

UGANDA / JUDGMENT

Masette & Another v Khainza (Civil Appeal 171 of 2022) [2025] UGHC 25 (28 January 2025)

[2025] UGHC 25

COURT

High Court of Uganda

BEFORE

Lubega, J

CASE / FILE NUMBER

Civil Appeal 171 of 2022

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT MBALE

CIVIL APPEAL NO. 171 OF 2022

(ARISING FROM CIVIL SUIT NO. 45 OF 2019)

1. MASETTE STEPHEN

2. WATSEMBA ALEX :::::::::::::::::::::::::::::::

VERSUS

KHAINZA HELLEN ::::::::::::::::::::::::::::::: BEFORE: HON. JUSTICE LUBEGA FAROUQ
JUDGMENT

1. Introduction:

- The Plaintiff/Respondent instituted Civil Suit No. 45 of 2019 against the Defendants/Appellants for an order to nullify the transaction between the \$2nd and \$1st defendants, an order that the \$1st defendant produces the original land agreement, a declaration that the defendants are both trespassers, vacant possession, eviction order, general damages and costs of the suit.

3. Background:

- 4. The Respondent's case in the lower court was that the Plaintiff in the year 2008 bought a suit land from Khaukha Sam, Mwesigwa and Martha, Hellen Kwagala at the consideration of Ugx: \$3,000,000/= which was paid in cash and a written agreement was duly executed. The suit land approximately measures $\frac{1}{4}$ an acre. It is bordered by Mrs Nambi in the East, Mayor in the West, Mrs. Nambi in the North and a road from Makanga to Marale in the South and it has a permanent house which was constructed by the Respondent. Upon purchase, the Respondent took immediate possession unchallenged until August 2019.
- 5. That prior to the trespass, the 1st Appellant befriended the Respondent and they co-habited for 6 months and during that time, the 1st defendant

took that opportunity and stole the purchase agreement and the Respondent got to know about the loss of the agreement when the 2nd Appellant started claiming that he had bought the suit land from the 1st Appellant.

- 6. The Appellants/Defendants in their joint amended written statement of defence denied the Respondent's allegation and averred that the suit land and property was originally owned by the 1st Appellant having lawfully acquired it from Mwesigwa Martha and Kwagala Allen at a consideration of Ugx: 3, 500,000/= and subsequently transferred his interest in the land to the 2nd Appellant on 15th of August 2012. The Appellants added that the Respondent has never held any interest in the suit land and property since the 1st Appellant acquired it individually.

7. Issues for determination in the trial court

- (a) Whether the 1st Defendant had good title to pass to the 2nd defendant?
- (b) In alternative, who is the rightful owner of the suit land?
- (c) Whether the Defendants are trespassers?
- (d) Remedies available to the parties?
- 8. The trial magistrate determined the above issues in favour of the Respondent. She found that the Respondent is the lawful owner of the suit land, nullified the sale transaction between the Appellants and declared them trespassers on the suit land among other orders.
- 9. The Appellants were dissatisfied with the decision and orders of the trial magistrate hence this appeal.

10. Grounds of appeal

- (a) The learned trial magistrate erred in law and fact when she held that the Respondent is the lawful proprietor/owner of the suit land:

- (b) The learned trial magistrate erred in law and fact when she held that the ² Appellant had not obtained good title from the ¹ Appellant:
- (c) The learned trial magistrate erred in law and fact when she conducted the locus in quo proceedings contrary to the law and procedure:

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- (d) The learned trial magistrate erred in law and fact when she relied upon proceedings at the locus in quo that were undertaken contrary to the law and procedure:
- (e) The learned trial magistrate erred in law and fact when she failed to judiciously evaluate the evidence and legal arguments on record as a whole thereby occasioning a miscarriage of justice:
- (f) The learned trial magistrate erred in law and fact when he failed to give an exhaustive scrutiny and proper evaluation of legal arguments on the court record thus arriving at a wrong decision:
- (g) The trial magistrate erred in law and fact when he failed to exercise his discretion judiciously thus arriving at a wrong decision.
- 11. The Appellants prayed that the Appeal be allowed, the orders and decision of the trial court be set aside, the ² Appellant be declared the lawful proprietor of the suit land and property and the costs of this court and of the lower court be awarded.

