimonial property, an order cancelling the purchase/sale, a declaration that the sale was unlawful, general damages, interest and costs.

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The 2^d Defendant/Respondent is the only one that put in a defence and she denied all the allegations. She said it was even the Plaintiff/Appellant who first approached her to buy the suit property and therefore she should be estopped by her conduct from challenging the sale/transaction.

That the Plaintiff/Appellant was aware that the property was for only the 1st Defendant/1st Respondent though he has been elusive in collecting the balance of the purchase. That the 1st Defendant/ 1st Respondent and the Plaintiff/Appellant are residents in Mukono and the lockup shop in Ggaba [suit property] is only a commercial premise.

Agreed issues.

- 65 The parties had a scheduling memorandum in the lower Court and the agreed issues were;
- 1. Whether the suit property is family home of the 1st Defendant and the Plaintiff where they reside.
- 2. Whether the sale of the suit property by the 1st Defendant and purchase by the second Defendant is null and void.
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- 3. Whether there are any remedies available for the parties.

Judgment in the lower Court.

The Chief Magistrate HW BASEMERA ^S elaborate that what amounts to a matrimonial home per Section 2 of

75 the Mortgage Act as a building or part of husband and wife or as case may be live the building in which the and their children if an

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ordinarily reside. The learned Magistrate also cited *Rloabinumi Vs Bahimbisomwe* CA No. 10 of 2009 to define matrimonial property and found that there is no evidence that the Plaintiff lived in the suit premises since 2003.

The trial Magistrate further stated that when the Court visited locus on 19th November 2022, it concluded that the Plaintiff doesn't live the premises and the sick old man who was found there had been brought to divert the Court.

- 85 She also stated that the premise is in a market area on a commercial building, a lock up in Ggaba market with no amenities of a toilet. That the Plaintiff didn't bring evidence to show that the proceeds from the car that they sold to buy the house was out of the joint contribution of the work they did in South Africa.
- 90 The Court found that the purchase was done by only single person, the 1st Defendant and only witnessed by the Plaintiff. That there was no evidence of contribution towards the purchase of the suit property. She held that the Plaintiff totally failed to prove that a lock up shop in the market was a matrimonial home.
- 95 The Chief Magistrate went ahead and found that on the second issue pertaining validity of the sale between the 1st and 2nd Defendants that though the Plaintiff asserts that it was matrimonial property that necessitated her consent before sell. She quoted Section 38A and 39(1) of the Land Act as amended in concluding that the suit property doesn't fall under Section 38A to qualify as family land but rather 100

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that the land belonged to the 1st Defendant singly and he reserved the right to deal with it as he felt.

About purchase, the trial Magistrate held that there was contractual intent between the Defendants to sell/purchase the suit property and this position has never changed despite the elusive mannerism of the 1st Defendant. That the interest in the property already passed to the buyer and the only obligation on the 2nd defendant to pay up the remaining balance of UGX 2,000,000. She ordered the same to be paid to Court for onward transmission to the 1st Defendant or his representative.

The Court ordered that suit property isn't matrimonial property, validated the partial sale of the suit property, ordered the 2nd Defendant to deposit the balance of UGX 2,000,000 into Court account, gave vacant possession to the 2nd Defendant and costs were borne by the Plaintiff.

The Plaintiff/Appellant was dissatisfied with the decision of the trial Magistrate hence the Appeal.

Ground of Appeal

1. The Learned Trial Chief Magistrate erred in law and in fact in finding that the suit property is not matrimonial property.

validating the partial sale between the 1st and 2nd Respondents.

2. The Learned Trial Chief Magistrate erred in law and fact in
 3. The learned trial Chief Magistrate erred in law and fact when she ordered the Appellant to give vacant possession of the suit property to the 2nd Respondent.
 4. The learned trial Chief Magistrate erred in law and fact when she misapplied the law on matrimonial property.
 5. The learned trial Chief Magistrate erred in law and fact when she failed to properly evaluate and analyze the evidence on matrimonial property before Court thereby coming to untrue conclusions and occasioned a miscarriage of justice to the Appellant.
 6. The learned trial Chief Magistrate erred in law and fact when she exhibited manifest bias in her judgement and the Court proceedings including the visit at the locus in quo.
 7. The learned trial Chief Magistrate erred in law and in fact when she ordered the Appellant to pay costs of the suit to the 2nd Respondent.

