

1 / 10

The agreement between the Appellant and Lubega Jimmy dated 20/07/2019 and admitted as PExhII. She took possession by putting sand and when she brought builders that is when the Appellant chased her from the suit land /kibanja.

The Appellant's evidence in the lower court was that he never authorized Jimmy Lubega to sell the suit land/kibanja.

The basic contention in the appeal is that there was no authority by way of Powers of Attorney or a document of any sort to authorize the said Lubega Jimmy to sell the Appellant's land/kibanja.

### **The Respondent's evidence in the lower Court:**

The Respondent testified as PW1 and stated that the land in dispute belongs to her because she bought it from Kimbugwe Abdu vide an agreement dated 10/10/2019. Kimbugwe had purchased



it from Lubega Jimmy a broker authorized by the Defendant/Appellant to sell. PWII, the L. C Chairman testified that the Plot in dispute belongs to the Respondent/plaintiff, and that he witnessed the agreement when she purchased it from Kimbugwe Abdul.

Kimbugwe Abdul testified as PWIII that he had bought the suit land from Jimmy Lubega who had informed him that he had authority to sell from the Defendant/Appellant. The L. C Chairman witnessed the agreement between him and the Respondent and first called the Defendant and the defendant confirmed that he had authorized Lubega Jimmy to sell. Further that there were public announcements in the area that plots of land on the defendant's land were being sold.

PWIV, Walugembe Jamal testified that the land in dispute belongs to the Plaintiff/Respondent who bought it from Abdul Kimbugwe. He was present. The Plaintiff paid Ugx 1,700,000/- and an agreement was executed. The Chairman L. C I witnessed it and before he did, he first called the Defendant/Appellant who confirmed that he had authorized Jimmy to sell. It was also being announced on the village public address system for a period of three months that the plots were being sold. Other people had also bought from Jimmy like Deus and some of them built.

The testimonies of PWV and PWVI were to the same effect that the Plaintiff bought from Kimbugwe who had purchased from Jimmy, the Defendant's authorized agent.

That was the Plaintiff's case.

### **The Appellant's/ Defendant's Case**

The defendant/Appellant testified as DWI and contended that he never authorized Jimmy Lubega to sell his plot of land at Kasanvu. He admitted having sold land to other people and that they built on it. He never sued Jimmy Lubega for selling his plot nor did he sue the Plaintiff but he chased her off his land. He denied having been called by the L. C. I Chairman and acknowledged that the Plaintiff/Respondent has a foundation on the disputed Plot.

He did not call any other witnesses and that was his case.

### **Proceedings at the Locus in Quo:**

The Court visited the locus in quo on 10/09/2021. The defendant confirmed the plot of land in dispute and reiterated that he did not authorize Jimmy to sell. The plaintiff/ Respondent maintained that she bought after making the necessary inquiries from the L. CI Chairman.

### **Judgment of the Lower Court:**

The learned trial Magistrate, Mfitundinda George delivered his judgment on the 22nd day of October, 2021 in favour of the Plaintiff/Respondent. He noted that it was the same Lubega Jimmy that sold to PWII, Walusimbi Lamech and that the Defendant did not dispute that agreement. By



implication, the defendant authorized Lubega Jimmy to sell in his behalf. That PWII, III, IV and V also told Court that the plot was on sale and had been advertised on the town public system for a long time. He found that the Defendant authorized Lubega Jimmy to sell and that the sale agreement between the Plaintiff and Kimbugwe Abdul was valid.

### **Representation:**

- 1. The Appellant was represented by Mr. Lawrence Yawe
- 2. The Respondent was represented by Mr. Ochieng.

### **The Appeal**

It is against that background that the Defendant, being dissatisfied with the decision of the learned trial magistrate, filed this appeal.

### **The grounds of the appeal**

The grounds of appeal as set forth in the Memorandum of Appeal are as follows:

- 1. The learned trial Magistrate erred in law and fact when he held that the Plaintiff had legally purchased the suit land whereas there was no evidence to support that finding.
- 2. The learned trial magistrate erred in law and fact when he failed to properly evaluate the evidence on record and thereby made an erroneous judgment.

### **The Arguments of Counsel for the Appellant:**

The appellants Counsel set out his arguments as follows:

The Respondent sued the Appellant in the lower court seeking a declaration that she is the lawful owner of the plot of land and also sought general damages and costs of the suit.

The Respondent's case in the lower court was that she purchased a plot of land from a one Kimbugwe Abdul and the said had purchased it from Lubega Jimmy. The said Lubega Jimmy was said to be a broker of the Appellant and was said to be authorized by the Appellant to sell his land/kibanja.

