

UGANDA / JUDGMENT

Okitela Joseph v Opoli Patrick (Civil Appeal No.140 of 2013) [2025] UGCA 245 (21 July 2025) [2025] UGCA 245

COURT

Court of Appeal of Uganda

BEFORE

Asa Mugenyi, JA/ JCC, Musa Ssekaana, JA/JCC,
Stella Alibateese, JA/JCC

CASE / FILE NUMBER

Civil Appeal No.140 of 2013

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THE REPUBLIC OF UGANDA**IN THE COURT OF APPEAL OF UGANDA AT KAMPALA**

(Coram: Dr. Asa Mugenyi, Musa Ssekaana, Stella Alibateese, JJA)

CIVIL APPEAL NO.140 OF 2013**(ARTSTNG FROM HIGH COURT MBALE HCT-04-CA-0030 OF 2007)**

(ALL ARISING FROM TORORO CIVIL SUIT NO: 0030 OF 2005)

OKITELA JOSEPH:3:3: APPEILANT

VERSUS**OPOLI PATRIC RESPONDENT**

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JUDGMENT OF MUSA SSEKAANA, JA.

This appeal was preferred against the decision of the High Court Stephen Musota J (as he then was) sitting on appeal from the decision of the Magistrate grade 1- Tororo, in which the court overturned the decision of Magistrate grade one.

1. Introduction.

t5 The Plaintiff/appellant brought this suit against the defendant/respondent in the trial court for recovery of land which he said was customary land. That he had inherited the said land from his late father Yakobo Owori and the defendant entered into it and started constructing without his consent. The suit land is located in Maliri center "A" Merikit Sub County, Tororo District.

20. Background.

The facts as can be deduced from the record of the court are that the appellant claims to be the lawful owner of the suit land. That he inherited the same from his late father Yakobo Owori. That in 2003, he saw the respondent construct a house on the suit land but he did not know who sold it to him. s:.n

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In his defense, the respondent testified that he bought the land from Maliri Primary School on the 29/7/1997 at Ug.shs. 2,000,000/=. The sale agreement was tendered in as defense exhibit l and that he there and then started construction on the said land.

s That he was allowed to buy the said land through minutes of the board. That the suit land was donated to the school by the elders who included the appellant's father in 1983. That the school owed money to the respondent for building materials but had no money to pay. The land was given in lieu of money owed.

The Magistrates court entered judgement in favor of the appellant and the 10 respondent appealed to the High court on the following grounds;

- o That trial Magistrate erred in law when he ignored the appellant's documentary evidence and wrongly decided the case against the appellant.
- c That the trial Magistrate erred in law when he decided the case when the plaintiff had no locus standi.
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- t That the trial court erred in law when it entertained the suit when there was no cause of action.
- o The trial court erred in law by ignoring the testimony of the witnesses and reached a wrong decision.

The High court held that the trial court failed in its duty to evaluate the evidence zo on the record and thus reached a wrong decision. It was the decision of court that had the trial magistrate analyzed the evidence of both parties, he would have come to a conclusion that the respondent's evidence was more credible than that of the appellant on a balance of probabilities.

The High court further held that the appellant's witnesses all simply stated that 2s they knew that the disputed land belonged to the late Yakobo Owori but they did not know if the said land was ever sold to the appellant. They said they only saw the respondent construct on the disputed land in 2003.

That on the other hand, the evidence of the respondent was minutely corroborated by his witnesses on how he came to acquire the suit land. DW2- 30 Okong Livingstone, DW3 Omoit Wilberforce and Osiro Obbo Yesero clearly explained how the land in dispute was acquired by the respondent. ,-,4'

They all agree that the land initially belonged to the father of the appellant. They also testified that in 1982, the parents of Maliri Primary School which borders the sult land sat and resolved that the school should expand. They did not have land. The elders neighboring the school agreed to donate land to the school for that 5 purpose. Among the neighbors who agreed to donate was the appellant's father

Yakobo Owori who donated 1 /z acres of land. The boundary marks to the land were fixed in 1983.