The Role of the Appellate Court

1,40 This Court is under an obligation during first Appeal to re-hear the case by subjecting the evidence presented to the trial Court to a fresh and exhaustive scrutiny and re-appraisal before coming to its own conclusion.

This duty is well explained in *Father Nanensio Bequmisa and three 14s Others u. Eic Tiberaqa* SCCA 17 of 2000: 120041 KALR 236 as thus;

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"It is a well-settled principle that on a first appeal, the parties are entitled to obtain from the appeal court its own decision on issues of fact as well as of law. Although in a case of conflicting evidence the appeal court has to make due allowance for the fact that it has neither seen nor heard the witnesses, it must weigh the conflicting evidence and draw its own inference and conclusions."

In the first Appeal, the parties are entitled to obtain from the Appellate Court its own decision on issues of fact as well as of law See *Pqrafoa u. R* 119571 EA. 336.

- 155 It is therefore incumbent on this Court to weigh the conflicting evidence and draw its own inferences and conclusions in order to come to its own decision on issues of fact as well as of law and remembering to make due allowance for the fact that it has neither seen nor heard the witnesses.
- 165 It is also important to point out that the Appellate Court is confined to the evidence on record. Accordingly, the view of the trial Court as to where credibility lies is entitled to great weight. However, the Appellate Court may interfere with a finding of fact if the trial Court is shown to have overlooked any material feature in the evidence of a witness or if the balance of probabilities as to the credibility of the witness is inclined against the opinion of the trial Court. 160

This Court is also not bound necessarily to follow the trial Magistrate's findings of fact if it appears either that she/he has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence or

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if the impression based on demeanor of a witness is inconsistent with the evidence in the case generally.

It is on this basis that I will go on to resolve the grounds as stipulated by the Appellant.

175 I will resolve grounds 1,4,5 and 6 concurrently as well 2 and 3. I shall consider ground 7 separately.

Resolution of grounds

Ground 1, 4, 5 and 6 rotate on matrimonial property and I will look into the subject appropriately so as to determine if the suit property amounted to matrimonial property.

Ground one: The Learned Trial Chief Magistrate erred in law and in fact in finding that the suit property is not matrimonial property.

Ground four: The learned trial Chief Magistrate erred in law and fact when she misapplied the law on matrimonial property'

Ground five: The learned trial Chief Magistrate erred in law and fact when she failed to properly evaluate and analyze the evidence on matrimonial property before Court thereby coming to wrong conclusions and occasioned a miscarriage of justice to the Appellant-185

Ground six: The learned trial Chief Magistrate erred in law and fact when she exhibited manifest bias in her judgement and the Court proceedings including the visit at the locus in quo. 190

What amounts to matrimonial property?

From the onset, it is important to note that under our laws, there is no uniform definition of what amounts to matrimonial property.

¹⁹⁵ Black's Law Dictionary (8th edition 2004) Bryan A. Garner page 3071 defines marital property as "property that is acquired during marriage and that is subject to distribution or division at the time of marital dissolution.

Furthermore, the definition of matrimonial property was broken ²⁰⁰ down in the famous case of Julius Rutabinumi V Hope Bahimbisomwe Civil Appeal No.10 ²⁰⁰⁹ Hon. Dr. Esther Kisaakye JSC'S decision at page 23 stated the following; "Matrimonial property is understood differently by different people:

1. There is always property which the couple chose to call home.
2. There may be property which may be acquired separately by each spouse before or after marriage.

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- 3. Then there is property which a husband may hold in trust for the clan.
- 4. Each of these should be considered differently. The property to which each spouse should be entitled is that property which the parties chose to call home and which they jointly contribute to. This means that other types of property except property a person holds in trust for the clan may be considered matrimonial property"
- 2. Also see John Tom Kintu Mwanaka v. Muliious Gafafusa Kinfit ²⁰⁰⁹ (Divorce Appeal No. 135 of 1997. ak

Section 2 of the Mortgage Act Cap 239 defines matrimonial home as a building or part of the building in which a husband and wife, as the case may be, wives and their children, if any, ordinarily reside together and includes;

- (a) Where the building and its curtilage are occupied primarily for residential purposes, that curtilage and outbuilding on it, and

- (b) Where the building is on or occupied in conjunction with agricultural land or pastoral land, any land allocated by one spouse to his or her spouse or in case of a husband, to his spouses for his, her or their exclusive use.