The Respondent adduced evidence of six witnesses including herself. In their evidence in the lower court, she told court that she purchased the kibanja/plot from one Kimbugwe Abdul and paid 1.7M on 10/10/2019. The agreement was tendered in as PExh I. That Kimbugwe purchased it from Lubega Jimmy a broker authorized by the Appellant to sell.

The agreement between the Appellant and Lubega Jimmy was dated 20/07/2019 and admitted as PExh II. She took possession by putting sand and when she brought builders that is when the Appellant chased her from the suit land /kibanja.



The Appellant's evidence in the lower court was that he never authorized Jimmy Lubega to sell the suit land/kibanja.

The basic contention in the appeal is that there was no authority by way of Powers of Attorney or any document of any sort to authorize the said Lubega Jimmy to sell the Appellant's land/kibanja.

The plaintiff and her witnesses admitted that the kibanja previously belonged to the Appellant. They alluded to authority of Lubega Jimmy to sell, which was never there. The witnesses alluded to consulting the chairman of the area who was never called as a witness, that Lubega Jimmy had authority to sell. That was the evidence of PW3 and PW4.

We contend that the right to sell unregistered land is vested only in the person who holds valid title to that land. He/she who has no title has nothing to sell. The Respondent cannot even contend to be a bonafide purchaser for value without notice because this defence only arises in cases of registered land.

The witnesses of the Respondent knew that the land belonged to the Appellant but they never consulted him on their transaction.

He invited court to find that there was no valid transaction between the Respondent and Kimbugwe Abdul because Kimbugwe did not have valid title to pass on the Respondent and prayed that the appeal is allowed in this court and the court below.

### **Respondent's Counsel's Arguments:**

In reply, Mr. Ochieng submitted that the trial court correctly found that the Respondent had correctly bought the suit land from the Appellant who sold it through his agent Lubega Jimmy.

In reaching this conclusion, the trial magistrate established a principal agent relationship between Lubega Jimmy and the Appellant. He relied on the evidence of PwII, Rubirizi Geoffrey the area L. C1 Chairman. He testified that before the land was sold, the appellant was called for approval of the sale by phone and the appellant approved the sale.

The magistrate also relied on the evidence of PWIII, IV & V all of whom testified that before the land was sold it was announced on loud speakers for a period of over 3 months.

This indicates that the Appellant was duly aware that his land was being sold and he authorized the same.

Furthermore, PWVI also testified that he bought land from the Appellant through Lubega Jimmy and his sale was never contested.

In **Equity Bank vs Achola Lydia CA No. 4 of 2017** the court noted that a Principal Agent relationship can either be express or implied. Court further noted that an implied agent arises in



circumstances where the principal places an agent in a situation in which it is apparent that they have incidental authority.

The court also relied on S.118 of the Contract Act which defined a principal to mean a person who employs an agent to do way act for him or her or to represent him/her in a declining with a third party.

Court listed the 2 main functions of an agent to be (1) to make contracts on behalf of the principal, (2)) to dispose of the principles property.

He submitted that Lubega Jimmy sold the land as an agent of the Appellant and all the land sales agreements in which Lubega Jimmy sold bear the stamp of Hot Value Property Masters an indication that they were concluding the transaction on behalf of somebody else.

He submitted further that the Respondent acquired good title and ownership of the land when she bought it from Kimbugwe Abdul. That the Appellant held out Jimmy Lubega as his agent and accrued benefit as a result of this relationship.

He is therefore estopped at this stage from denying all transactions that Lubega Jimmy entered into on his behalf.

He reiterated that there was an implied Principal/Agent relationship between Lubega Jimmy and the Appellant which enabled the Respondent to get good title to the kibanja and prayed that the Appeal be dismissed with costs.

### **Appellant's submissions in Rejoinder**

In rejoinder, Mr. Yawe submitted that there is nothing in evidence to prove an express or implied agency.

The alleged phone call from PWII to the Appellant is suspect because it was Kimbugwe Abdul selling to the Respondent and PWII allegedly called the Appellant to confirm whether he authorized Lubega Jimmy to sell, meaning that they were not aware of Lubega Jimmy's authority. The Respondent could not have believed a phone call of a 3rd party to another third party to confirm authority to sell.

Purchasing land is not like purchasing any other commodity. Extra care and due diligence must be exercised.

The evidence of PWVI of a previous transaction between himself and a one Lubega Jimmy a broker does not render legality to the transaction in the instant case.

The Equity case presented to court was in relation to negligence of an agent of a bank not in relation to sale of land.

Counsel maintained his earlier submissions and reiterated his prayers.



### **Determination of the Appeal**

It is the duty of this court as a first appellate court to re- examine, reappraise and reevaluate the evidence on record and come to its own inference of facts and conclusions. (\*See Pandya vR [1957]E. A 336 and Father Nanensio Begumisa and three Others v Eric Tiberaga SCCA 17 of 200[2004]KALR 236)\* 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 conclusions (\*Pandya v R supra)\*

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.

