

UGANDA / JUDGMENT

Kambenkwine Christopher and Another v Rose
Bella Rwomushana and Others (Civil Appeal
No:
53 of 2014) [2024] UGCA 344 (19 December 2024)
[2024] UGCA 344

COURT

Court of Appeal of Uganda

BEFORE

Kiryabwire, JA, Muzamiru, JA, Gashirabake, JA

CASE / FILE NUMBER

Civil Appeal No: 53 of 2014

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THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

[Coram: Geoffrey Kryabwie,ltluzamiru M. Kibeedi and Christopher Gashuabake, JJA]

CIVIL APPEAL NO: 53 OF 2014

|| 1, KAMBENKWINE CHRISTOPHER || |-----
--|-----|-----| || 2. KAMBENKWINE
FLORENCE | APPELLANTS || | 3. TADEOKAREKYEZI || | VERSUS || | | 1. ROSE BELLA
RWOMUSHANA || | | 2. EVAS BABIGUMIRA || | | 3. GODFREY NYERWANIRE | RESPONDENTS || |
4. RONALD KAKWERERE || | (Administrators of the Estate of the late Gilbert Mpigika) || | |
|Appeal from the Judgment of the High Court of Uganda at Kabale (J. W. Kwesiga, J) || | | delivered
on the 0h of June 2013 in Civil Appeal No. 36 of 2011 || | | JUDGMENT OF THE COURT || | |
Introduction || | | tll This is a second appeal arising from the judgment and orders of Hon.
Justice J. W. || | | |

Kwesiga delivered on 6tn June 2013 in Civil Appeal No. 36 of 201 1 of the High Court of
UsandaatKabale. /

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Background facts

- 12) The Appellants were the Defendants in the original trial court proceedings in the Chief Magistrate's Court of Kabale at Kabale, Civil Suit N0.265 of 2010, while the Respondents were the Plaintiffs in the said trial court proceedings.
- t3l The facts as established by the 1s appellate court are that the subject matter of the dispute is land situate at Makanga Hill, Kabale Municipality (suit land). In 1983 Dr. Gilbert Mpigika (deceased) applied for a lease over the suit land and it was granted by the Uganda Land Commission. Following his death, the Respondents obtained Letters of Administration to his estate under Administration Cause N0.43 of 2000 dated 17th April, 2000. By virtue of this grant, the Respondents became the registered proprietors of the suit land and registered as Leasehold Register Volume 4132 Folio 22Plol19, Bitete Road, Kabale Municipality measuring approximately 0.133 Hectares. This certificate of Title's term was for five (5) years from January 2006 subject to the covenants and conditions in the lease which included lease enlargement to 49 years after full development.
- t4l The Respondents alleged that they were prevented from occupation and development of the plot by the unlawful entry into the suit land by the Appellants in September 2010.
- t5l On the other hand, the 1sr and 2nd Appellants averred that they purchased ^a customary tenure-holding in respect of the suit land on 27tn December, 2007 from Karekyezi Tadeo, Komuhangi Rhoda and Tumwesimire Rhode of Kinyanguzi, Lower Bugongi at Shs. 20,000,000/=.

/ (. Ad

Proceedings before the Trial Court

- t6l In 2011, the Respondents instituted a suit against the Appellants in the Magistrate's Court for trespass on a piece of land situate at Makanga Hill, Kabale Municipality and sought Court's Declaration that they are the lawful proprietors of the suit property, a permanent injunction to restrain the Appellants or their agents from entering the suit land, general damages and any other reliefs, Vide: Civil Suit No. 265 of 20'10.
- t7l The Appellants' defence to the suit was that the first and second Appellants were bonafide/ Lawful occupants of the suit land having lawfully purchased it from the third Appellant who was the Kibanja/Suit land owner.
- t8l At the conclusion of the trial of the case, the Magistrate Grade One, His Worship Okumu Jude Muwone, held that the Respondents are the lawful owners of the suit land. He then ordered the Appellants to vacate the suit land within one month, and granted a permanent injunction and the costs of the suit against the Appellants.

It Appellate Court proceedings

- t91 The Appellants being dissatisfied with the decision of the trial Magistrate filed an appeal in the High Court at Kabale.
- [10] The High Court, as the lsr Appellate Court, allowed the appeal and declared the Appellants laMul owners of customary tenure on the suit land and not trespassers. The Court also declared the Appellants the registered proprietors of the Suit land. Lastly, the court then warded each party 50% of his or her own costs.

