

UGANDA / JUDGMENT

Sentambule v Musoke (Civil
Application 481 of 2024) [2025]
UGCA 83 (24 March 2025)

[2025] UGCA 83

COURT

Court of Appeal of Uganda

BEFORE

Buteera, DCJ, Luswata, JA, Kazibwe, JA

CASE / FILE NUMBER

Civil Application 481 of 2024

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⁵ THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

(Coram: Richard Buteera, DCJ; Eva K. Luswata & Moses Kazibwe
Kawumi, JJA)

CIVIL APPLICATION NO. 0481 OF 2024

¹⁰ (Arising from Civil Appeal No. L22 of 2015)

(Arising from High Court Civil Application No. 118 of 20LL, & all
Arising from Civil Suit No. 204 of 2009, Chief Magistrate's Court
of Nakawa at Nakawa)

PAUL SENTAMBULE

¹⁵ VERSUS

JANE MUSOKE :..... RESPONDENT

RULING OF COURT

Introduction and brief background

²⁰ 1] The Applicant through Mls Kabega Bogezi & Co. Advocates and Sebanja & Co. Advocates, presented this application by Notice of Motion under Rules 2(2), 30(1), (2) & (3) and 43 of the Court of Appeal Rules, Section 33 of the Judicature Act Cap 16, Sections 98 and 100 of the Civil Procedure Act Cap 282, seeking for orders that the Applicant be granted leave to adduce additional evidence ²⁵

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- ⁵ in Civil Appeal No. 122 of 2015. He, in addition, sought for costs of the application.
- 2] The grounds of the application as set out in the motion briefly are that:-
 - a) The Applicant was sued by the Respondent in the Chief Magistrate's Court of Nakawa at Nakawa vide Civil Suit No. 204 of 2009 (hereinafter CM Suit) in an action for trespass on land comprised in Kyadondo Block 185 Plot 531 at Butenga (currently Kira Municipal Council), Wakiso District, (hereinafter the suit land). The matter was decided in favour of the Respondent with the Applicant being declared a trespasser on the suit land.
 - b) During the hearing of the CM suit, the Chief Magistrate made a locus visit in which important evidence was collected, i.e:
 - ¹ The size (area) of the suit land was confirmed to be 3.5 acres.
 - ii. Evidence relating to the length of time the Applicant had been on the suit land.
 - iii. The size (area) in the possession of the Applicant and its ownership.
 - iv. Identities of the Applicant's predecessors and those who had sold him his interest were confirmed.
 - v. The occupants of the remaining parcels on the suit land who included predecessors of the late Yosea ⁵ Kayizzi who sold to the Applicant the portion that he occupies.
 - c) The trial Magistrate omitted to consider the above evidence both when evaluating evidence and in his judgment, which omission substantially affected the outcome of the trial and to the Applicant's detriment.

- d) The Applicant raised this issue on appeal in the High Court vide HCCA No. 118 of 2011. The High Court did not address his concerns and the appeal was dismissed on grounds that there was no lower Court record in respect of the locus visit and evidence collected therefrom. Therefore, the High Court as the first appellate Court neglected to investigate that material issue, or order a re-trial, thereby occasioning a miscarriage of Justice.
- e) After filing the appeal in the Court of Appeal, the Applicant secured a stay of execution vide M. A. No. 193 of 2015. Subsequently, the Respondent filed HCMA No. 1052 of 2018, which was resolved in her favour by the court making a finding that the Applicant was in contempt of a court order. The Applicant argued however that the allegations of contempt levied against him were in fact in relation to activities carried out by other occupants on the suit land. One of those occupants filed an application for review vide HC M. A No. 257A of 2023 (Ssali Moses Vs Paul Sentambule & Jane Musoke) (hereinafter the Objector suit),

⁵ and during its trial, the trial Judge made a locus visit on the sune suit land in which the following were established:

- i. Ssali Moses and the Applicant Paul Sentambule occupy different parts of the suit land and their portions have a clear boundary between them.
- ¹¹ The grave yards of the Late Yosea Kayizzi and other people existed on the land. Those deceased persons had previously sold part of their portions to the Applicant.
- ¹¹¹ The High Court decided that execution of the Order in HCMA No. 1052 of 2018 should proceed against the Applicant since it would not affect Moses Ssali's interests even if Ssali and the Applicant are in occupation of the suit land.
- 0 By omitting to include the proceedings of the locus visit, the impression made by the decision of the Magistrate and High Court Judge is that the Applicant occupies the entire suit land which measures approximately 3.5 acres, whereas not.
- g) The Applicant is interested in adducing evidence of the locus visit proceedings in the Objector Suit and some proceedings in relation to High Court Civil Suit No. 18 of 2019, Ssali Moses v Jane Musoke & Others the ruling therein which shows evidence of;
- ⁵ ¹ The existence of the graveyard of Yosia Kayizzi and others being family members who sold their interests to the Applicant, which meant, as is the fact, that the Applicant, Paul Sentambule, is not in occupation of the entire Plot 531 as a sole occupant.
- ¹¹ The existence of Civil Suit No. 1B of 2019 and a counter claim by the Respondent, Jane Musoke, against others including the late Yosea Kayizzi's family who sold to Paul Sentambule, the Applicant.

- h) The additional evidence was not available to the Applicant at the time of the trial before the Chief Magistrate and the subsequent appeal in the High Court. That evidence is credible and material to the determination of Civil Appeal No. 122 of 2015 and will assist court in arriving at a just decision.
- i) The Respondent is not likely to suffer any injustice and/or prejudice if the application is granted, this evidence being that which shall give clarity of the Applicant's claim of right over the suit land. The Respondent shall have ^a corresponding right to respond to the evidence intended to be adduced.
- j) That the present case is one of the exceptional circumstances where the Applicant ought to be allowed to adduce additional evidence on a second appeal.

31 The Applicant swore an affidavit in support of the motion in which he gave a background of the case and re-stated much of what was outlined in the grounds in the motion. We shall not repeat them, but suffice to state, he deposed that to date, he is in occupation of the suit land as a tenant by occupancy having obtained his interest in 1992 from Fred Muwanga, the previous owner, and successor in title of the Late Yosea Kayizzi who is buried on the suit land.

Representation

- 15 20 25 4) At the hearing of the Application on 18th December 2024, the Applicant was represented by Mr. Mutesasira Josephat holding the brief of Mr. Musa Kabega, while the Respondent was represented by Allan Bariyo. Mr. Bariyo raised an issue that he had received service of the Appellant's submissions late. We accordingly allowed him to file the Respondent's affidavit in reply and submissions by 13th January 2025, and a rejoinder if any to follow by 13th January 2025. We have confirmed that Mr. Bariyo filed no evidence or submissions in the time given. That being the case, we take it that this application is uncontested. We shall therefore make a decision on what is on file to date.
- 5] There is only one issue in contention i.e; Whether the Applicant should be allowed to introduce new evidence in the appeal

Applicant's submissions

61 As an introduction, Applicant's counsel provided a detailed background of the application, which traversed actions in different

- ⁵ Courts but touching the same suit land. He re-stated the principle set down in Rule 32.21 of the Rules of this Court and the case of Henry Kifamunte v Uganda, SCCA No. of L997 where it was held that this court, on a second appeal, is precluded from questioning findings of fact made by the trial Court. He argued, however, that in exceptional cases like this one, where there was a mis-trial, new evidence should be allowed in order to meet the ends of justice. Counsel conceded that under Rule 32.21 of the Rules of the Court, this Court is barred from hearing additional evidence. That notwithstanding, Rule 2(21) of the Rules of

this Court gives the Court wide powers to admit additional evidence in exceptional circumstances where it is shown that it elucidates the evidence already on record in order to meet the ends of justice. Counsel cited the cases of Commissioner Land Registration & Anor v Emmanuel Lukwaiiu, SC Civil Application No. L2 of 2016 and Hon. Anifa Bangirana Kawooya v National Council for Higher Education, SC Miscellaneous Application No.8 of 2013 in that regard. 10 15 20

