

UGANDA / JUDGMENT

Kampala District Land Board and Another v Babweyaka and Others (CIVIL APPEAL No . 16 OF 2002) [2002] UGSC 50 (6 August 2002)

[2002] UGSC 50

COURT

Supreme Court of Uganda

BEFORE

Oder, JSC, J.W.N.Tsekooko, JSC, Mulenga, JSC, Kanyeihamba, JSC, Kato, JSC

CASE / FILE NUMBER

CIVIL APPEAL No . 16 OF 2002

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THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT MENG0

(CORAM: ODER, TSEKOOKO, MULENGA, KANYEIHAMBA AND KATO JJ. S. C.)

CIVIL APPEAL No. 16 OF 2002

BETWEEN

| 1. | KAMPALA DISTRICT LAND BOARD | |----|-----|-----| | | .
APPELLANTS
. | | 2. | GEORGE MITALA | | | AND | | | 1. | VANANSIO BABWEYAKA | | | 2. |
EDWARD KIZITO | | | 3. | ROBERT TUMUSIIME | RESPONDENTS | | 4. | ROBERT KIKOMEKO | | | 5.
| SENGENDO SEMPALA | | | 6. | APOLLO NABEETA | | | |

[Appeal from the judgment of the Court of Appeal at Kampala (Mukasa-Kikonyogo, DCJ, Okello and Twinomujuni JJ. A) dated 6th August, 2002 in Civil Appeal No.20 of 20021

JUDGMENT OF TSEKOOKO, JSC

This is a second appeal arising from the judgment of the Court of Appeal which allowed an appeal by the Respondents against the decision of the High Court. The facts of the case may be simply stated: -

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The first appellant (E: Lr6, -LlL, l, l.1-1, Lr administration and Li]. Str]-Ct. is a body 1998, and management corporate created under is responsible for of land in Kampala

The respondents, who are some of the twenty original plaintiffs at the trial, were occupants of a plot of land situated at Ndeeba in the suburb of the City of Kampala, Kampala District, and described as plot 1A2B block 7 Ki-buga, hereinafter referred to as the "suit land." On 8th November, 2000, the 1st appellant allocated the suit land to the 2nd appellant for ^a lease. A formal lease was subsequently offered to the latter. He accepted the lease offer and was on 20/17/2000 registered as the proprietor of the suit land. A Certificate of Title in respect thereof was accordingly issued to him.

The respondents who felt aggrieved by the leasing sued the appellants jointly and severally seeking, inter alia, declarations that the respondents were bona fide/lawful occupants and/or customary owners of the suit land; that the 1st appellant wrongfully leased the suit land to the 2nd appellant and that the latter obtained the lease thereof wrongfully, unlawfully and fraudulently.

Both appellants filed their respective Written Statements of Defence. in which they denied the respondents' claim.

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After pleadings in the High Court were closed, Katutsi, J, held a scheduling conference at which facts agreed upon were recorded as follows: -

- 1. The 6 plaintiffs are occupants of the suit Plot .
- 2. Second defendant is the registered proprietor of the suit property described as Leasehold Plot 7.2B7 Folio 9 Block 7 Plot 7028 at Ndeeba.
- 3. The first defendant is the statutory owner of the suit property -

Thereafter 21 sets of documents for the respondents were admitted in evidence.

None was admitted for the 1st appellant but "photocopies of drafts for compensation for all the plaintiffs" were admitted as exhibit D1 for the second appellant.

This was followed by the framing of five issues in this way:

- 1. Whether the occupants of plaintiffs are the suit land. Lawful or bona fide
- 2. Whether the plaintiffs are customary owners of suit Land.
- 3. Whether the suit Land was available for leasing to the second defendant at the time of the grant of lease.
- 4. Whether the second defendant obtained certificate of title lawfully.

⁵. -Remedies .