In presenting the appeal, Appellants Counsel argued both grounds together. In any case, this court would strike out the second ground of the appeal for being too general thereby offending the provisions of Order 43 r(1) and (2) of the Civil Procedure Rules.

### **Resolution of Ground One**

**The learned trial Magistrate erred in law and fact when he held that the Plaintiff had legally purchased the suit land whereas there was no evidence to support that finding.**

In resolving this ground of appeal, it is necessary to set out the law applicable to the facts of this case.

Section 102 of the Evidence Act lays the burden of proof in a suit upon the person whose action would fail if no evidence at all were given on either side.

The burden of proof in a civil suit is on a balance of probabilities by the person who presents a civil suit in a court of law so as to be able to secure a judgment in his/her favour.

The Respondent testified as PWI in the trial court. She testified that she bought the suit land from a one Kimbugwe Abdu and that he, Kimbugwe Abdu had bought from Lubega Jimmy, the Appellant's agent. To substantiate her testimony, she adduced in evidence two agreements that were admitted and marked PEXhI and PEXhII respectively. The first agreement, PEXhI is dated 10/10/2019 and it relates to her purchase of the suit land from Kimbugwe Abdullahman. The second agreement is dated 29/07/2019 in respect to the sale and purchase of a plot of land( the suit land) between Lubega Jimmy and Kimbugwe Abdllahmaan. The agreement dated 10/10/2019 bears the Chairperson L. C Kasanvu Cell, Kasanvu Ward, Mutukula Town Council stamp and the one dated 29/07/2019 bears both the L. C Chairman's stamp as well as the stamp of Hot Value Property Masters.

It was also the evidence of PWII, PWIV and PWV that the Respondent purchased the suit land from Abdul Kimbugwe and paid Ugshs, One Million, Seven Hundred Thousand only for it.



It is therefore settled that the Respondent purchased from Kimbugwe Abdul and she has furnished this court with the necessary evidence to prove that. This is because the evidence at trial clearly supported the Respondent's claim that she bought from Abdul Kimbugwe. The question that remains is whether Kimbugwe Abdul had authority to sell the suit land that is, whether or not he obtained valid title when he purchased from Lubega Jimmy. It is the Appellant's contention that the person Kimbugwe Abdul bought the suit land from, a one Lubega Jimmy had no authority to sell it. That he did not, as owner authorize him to sell it and that Kimbugwe Abdul bought air. Going back to the Respondent's evidence, PWII, the L. C. I area Chairperson stated that he witnessed the purchase of land transaction between the Respondent and Abdul Kimbugwe, PWIII and that he called the Defendant/ Appellant and that he, the defendant/Appelllant confirmed to him that he authorized Lubega Jimmy to sell. This testimony was supported by that of PWIII, Kimbugwe Abdul who stated that, "I was given a letter by you authorizing to sell. Chairman called you on the phone first and confirmed that you had authorized Jimmy to sell. Plots were many and were all divided." This was said directly to the Appellant and he did not deny it.

The agreement between Kimbugwe Abdul and Lubega Jimmy was admitted in evidence for the Plaintiff as PEXh I and is dated 29th July, 2019. It was drawn seven days after the same Lubega Jimmy had sold land to Walusimbi Lamech on the 22nd day of July, 2019. Walusimbi Lamech testified as PWVI and the agreement was admitted as PEXh III. His testimony is that the Defendant/Appellant authorized Jimmy Lubega to sell. The plots were advertised on the market by the said Jimmy Lubega and he too, bought one of the plots. The Defendant/Appellant was not present when Lamech bought and the Appellant has never complained that he did not authorize

Jimmy Lubega to sell. The Defendant/Appellant did not dispute this evidence either.

That the sale of the Defendant/Appellant's land was advertised was attested to by PWIII who stated that he had been hearing on the public announcements that the plots on defendants were being sold.

The case of the appellant as Defendant in the trial court is that he never authorized Jimmy Lubega to sell his plot in his behalf. He knows some people who built on his land at Kasanvu and he is the one who sold to them. He never sued Jimmy for selling his plot nor did he sue the Plaintiff/Respondent but chased her from his land.