The High court further noted that the evidence in the trial court was to the effect that, the school wanted to expand, they got an offer from Plan International to l0 construct a school to add at least 3 classrooms blocks provided the parents contributed building materials.

That at the time, both the school and parents had no money. It was at this point that they contacted the respondent who contributed building materials worth Ug. shs. 2,000,000/= to the school. The suit land was offered to the respondent as l5 payment for the building materials supplied to the school.

It was from the above that the High court found that the trial Magistrate failed to properly analyze the evidence and hence reached a wrong decision. The decision of the Magistrate was set aside and the respondent was declared the lawful owner of the suit land having properly acquired it from Maliri Primary School as ^a 20 tradeoff for materials he supplied to the school worth Ug.shs. 2,000,000/=.

From the above decision and orders of the High Court, the appellant lodged ^a second appeal in this court on the following grounds.

- 1. That the learned judge failed to properly exercise his duty as the first appellate court to properly evaluate the evidence on record in the lower court hence reaching a wrong decision.
- 2. That the learned judge did not properly address the issue of whether the appellant's father ever gave land to the school which sold the same to the respondent hereof hence reaching a wrong decision.
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- 3. That the decision ofthe learned judge occasioned a miscarriage ofjustice.

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The appellant proposed that this honorable court;

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- ^I. Allows the appeal
- 2. Set aside the decision of the learned Judge
- 3. Reinstates the decision of the learned Magistrate Grade 1..

Representation.

s When the appeal came up for hearing, the appellant was unrepresented (selfrepresented) whereas the respondent was represented by Counsel Nyafwono Irene,

Preliminary Objection to the Appeal.

The respondent's counsel submitted that grounds 1 and 3 raised by the appellants l0 are of a general nature thus contravening the provision of Rule 86(l) of the Judicature (Court of Appeal Rules) while ground 2 is clearly a ground of fact contrary to Sections 72 and 74 of the Civil Procedure Act.

It was contended that rule 86 provides that the grounds must be specific in what way and in what specific aspect the decision being appealed against did the court ^t5 that made the decision go wrong.

Therefore, grounds L and 3 raise a general issue of failure to evaluate but does not state which particular evidence was not evaluated or which was wrongly evaluated.

Secondly, the respondent submitted that the 2nd ground of appeal in a second zo appeal is contrary to S.72 of the Civil Procedure Actt That the learned judge did not address the issue of whether the appellant's father ever gave land to school which sold the same to the respondent hereof hence reaching a wrong decision.

It was contended that this being a 2nd appeal, the grounds are limited to questions of law and not of fact. In counsel's view this is ground of appeal is purely ^a 2s question of fact and cannot be considered by this court.

The appellant in response to the preliminary objection contended that the two grounds of appeal are in line with section 72 of the Civil Procedure Act. He submitted that the 2"d appeal lies on permitted questions of law or facts whose

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mandate is to ascertain whether the Lt appellate court exercised the duty of evaluating the entire evidence on record.

On the 2'd preliminary objection, the respondent averred that it contains the question of land ownership which is purely matters of law not question of fact as s per the submission of the respondent. It was his contention that the learned trial judge did not properly address the issue of whether the appellant's father ever gave land to the school hence reaching a wrong decision but forms part of law or

mixed law and facts.

Consideration of Preliminary Objections

to A preliminary objection to the competence of an appeal should be heard and determined first because it is after that it can be known whether or not the appeal should be heard on its merits.

Rule 86(1) of the „Judicature Court of Appeal Rules provides for the content of the Memorandum of Appeal and states that;

- (1) A memorandum of appeal shall set forth concisely and under distinct heads, without argument or narrative, the grounds of objection to the decision appealed against, specifying the points which are alleged to have been wrongly decided, and the nature of the order which it is proposed to ask the court to make. 15
- 20 The respondent faults the appellant for violation of this rule in the formulation of grounds 1 & 3 of the memorandum of appeal;
- 1. That the learned judge failed to properly exercise his duty as the first appellate court to properly evaluate the evidence on record in the lower court hence reaching a wrong decision.
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- 2. -.
- 3. That the decision of the learned judge occasioned a miscarriage of justice.