It should be noted _L edSe wd. S an assue. that although the plaint alleged t.hat the regist.ered fraudulenLly, fraud was not made

The suit was fixed for hearing on I/Ll/2001. Apparent*ly the hearing did not take place. Somehow, on 3L/L0/20a1 counsel for the respondents filed their written submissions. The 2"d appellant filed hls written submissions on 7/71-/200]. which was followed by the writ. Len submisslon of the 1st appellant whj-ch was f iled on 5/71,/2007.

The learned trial judge del-ivered his brief judgment on 2l/72/2a0L. In it, he alluded to section 30 (1) of the Land Act, 1998. He then stated:

nThere is no evidence on record nor is it agreed that pTaintiffs were persons occupying the Tand by virtue of the repealed Taws mentioned abowe.

?here is no evidence nor rua s it conceded or argued tJrat the pTaintiffs entered upon tle sujt property with the corsent of the registered owner. There is no evidence to suggest that the pTaintif f.s were customary tenants whose tenancy had not been discfosed or compeasated for by tJ: e registered owner. In

short tJ:ere is nothing on pTaintiffs under the ambit the Land Act, 1-99{" record to of section bring the 30 (1) ot

The learned judge then briefly discussed who is a "bona fide occupant " in terms of S . 3 0 (2) of the Act . ThereafLer he held that. Ehe respondenLs were not bona fide occupanLs. So he answered the first and second issues in t.he negative. In consequence he answered the third and fourLh issues in the affirmative.

It is a little puzzling t.hat the learned tri-al judge fixed a date for hearing evidence, bul he apparently cancelled that. and relied on document.s. He then decided the suit on basis that there was no evidence.

In the Court of Appeal there were eight grounds of appeal . The sewent.h ground of appeal complained that the judge erred when he decid.ed the case against the respondents without affording them proper hearing.

Okello, J. A, delivered the lead judgment with which the other Justices of Appeal on the panel agreed. At page 7 of his judgment, the learned . Tustice of Appeal lamented the conduct of the trial by the trial judge in these words :

nAt tlre scheduling conference held on 25/9/200L, admitted facts were recorded. Documentary evidence was received and issues for determination of tjre court were franed. Thereafter the case was set

down for hearing on 1/71/200J-. Eowever, the promised hearing was not conducted, thus shutting out oraL evidence. CounseT for both parties and the triaT court appear to have agreed that the framed issues couTd be determined on tj:e 7aw (SiC.) admitted facts and the documentary evidence received a7one. CounseT for both parties then tiTed written submissions which were foTTowed by the j udgment of tj:e Court. No oraT evidence was called.

I think that was a flaw. The judgarent of the trial judge indicated that tfiose jssues could not have fairTy been determined without oraT evidence. lhe trial judge remarked in iris judgment on severaf occasions that there was no evidence to prove this or that. This shortcoming couTd have been avoided had the promised hearing been conducted.

The Tacking evidence could probabTy have been adduced- . Learned counse-I. for the appeTTants made half-hearted complaint before us about this point and abaadoned it. He even abandoned ground 7 which was on the point. Z therefore cannot pursue the point any further

This means that the learned Justice of Appeal held that there was a mistrial .

I cannot comprehend why the learned trial judge did not hear oral evidence on 1/11/200A. If Lhere was change of heart by any party about adducrng oral evidence,

this should have been recorded. In his lamentation about absence of evidence to prove certain points, as quot.ed earlier, the learned Justice of Appeal does not blame it on failure by any party to adduce evidence. Could this have been due to the inexperience of the trial judge and advocaLes in the implementation of the new rules of order XB of CP Rules which had come into force in 1998? There is no ready ..\"*\"/. However r can certainly say that. by the time the trial judge wrote his judgement he was aware that material evidence should have been adduced to enable him decide the case on merit. I thj-nk that at t.haL sEage it would have been prudent for the trial-judge to have stopped wri-ting the judgment. He should have asked the parties to adduce evidence or give reasons for not doing so. Fai-lure to do so rendered the trial a mistrial .

