

UGANDA / JUDGMENT

Latim v Lajul (Miscellaneous Application 247 of 2022) [2024] UGHC 255 (2 May 2024)

[2024] UGHC 255

COURT

High Court of Uganda

BEFORE

Phillip Odoki, J

CASE / FILE NUMBER

Miscellaneous Application 247 of 2022

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THE REPUBLIC OF UGANDA**IN THE HIGH COURT OF UGANDA AT GUNU****(MISCELLANEOUS APPLICATION NO. 247 OF 2022****(ARISING FROM CIVIL APPEAL NO.065 OF 2022)****LATIM RONALD ===== APPLICANT****VERSUS****ANDREW LAJUL****(LEGAL, REPRESENTATIVE OF THE LATE DRUSSILA) =====RESPONDENT****BEFORE HON. MR. JUSTICE PHILLIP ODOKI RULING****Introduction:**

- [1] The Applicant filed this application, by Notice of Motion, seeking to be allowed to adduce, by affidavit, additional evidence in Civil Appeal No.065 of 2022 and that the costs of this application be provided for. The application was brought under Section 98 of the Civil Procedure Act Cap 71, Section 39(2) of the Judicature Act and Order 52 Rule 1,2 &3 of the Civil Procedure Rules S. I. 71-1.

Background of the application:

- [2] In 2013, Drucilla Lajul instituted Civil Suit No. 003 of 2013 against Pilimena Ojera and the Applicant in the Chief Magistrate Court of Gulu. He sought for a declaration that he is the rightful owner of land measuring approximately 0.5 acres, situate at Pakwelo village, Unyama parish, Unyama sub-county, Gulu district (hereinafter referred to as the 'suit land'); an order of a permanent injunction to restrain Pilimena Ojera and the Applicant together with their agents from interfering with his quite possession and ownership of the suit land; an eviction order against Pilimena Ojera and the Applicant; general damages; interest; and costs of the suit. The suit proceeded inter parties. On the 7th July 2022, the trial Magistrate Grade rendered his judgment in which he found that Drucilla Lajul had failed to prove his case against Pilimena Ojera. The suit against Pilimena Ojera was therefore dismissed. The Trial Magistrate however found that Drucilla Lajul had proved his case against the Applicant and that the Applicant is a trespasser on the suit land. He awarded Andrew Lajul general damages of Ugx 20,000,000/=. He issued an order of vacant possession against the Applicant and a permanent injunction to restrain the Applicant from trespassing on the suit land. He also awarded Pilimena Ojera the costs of the suit. Dissatisfied with the judgment and orders of the Court, the Applicant filed in this Court, Civil Appeal No.065 of 2022 from which this application arises.

The Applicant's case:

- [3] The grounds of the application are contained in the Notice of Motion, supported by the affidavit of the Applicant. The Applicant contends that at the time of hearing Civil Suit No. 003 of 2013, his documents which were to be used by him as proof of his ownership of the suit land had been misplaced or got lost. As a result, they were not tendered in evidence. The documents are, a building permit dated 28th April, 1993 issued to Kilama Andrew Jimma to build on plot 14 in Unyama Trading Centre; revenue receipts issued to the Applicant for payment of ground rent for plot 14 dated 29th April 2019 for the period from 29th April 2019 to 13th May 2019; revenue receipt issued to the Applicant for payment of ground rent dated 14th December 2020 for plot 14; revenue receipt issued to the Applicant for ground rent dated 29th March 2018 for plot 14; a building plan approved by the District health Inspector and the Works Supervisor on the 28th April 1993 and 5th May 1993 respectively. The applicant deponed that in the judgement in Civil Suit No. 003 of 2013 the trial Magistrate observed that he (the Applicant) stated that he inherited the suit land from his late father Kilama Andrew who had acquired it from Gulu District Administration as public land but he did not produce any allocation documents in court. The Applicant contended that soon after the completion of the trial in Civil Suit No. 003 of 2013 he recovered the documents from Oketta Emmanuel Lokwiya a son to his late paternal uncle Lokwiya Fredinand. The documents have since been certified by the relevant authorities. He is desirous of tendering them in Court as additional evidence on appeal in proof of his ownership of the suit land. According to the Applicant, the documents do not introduce new issues but provide greater detail, sheds light on the evidence adduced at the trial, proves how he acquired the suit land

and shows his occupation of the suit land. In his view, the Respondent will not be prejudiced if this application is granted.

The Respondent's case:

- [4] The Respondent deposed an affidavit in reply opposing the application. She deposed that the Applicant had sufficient time to tender in the said documents, since Civil Suit No.003 of 2013 took 9 years in Court before its final disposal, but he neglected to do so. She stated that the documents which the Applicant seeks to adduce as additional evidence do not prove ownership of the suit land and are not relevant to the decision on appeal. She contended that the documents were not tendered during trial because the Applicant's advocate knew they were irrelevant to the decision the Court had to make. According to the Respondent this application does not meet the required standard for Court to allow additional evidence to be adduced on appeal.

Legal representation:

- [5] At hearing of this application, the Applicant was represented by Mr. Ndego Zame of M/S SMAK Advocates while the Respondent was represented by Ms. Elizabeth Kamakune of M/s Kunihira & Co. Advocates.

