

UGANDA / JUDGMENT

Ndyamuhaaki v Ninsiima and Another (HCT-01-LD-CA-0058-2017) [2025] UGHC 442 (11 June 2025)

[2025] UGHC 442

COURT

High Court of Uganda

BEFORE

Wagona, J

CASE / FILE NUMBER

HCT-01-LD-CA-0058-2017

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT FORT PORTAL

HCT-01-LD-CA-0058-2017

NDYAMUHAKE DENIS ::::::::::::::::::::::::::::::::::: APPELLANT

VERSUS

1. NINSIIMA PROVIA

2. BYAMUKAMA SILVANO ::::::::::::::::::::::::::::::::::: RESPONDENTS

BEFORE: HON. JUSTICE VINCENT WAGONA

JUDGEMENT

Introduction:

- 1. This is an appeal against the decision and orders of His Worship Kwizera Viane, Magistrate Grade One delivered on 3rd October 2017 in the Chief Magistrate's Court of Fort Portal at Fort Portal. The Appeal is premised on grounds that; -
- (1)The learned trial Magistrate Grade One erred in law and fact when he failed to properly evaluate the evidence of PW1, PW2 and PW3 on Court record and came to a wrong conclusion.

- (2) The learned trial Magistrate misdirected himself when he disregarded and disbelieved PW3 Pakalansio Turyamureba the former owner of the suit land.
- (3) The learned trial Magistrate erred in law and fact when he found that the 2nd Defendant, Mr. Byamukama Selevano purchased the suit land from PW3 in 1998.
- 2. The Appellant prayed that this appeal be allowed with costs and that the Appellant be declared the owner of the suit land.

Background:

- 3. On 29th April 2011, the Appellant brought a civil suit vide, **FPT-00-CV-CS-0052 of 2011** against the Respondents herein for a declaration that the suit land situate at *Rubalika 11B, Kakinga Trading Centre Rwimi Sub-county* belongs to him. He sought a declaration that the Defendants (now Respondents) are trespassers on the suit land, general damages, an eviction order, a permanent injunction restraining the Respondents from further acts of trespass and costs of the suit.
- 4. The Appellant contended that he purchased the suit land from *Turyamureba Pakalasio* on 1st February 2000, but subsequent to the purchase, his sister the

1st Respondent entered onto the suit land with the 2nd Respondent and started residing in the semi-permanent house thereon. When the Appellant asked them to vacate the land, they pleaded for mercy as they were landless and undertook to vacate very soon on grounds that they were about to buy their own land in a few months' time. To date, the Respondents have refused to vacate the suit land instead have become hostile to the Appellant calling him "names" and threatening his life.

5. In their joint written statement of defence, the Respondents denied the contents of the Complaint and contended that they are the rightful owners of the suit property having bought the same, as husband and wife, from *Pakarasio Turyamureba* and his wife *Rusia Kyomugisha* on the 4th of May 1998. That they acquired equitable and legal proprietorship to the suit property in 1998 before the Appellant purportedly purchased the same in the year 2000. That it was only them who had the legal and equitable right to dispose of the suit property since the seller's rights were extinguished upon execution of the agreement on 4th May 1998 and as such, the Appellant's title is defective. They denied all the allegations of trespass and contended that they are the rightful owners of the land.

Judgment of the trial court:

6. In his judgement delivered on 3rd October 2017, the learned trial Magistrate Grade One found that the Respondents herein are the owners of the suit land, they are not trespassers thereon since the land belonged to them, and he accordingly dismissed the suit with costs.

Representation and Hearing:

7. The Applicant was represented by *M/s Ahabwe James & Co. Advocates* while *M/s Kayondo & Atuhaire Advocates* appeared for the Respondent. Both parties addressed me by way of written submissions which I have duly considered.

Duty of the first appellate Court:

8. This being a first appeal, my duty is to subject the evidence at trial to a fresh and exhaustive scrutiny and a re-appraisal of all the evidence on record before reaching my own decision. I will make due regard to the fact that I did not see the witnesses testify to observe their demeanor. I will thus weigh the evidence and the contradictions therein to draw my own inference. (See *Fr. Nanensio Begumisa & 312 others vs. Eric Tiberuga*, SCCA No. 17 of 2014 [2004] KALR 236).