Appeal to the Court of Appeal

[11] TheAppellantsweredissatisfiedwiththedecisionoftheHighCourtandappealedto this Court on the following grounds: - /,b

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- 1. The Learned Appellate Judge erred in law and in fact when he held that the Respondents are the lawful registered proprietors of the Suit land, whereas not.
- 2. The Learned Appellate Judge erred in law and fact when he based his decision on wrong facts to find that the Respondents are in possession of a valid certificate of title to the Suit land.
- 3. The Learned Appellate Judge erred in law and in fact when he awarded each party 50% of "his or her" own costs.
- [12] The Appellants prayed to this Court to: -
- Allow the appeal and [cancel] the alleged certificate of title to the Suit land on the \$a)\$ ground that it was not part of the pleadings of the Respondents in the lower Court and that it was illegally obtained by the Respondents during the pendency of the Suit.
- \$b)\$ [Grant] the Appellants the costs of the appeal and in the lower Courts.

Representations

- [13] When the matter came up for hearing before this court the 31st of July 2024, the Appellants were represented by Mrs. Venny Kasande Murangira while the Respondents were represented by Mr. Michael Akampurira.
- [14] Leave was granted to the parties to adopt the written submissions which were already on the court record as their respective legal arguments in the matter. \$\mathcal{I}\$

Resolution of the appeal

[15] The jurisdiction of this court in second appeals is settled. It is restricted to the matters laid out under Section 72 (1) of the Civil Procedure Act, Cap. 71, that is, matters of law

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as opposed to matters of fact, save for exceptional circumstances where matters of fact may be considered. See: **Banco Arab Espanol Vs. Bank of Uganda**, Supreme Court Civil Appeal No. 8 of 1998; Elizabeth Nalumansi Wamala Vs. Jolly Kasande & Othe (2017) UGSC 21; Mubingwa Zepher Vs Thembo David Kabau, Civil Appeal No 190 of 2019; Celtel Uganda Ltd vs. Karungi, Civil Appeal No. 0073 of 2013; and *Mutale vs. Balisigara*, Civil Appeal No. 061 of 2018

- [16] With the above in mind, we have considered whether the current appeal falls within the restricted mandate of this court in second appeals. From the wording of all the grounds of appeal in the instant matter, it is expressly stated that "the learned" appellate Judge **erred in law and in fact** when he..." [Emphasis ours].
- [17] The obvious meaning of such phraseology is that the grounds are of mixed law and fact.
- [18] We have also gone beyond the choice of words explicitly used in the grounds of this appeal and considered their substance to satisfy ourselves whether the grounds, despite having been explicitly drafted to suggest that they are of mixed law and fact, they are in substance faulting the first appellate court on matters of law. Our bor conclusion has been in the negative.
- [19] We are alive to the fact that the subject matter of this second appeal is land which, historically, has been a very sensitive and emotive matter in Uganda, and thereby enjoins this Court to exercise maximum restraint not to dismiss matters without consideration of the merits of appeal. We are nonetheless satisfied that the propriety of the grounds of appeal is inextricably intertwined with the issue of jurisdiction of this court and its legal competence to adjudicate upon a matter before it. As such, our jurisdiction being a matter prescribed by statute, we cannot vest in ourselves what has not been vested in us by statute.

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- [20] Lastly, we have considered the injustice likely to be occasioned from dismissal of the appeal without consideration of the dispute on its merits. We are satisfied that in this particular case, none will be occasioned as the 1st Appellate Court went into very great depth in re-evaluating the two most contentious issues before it, namely the registered title of the Respondents which was upheld, and the unregistered interest of the Appellants in the same plot of land which was likewise upheld.
- [21] In the premises, we have come to the irresistible conclusion that the appeal must fail.

[22] Disposition

- 1) The appeal is hereby dismissed.
- 2) The Judgment and Orders of the High Court are hereby upheld.
- 3) The Respondents are awarded the costs before this Court.

[23] We so order.

Delivered and Dated at Kampala this tff** fuenLrl ²⁰²⁴

GEOFF RYABWIRE Justice of Appeal MUZAMIRU MUTANGULA KIBEEDI Justice of Appeal t
CHRISTOPHER GASH IRABAKE

Justice of Appeal

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