

UGANDA / JUDGMENT

Kyobutungi v Amutuheire (Civil Appeal 39 of 2022) [2023] UGHC 446 (31 October 2023)

[2023] UGHC 446

COURT

High Court of Uganda

BEFORE

Tom Chemutai, J

CASE / FILE NUMBER

Civil Appeal 39 of 2022

Source: ulii.org · Research copy typeset by Esheria. Not court-issued or certified.

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT RUKUNGIRI

CIVIL APPEAL NO. 039 Of 2022 (ARISING FROM CIVIL SUIT NO. 019 OF 2019 OF THE CHIEF MAGISTRATES COURT OF KANUNGU AT KANUNGU)

<table>

KYOBUTUNGI HILDA ::::::::::::::::::::::::::::::

VERSUS

1) AMUTUHEIRE ALLAN

\$\chi \cdot \widetilde{R}\$

2) AYEBARE INGRID:::::::::::::::::::::::::::: (SUING THROUGH NEXT FRIEND, TUKWASISIBWE OLIVER)

(BEFORE: HON. JUSTICE TOM CHEMUTAI)

JUDGMENT

This Appeal arises out of a judgment of the Magistrate, Grade One at the Chief Magistrates Court of Kanungu at Kanungu delivered by His Worship Mukobi Asanasio in Civil Suit No. 19 of 2019.

The brief background to this Appeal is that:

The Respondents who are total orphans of the late the Twebaze Augustus, sued the Appellant (their step-mother) seeking for a share from the estate of their late father (Twebaze Augustus). The estate of the late Twebaze was said to comprise of monthly gratuity from Government of Shs 175,000/ \$=\$ and two pieces of land. The first piece of land was estimated to be over 8 acres, situated in Nyaruhanga Burama Village, Kanyantorogo Sub County, Kanungu District and the second one was estimated to be about 2 1/2 acres situated in Nyakagyezi village, Kihanda parish, Kirima Sub County, Kanungu District.

The trial Magistrate heard the matter and delivered his judgment on 18th March 2022. He ordered that the Appellant and her four children were to take the estate land which was situated at Nyaruhanga Burema village. He also allocated the Respondents the estate land located at Nyakagyezi village, Kihanda Parish, Kirima Sub County and ordered that the Respondents were to continue getting a share on the gratuity of about 50,000/ \$=\$ per month as parties had earlier agreed on it.

The trial Magistrate accordingly stopped the Appellant from further utilizing the land at Nyakagyezi village which was allocated to the Respondents. The appellant was further ordered to remove her crops from the said land.

The Appellant being dissatisfied with the decision of Magistrate Grade One, appealed to this Court and her Memorandum of Appeal has the following

- 1. The Learned Trial Magistrate erred in law and fact when he failed to properly evaluate the evidence on record and arrived at an erroneous decision thereby occasioning to a miscarriage of justice.
- 2. The Trial Magistrate erred in law and fact when he failed to consider the applicant as a beneficiary to the estate of late Twebaze Augustus Mubone.
- 3. The Trial Magistrate erred in law and fact when he failed to determine the size of land of the deceased thereby erroneously appropriating 2.5 acres of land to the respondents.
- 4. The Trial Magistrate erred in law and fact when he distributed entire 2.5 acres of Land at Nyakagyezi village to the Respondents that did not form part of the deceased's estate.

The Appellant was represented by Counsel Nasike Sara from M/s Kitatta Adikin & Co. Advocate. Counsel for the Appellant filed the Appellant's submissions in the Court on 17th May, 2023. The Respondents were unrepresented.

When the appeal first came up for the hearing, the parties requested to be given some time to explore possibilities of alternative dispute resolution which was accordingly granted to them but the mediation failed as the parties were not co-

When the matter came for further hearing of the appeal on 22nd August, 2023, both the parties were present and they orally submitted their views and contentions to the Court.

The appellant contended that she was dissatisfied with the judgment of the lower Court. She contended that the lower Court did not give equal share of the estate to the children of the deceased. She prayed that this Court give equitable distribution of estate of the deceased.

The 1st Respondent supported the judgment of the lower Court. He told the Court, that he lives with his uncle, who was paying his school fees. He contended that the Appellant lives on piece of land which is about the 8 acres and not on 2

acres which they were allocated. He said they were not receiving part of the gratuity of about \$50,000/\$ = per month. He prayed that appeal be dismissed with

The 2nd Respondent informed the Court she lives with her uncle called James Katurama who was paying her school fees. She was studying, in Junior three. She concurred with earlier submissions of her brother (1st Respondent)

The Appellant in rejoinder stated that she had been paying school fees for the Respondents through her Aunt and that she would on onwards continue paying their fees through their guardian, James Katurama.