Evidence of the Appellant at trial:

- 9. At trial, the Appellant called three witnesses, namely, *Ndyamuhaki Denis (PW1)*, *Purisira Nyamarembo (PW2)* and *Pakarasio Turyamureba (PW3)* who all gave oral testimony. The combined testimony of the said witnesses was that the Appellant (PW1) and the 1st Respondent are both biological children of *Purisira Nyamarembo* (PW2) and the late *Tibanyenderaa Nalice* while the 2nd Respondent is a husband to the 1st Respondent hence a brother in law to the Appellant. That the Appellant purchased the suit land from PW3 on 16th April 2000 at a total consideration of Ug. Shs. 300,000/= and that he immediately started using the land for planting maize and banana plants. The Appellant relied on exhibits PE1 and PE2 which are the purchase agreement dated 16th April 2000 and its English translation respectively.
- 10. That on 1st August 2000, the 1st Respondent was evicted from her rented house and that she asked the Appellant for refuge and the Appellant allowed her to live in the grass thatched house that was on the suit land on condition that she would leave whenever requested to vacate the land. That she started living on the land with her children and that later, the 2nd Respondent also requested the Appellant to allow him live on the land, and he allowed him to also stay on the land also on condition that he would vacate the land whenever

asked to. On 15th September 2010, the Appellant asked the Respondents to vacate the land and they promised to vacate but they have since declined to vacate. He sued them in the LC1 Court which instead held that the land belongs to them.

11. PW3 testified that he is the former owner of the suit land and that he sold it to the Appellant in the year 2000 at a consideration of Ug. Shs. 300,000/= and that he never sold it to the 2nd Respondent. However, in the year 2011, the 2nd Respondent in the company of a one Gacharo picked him from his home and took him to the trading center and bought him alcohol (waragi and beer) and also gave him a cigarette, which he took and got drunk. Having become drunk, they told him to make another agreement in respect of the same piece of land and he did so in a drunken state. The 2nd Defendant also made him thumbprint the agreement. The agreement was written by a one *Nalis Bananuka* at his place and that he only learnt the agreement when he went to police to record a statement.

Evidence of the Respondents at trial:

12. At trial, the Respondents also called 3 witnesses, namely; *Byamukama Selevano (PW1)*, *Ninsiima Provia (DW2)* and *Gacaro Bonefansion (DW3)*.

They testified that the 2nd Respondent purchased the suit land from PW3 on 4th May 1998 and denied ever intoxicating PW3 for him to sign an agreement in favour of the 2nd Respondent. The 1st Respondent (DW2) confirmed that he witnessed on the agreement between the Appellant and PW3 dated 16th April 2000, however that she signed without knowing the contents of the said agreement.

Appellant's Submissions:

- 13. Learned Counsel for the Appellant argued all the grounds of appeal jointly and submitted that the Appellant purchased the suit land from PW3 on 16th April 2000 and that the 1st Respondent and her late Father a one *Tibanyendera* witnessed the sale and signed the agreement. That PW2 and PW3, the former owner of the suit land corroborated this testimony. That the sale agreement dated 4th May 1998 was fraudulently executed long after PW3 had already sold the land to the Appellant and procured through first intoxicating PW3.
- 14. Counsel submitted that the learned trial magistrate ignored all the evidence on record and he faulted the learned trial magistrate for having relied on the equitable maxim of *"first in time first in right"* which cannot operate in the 2nd Respondent's favour since he has never purchased the suit land as

confirmed by PW3. Consequently, counsel asked this Court to find that the learned trial magistrate did not properly evaluate the evidence on record and he erred in disbelieving the testimony of PW3. He prayed that the appeal be allowed with costs both in the lower court and on appeal.