The Lands Act Cap 236 does not refer to matrimonial property but deals with family land. Section 40 imposes restrictions on transfer of family without consent. It can be argued that the suit property is family land and thus require the consent of the spouse' The 2004 Land Regulation 64 and 65 provide for the procedure of obtaining this consent.

In this case, the suit property was a market stall which is typically for selling products. The argument that it is not part of the land does not stand. The legal maxims very clear. I will reproduce them below

for emphasis.

"Cuius est Solum eius est usque ad coelum et ad inferos" Whoever is the soil, its theirs all the way to heaven and all the way to hell. The principle is that "Part holder have rights not only on plot of land itself but also the air above".

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"Quicquid plantatur solo solo cedit. Whatever is fixed on the land /soil belongs to the land/ soil. The principle is "whatever is fixed to the land belongs to the land and forms part of it"

Common law recognizes the market stall as part of the land on which it stands. It does not matter that the ownership of the land and the stall is different.

Therefore, was the suit property considered matrimonial property? In the facts before this Court, the Appellant mentioned that when they got married, the couple went to South Africa where they lived and worked as casual laborers. That they then bought a car out of their wages and returned to Uganda. That then after selling off that car, they bought the suit property.

However, all this is oral evidence save for the proof of passports and visas to south Africa. There were also details of the Sahara vehicle but no proof of joint contribution towards acquiring of the property because even the suit property is in the names of the 1st Respondent.

Nothing in the law indicates that facts cannot be proved by oral evidence. Failure to produce documentary evidence does not prove non-existence of a fact.

260 However, it is important to note that the Appellant signed on the purchase agreement as a witness when they were acquiring the suit property. It is my finding that by inference the Appellant's presence in the process of purchasing the suit property qualifies her to be party to the "family asset" that they were buying' ¹¹ a

I adopted the definition as outlined in the General Comment No 6 on the African Charter on Human and People's rights on the Rights of Women in Africa; Article 7 of the Maputo Protocol. It defines joint property deriving from the marriage (Marital Assets) to include "all property acquired during the course of marriage, regardless of who actually holds title to it. 265

Counsel for the 2nd Respondent contends that the property can't be matrimonial property since it lacks a toilet facility, kitchen and bathroom and that the Appellant's son testified that they don't stay there. Secondly that the market register has that suit property registered as a market stall/lockup. And finally that the couple bought the property and the 1st Respondent sold it off three months later so it can't amount to a matrimonial home.

280 It is my finding that there is no legal backing in this above argument whatsoever. The law does not dictate what amounts to a home' whether lack of a kitchen, toilet and bathroom disqualifies ^a structure from being considered a home by the occupants or not. What is important is the intention of the parties to treat that suit property as a home.

285 I also noted that in the lower court, the learned Magistrate equally went ahead to find that the suit property is not matrimonial property among other reasons because it is in a commercial setting [a market area].

The trial Magistrate held that during the locus visit, the court found only a sick man in there who seemed to have been ferried there to

- 290 misguide the court and that there was no evidence from the Appellant to prove that she made any joint purchase on the suit property. And that there is no evidence that the family derived sustenance from there.
- 295 300 The problem with the above reasoning is that this court cannot verify these facts since there is no proper record and formal proceedings of the locus in quo visit that preempted the trial Magistrate to determine relevant facts. The trial Magistrate found that the sick man found in the premises was trickery or he relates to the parties. However, it is not clear whether it came out in cross examination of the witnesses and Court observations.

The only record of the Locus Visit is the list of attendance and sketch map. The only record in the Court proceedings are "matter for loans at Gaba market. Plaintiff takes court through the disputed suit property and" the 2nd Defendant confirms the same. No issues with boundaries as the property forms one of the stalls in Gaba market".

