

UGANDA / JUDGMENT

Kunya v Naigaga & Another (Civil Appeal 70 of 2023) [2023] UGHC 465 (31 October 2023) [2023] UGHC 465

COURT

High Court of Uganda

BEFORE

Batema, J

CASE / FILE NUMBER

Civil Appeal 70 of 2023

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THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT IGANGA CIVIL APPEAL NO. 070 OF 2023

(Formerly Jinja High Court Civil Appeal No. 091 of 2015) (Arising from Civil suit No. 040 of 2010)

KUNYA CHARLES DAVID (Administrator of the Estate of \$=====APPELLANT\$ the Late
KUNYA STEPHEN)

VERSUS

1. NAIGAGA RUTH 10 (Administrator of the Estate of the Late MIRABU BWOTE)

> 2. TUGALAGE PETER (Administrator of the Estate of \$===== \$ RESPONDENTS the Late KAMU
TUGALAGE)**BEFORE: HON. MR. JUSTICE BATEMA N. D. A, JUDGE**

Detailed Judgment. 20

I first delivered a short Judgment on 11/10/2023 dismissing the Appeal.

This is an Appeal from the Judgment and orders of Her Worship Pamela Karamagi, Magistrate Grade One sitting at Iganga. It was claimed that in 1960, the Appellant's father Kunya Stephen was given 10 acres, part of the suit land, as a gift *intervivos* by his grandfather the Late Samwiri Mubetera.

That Kunya Stephen took physical possession of the gifted land in 1965. Then in 1984 and 1985 the same Kunya bought other pieces of land from George Mubetera son of Nasanairi Mubetera evidenced by written Agreements of sale.

Further, it was alleged that on 27/05/1986 Kunya bought another portion of 30 the suit land from George Mubetera son of Nasanairi for \$200,000/= \$.

That in September, 2009; the Defendants attempted to evict Kunya Stephen leading to the filing of the Civil Suit. The Defendants denied trespass and claimed that they inherited the land from their father the Late Mubetera. They challenged the sales Agreements exhibited by Kunya saying they were forged.

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The trial Magistrate evaluated the evidence of both parties and ruled in favour of the Respondents hence this Appeal.

It is on record that both parties died and Letters of Administration were taken out by Charles Kunya for the estate of Late Kunya Stephen, Naigaga Ruth for the estate of Late Bwote Mirabu, the \$1^{\rm st}\$ Respondent and Tugalage Peter was also granted Letters of Administration in the estate of Late Kamu Tugalage, the \$2^{\rm nd}\$ Respondent.

Before the Appeal could be disposed off, another BOGERE ISIIKO MOSES got Letters of Administration in the estate of the Late Mirabu Bwote and immediately entered a consent with Kunya Charles giving away part of the suit land. This Court noted the illegality of issuing two different grants in the same estate and asked the Chief Magistrate to put right the record. He cancelled the second Letters of Administration wrongly granted to Bogere Isiiko Moses since the first grant to Naigaga Ruth has never been cancelled by Court.

I proceed to write my Judgment based on the submissions on record ignoring the so-called consent between Kunya Charles and Bogere Isiiko Moses. Technically speaking, the consent collapsed with the cancellation of Letters of Administration obtained by Bogere Isiko Moses. No need for consequential orders.

Duty of this Court:

It is the duty of this first Appellate Court to re-consider and analyze all the evidence on record and come up with its own decision.

Grounds of Appeal:

The grounds of Appeal were poorly framed in an argumentative and narrative manner contrary to the provisions of Order 43 Rule 2 of the Civil Procedure Rules.

The rule provides;

"The memorandum shall set forth concisely and under distinct heads, the ground of the objection to the decree appealed from without any argument or narrative and the grounds shall be numbered consecutively".

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However, let me try to paraphrase the grounds of appeal and resolve the appeal on its own merits, if any.

Ground 1:

That the learned trial Magistrate erred in law and fact when she ruled that 70 the appellant has no interest in the suit land.

Ground 2:

That the learned trial Magistrate striate erred in law when she visited the locus in quo before hearing parties and failed to record evidence at locus in quo.

Ground 3:

That the learned trial Magistrate erred in fact and law when she failed to evaluate the evidence and arrived at a wrong decision.

Ground 4:

That the learned trial Magistrate failed to spell out the rights of the 80 Appellant on the suit land occasioning a miscarriage of justice to the Appellant.

My opinion:

I would lump together the \$1^{\text{st}}\$, \$3^{\text{rd}}\$ and \$4^{\text{th}}\$ grounds of appeal because they rotate around failure to evaluate the evidence on record to establish whether the Appellant is the rightful owner of the suit land. I will resolve the \$2^{\text{nd}}\$ ground of Appeal separately.

Evidence from the Appellant PW1 – KUMYA STEPHEN was that he was given 10 acres of land in 1969 as a care-taker. This is not a gift intervivos or evidence of ownership. The land remained part of the estate of the giver, the grandfather SAMWIRI MUBETERA. The children of Samwiri Mubetera are right to claim the 10 acres Kunya was keeping as a cate-taker.

It appears Kunya Stephen was allowed to use the land as a grandson but was never given this land as a gift intervivos. He was a mere squatter or a tenant at sufferance.

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Kunya Stephen claimed the other pieces of land as land he lawfully purchased. He relied on some sale Agreements signed in 1984 and 1985. I did not see the evidence of the seller George Mubetera.

The Agreements are stamped with a village Local council stamp dated 26/06/2008. The Magistrate rightly held that these are fake and raise a lot 100 of suspicion since the Local Councils were non-existent in 1984 and 1985. I would similarly conclude that the sales Agreements were fabricated by Kunya Stephen.

The learned trial Magistrate properly analyzed the evidence on record and arrived at the most right decision.

There was no miscarriage of justice occasioned. I would dismiss ground 1, 3 and 4.

As for ground No. 2; there is nothing forbidding a pre-trial visit to the locus in quo. It is not being argued by the Appellant that the trial Magistrate relied on evidence given at the locus in quo. No, it would have been 110 different and fatal if the trial Court had based its Judgment on solely evidence irregularly recorded at the locus in quo and not cross-examined upon. [See Order XI A Rule 3(2) of the Civil Procedure Rules].

The old judicial practice was to encourage the trial Judicial Officers to firsts record the evidence in Court then visit the locus in quo. That practice was dropped because it had its own short comings. Court would never know the status quo of the suit land even when it issued orders of maintaining the status quo. Many things would be changed as the trial progressed.

The law, as amended, enables the trial Court to visit the suit land as many times as it pleases beginning with a pre-trial visit. That way, the trial Court is able to know and mark particular land marks like roads, rivers, streams, anthills, graves and permanent developments on the suit land. Court is able to tell the exact measurements of the lands in dispute. Court is now able to immediately enter Judgment and demarcate off lands admitted to be NOT part of the suit land. This cured the old practice where Courts imposed temporary Injunctions on all lands claimed to be in dispute until final disposal of the suit.

This appeal lacks merit and must fail.

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Before I take leave of this matter, I wish to observe that the Appellant 130 attempted to bribe Court staff to steal the Court records and burn the Judge's Chambers if his mission failed. He was arrested in my Chambers before he could execute his mission. This was very unfortunate because I had already given the parties my short Judgment and there was nothing to change. Let us put our focus on this civil matter.

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Be that as it was, this appeal fails and is dismissed with costs.

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Prepared on 14 October 2026 · Esheria