In spite of the misgivings which the Court of Appea} had about the conduct of the trial , the court did not order a retrial but decided the appeal on merits and reversed the decision of the tri-a1 judge. It can be said that. in normal c j-rcumst.ances, where a trial is conducted properly, t.he Court of Appeal would be ^justif ied j.n deciding t.he merit.s of the appeal on the basis of whatever material there was on t.he record. But. the trial in this case was fundament.ally defective.

The appellants filed the following grounds of appeal .

- n1 The Tearned ,Justices of AppeaT erred in Law when they heTd that the occupation of the suit Tand by the respondents without any Tease or Ticence from the controTTing authority constituted their customary right of occupancy -
- 2. The Tearned 'Justices of AppeaT erred in 7aw and fact when they heTd the respondents to be customary owners of tj:e suit Tand without evidence to prove the customs appTicabTe.

- 3. The Learned Justices of Appeal erred in fact when they held that the respondents had occupied the suit land or bought it from those who had occupied it unlawfully for 40 years.
- 4. The Learned Justices and fact when they District Land Board the suit land. of Appeal erred in law held that the Kampata had no authority over
- 5. The Learned Justices of Appeal erred in law when they held that the procedure prescribed in the Land Regulations, S.I. No.1-6 of 2001-, was applicable to the allocation of the suit land.

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6. The learned Justices fact when they not been pleaded of Appeal erred in law relied on fraud which cannot strictly prove. "

It is obvious that most, if not all, the objections in the above grounds of appeal hinge on evidence partly contained in the documents admitted at the scheduling conference and partly on speculation about missing oral evidence which was never given because of the procedure adopted by the trial court.

In the light of what I have pointed out above and of the order I intend to propose, it is not desirable to discuss the written submissions filed by both sides.

In my opinion adduced to this is ^a case where oral evidence should claims of each of the parties.

I would therefore allow this appeal, set aside the decisions and orders of the two courts below except orders made during scheduling conference. I would order that the trial of the suit should proceed by recording whatever oral evidence each party may wish to adduce. The scheduling conference which was held on 26/9/2001, should form the basis of the resumed trial. The case should be remitted back to the High Court for that purpose.

Considering that which has led to is the error of the trial court order that each in this ^s decision, I would

party bears its own costs here and in the Court of Appeal. The costs in the trial court should abide the results of the resumed trial.

Dated at Mengo this the day of December 2003.

J. W. N. Tsekooko JUSTICE OF THE SUPREME COURT
eritha for 150 Appellants
Wease for 2nd Appellants
Mr. N. Ne Ms. J. Mukasa $\left\langle \right\rangle$ Mr. Mulium
And Mirk $\rightarrow$ Kaningizig porden

THE REPUBLIC OF UGANDA IN THE SUPREME COURT OF UGANDA AT MENGO

(CORAM: ODER, TSEKOOKO, MULENGA, KANYEIHAMBA AND KATO, JJ. S. C.)

CIVIL APPEAL NO.16 OF 2002**BETWEEN**

1. KAMPALA DISTRICT LAND BOARD
2. GEORGE MITALA

..... APPELLANT

AND

- 1. VINANSIO BABWEYAKA
- EDWARD KIZITO
- 3. ROBERT TUMUSIIME
- 4. ROBERT KIKOMEKO
- 5. SENGENDO SEMPALA
- 6. APPOLO NABEETA

..... RESPONDENTS

(Appeal from the judgment of the Court of Appeal at Kampala (Mukasa-Kikonyogo, DCJ, Okello and Twinomujuni, JJ. A.) dated 2/5/2002 in Civil Appeal No. 6 /8/ 2002)

JUDGMENT OF ODER, JSC

I have had the advantage of reading in draft the judgment of my learned brother, Tsekooko, JSC. I agree with him that the appeal should be allowed and that the decision and orders of the Court of Appeal and of the High Court should be set aside. The case should be remitted to the High Court for completion of the trial. I also agree with orders for costs as proposed by Tsekooko JSC.

Since the other members of the Court also agree, the orders of the Court shall be as proposed by Tsekooko JSC.