Respondent's Submissions:

- 15. Learned Counsel for the Respondent submitted that the learned trial magistrate correctly concluded, in keeping with the maxim **qui prior est tempore, potior est jure** (the first in time/place, is stronger in law), that as the Respondents were the first in time, they were stronger in law. That since both sides of the case acknowledge both agreements, it was the duty of the court to point out which of the two agreements was voided by minority, illegality and illiteracy. That the trial magistrate properly discharged this duty.
- 16. Counsel further submitted that the Appellant's suit was flawed from its premise since it was barred by limitation having been brought 13 years after the Respondents' acquisition of the land. That PW3's drunkenness is not recognized at common law or even under the **Sections 11 and 12 of the Contracts Act** to vitiate his capacity to sell land. That the purported sale of

the suit land between the Appellant and PW3 on 16th April 2000 was voided by the revelation during the cross examination of PW2 (Appellant's mother) that at the time of purchase, the Appellant was only 7 years old. Counsel referred to **Section 11 (1) (a) of the Contracts Act**. That it is trite law that a suit in trespass can only be brought by a Plaintiff who is in possession. This violation voided the Appellant's suit as well as the instant appeal. Counsel prayed that this appeal be dismissed with costs.

CONSIDERATION BY COURT:

17. I have carefully considered the submissions of both learned counsel, the evidence adduced at trial, and the judgment of the trial court. This appeal raises fundamental questions regarding land ownership, contract validity, and proper evaluation of evidence by the trial court. The core of this dispute revolves around two competing claims of purchase of the same piece of land from the same vendor, **Pakarasio Turyamureba (PW3)**. The Respondents claim to have purchased the land on 4th May 1998, while the Appellant claims to have purchased the same land from the same vendor on 16th April 2000.

18. Just like both counsel, I will also address the grounds of appeal together since they are intricately linked and concern the evaluation of evidence relating to both sale agreements.

Ground One: The learned trial Magistrate Grade One erred in law and fact when he failed to properly evaluate the evidence of PW1, PW2 and PW3 on Court record and came to a wrong conclusion.

Ground Two: The learned trial Magistrate misdirected himself when he disregarded and disbelieved PW3 Pakalansio Turyamureba the former owner of the suit land.

Ground Three: The learned trial Magistrate erred in law and fact when he found that the 2nd Defendant, Mr. Byamukama Selevano purchased the suit land from PW3 in 1998.

19. Evaluation of evidence ideally entails the judicial process by which a court of law assesses the credibility, reliability, and probative value of the entire evidence presented by the parties during a trial. It involves weighing of different pieces of evidence against each other to determine the most convincing pieces of evidence that ought to be given more weight in reaching a judicial decision. In Uganda, evaluation of evidence is governed by the rules

of evidence as set out in the **Evidence Act, Cap 8**. In the case of **Ibrahim Muli vs. Sali Akwai (2021) JELR 109440 (CA)**, the Court of appeal of Nigeria was of the view that evaluation evidence is the primary duty of a trial Court. In delivering the lead judgment, Jummai *Hannatu Sankey, J. C. A*. held that; -

"Courts of trial are expected to carry out their sacred duties of review, evaluation and appraisal, as ascription of probative values, when determining cases presented before them, so that as much as possible, cases are decided on admissible and credible evidence. The receipt of relevant evidence is an act of perception, while the evaluation of evidence and findings of facts by a trial Court involves both perception and evaluation. A trial Court that fails in this duty, fails in its duty of being an impartial arbiter in the adversarial system of the administration of justice – Guardian Newspaper V Ajeh (2011) 10 NWLR (Pt. 1256) 574, 582. Thus the evaluation of relevant and material evidence and ascription of probative value to such evidence, both oral and documentary, are the primary functions and within the domain of the trial Court which saw, heard and assessed the witnesses."*

20. He added that; -

"In carrying out the evaluation of evidence, a Court is not to merely review or restate the evidence, but it is expected to critically appraise it in the light of the facts in issue, what is relevant, admissible and what weight is to be attached. In other words, the evaluation of evidence is much more critical, crucial and tasking than a mere review of evidence. For unlike the review of evidence, its actual evaluation involves a reasonable belief of the evidence of one of the contending parties and disbelief of the other, or the reasoned preference of one version to the other. There must be an indication on the record of the Court to show how the trial Court arrived at its conclusion preferring one piece of evidence to the other. Thus, the act of reaching

conclusions by drawing necessary inference is a product of a legal mind and not an indulgence in speculation – *Aregbesola V Olagunsoye* (2011) 9 NWLR (Pt. 1253) 458; *Olonade V Sowemimo* (2014) 9 SCM 106, 121, per MD Muhammad, JSC; *Michael V Access Bank* (2017) LPELR-41981(CA)13".*