12. Legal representation

- 13. Counsel Nangulu Eddie represented the Appellants whereas Counsel Watete Ronald represented the Respondent.
- 14. This appeal proceeded by way of written submission and all the parties complied. I will consider them when necessary in the determination of this judgment.

15. Duty of the first appellate court

- 16. I am aware of this court's duty as a first appellate court with a duty to subject the evidence on the court record to a fresh scrutiny and evaluation and come to my own conclusion not forgetting that, I did not have the chance to witness the demeanor of the witnesses. (See: Fr. M. Begumisa & Ors V. E. Tibegana SCCA No. 17 of 2003)

17. Analysis of court

- 18. I will handle grounds No. 5, 6, and 7 first and grounds No. 1, 2, 3 and 4 will follow in that order.

- 19. Ground No. 5: The learned trial magistrate erred in law and fact when she failed to judiciously evaluate the evidence and legal arguments on record as a whole thereby occasioning a miscarriage of justice.
- 20. Ground No. 6: The learned trial magistrate erred in law and fact when she failed to judiciously evaluate the evidence and legal arguments on record as a whole thereby occasioning a miscarriage of justice.
- 21. Ground No. 7: The trial magistrate erred in law and fact when he failed to exercise his discretion judiciously thus arriving at a wrong decision.
- 22. Counsel for the Respondent submitted that Grounds 5, 6 and 7 are too general. They are not concise, not specific and contravene Order 43 rule (2) of the Civil Procedure Rules. He cited the case of National Insurance Corporation V. Pelican Air Services Civil Appeal No. 15 of 2003 and a case of Lagedo Christine & 3 others V. Fabiano Obwoya Civil Appeal No. 82 of 2019 to support his submission.

23. Order 43 rule 2 of the Civil Procedure Rules SI.71 provides that-

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

- 24. In National Insurance Corporation V. Pelican Air services, Civil Appeal No. 15 of 2003 the Court of Appeal while citing rule 86 of the rules of that court relied on the Supreme Court decision in Sietico V. Noble Bulibers (U) Ltd SCCA No. 31 of 1995 and held that- "a ground of appeal must challenge a holding, **a ratio decidendi** and must specify the points which were wrongly decided."
- 25. In the case of Arim Felix Clive V. Stanbic Bank (U) Ltd, CACA No. 101 of 2013, the Court of Appeal struck out a ground of appeal which was

framed as follows- "That the learned trial judge erred in law and in fact when he did not properly evaluate the evidence on record and thereby came to a wrong conclusion and occasioned a miscarriage of justice to the appellant." The court stated that the ground was too general and allows the Appellant to go on a fishing expedition to the prejudice of the Respondent.

- 26. In this case, the above grounds of appeal as outlined are too general. They do not concisely state what they are contesting.
- 27. The position in National Insurance Corporation V. Pelican Air services (Supra) is that the grounds of appeal must relate to the **ratio decidendi** and specify the issues which were wrongly decided. However contrary to that provision, in the instant case, grounds No. 5,6 and 7 of this appeal do not relate to the ratio decidendi nor specify the issues which were wrongly decided.

- 28. In the circumstance, Counsel's objection is accordingly sustained. Grounds 5, 6, and 7 are struck off the court record for offending the $\frac{1}{2}$ provision of the law.
- 29. Ground No.1: The learned trial magistrate erred in law and fact when she held that the Respondent is the lawful proprietor/owner of the suit land
- 30. I have had the opportunity to study the lower court record and noted that the Respondent called a total of 4 witnesses to support her case and the Appellants called a total of 6 witnesses. Court further after it heard the evidence of both parties in court, it visited the locus in quo.
- 31. PW1 testified that she got a loan of Ugx: \$6,000,000/\$ = from Centenary Bank and purchased the suit land from Khaukha Samuel, Malisa Mwesigwa and Kwagala Allen in 2008 at Ugx: \$3,500,000/\$ =. The people present were the vendors, the purchaser, LC.1 Chairperson Lawrence and LC.1 Secretary Lwanga. That the suit land neighbors Mayor Akana in the East, Late Wambi in the West, Mukaaga Malare Road in the South and late Nambi in the North.

