

UGANDA / JUDGMENT

Mbumakore v Tinkasimire (Civil Revision No. 0008 of 2015) [2016] UGHCLD 28 (27 October 2016)

[2016] UGHCLD 28

COURT

HC: Land Division (Uganda)

BEFORE

Ojok, J

CASE / FILE NUMBER

Civil Revision No. 0008 Of 2015

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT FORT PORTAL

CIVIL REVISION NO. 0008 OF 2015

(Arising from FPT-01-CV-LM-0022 of 2009)

DORIKA MBUMAKORE APPLICANT

VERSUS

PETER TINKASIMIRE..... RESPONDENT

BEFORE: HIS LORDSHIP HON. JUSTICE OYUKO. ANTHONY OJOK, JUDGE.

Ruling

The Applicant in the instant case first reported the matter to the LC1 Court of Kituli which found in her favour. However, she was later evicted off the suit land by the local authorities claiming that the suit land belonged to one Bamugaya who bought the same from the Respondent. The Applicant had told Court that she bought the suit land from the Respondent at UGX 800,000/= in 2000 which fact the Respondent did not deny. The suit land had developments of 3 houses though one eventually collapsed because of lack of maintenance. The Respondent also does not deny the fact that he later sold the suit land to Bamugaya whom he had promised to refund.

The Applicant was evicted off the suit land following execution of the LC1 Court judgment in favour of Bamugaya yet she was even not party to that suit. The suit was between the Respondent and Bamugaya.

It is my observation that Respondent did not deny selling the suit land to both parties. However, one of the sales was fraudulent because he had already sold to the Applicant and thus had no good title to pass on to the second buyer. The second buyer is also illegally in occupation of the same.

The Applicant upon eviction instituted a Civil Suit in the Chief Magistrate's Court of Bundibugyo which decreed the suit land to her again after the LC1 Court had previously decreed the same to her on 24/01/2009 but she has since failed to execute the decree. The decree at the Chief Magistrate's Court of Bundibugyo was issued by His Worship Kaweesa Godfrey Magistrate Grade 1 on 18/12/2009. She then lodged a complaint before the Deputy Registrar of Fort Portal.

The Chief Magistrate/Acting Deputy Registrar of Fort Portal then summoned the Applicant, Respondent, LC1 Chairperson Mugenyi Abdulman, Monday Robert (Vice Chairperson) and Bamugaya Deo to Court.

Monday Robert did respond to the Court summons and came to Court. He told Court that they handled this matter and delivered judgment in favour of the Applicant. That later Bamugaya brought a suit against the Respondent and it was decided in favour of Bamugaya. The Applicant was then evicted off the suit land in execution of the judgment in favour of Bamugaya yet she was not party to that suit. That Bamugaya was the current occupant of the suit land.

Bamuyaga told Court that it was true that he was in occupation of the suit land because the Respondent had no authority to sell to the Applicant.

The Chief Magistrate/Acting Registrar found that there were two contradictory judgements passed by the same LC1 Court and that the matter was thus **Res-judicata** and forwarded the file to the High Court at Fort Portal for Revision.

Court ought to note that on the Court record is a report made by Monday Robert indicating that the Applicant is the true owner of the suit land and this was upon a locus visit that was conducted by the executive. This only means that the LC1 Court in delivering its judgment had done its investigations and found the Applicant as the true owner of the suit land. Therefore, the same Court could not then come up and evict the Applicant just because there was a second buyer.

Secondly, there is no sale agreement that was brought by Bamuyaga to prove his purchase of the suit land. Only the Applicant was able to produce a sale agreement as proof of her purchase of the suit land. The Applicant therefore should not be denied of what legally belongs to her and has proof thereof.

Section 7 Civil Procedure Act, provides that;

“No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try the subsequent suit or the suit in which the issue has been subsequently raised, and has been heard and finally decided by that court.”

Black's Law Dictionary 6th Edition defined *Res-judicata* as;

“A matter adjudged, a thing judicially acted upon or decided a thing or matter settled by judgment. Rule that a final judgment rendered by a court of competent jurisdiction on the merits is conclusive as to the rights of the parties and their privies, and as to them, constitutes an absolute bar to a subsequent action involving the same claim, demand or cause of action.”

Therefore, for *Res-judicata*, to be applicable, requires identity in the thing sued for as well as identity of cause of action, of persons and parties to action, and capacity in persons for or grant against whom the claim is made.

There are three minimum conditions which have to be satisfied and these were laid out in the case of **Mansukhlal Ramji Karia and another Versus A. G and others, SCCA 20 of 2002**, where it was held that;

“There must have been a former suit or issue decided by a competent Court; the matter in dispute in the former suit between parties must also directly or substantially in dispute between the parties in the suit where the doctrine is pleaded as a bar; the parties in the former suit should be the same parties or parties under whom they or any of them claim, litigating under the same title.”

In the case of **Hilariyo Ochanya Vs Petero Ogwang [1976] HCB 131**, it was held that;

“Where there is no record of the earlier case before the trial court, it would be reasonable and proper for the trial court to rule that the plea of Res-judicata has not been proved to the satisfaction of the court.”

In my opinion this matter was already decided by the LC1 Court and also the Chief Magistrate's Court of Bundibugyo upheld the same decision thus making the matter constitute *Res-judicata*. From the lower Courts it is clear that the suit land was purchased by the Applicant from the Respondent which is not denied by the Respondent either. And the LC1 hearing a matter between different parties and executing it against a party that was not party to the said suit forms grounds for revision.

Section 83 of the Civil Procedure Act lies down the grounds under which revision orders can be sought and these are that;

1. *The court failed to exercise jurisdiction vested in it by law.*
2. *The court acted in excess of jurisdiction*
3. *The court failed to exercise jurisdiction*
4. *The court exercised jurisdiction but with material irregularity.*

In the instant case the LC1 Court in exercising its jurisdiction acted in a manner that contravened the law and falls in the ambit of **Section 83** as outlined above. Therefore, the application should be allowed and Court order that the decree as issued by the Chief Magistrate's Court of Bundibugyo be executed without any further interference. Let the current occupant vacate the suit land and seek remedies against the Respondent and not the Applicant.

Under **section 27(1)** of the Civil Procedure Act costs should follow the event unless court orders otherwise. This provision gave the judge discretion, but that discretion must be exercised judicially. That a successful party can only be denied costs if it is proved that for his conduct the action would not have been brought. The costs should follow the event even where the party succeeds only in the main purpose of the suit.

In the case of **Butagira Vs Deborah Namukasa (1992-1993) H. C. B 98 at 101**, it was held that:

“The general rule is that costs shall follow the event and a successful party should not be deprived of them except for good cause. This means that the successful party is entitled to costs unless he is guilty of misconduct or there is some other good cause for not awarding costs to him. The court may not only consider the conduct of the party in the actual litigation but matters which led up to the litigation.”

The Applicant in the instant case did prove her case and indeed though unrepresented she was greatly inconvenienced by the acts of the Respondent. The Respondent should compensate Bamugaya and Bamugaya should vacate the suit land immediately. The Application is therefore allowed with costs.

Right of appeal explained.

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OYUKO. ANTHONY OJOK

JUDGE

27/10/16

Read in open Court in the presence of;

1. The Applicant
2. Court Clerk James

In the absence of the Respondent.

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OYUKO. ANTHONY OJOK

JUDGE

27/10/16

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