Dated at Mengo this.....

A. H. O. ODER

JUSTICE OF SUPREME COURT

IN THE SUPREME COURT OF UGANDA

AT MENGGO

(CORAM: ODER, TSEKOOKO, MULENGA, KANYEIHAMBA, KATO JJSC)

CIVIL APPEAL NO. 16 OF 2002

BETWEEN

| KAMPALA DISTRICT LAND BOARD | |-----|-----| | GEORGE
MITALA | } ::::::::::::::: PPELLANT | | |

AND

| | VANANSIO BABWEYAKA | |----|-----|-----| | EDWARD KIZITO | | | ROBERT
TUMUSIIME | | | 4 | ROBERT KIKOMEKO | RESPONDENT | | 5. | SENGENDO SSEMPALA | |
| 6. | APOLLO NABEETA | |

(Appeal from the judgment of the Court of Appeal (Mukasa-Kikonyogo, DCJ, Okello and
Twinomujuni JJ. A) at Kampala dated 6th August 2002 in Civil Appeal No. 20 of 2002.

JUDGMENT OF MULENGA JSC.

I have had the benefit of reading in draft the judgment of my brother Tsekooko, JSC. I agree with
him that the appeal should be allowed. I also agree with the orders he has proposed.

Dated at Menggo this

J N Mulenga JUSTICE OF THE SUPREME COURT

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT EMNGO

ODER, TSEKOOKO, MULENGA, KANYEIHAMBA, KATO, (CORAM: \$J. J. S. C.\$

CIVIL APPEAL NO. 16 OF 2002

BETWEEN

1. KAMPALA DISTRICT LAND BOARD 2. GEORGE MITALA] ::::::::::::::: APPELLANTS

AND

1. VANANSIO BABWEYAKA 2. EDWARD KIZITO 3. ROBERT TUMUSIIME] :::::::::::::::::::: 4. ROBERT KIKOMEKO 5. SENGENDO SSEMPALA 6. APOLLO NABETA

(Appeal from the judgment of the Court of Appeal at Kampala (Mukasa-Kikonyogo, D. C. J., Okello and Twinomujuni, J. J. A.) dated 6th August, 2002, in civil Appeal No. 20 of 2002).

JUDGMENT OF KANYEIHAMBA, J. S. C.

I have had the benefit of reading in draft the judgment of Tsekooko, JSC. I agree with him that the appeal should be allowed. I also agree with the orders he has proposed.

Dated at Mengo this 17 day of December, 2003.

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JUSTICE OF THE SUPREME COURT

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(CO R{vi : OD E R, TE SE KOO KO, NIULE NGA, I.i\ \$iYE IH-\IBA L{TO JJ. S. C)

CIYIL APPEAI NO. 16 OF 2002

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| I | I\IPAIA DISTRICT t. A.r\D BO-{RD } | |

|---|-----|-----| | 2 | GEORGE NIIT. AI--A,

|) :::::::::::::::::::: APPELL{TS | | | A\D | | I | !.{r\ANSIO B-{BWEYAI\ \$ | t
r | | ? | EDW"{RD KIZITO |) | | 3 | ROBERT TULLUSII,vtlE |) | | ROBERT KIKONIEKO | RESPO\DENTS
l | | | |

(-A.ppeal from the judgment of the court of . A.ppeal (Nlukasa-Kikonyogo, DCJ, Okello and Twinomujuni JJ. A) at Kampala dated 6th August,2002 in Civil Appeal No. 20 of 2002.

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JUDGIII. INT OF C. NI. I\-\TO JSC

SENGENDO SSE}IP.{LA .{POLt,O N\BEETA

5 6

I have had the advantage of reading the judgment of my brother Tsekooko, JSC, in draft. I agree with him that this appeal should be allowed. I also agree with the orders he has proposed. I would allow the appeal.

Dated at Mengo this . / 1 day of .).r4. 00i "fuc

d, c.rrfrio JLST'ICF- OF THE SL'PRE}IE COT'RT'

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