Legal Submissions:

- [6] Counsel for the Applicant submitted that the matter before Court concerns public land and proof of use of public land is necessary. He submitted that this Court has discretion under Section 98 of the *Civil Procedure Act Cap 71* to allow the application. He relied on the case of *Idrifua Patrick Versus Uganda HCCA No. 0036 of 2016* in which the court cited with approval the English case of *Ladd versus Marshall [1954] 1 WLR 14 89* in which the guidelines which must be considered for admission of fresh evidence was discussed.
- [7] In reply, Counsel for the Respondent submitted that the new evidence that the Applicant seeks to adduce on appeal are not relevant and do not go to the root of the case. Counsel relied on the case of *Aluma Michael Bayo & Ors v Said Nasur Okuto HCM No. 0012 of 2016* for the guidelines which must be considered for admission of fresh evidence on appeal. According to Counsel for the Respondent, the Applicant did not prove any of the guidelines. Counsel further submitted that the building permit granted to Kilama Andrew Jimma dated 28th April 1993, the ground rent receipt issued to the Applicant dated 28th December 2011, the revenue receipt dated 29th March 2018 and the demand note dated 29th April 2019 were admitted for identification in the lower Court and the Applicant failed to have them certified during the trial in the lower court. Counsel submitted that if the application was allowed, there would be need to cross examine witnesses and it would mean there would be a retrial which would be an injustice to the Respondent. She prayed that the application be dismissed with costs to the Respondent.

Analysis and determination of the Court:

[8] This Court, as an appellate court, has the power under section 80(1)(d) of the Civil Procedure Act, Cap 71 to take additional evidence or to require such evidence to be taken, subject to such conditions and limitations as may be prescribed. The conditions and limitations are prescribed in Order 43 Rules 22(1) of the Civil Procedure Rules S.1.71 -1 which provides that:

"22. Production of additional evidence in High Court.

(1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the High Court; but if—

(a) the court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted; or

(b) the High Court requires any document to be produced of any witness to be examined to enable it to pronounce judgment, or for any other substantial cause,

the High Court may allow the evidence or document to be produced, or witness to be examined."

[9] In **Karmali Tarmohamed and Another Versus I. H. Lakhani and Co.** [1958] EA 567, Sir Kenneth O'Connor P., at page 574 stated that:

"*The principles upon which an appellate court should admit fresh evidence where the application is not made on the grounds of fraud or surprise are not, I think, in doubt. I take the following passage from the judgment of Denning, L. J., in *Ladd v. Marshall* (1), [1954] 1 W. L. R. 1489, at p. 1491:*

"*To justify the reception of fresh evidence or a new trial, three conditions must be fulfilled: first, it must be shown that the evidence could not have been obtained with reasonable diligence for use at the trial; secondly, the evidence must be such that, if given, it would probably have an important influence on the result of the case, though it need not be decisive; thirdly, the evidence must be such as is presumably to be believed, or in other words, it must be apparently credible, though it need not be incontrovertible."*

[10] In *Michael Mabikke versus Law Development Centre SCMA No. 16 of 2015* the Supreme Court held that:

"...an appellate Court may exercise its discretion to admit additional evidence only in exceptional circumstances which include;

- I. *Discovery of new and important matters of evidence which, after the exercise of due diligence, were not within the knowledge of, or could not have been produced at the time of the suit or petition by, the party seeking to adduce the additional evidence;*
- II. *It must be evidence relevant to the issues;*

- III. *It must be evidence which is credible in the sense that it is capable of belief;*
- IV. *The evidence must be such that, if given, it would probably have influence on the result of the case, although it need not be decisive;*
- V. *The affidavit in support of an application to admit additional evidence should have attached to it, proof of evidence sought to be given;*
- VI. *The application to admit additional evidence must be brought without undue delay."*

[11] The Supreme Court explained that the need for the exceptional circumstances is because there would be no end to litigation unless a court can expect a party to put its full case before the court.

[12] In the instant application, the Applicant seeks to adduce additional evidence which includes, a building permit granted to Kilama Andrew Jimma dated 28th April 1993; the ground rent receipt issued to the Applicant dated 28th December 2011; the revenue receipt dated 29th/03/2018; and the demand note dated 29th April 2019. According to the Applicant, during the hearing Civil Suit No.003 of 2013, these documents could not be adduced in Court because they were misplaced or got lost. He was only able to find the documents after judgment was delivered. I have perused the record of proceedings of lower court and I find that the allegation of the Applicant is not true. At page 23 and 24 of the record of proceedings, those documents were tendered in Court by his counsel and admitted by the court for identification. What that means is that the Applicant had the photocopies of the documents. The documents are all public documents. He should have secured certified copies from the relevant public offices before or during the trial. He did not do so. no reason was advanced by the Applicant he did not get the certified copies of those documents during the trial. He opted to obtain certified copied which he attached to his application in 2022. I therefore agree with Counsel for the Respondent that the Applicant would have taken steps to certify the documents during the pendency of the suit and have them admitted in evidence but failed to do so.

[13] With regard to the approved building plan and the receipt dated 14th December 2020, these were not referred to in the Applicant's evidence at trial. At page 23 of the record of proceedings, the documents which the Applicant testified to be non-existent were allocation documents. Indeed, at page 6 of the judgement of the lower Court, the trial Magistrate noted that the Applicant did not produce in Court any allocation documents, he simply stated that the documents were lost during the insurgency. Be that as it may, the two documents are public documents. If the Applicant had taken reasonable diligence, he would have obtained certified copies from the relevant offices.

[14] In the circumstances, I find that the Applicant has failed to demonstrate that the documentary evidence he seeks to adduce as additional evidence on the appeal was not available at the time of the trial or could not, with reasonable diligence, have been procured and obtained. Having failed to prove the first condition, I find no reason to determine whether the Applicant has satisfied the other conditions to justify the reception of fresh evidence.

[15] In the end, I find that this application has no merit. It is accordingly dismissed with costs to the Respondent.

I so order.

Dated and delivered this 2nd day of May, 2024.

Phillip Odoki

Judge.

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