Therefore, this is evidence that this Court cannot heavily rely on to determine the physical examination of the premises. It is my finding that this court is unable to confirm those observations from the record.

310 It is important to note that in evaluating evidence, the minimum requirements of evaluation of evidence are met where the decision demonstrates on the face of it; (i) a discussion of the evidence in favour of the claim; (ii) a discussion of the evidence against the claim, and (iii) a reasoned explanation as to why one set of evidence

315 outweighs the other set, or that the evidence is in equal balance for and against the claim. The process entails assessing the credibility and probative value of evidence before weighing the evidence in order to arrive at a decision.

320 In order to distil the truth from the evidence presented, the Court must consider the body of evidence as a whole, as well as evaluate the persuasiveness of each individual piece of evidence. Weight should not be assigned unjustly or arbitrarily.

I have scrutinized the lower record and the submission of both Counsel before this Court and I am optimistic that once the ground of matrimonial property is resolved, all others will follow suit.

As earlier defined, what amounts to matrimonial property is determined by the circumstances between the affected parties and the applicable laws. If the Appellant has presented the suit property as a place they resided after purchasing it, occupying the upper part and letting out the lower one, then any other proof comes with possession. Besides that, the Appellant has been in possession of the property since 2003 when they bought the property to date.

Much as the Respondent made mention that it was sold off three months after it was bought. Period doesn't deter the fact that the suit property was matrimonial property if the husband had not decided to sell it off whenever he did.

A person can be absent for significant periods and still be ordinarily resident so long as he or she maintains some tie or connection with the place. A person absenting himself or herself temporarily from his or her place of ordinary residence cannot by reason thereof cease to be ordinarily resident thereat.

I will not emphasize further that the Appellant by uncontested virtues calls the suit property matrimonial home simply because they chose to call it home when they bought it and they both contributed to it

the reason as to why she appears on the purchase agreement as a witness. 345

When the Appellant mentioned that they resided there, it was the argument of the 2nd Respondent and the trial Magistrate that the suit place was not a kind of place someone would live in as a matrimonial home.

Can the suit property be considered an ordinary residence?

In defining Ordinary residence, Justice Mubiru quoted in *Larulero Vs Okene & anor* Civil Appeal No. 29 of 2018 that It is the fact that a³⁵⁵ definition must provide sufficient structure to facilitate uniform interpretation, but be flexible enough to adapt to the unique facts of each case. Determinations of "ordinary residence" should thus take into account "all the circumstances of any particular case" (see *Cu. S 1990 2 All E. R. at 965* The "ordinary residence" of a family therefore may include the "matrimonial home" as well as the "habitual home,"

360 places where both spouses take steps to set up a regular household together with a shared, settled, mutual intent that the stag lasts indefinitely, the period need not be long.

365 The Appellant put up her argument that the suit property is all they owned as a family and none other property. I noted that the 2^d Respondent tried to disagree but never brought forth any other proof to negate the fact that the suit property is the ordinary residence of the Appellant and her family.

I am aware that the environment doesn't determine comfortability in formulating an ordinary residence lest street kids wouldn't call the streets their home. It is important to keep in mind that Section 38A (a) of the Land Act. Where "family land" includes land on which is situated the "ordinary residence" of a family.

The puzzle to resolve is whether the aggrieved spouse had put all the surroundings into consideration in forming a concrete intent that the suit property is ordinary residence and therefore matrimonial property and actually stayed. The evidence indicates that the Appellant has been in possession of the suit property since 2003 even when the 2^d Respondent apparently part paid for the property. Therefore, terminating of ordinary residence takes a departure with intent to relocate permanently, which is lacking here. 375

The concept of ordinary residence must entail some element of voluntariness and purposeful design. The significance of the adverb "ordinarily" is that it recalls the necessary features, namely; residence adopted voluntarily and for settled purposes (see Shah, [1983] 1 AU E. R. at 234). Also see in *Lanuro Vs Okene & another* supra

The Appellant testified that they intended and actually stayed on the upper floor while they rented out the lower floor to derive sustenance

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until in the recent past when her tenant defaulted and she chased him. That even the 2^d Respondent who testified that she is their opposite neighbour didn't contest it.