Court's determination

Before addressing the grounds of Appeal, I have to address my mind to the role of the first Appellate Court. This is a first Appeal from the decision of the Magistrate Grade One to the High Court.

This role was properly articulated in the case of *Selle and Another vs Associated Motor – Boat Ltd and Others* (1968) E. A 123 at Page 126 where Justice Clement De Lestang stated the role of the first Appellate court as follows: \

"An Appeal..... evidence, evaluate it itself and draw its own conclusions though it should always bear in mind it has neither seen nor heard the witnesses and should make due allowance in this respect."

The same principle role was referred to in the case of *Fredrick J. K. Zaabwe vs Orient Bank Ltd & 05 Others*, SCCA No. 4 of 2006 by the Supreme Court of

In re-evaluating the evidence and subjecting it to a fresh scrutiny, I will keep in mind the issues raised at trial and the evidence adduced by both parties, appellant's submission and oral submissions of both parties at the hearing of the

I will first handle the contention in ground four whereby the appellant contended that the trial Magistrate erred in law and fact when he distributed entire 2.5 acres of Land at Nyakagyezi village to the Respondents that did not form part of the

The appellant in her submission contended that her and her deceased's husband jointly owned the piece of land at Nyakagyezi village, Kihanda Parish, Kirima Sub-county and she added that it was erroneously allocated to the Respondents.

I have perused the record of the lower Court. In the Complaint, the Respondents in paragraph 6 contended that that, I quote:

"That the estate of the late TWEBAZE AUGUSTUS included land in Kanyantorogo sub county and land at Nyakagyezi Cell, Kirima within Kanungu District in this Court's jurisdiction."

The Appellant filed her Written Statement of Defense in lower Court on 13th September, 2019, where in paragraph 7, she at length responded to the allegations of the Respondents in the Complaint. However, in her response she did not raise it or oppose the fact that the land at Nyakagyezi village was jointly owned by her and the deceased and therefore could not form part of the estate.

The trial Magistrate visited the locus in quo of both pieces of land and in attendance was both the appellant and the respondents. The Appellant confirmed that the boundaries and size of the land shown to the Court and she added that on the upper side, was the land she bought with her husband.

The land she claimed to have bought with her husband was not clearly stated or shown to the trial Magistrate and there is no sales agreement to confirm the sale and it is not clear of the two pieces of land of the estate, which one she claimed to have bought.

In the case of *Jani Properties Ltd. vs. Dar es Salaam City Council* [1966] EA 281 it was held that the parties in civil matters are bound by what they say in their pleadings which have the potential of forming the record and moreover, the court itself is also bound by what the parties have stated in their pleadings as to the facts relied on by them. No party can be allowed to depart from its pleadings.

Parties are bound by their pleadings, I am of view that if indeed that the Appellant had bought any of the pieces of land included to the estate of the deceased, she should have adduced evidence to that effect and she would have put a counterclaim to that effect in her written statement of defense objecting addition of that piece of land to the estate of the deceased.

I therefore find the claim of the appellant in ground four as an afterthought and I accordingly find no merit in ground four.

I will address the rest of the grounds together.

The major issue for determination for the lower Court was distribution of the estate of late the Twebaze Augustus. It should be noted that the Appellant was appointed by the Court as Administrator of the estate of the late the Twebaze Augustus. She failed to distribute the estate because of disputes between her and the Respondents.

I also note that there was mediation of the matter before Mr. Byomuhangi Gad, (District Vice Chairperson(Mediator). The parties only agreed on one issue, that is that the Respondents were to receive a monthly \$50,000/\$ = from the gratuity of their father from the Government. The parties failed to agree on land usage and sharing of the estate land which they left for Court to determine.

The trial Court visited the locus in quo and established that the land at Nyakagyezi was approximately 2 1/2 acres and the late Twebaze had started to put up a house for the Respondents' late mother. The said land had an incomplete house structure at the window-level. The trial Court was of the view that it would be unfair to the Respondents if the Appellant who had occupied over 8 acres with her children at Nyaruhanga-burema was to be added another portion of land at Nyakagyezi village. The trial Court exclusively allocated the estate land at Nyakagyezi village, Kihanda Parish, Kirima Sub-county to the Respondents which in my view was a correct decision.

I therefore find no merit in grounds 1,2 and 3 and accordingly dismiss Civil Appeal No.039 of 2022 with costs to the Respondents. The orders made by the lower Court are hereby upheld.

Dated at Rukungiri this. S. J.....

TOM CHEMUTAI JUDGE

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://ulii.org/akn/ug/judgment/ughc/2023/446/eng@2023-10-31>

CASE PAGE <https://chat.esheria.ai/case-law/uganda/kyobutungi-v-amutuheire-civil-appeal-39-of-2022-2023-ughc-446-31-october-2023-unknown-topic-unknown-court-2023>

Prepared on 14 October 2026 · Esheria