

UGANDA / JUDGMENT

**Kesande Byamukama v St Matayo
Group (Civil Appeal No. 8 of 2020)
[2021] UGHCCD 117 (13 October 2021)
[2021] UGHCCD 117**

COURT

HC: Civil Division (Uganda)

BEFORE

Kazibwe, J

CASE / FILE NUMBER

Civil Appeal No. 8 of 2020

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KABALE

CIVIL APPEAL NO 008 OF 2020

(Arising out of Kabale Land Case No.101 of 2016)

KESANDE BYAMUKAMA=====APPELLANT

VERSUS

ST. MATAYO GROUP=====RESPONDENT

BEFORE: HON. JUSTICE MOSES KAZIBWE KAWUMI

JUDGMENT

This Appeal arises from the judgment of the Magistrate Grade 1 at Kabale delivered on 23rd January 2020. The suit was filed by the Plaintiff /Appellant against the Defendant/Respondent for a declaration that land at Kigata, Kabale District occupied by the Respondent belongs to her family, an eviction order, general damages and costs.

The Appellant's contention was that her husband was a member of the defendant group from which he borrowed Ugx.40,000/= in 1999 and he failed to it back in time. Interest on the principle sum accumulated and the Appellant agreed that the Respondent uses the land until the loan is paid back with accrued interest and the land reverts to the family.

The Appellant raised the loan amount with accrued interest of Ugx.87,000/= in 2014 to clear the loan. The Respondent refused it claiming that they bought the land from Byamukama Julius, the Appellant's husband. Byamukama conceded that he sold the land to the defendant and the transaction was witnessed by his father.

An agreement of sale was tendered in evidence by the Respondent's members to confirm that the land was sold by the Appellant's husband.

Issues framed by the court were:-

- 1. Whether the suit land was matrimonial property at the time of sale?
- 2. Whether the sale of the suit land between the Plaintiff's husband and the defendant was lawful?
- 3. Remedies available to the parties.

The Court held that the Appellant failed to prove that the suit land was matrimonial property and the Respondent had occupied it for more than twenty years. That the Appellant's husband had a right to sell the land which was lawfully bought by the defendant. The court dismissed the suit with costs.

Legal representation.

M/S Beitwenda & Co . Advocates represented the Appellant while M/S Nasiima Patience &Co. Advocates represented the Respondent.

Issues listed in the Memorandum of Appeal are:-

- 1. The learned Magistrate erred in law when he entertained and determined a suit against a non- existing entity which was a nullity.
- 2. The learned trial Magistrate erred in law when he awarded costs to a nonexisting entity.

Submissions.

For the Appellant it was submitted that the Plaintiff described the Respondent as "a local organized group operating in Kyanamira sub county and having its head office in Kyabuhire cell, Kigata Parish, Kyanamira sub county, Kabale District." which description was admitted to by the Respondent.

It was argued by Counsel that a non-existent person cannot maintain an action but this fact was ignored by the trial court which proceeded to hear the case thus wasting time on an illegality. It was further pointed out that costs cannot be awarded to a non-existing entity.

I was invited to allow the Appeal with no costs since the Respondent does not exist as a legal person.

Counsel for the Respondent argued that "the Appellant had an opportunity to amend and replace the defendant before hearing the case hence it was not a nullity." Counsel blamed the Appellant for not bring the issue to the attention of the court hence the appeal was brought in bad faith and should be dismissed with costs.

Decision.

I believe Counsel for the Respondent failed to appreciate the legal nuance about who can be a party to a suit. It was correctly submitted by Counsel for the Appellant that a non-existent person cannot maintain an action and costs cannot be awarded to a non-existent entity.

A non-existent legal entity cannot sue or be sued, cannot pay costs nor have orders enforced against it.

Fort hall Bakery Supply Company V Fredrick Muigai Wangoe (1959) EA 474;Chombe & Others V Kaya & Another. HCCA No.2010 of 2015.

It is also the position of the law that a non-existing entity cannot be substituted since the suit was a nullity in the first place. The argument that the Appellant had an opportunity to amend the Plaintiff raised by Counsel for the Respondent does therefore not hold.

The Registered Trustees of Miracle Center V Omulangira Ssimbwa. MA No.57/2006; Reliable African Insurance V NIC (1979)59; Benjamin Sajjabi V Timber Manufacturers (1986)HCB 202

In Housing Finance Bank of Kenya Ltd V Embakasi Development Project (204) 2KLR 548 at 554, the Hon. OJWANG (Ag. Justice) as he then was while handling a similar matter observed:-

"It follows that the notion that an entity lacking legal personality can seek orders of the court or become the bearer of rights or liability declared by the court, is totally inconsistent with the character and modus operandi of the courts in the common law system."

Before I take leave of this matter, I find it imperative to point out that the parties did not use the services of Counsel in the lower court. The trial Magistrate had a duty to advise them and to discontinue the proceedings. It would have saved a lot of judicial time that could have been valuably applied to other cases in both courts.

In the circumstances, the Appeal succeeds. The judgment and orders of the Magistrates Court are set aside. No Order is made as to costs since a non-existing entity cannot be awarded costs.

..... **MOSES KAZIBWE KAWUMI JUDGE 13TH OCTOBER, 2021**

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