From the above analysis, the suit property and no other was/is considered the ordinary residence of the Appellant with all her intent and purpose therefore, remains the "ordinary residence" of the Appellant's family. Hence the suit property constitutes part of the marital assets.

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Contribution to acquisition of the suit property.

The trial Magistrate in reaching her decision concluded that the property singly belonged to the 1st Respondent as the Appellant didn't prove at all that she contributed to the purchase of the suit property.

- 400 In determining contribution towards the matrimonial property, Justice Mwangusya observed in *Kaqqa Vs Kaqqa HC Divorce Cause N0. 11 of 2005* that Our courts have established a principle which recognizes each spouse's contribution to acquisition of property and this contribution may be direct, where the contribution is monetary or indirect where the spouse offers domestic services...it is immaterial
- 405 that none of the spouses was as financially evidenced as the other.

In the instant case, the Appellant tried to prove that she is legally married to the 1st Respondent. She showed evidence of South African documentation when she asserts that they both lived and worked there. She brought details of the car they bought and the bank of

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Uganda exchange of currency documents which she consistently laid out how all this led them into buying the suit property.

It is also my finding that there was no way she would have ended up as a witness on the purchase agreement if she was estranged to the

415 42C) purchaser. It is immaterial if the Appellant has evidence of her monetary contribution or not. In *Kiuuht Vs Kiuuitu* [1990-1994] EA 270, the judge found that ...4 wife indirectly contributes towards payments by ...preparing food, organizing children for school and general enhancement of the home welfare...and this entitles her to an equal share in the couple's joint property.

The right of the spouse to have access to and live in the matrimonial home or on family land should unconditionally prevail over the prospect of the other spouse's cash flow being interrupted or mishandled as an individual so that at the termination of a marriage or a relationship neither spouse walks out of the marriage empty handed.

The Appellant in such scenarios as this has to just prove that this suit property was matrimonial by satisfying Court that eviction therefrom will occasion the Appellant undue hardship, i.e. significant difficulty, expense or disruption.

It should be hardship which is excessive or disproportionate in all the circumstances of the case, considering the fact that the spouse that gets into a transaction depending on the suit property ought to have foreseen.

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- 435 440 When determining the magnitude of hardship the eviction from a matrimonial home is likely to cause, the court will consider, among other factors; (i) the nature of the transaction that exposed the spouses to eviction therefrom; (ii) the size of the family; (iii) the period for which they have occupied the home; (iv) the availability of alternative, reasonable accommodation; (v) any unique qualities of the home; (vi) whether there are likely to be serious safety or health issues emanating from the eviction such as those related

to childcare' or responsibilities of caring for an elderly, disabled, or sick family member; (iii) whether loss of that accommodation will substantially

- affect the applicant's viability as a cohesive family, and so on....see Nakato Vs Housing Finance Bank and another HC Civil Appeal 687 OF 2021 445

450 455 When the Appellant testified in the lower Court that she has stayed in the suit property since it was purchased and that she has no other place to call home. The Respondent failed to bring forth proof that the Appellant has another home in Mukono as she alleged- The Appellant has a small family of a son whose birth certificate she attached and sharing the upper floor of the suit property wouldn't be alarming so loss of this property where she also derives sustenance from will be detrimental for her.

Conclusion

As regards ground one, four and five. It is my conclusion that trial Magistrate erred in law and fact when she failed to properly evaluate the evidence and find that the suit property was a family asset and

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⁴⁶⁰ that any transaction in relation to this property needed the consent of the Appellant.

As regards ground 7, I find that the trial Magistrate did not address her mind to the proper procedure of handling of locus. The Court just summarized the process. There was no record of observations referred to in the judgment.

Therefore, the first set of grounds are found in the affirmative and I declare the suit property matrimonial property.

I allow grounds 1, 4, 5 and 6.

Ground two: The Learned Trial Chief Magistrate erred in law and fact in invalidating the partial sale between the 1st and 2nd Respondents.

Ground three: The learned trial Chief Magistrate erred in law and fact when she ordered the Appellant to give vacant possession of the suit property to the 2nd Respondent.