It was the respondent's submission that the two grounds are too general and thus contravene rule 86(1) of the Judicature (Court of Appeal) Rules. <d.

A ground of appeal is the error of law or fact alleged by an appellant as the defect in the judgment appealed against and relied upon to set it aside. The grounds of appeal are thus the reasons why the decision on appeal is considered by the aggrieved to be wrong. Their purpose is to isolate and accentuate for attack the 5 basis of the reasoning of the decision challenged. A ground of appeal must be

fixed and circumscribed within a particular issue in controversy.

In any suit, there must be issues in controversy between the parties which call for determination. An appeal against a decision resolving the issues one way must necessarily deal with issues in controversy. A ground of appeal should therefore

to be based on an issue in controversy and arise from the judgment on appeal; it should constitute a challenge to the ratio of the decision.

Therefore, the ground of appeal should be concise and deal with the real complaint the ground is supposed to highlight. No ground which is vague or general in terms or which discloses no reasonable ground of appeal is permitted.

15 The appellant ground of appeal in 1 and 3 are vague and in general terms and do not conform with the requirement under rule 86(1) of the Court of Appeal rules.

The purpose of this rule is to give the respondent notice of the case to be met and to narrow the issue on the appeal, and the appellant must confine their arguments at the hearing to what the respondent could be fairly expected to

- 20 prepare for under the grounds. The general or omnibus ground of appeal is one that complains that the judgment is against the weight of evidence. It is an attack on the findings of facts and involves questions of examination of facts. By it, the appellate court is invited to examine and determine on what grounds of facts, apart from misdirection, the judgment appealed against can be supported.
- 2s This implies that the appellant must set out those parts of the evidence adduced by the successful party which the trial judge either wrongly accepted or that the inference drawn or conclusion reached by the trial court based on the accepted evidence cannot be justified. The general ground of appeal should set out the different parts of the evidence under attack in order to avail the respondent an
- 30 opportunity to prepare in response. The ground must specify in what way and in what specific aspect the decision being appealed against did the court that made the decision go wrong. -e"r,

In the case of **Ranchobhai Shivabhai Patel Ltd & Another v Henry Wambuga & Another SCCA No 06 of 2017** where the court considered the import of Rule 82(1) of the Supreme Court rules which is similarly worded as Rule 86 of the rules of this court. The impugned ground of appeal had been worded as follows;

"The learned justices of the Court of Appeal erred in law and in fact when they $\mathcal{S}$ failed to evaluate the evidence on record and thereby arrived at a wrong conclusion."

Mugamba, JSC who wrote the lead judgment held that;

"This ground is too general and does not specify in what way and in which 10 specific areas the learned justices of Appeal failed to evaluate the evidence. It does not set out the particular wrong decision arrived at by the learned Justices of Appeal"

Where objection is to be taken to particular findings of fact, it is however, desirable to specify them in the grounds of appeal, conveniently under the 15 general ground.

The appellant faults the High Court Judge for failing to evaluate the evidence on record without specifying the subject matter of the case to which evidence related. The ground does not set out how the honorable appellate Judge failed to evaluate such evidence. No instances of evidence, which the learned appellate

Judge is alleged to have wrongly evaluated are stated at all in this ground. The 20 ground contravenes the rules of this court and is wrong in law. See **Celtel Uganda* Ltd t/a ZAIN Uganda v Karungi Susan CACA No. 0073 of 2013* decided on (20th July 2021)