Jimmy Lubega was referred to as the Defendant/Appellants broker. It was stated by the Plaintiffs witnesses that at the time of drawing the sale agreement between the Plaintiff/Respondent the Defendant/Appellant was called by the L. C I Chairman of the area and he confirmed that he authorized Jimmy Lubega to sell. It is Respondent's Counsel's submission that Jimmy Lubega was the Appellant's agent and had authority to execute the impugned agreements on the Appellant's behalf. This court is inclined to agree with Respondent's Counsel. There were past similar transactions in which the said Jimmy Lubega acted as the Appellant's agent. The Appellant did not dispute the transaction between Deus and Jimmy as well as the one between Walusimbi Lamech and Jimmy. The said transactions, particularly the one between Lamech Walusimbi and



Jimmy Lubega were conducted in much the same way as the Respondent's and in the same period. Also pertinent to note is the said Walusimbi Lamech's uncontroverted testimony that it is the said Jimmy Lubega, the broker who advertised the said plots on the public address system in Kasanvu. The general principle in law is that a principal is bound by the acts of the agent executed on his or her behalf. To be bound, the agent must have authority from the principal. The authority is either express, implied or apparent. Apparent authority arises when a third party reasonably believes from the principal's words, written or spoken, or from his conduct that he or she has in fact consented to the agent's actions. (\*See Zura Mohammed vs Latim Andrew HCCA No.027 of 2017 and Equity Bank Uganda Ltd vs Achola Lydia HCCA No004 of 2017\*) In cases like this one, the court must look at the realities of the situation to determine the true relationship. ( see **Massey v Crown Life Insurance Company [1978]679.**

In the instant case, the Appellant sub divided his parcel of land into different plots. He then advertised them using a public address system in the village of Kasanvu for sale. It was none other than the said Jimmy Lubega who conducted the public address. He also went ahead, in the Appellant's behalf to sell plots of land to Deus and to Lamech Walusimbi. The Chairman L. C. I participated in these transactions and confirmed authority from the Appellant in the same way he did in the Respondent's transactions. For the Appellant's counsel to argue that Kimbugwe Abdul who bought from Lubega Jimmy like the others did, had no valid title is not correct. The others bought unregistered land too and in the similar manner. In the considered opinion of this court, Kimbugwe Abdul had similar title to Lamech Walusimbi who bought from Lubega Jimmy on the authority of the Appellant. Excluding the Respondent's transaction from the other

transactions conducted by Lubega Jimmy under Hot Value Property Masters, is to attempt to disenfranchise her. The appellant indeed held out Jimmy Lubega as his agent. He cannot now challenge the agreement and is estopped from so doing under the doctrine of estoppels as enshrined in Section 114 of the Evidence Act.

### Section 114 of the Evidence Act

\*When one person has, by his or her declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon that belief, neither he or she nor his or her representative shall be allowed, in any suit or proceeding between himself or herself and that person or his or her representative, to deny the truth of that thing.\*

For the doctrine of estoppels to apply, it should be established that the Appellant, by his conduct permitted the Respondent to believe that it was true that Lubega Jimmy was his agent. \*(see Lanex Forex Bureau Ltd vs Damus Mulangwe CA No.190 of 2016 at pg 11)\*This court has evaluated the evidence of all the Respondents witnesses in the lower court to show that in the said period, Lubega Jimmy acted for the Appellant in similar transactions on the same land in much the same way and anyone in a setting such as Kasanvu would believe him to be the Appellant's authorized agent. Important to note is that the Appellant does not dispute the other transactions on the said



land but this one. Nothing stopped him from taking on Lubega Jimmy who had transacted in his behalf in the other transactions. Lastly, PWII, the L. C Chairman is an authority and may be regarded as an independent witness here. He had witnessed the other transactions in the same manner as this one, by calling the Appellant to confirm Jimmy Lubega's authority. The Appellant is therefore barred by the doctrine of estoppels from asserting another position that for this particular transaction, Lubega Jimmy had no authority. He would be cherry picking in doing so.

I therefore agree with the holding of the learned trial Magistrate that:

"\*I wish to note that Lubega Jimmy, the broker is the same person who sold to PWVI, Walusimbi Lamech. The sale agreement between the two was tendered in court as an exhibit and marked PExhII. PWIII, PWIV and PWV also told court that the plot had been on the market being advertised by Lubega Jimmy on a town public address system for a long time. The fact that the defendant does not dispute the sale agreement between Walusimbi Lamech who also bought from Lubega Jimmy, implies that he authorized Lubega Jimmy to sell. As such, the sale between the plaintiff and Kimbugwe Abdu who also bought from the broker, Lubega Jimmy is valid. As such, the plot in dispute belongs to the plaintiff who bought from Kimbugwe Abdul."\*

In conclusion, I find no merit in the appeal. The Respondent acquired good title and ownership of the land when she bought from Kimbugwe Abdul.

The Appeal is accordingly dismissed with costs of this appeal as well as those of the court below.

Dated and delivered electronically at Masaka this 1st day of April, 2023.

**Victoria Nakintu Nkwanga Katamba**

**JUDGE**

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