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- 32. She further testified that during the time of purchase of the suit land she cohabited with the 1st Appellant for 6 months whereupon she showed him the suit land as well as the purchase agreement. That after purchase, she went for further studies. However, after some time she was informed by PW2 the care taker that the 2nd Appellant was constructing on the suit land. Upon inquiry, she came to know that the 1st Appellant stole her purchase agreement and sold the suit land to the 2nd Appellant.
- 33. PW3 and PW4 Kwagala Allen and Malisa Mwesigwa (the vendors) told court that the suit land formerly belonged to them and they sold it to the Respondent in 2008 at Ugx: \$3,500,000/\$ = in the presence of the LC.1 Chairperson and the LC.1 Secretary. There evidence was corroborated by PW2 who said that he was also present on the day of the sale transaction in 2008.
- 34. On the other hand, the 1st Appellant who testified as DW1 told court that he purchased the suit land from Kwagala Allen and Malisa Mwesigwa in the presence of Malisa Mwesigwa, Kwagala Allen, Buwemba Topha LC.1 Chairperson and LC.1 Secretary who drafted the purchase agreement. That after purchase, he constructed a house thereon but did not complete it. However, later in 2012, he sold the suit land to the 2nd Appellant at Ugx: 9,500,000/= still in the presence of the Chairperson LC.1 and LC.1 Secretary. After payment, he handed over the original purchase agreement to the 2nd Appellant. His evidence regarding the sale to the 2nd Appellant and being the previous owner of the suit land was supported by the evidence of DW5 Wakilo Lawrence, BW6 Lwanga Hamisi Chairperson of Munkaaga cell and DW3 Buwemba Christopher who accompanied DW1 to buy the said land from Kwagala and Mwesigwa Melisa.

- 35. From the above evidence, it is apparent that the Respondent alleged theft of her purchase agreement by the 1st Appellant. The 1st Appellant on the other hand also alleged that he handed over the said purchase agreement to the 2nd Appellant. The 2nd Appellant in his evidence said that the

purchase agreement between the 1st Appellant and Kwagala and Mwesigwa Melisa was stolen on 18/6/2019 at his home with his other academic documents and he reported to police under Police No. 29/18/06/2019 at Nauyo Police Station. The said police reference was however not tendered in court as an exhibit.

- 36. The 2nd Appellant claims that the original purchase agreement between the 1st Appellant and PW3 and PW4 was stolen. However, the purchase agreement between the 1st Appellant and the 2nd Appellant was not stolen, despite the expectation that it would have been kept alongside the allegedly stolen documents. I find this evidence unconvincing.
- 37. Be that as it may, going with the evidence of the 1st Appellant, he admitted being in possession of the said purchase agreement like it was alleged by the Respondent. He however, also claims ownership of the suit land. Therefore, the only piece of evidence which would prove that fact, is the purchase agreement.
- 38. The other evidence on record is oral evidence of the vendors. The former vendors of the suit land that is; Kwagala Allen and Mwesigwa Malisa who testified as PW3 and PW4 said they sold the suit land to the Respondent. Ordinarily, a purchase agreement of land is made between the purchaser and the vendor. For that reason, the evidence of PW3 and PW4 carries more weight.
- 39. On the court record, there is also evidence of DW5 and DW6 the Chairperson LC.1 and LC.1 Secretary who said the suit land was purchased by the 1st Appellant from Kwagala Allen and Mwesigwa Malisa. This is outrageous since PW3 and PW4 said they sold the said land to the Respondent.
- 40. Section 58 of the Evidence Act Cap 8 provides that-

"All facts, except the contents of documents, may be proved by oral evidence."