The 3rd ground of appeal; That the decision of the learned judge occasioned a **miscarriage of justice**; is equally questionable for being general but I also find that it is quite vague. Vagueness of a ground of appeal may arise where it is couched in a manner which does not provide an explicit standard for being understood, or when what is stated is so uncertain that it is not susceptible of being understood. It may also be considered vague when the complaint is not defined in relation to

30 the subject matter or it is not particularized, or the particulars are clearly irrelevant. \$

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Grounds of appeal are competent when they have not breached the rules of court and have stated what the problems between the contending parties are; and have not left any one in doubt of what substance of the complaint is and what is expected of them in rebuttal. See *Unity Bank Plc v Declag Limited* (2012) 18 NWLR p.293(SC); *Addax Pet. Dev. Co. (Nig)Ltd v Duke* (2010) 8 NWLR (pt 1196) 278

The very essence of grounds of appeal is to give reasonable and adequate notice of what the grouse, attack or complaints are against the decision appealed from. Therefore, a ground of appeal must be located in the judgment under 10 consideration and must form a strong and valid complaint against it, for the appellate court to assume jurisdiction to consider any issue therefrom.

The general grounds like ground 1 and 3 of this appeal are unarguable and incompetent as the appellant never appealed against the specific wrongs in law or findings of fact of the court below, or the inferences it ought to draw or failed to

15 draw from the conclusions arrived at by the trial court. The two grounds of Appeal are struck off.

The 2nd ground of appeal is being challenged for being a question of fact which cannot be challenged in a second appeal.

That the learned judge did not properly address the issue of whether the appellant's father ever gave land to school which sold the same to the respondent 20 *hereof hence reaching a wrong decision.*

Section 72 of the Civil Procedure Act provides that; -

"Second Appeal"

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- (1) Except where otherwise expressly provided in this Act or by any other law for the time being in force, an appeal shall lie to the court of Appeal from every decree passed in appeal by the High Court, on any of the following grounds, namely that:-
- (a) The decision is contrary to law or to some usage having the force of law;
- (b) The decision has failed to determine some material issue of law or usage having a force of law;
- (c) A substantial error or defect in the procedure provided by this Act or by any other law for the time being in force, has occurred which may possibly have produced error or defect in the decision of the case upon the merits."
- .5 Section 74 provides as follows:

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"74. Second Appeal on no other grounds.

Subject to section 73, no appeal to the Court of Appeal shall lie except on the grounds mentioned in section 72"

There are two findings of fact that may arise in the trial. A finding of fact may be based on the credibility of witnesses or may be an inference from other facts proved before the trial court. The learned appellate judge overturned the decision of the trial magistrate by re-evaluating evidence on record and made his own findings and conclusions or inferences.

"The High court held that the trial court failed in its duty to evaluate the evidence on the record and thus reached a wrong decision. It was the decision of the court that had the trial magistrate analyzed the evidence of both parties, he would have come to a conclusion that the respondent's evidence was more credible than that of the appellant on a balance of probabilities.

The High court further held that the appellant's witnesses all simply stated that they knew that the disputed land belonged to the late Yakobo Otori but they did not know if the said land was ever sold to the appellant. They said they only saw the respondent construct on the disputed land in 2003."

The position is therefore that an appellate court will generally differ from the trial magistrate on a finding of fact based on credibility of witnesses but may disregard a finding of fact based on an inference from evidence accepted by the trial magistrate, the appellate court being in as good position as a court of trial to do this. Therefore, there was good reason for the appellate court to disagree with the trial magistrate's views of facts especially where they are founded on credibility of witnesses.

The appellant's appeal was determined by the appellate court on facts or reevaluation of evidence. The appeal against the said could not be rooted in any law as the appellant contends. The difference between a ground of law and a ground of mixed law and facts can be very narrow. Labelling a ground of appeal an error of law, or a misdirection may not necessarily make it so. The appellation is irrelevant in determining whether the ground of appeal is of law or mixed law and fact. The court should examine the grounds and their particulars and identify the substance of the complaint.