- The second set of grounds is equally synchronized with the determination if the suit property was matrimonial property. In the scenario that it is, then the sale was illegal and so was the validation of the partial sale as per Section 38 A of the Land Act and Section 39 (1) (as amended by the Land (Amendment) Act of 2004, Section 39 Land Act and Section 5(1) (a) & (b) of the Mortgage Act No. B of 2009. 475
- S. 39. Restrictions on transfer of land by family members. 480
- (1) No person shall-

(a) sell, exchange, transfer, pledge, mortgage or lease any land;

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(b) enter into any contract for the sale, exchange, transfer, pledging, mortgage or lease of any land; or

485 (c) give any person any land interest, or enter into any other transaction in respect of land-

(i) in the case of land on which the person ordinarily resides with his or her spouse and from which they derive their sustenance, except with the prior written consent of the spouse;

(ii) in the case of land on which a person ordinarily resides with his or her dependent children of majority age, except with the prior written consent of the dependent children of majority age; 490

(iii) in the case of land on which a person ordinarily resides with his or her children below the age of the majority, except with the prior written consent of the committee;

(iv) in the case of land on which ordinarily reside orphans below majority age with interest in inheritance of the land, except with the prior written consent of the committee.

Section 39 (1) (b) of The Land Act prohibits a spouse from entering into any contract for the sale, exchange, transfer, pledging, mortgage or lease of any family land, except with the prior written consent of the other spouse. 500

According to section 38A (5) of The Land Act, this restriction does not apply to spouses who are legally separated and here we have no proof of divorce though the 1st Respondent has been evasive. In the instant case the Appellant and the first Respondent had not legally

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separated. The first Respondent was bound by law to seek the express consent of the Appellant before selling this land, which he did not. A transaction of sale of family land entered into by one spouse without the express written consent of the other is void.

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Therefore, the sale of the suit property was null and void' The 2nd Respondent admitted that she has been a neighbor to the Appellant and the 1st Respondent for a long time and that her brother is the one that sold to the couple. She ought to have known better because being a bonafide purchaser for value doesn't protect her.

Even if the 2nd Respondent is a purchaser in good faith and for value without notice that requirement has not been complied with, the transaction is void though the purchaser has the right to claim from any person with whom she entered into the transaction, any money paid or any consideration given by her in respect of the transaction (see Section 39 (f) of The Land Act).

I will not delve much into this but will briefly hint that the standard of due diligence imposed on a purchaser of unregistered land is much higher than that expected of a purchaser of registered land' A purchaser of unregistered land who does not undertake the otherwise expected "lengthy and often technical investigation of title," is bound by equities relating to that land of which he or she had actual or constructive notice.

530 The second Respondent's purported purchase was therefore not made in good faith since she had notice that this was family land and

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that the requirement of spousal consent had not been complied with. (see Williams and Glun's Bank Ltd u. Boland, t19811 AC 48V.

Conclusion

535 In conclusion, as regard ground two, the trial Magistrate erred in law and fact when she failed to find that the suit property was a family asset and thus validated the partial sale between the Respondents. As regard ground three, the trial Magistrate erred in ordering vacant possession of the suit property by the Appellant.

I allow grounds 2, 3

540 Ground Seven: The learned trial Chief Magistrate erred in law and in fact when she ordered the Appellant to pay costs of the suit to the 2nd Respondent.

According to Section 27 (2) of The Civil Procedure Act, costs of any action, cause or matter follow the event unless Court for good cause orders otherwise.

Since the Appeal has merits, there is no need for the Appellant to incur the 2^d Respondent's cost.

However, each party bears their own costs in this Court and the lower Court.

550 This ground 7 allowed in part.

Conclusion

This Appeal is allowed. In the final result, the lower Court had ordered the 2^d Respondent to deposit the UGX 2,000,000 to Court

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so that it is transmitted to the 1st Respondent's representative which decision I over turn.

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I therefore set aside the lower Court judgment and instead enter judgment in favour of the Appellant.

The 2nd Respondent can get her refund from the 1st Respondent and also have the 2,000,000/ \$=\$ she deposited in the lower court refunded.

Each party bears their own costs in the lower Court and in this Court. 560

I so order.

Elizabeth Jane Alividza 565

Judge 917 DE rember 2024
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Elizabeth Jane Alividza

Judge

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