- 7] Counsel then cited the Supreme Court decision of Attorney General v Paul Kawanga Semwogerere & Another, Constitutional Application No. 02 of 2004, where guidance was given of factors an appellate court may consider before exercising discretion to admit additional evidence. Counsel proceeded to submit on each factor as outlined in that authority.
- B] Mr. Mutesasira submitted that the proposed new evidence is attached to the Applicant's affidavit as annexes "L", "M", "N", "O"
- ⁵ and "P". He considered the proposed new evidence as being very important and pertinent to the appeal yet it was not available to the Applicant or not reasonably within his knowledge at the time the C. M. suit was heard. In particular, that the trial Magistrate omitted to record the proceedings at locus in quo. To compensate for that omission, the Applicant proposed to adduce the Record of proceedings in the Objector Suit and the Ruling of Justice Bernard Namanya which pointed to the fact that the family of the late Yosea Kayizzi (from whom the Applicant obtained his interest), occupy part of the suit land up to date. That decision was handed down long after the C. M. Suit and the first appeal in the High Court were decided. 10
- 9] Counsel also referred to another piece of evidence adduced in HCCS No. 18 of 2019 and submitted that the Applicant came to know of that evidence when Ssali Moses filed an application for review during which the trial Judge made a locus visit on the suit land and observed that the land/kibanja of Ssali Moses is different from Sentambule's land/kibanja. He concluded by stating that by exercise of due diligence, the intended additional evidence in the instant application was not available at the relevant time, and the Applicant could not have adduced it at the trial.
- 10] Counsel, in addition, referred to a counter claim filed by Jane Musoke in HCCS No. 18 of 2019. He argued that going by those pleadings, the initial intention of the Respondent when filing the C. M. Suit was to deliberately conceal from the trial Court the fact that the suit land had several occupants other than the Applicant.
- ⁵ In counsel's view, should this court ignore that evidence, there is the likelihood that a different court may arrive at a different decision in HCCS No. 18 of 2019, which also touches issues relating to the same suit land. He argued further that should the High Court uphold the interests of the late Yosea Kayizzi on the suit land, the Applicant will be highly prejudiced. 10

- 111 For clarity, counsel submitted that the pronouncement that the Applicant herein is a trespasser on the suit land stands to conflict with the pending decision in HCCS No. 18 of 2019 in which the Respondent had counterclaimed for a declaration that the children of Yosea Kayizzi (from whom the Applicant obtained his interest) are trespassers on the suit land.
- 12) Thirdly, counsel submitted that the evidence sought to be adduced is relevant to the appeal. In particular, it will show that the Applicant is not in sole occupation of the suit land, but others like Moses Ssali, and the descendants of the late Yosea Kayizzi, (and his burial grounds) are also in residence there. Counsel emphasized that there was a mistrial of the suit as court omitted to record and consider proceedings at the locus in quo, which is a strong point to support their bid for a retrial.
- 131 Fourthly, counsel submitted that the proposed evidence is capable of belief. In particular, the ruling and record of the Objector Suit are court documents, certified under the hand of the Registrar of the High Court of Uganda (Land Division). Further, the Plaint in HCCS No. 18 of 2019 was received and registered at the High Court of Uganda, Land Division and the Respondent's Written 25
- ⁵ Statement of Defence and Counter Claim were also formerly lodged in the Registry and are now available on ECCMIS. In his view, the court documents mentioned were the most credible source on matters detailing the status of the suit land.
- 14] Fifthly, Mutesasira submitted that the evidence sought to be adduced was capable of influencing the results of the case as it proved that both the trial Court and the first appellate Court without visual observations, did not have an opportunity to make proper findings of law and fact relating to the status of the suit land. For guidance, counsel referred to Yowasi Kabiguruka vs Samuel Byamfu, CACA No. 18 of 2008. Counsel submitted further that the trial Magistrate and the 1st appellate Judge fell short of the requirement of the law as regards to the recording of evidence at the locus, and it is for that reason that the Applicant will in the appeal seek for a retrial of the case. 10 15
- 15] Lastly, counsel submitted that the evidence adduced to support the application indicated that the proceedings at the locus visit were recorded during March 2024. On the other hand, the Plaint in HCCS No. 18 of 2019 is dated January 2019 and the counter claim was dated 14th September, 2020. This application was filed expeditiously in August 2024, and as such, this court should judiciously consider allowing the prayers sought in the application. 20 25