- 41. The above provision means that any other fact can be proved by oral evidence except the contents of documents. The issue in contention in

this matter is about who purchased the suit land and this could only be proved by the contents of a purchase agreement other than oral evidence. 42. Section 103 of the same Act provides that-

> "The burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person."

- 43. In this case, since the 1st and 2nd Appellants admitted to being in possession of the purchase agreement in question, they had a duty to present it in court. Their failure to do so leads this court to infer that they did not fulfill their obligation.
 - 44. The Respondent having said that the 1st Appellant stole her purchase agreement for the suit land, it became a duty of the 1st Appellant to rebut that allegation but he failed.
 - 45. The trial magistrate was therefore right to find that the Respondent is the lawful proprietor of the suit land.
46. Issue No.1 is answered in the negative.
- 47. Ground No.2: The learned trial magistrate erred in law and fact when she held that the 2nd Appellant had not obtained good title from the 1st Appellant
 - 48. Considering my findings in Ground No.1, it is obvious that the 1st Appellant did not have interest in the suit land and therefore, did not pass any recognizable interest to the 2nd Appellant.
 - 49. The 2nd Appellant testified that on the first day he met the 1st Appellant, he was in the company of the Respondent. Before purchasing the suit land, he noticed a notice from Centenary Bank on the uncompleted house on the land, stating: "The land or house is not for sale." Despite this, he failed to conduct further investigations into the land and proceeded with the purchase. This demonstrated lack of due diligence on the part of the 2nd Appellant, as rightly observed by the trial magistrate.
50. Due diligence is defined by the **Black's Law Dictionary 9th Edition, Page 523** to mean-
- > "The diligence reasonably expected from, and ordinarily exercised by, a person who seeks to satisfy a legal requirement *or to discharge an obligation.*"

51. In Jennifer Nsubuga V. Michael Mukundane and Shine Asimwe Court of Appeal Civil Appeal No. 208 of 2018, it was stated that-

"*In my view, therefore, it would be self-defeating to consider*" supposed consultations with the vendor of the property to *amount to due diligence for purposes of cross-checking the authenticity of her interest in the land in question. As it was* astutely observed by this court in Sir John Bagire V. Ausi *Matovu Civil Appeal No. 7 of 1996, buyers are expected to make thorough investigations not only of the land but also of the seller before purchase.*"

- 52. Typically, due diligence is required before purchasing land. Any party intending to buy land in Uganda is obligated to conduct thorough investigations beforehand. Since the Appellant was aware of the Respondent's existence, he should have sought clarification from her regarding the true ownership of the suit land. His failure to do so means no valid interest was transferred to him. He is therefore only entitled to the refund of his purchase price from the Appellant.
- 53. Ground No. 2 is answered in the negative.
- 54. Ground No.3: The learned trial magistrate erred in law and fact when she conducted the locus in quo proceedings contrary to the law and procedure.
- 55. Ground No.4: The learned trial magistrate erred in law and fact when she relied upon proceedings at the locus in quo that were undertaken contrary to the law and procedure.

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56. I will resolve Grounds No.3 and 4 above together as below.

- 57. I have gone through the lower court record and noted that while at locus, the trial magistrate clarified to the parties and their advocates her reason for the locus visit. In her locus notes she indicated the members who were in attendance, the size of the land and the incomplete permanent structure in the suit land.
- 58. The trial magistrate did not however, remind the witnesses that they were still on oath and she did not indicate the name of the witness who showed her the boundaries of the suit land. This was an error, though not fatal considering the evidence on the court record.
- 59. The evidence on the court record was enough to assist the trial magistrate reach her decision even in absence of the locus visit.
- 60. Grounds No. 3 and 4 are answered in the negative.
- 61. In the final result, this appeal is dismissed in the terms below-
 - (a) The trial court's decision and orders are upheld.
 - (b) Costs are awarded to the Respondent.

I so order.

LUBEGA ROUO Ag. JUDGE

Judgment delivered via the emails of the advocates of the parties on 28th day of January, 2025

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