A question of law is understood to mean a question the court is bound to answer in accordance with a rule of law. It is a question predetermined and authoritatively answered by the law. In addition, when the question is as to what the law is. In this sense an appeal on a question of law means an appeal in which the question for argument and determination is what the true rules of law is on a certain matter. In the case of *Lubanga Lamada v Dr Ddumba Edward* (2016) 15 UGCA 11 this court stated:

"An appeal on a point of law arises when the Court, whose decision is being appealed against made a finding on the case before it, but got the relevant law wrong or applied it wrongly in arriving at that finding, [or if] the court reached a conclusion on the facts which is outside the range that the said Court would have arrived at, had that court directed itself as to the applicable law.

The error must be as a result of misapplication or misapprehension of the law. A manifest disregard of the law is an error of law. A question of law is about what the correct legal test is, as contrasted with a question of fact, which is concerned with what actually took place between the parties to the dispute. When the issue is whether the facts satisfy the legal test, then a question of mixed law and fact arises.

Where, on a second appeal in a civil cause, the grounds of appeal are not of law but are of findings of fact or mixed law and fact, such grounds are wrong in law and are either abandoned by the appellant or are struck out by Court". See *Celtel Uganda Ltd t/a ZAIN Uganda v Karungi Susan* CACA No. 0073 of 2013 decided on (2nd July 2021).

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A ground of appeal can only be of facts or mixed law and fact if it is based on a decision of the lower court derived from facts. A ground of appeal can be regarded as a ground of law where the adjudicating tribunal or court, in reaching a decision, took into account some wrong criteria, where the issue raised in the ground is based on legal interpretations of a deed, document,

terms, words and $\frac{S}{3}$ phrases and the inferences drawn from them, and where the complaint is about misunderstanding the law or misapplication of the law adjudicating tribunal or court.

The appellant's ground of appeal is clearly rooted in facts; whether the 10 appellant's father ever gave land to school which sold the same to the respondent.

The said question is one of fact which is not to be determined by a rule of law and does not involve any question of law. Such ground should not be presented on second appeal and certainly cannot be considered by this court.

Ground two of the memorandum of appeal is accordingly struck off.

15 The whole appeal is rendered incompetent and the same is struck out with costs to the respondent.

Dated at Kampala this $\frac{23}{3}$ day of

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20 MUSA SSEKAANA JUSTICE OF APPEAL

**THE REPUBLIC OF UGANDA IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
(Coram: Mugenyi, Ssekaana, Alibateese, JJA) CIVIL APPEAL NO.140 OF 2013
(ARISING FROM HIGH COURT MBALE HCT-04-CA-0030 OF 2007) (ALL ARISING
FROM TORORO CIVIL SUIT NO: 0030 OF 2005)**

OKITELA JOSEPH:.....

VERSUS

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OPOLI PATRICK:.....

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JUDGMENT OF STELLA ALIBATEESE, JA.

I have had the benefit of reading the draft Judgment of my learned brother, Hon. Justice Musa Ssekaana, JA. I concur with the judgement and the orders proposed.

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Dated and delivered at Kampala this \$23\$ day of \$J \cup L\$

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Stella Alibateare

JUSTICE OF APPEAL

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THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

(Coram: Dr. Asa Mugenyi, Musa Ssekaana, Stella Alibateese, JJA)

CIVIL APPEAL NO.140 OF 2013

(Arising from High Court Mbale HCT-04-CA-0030 of 2007) (All arising from Tororo Civil Suit No: 0030 of 2005)

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OKITELA JOSEPH:..... VERSUS

OPOLI PATRICK:.....

JUDGMENT OF DR. ASA MUGENYI, JA

I had the benefit of reading the draft judgment by my learned colleague Hon. Musa Ssekana, JA. I agree with the reasoning and orders proposed.

Dated and delivered at Kampala this . 23... day of .. JULY..... 2025.

DR. ASA MUGENYI 25 JUSTICE OF COURT OF APPEAL

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