Analysis and decision of Court

161 We have carefully considered the grounds of the motion and evidence presented in this motion. We have, in addition,

⁵ considered authorities provided by counsel and those sourced by the Court. In this matter, the Applicant seeks to adduce three pieces of evidence into the appeal, namely: -

- a) The locus visit proceedings in High Court Miscellaneous Application No. 257A of 2023, Ssali Moses vs Paul ¹⁰ Ssentambule & Jane Musoke.
- b) Ruling of the Court in High Application No. 257A of 2023, Ssentambule & Jane Musoke. Court Miscellaneous Ssali Moses vs Paul
- c) The plaint, a counterclaim, proceedings and a ruling in High Court Civil Suit No. 18 of 2019, Moses Ali v Nabulime Jane Kayizzi and 4 Others.

171 He relied substantially on Rule 30(1X21 & (3) of the Rules of this Court, which permits this court to take and consider additional evidence. There is ample authority mentioning factors that should be taken into account before allowing such evidence. However, this is a second appeal from the decision of the High Court sitting in appeal. The correct provision to consider would be Rule 32(21) of the Rules of Court, which provides as follows:

"On any second appeal from the decision of the High Court acting in exercise of its appellate jurisdiction, the Court shall have power to appraise the inferences of fact drawn by the trial Court, but shall not have discretion to ³⁰ admit evidence."

- ⁵ 181 Counsel who is alive to the above provision argued that this Court could still invoke her inherent powers under Rule 121 of the Rules of Court to admit additional evidence where it was shown that exceptional circumstances are in place. He relied largely on the Supreme Court decisions of Commissioner Land Registration & Anor v Emmanuel Lukwajju, (Supra) and Hon. Anifa Bangirana Kawooya v National Council for Higher Education (Supra) in that regard. 10
- 191 We appreciate the decision of the Supreme Court in the two cited cases. However, we emphasize that the Court was in both cases interpreting the Rules of the Supreme Court and not the Court of Appeal. In both cases, the Supreme Court found that where exceptional circumstances present, the Court may exercise its discretion under Rule 2(21) to allow additional evidence. With respect, the position in this court is different.

201 According to Rule 30(1) (b) of the Rules of this Court, the Court may in its discretion when sufficient reasons are presented, take additional evidence on appeal. It is envisioned that allowances for that are made when the Court sits in a first appeal. It must have been for emphasis that Rule 32.21 of the Rules of this Court was enacted to prohibit the introduction of new evidence when the appeal emanates from the High Court not in her original, but appellate jurisdiction. A similar provision was not inserted in the Supreme Court Rules and we are of the view that Rule 2(2) which makes provision for inherent powers of the Court may not be invoked to usurp that clear provision. 20 25 30

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\$21\$ To illustrate the point, in *Byahugwaho Zebrone & Another v \$\\mathsf{S}\$ Nakabonye Eseza*, CA Miscellaneous Application No. 224 of 2017 2019 UGCA 16 (25th March 2019) this Court relying on the above law, rejected a similar application where the Applicant sought to introduce certain evidence into a second appeal. The Court held as follows:-10

> "We are persuaded by counsel for the Respondent's argument with regard to application of Rule 32(2) of the *Judicature (Court of Appeals Rule) Directions*.*

The rule clearly prohibits this court from taking *additional evidence while** it is hearing appeals *emanating from the High Court in exercise of its** appellate jurisdiction. The above rule clearly prohibits this court from taking additional evidence on a second appeal from the High Court acting in its appellate jurisdiction. It envisages the idea that there must be an end to litigation. We agree with counsel for the Respondent that this application seeking leave of this court to adduce additional evidence is incompetent in view of the clear provision in \$R.32\$ (2) of the Rules of this *court* and we accordingly dismiss it with costs.*"

We take a similar view. This Court in not clothed with jurisdiction to take additional evidence.

221] The application is accordingly rejected and dismissed. Since the matter was uncontested, we make no order with regard to costs.

>vl rk ⁵ Dated at Kampala this day of. 2025

¹⁰ RICHARD BUTEERA DEPUTY CHIEF JUSTICE

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