21. While relying on the cases of **Dauda V Access Bank Plc* (2016) All FWLR (Pt. 831) 1489, 1513;* and **Idogbo V Ajayi* (2017) LPELR-42435(CA) 17, Jummai Hannatu Sankey, J. C. A.* also contended that, this sacred duty of the

trial Court is rarely interfered with by the appellate Court where the trial Court does such a duty diligently. Where however a trial Court fails in its bounden duty of evaluating and ascribing probative value to the evidence adduced before it, or where the findings and conclusions are perverse, the appellate court will not hesitate in taking over from the trial Court this duty in the interest of justice, thereby doing what the trial Court failed to do.

22. In the instant case, the trial court relied primarily on two agreements in issue and decided that the first in time would prevail. The trial Magistrate was guided by his disbelief that PW3 was indeed intoxicated at the time of execution of the agreement with the Respondents. To arrive at the conclusion that PW3 could have been intoxicated at the time of making the agreement with the Respondents, the learned trial magistrate relied on the existence of the signature of a one Rusia Kyomugisha on the agreement. At page 2 of his judgment, the learned trial magistrate stated that; -

"If the said Pakalasio was intoxicated which I still don't believe, how can his wife Rusia Kyomugisha who was not intoxicated authenticate the said agreement. The evidence of PW3 (Pakalasio Turyamureba) is a lie intended to pervert justice."

- 23. In his written submissions, learned Counsel for the Appellant faulted the learned trial magistrate for the above finding on grounds **Rusia Kyomugisha** is not even a wife to PW3 as alleged by the learned trial magistrate.
- 24. In my re-valuation I have considered the validity agreement attributed to PW3. **Section 1** of the **Contracts Act, (now Cap 284)** which defines a contract as an agreement enforceable by law as defined in **Section 9** and **Section 9** thereof defines a contract as **an agreement made with the free consent of parties with capacity to contract, for a lawful consideration and with a lawful object, with the intention to be legally bound**. It is trite law that when a document containing contractual terms is signed, then, in the absence of fraud, or misrepresentation, the party signing it is bound, and it is wholly immaterial whether he has read the document or not (See: **L'Estrange vs. F Graucob Ltd* [1934] 2 KB 394*). **Section 12** of the Contracts Act provides that, **consent of parties to a contract is taken to be free where it is not caused by coercion, undue influence, fraud, misrepresentation, or mistake.**

- 25. Both parties to this appeal acknowledge the existence of the two sale/purchase agreement both signed by PW3 in respect of the same land. One dated 4th May 1998 signed in favour of the Respondents and the other dated 1 st February 2000 signed in favour of the Appellant. In his Complaint, the Appellant

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did not challenge the existence or validity of the sale agreement dated 4th May 1994 belonging to the Respondents, however, at trial, the Appellant's case was that this agreement was procured by the Respondents fraudulently after intoxicating PW3 and making him make the sale agreement while in a drunken state. It is trite law that a party will not be permitted to succeed on a case not set up by them in their pleadings (**Interfreight Forwarders (U) Ltd vs. East African Development Bank (Supreme Court Civil Appeal no. 33 of 1992)**). Be that as it may be, by challenging the validity of the said sale agreement dated 4th May 1994, the Appellant brought the issue of PW3's capacity to contract in issue. And when the Appellant's mother (PW2) testified that the Appellant was only 7 years old in 2000 when he purportedly entered into the impugned purchase agreement dated 1st February 2000, she brought the Appellant's capacity to contract at that time in issue.

- 26. Intoxication is not expressly provided for under the **Contracts Act, Cap 284** as a vitiating factor of a contract. However, at common law, in the case of **Lucy vs. Zehmer, 196 Va. 493, 84 S. E.2d 516 (1954)**, the Plaintiff sought specific performance that was written in a restaurant cheque but the Defendant had claimed later that the offer had been made in jest and that he had been too intoxicated to comprehend the transaction. The trial court dismissed the suit,

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and on appeal, the *Supreme Court of Appeals of Virginia* held that the contract was enforceable as Zehmer was not too intoxicated to understand the nature of the agreement, and Lucy was warranted in believing the contract was serious. In arriving at its decision, the Court reasoned that Zehmer's actions and words, reasonably interpreted, indicated an intention to enter into a binding contract. The court noted that the drafting and signing of the contract took a significant amount of time and discussion, which suggested it was a serious transaction. Furthermore, Zehmer's claim of intoxication was unsupported by the evidence, as he was able to recall details of the night and his wife even suggested he drive Lucy home, indicating he was not too drunk to understand his actions. The court emphasized that even if Zehmer intended the contract as a joke, Lucy believed and was justified in believing it was a genuine agreement, making it binding.

- 27. In my re-evaluation in the instant case, after critically examining all the evidence presented at trial, I was also unable to find any cogent evidence to support PW3's alleged intoxication at the time of signing the impugned agreement dated 4th May 1998. Instead I found that PW3 was able to recall all the details of the day the agreement was signed. PW3 testified that he was taken to the trading centre by the 2nd Respondent and a one Gacharo, and while

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there, he was given beer and waragi as well as a cigarette. That when he became drunk, he was told to make another agreement in respect to the suit land and he made it. That the agreement was written by a one *Nalis Bananuka* at Nalis' place. That the 2nd Respondent made him to thumbprint the agreement. In my re-evaluation PW3 was able to recall the person who wrote the agreement, where it was made, the person who made him to thumbprint the agreement, and even recalls that he was asked to make an agreement in respect of the suit land and he accepted to make it; PW3 understood the nature of the agreement that he signed. He was therefore bound by the terms of the said agreement. The allegations that the agreement was signed in 2011 were not supported by any cogent evidence.

28. Learned Counsel for the Appellant submitted that the agreement of 1998 was fraudulently executed after PW3 had been given *"waragi"* and he became drunk. It is trite law that fraud must be specifically pleaded and the particulars of the alleged fraud must be stated on the face of the pleadings. (See: **Kampala Bottlers Ltd vs. Damanico (U) Ltd SCCA No. 22 of 1992**). In **Fam International Limited and Another vs. Mohamed Hamid El-Fatih**,

SCCA No.16 of 1993, it was held that fraud is a serious matter and the party against whom it is alleged should be afforded sufficient notice to enable him answer the allegations.

29. In the instant case, I have perused the Complaint and found that at trial, the Appellant did not make any allegations of fraud against the Respondents. As such, the Appellant could not be permitted to succeed on such a case against the Respondents at this stage. **Order 6 Rule 7** of the **Civil Procedure Rules** emphasizes that parties are bound by their pleadings. In the cases of **Jani Properties Ltd versus Dar-es-Salaam City Council (1966) EA 281**; and **Struggle Ltd versus Pan African Insurance Co. Ltd (1990) ALR 46 -47**, Court rightly observed that; *"the parties in Civil matters are bound by what they say in their pleadings which have the potential of forming the record 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."* I am therefore unable to find that the agreement dated 4th May 1998 was executed in 2011 when PW3 was intoxicated and/or in a drunken state. It is my finding that the impugned agreement was executed on 4th May 1998. By necessary implication, the agreement dated 1st February

2000, was executed long after PW3 had already sold the suit land to the Respondents.

30. Additionally, when the Appellant testified before the trial Court on 7th June 2012, he stated that he was only **26 years** old. This means that on 1st February 2000 when his purchase agreement in respect to the suit was purportedly executed, he was only **14 years** old. However, his mother, PW2, testified that at the time of execution of the said agreement in 2000, the Appellant was only **7 years** old. **Section 10 (1) of the Contracts Act, Cap 284** provides that a person has capacity to contract where that person is eighteen years or above

and Section 10 (2) of the Contracts Act, Cap 284 provides that a person of sixteen years or above has the capacity to contract as provided under article 34 (4) and (5) of the Constitution. Therefore, since the Appellant was below the age of 14 years in the year 2000 when the agreement dated on 1st February 2000 was executed, he did not have capacity to contract and the said agreement is null and void. This renders the suit vide FPT-00-CV-CS-No. 52 of 2011 in the trial court and this Appeal incompetent since they are based on an unenforceable land purchase agreement.

The Appeal therefore fails and is hereby dismissed with costs. I so Order.

Dated at Fort Portal this 11th day of June 2025

Vincent Wagona

High Court Judge

FORTPORTAL

Judgment delivered on the 19th day of June 2025

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