

UGANDA / JUDGMENT

Zimaririze v Bagiranise & 2 Others (Civil Appeal 44 of 2019) [2024] UGHC 330 (19 January 2024) [2024] UGHC 330

COURT

High Court of Uganda

BEFORE

Tom Chemutai, J

CASE / FILE NUMBER

Civil Appeal 44 of 2019

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT RUKUNGIRI

CIVIL APPEAL NO. 044 OF 2019

(ARISING FROM CIVIL SUIT NO.122 OF 2013 OF CHIEF MAGISTRATE'S COURT OF
KANUNGU AT KIHIMI)

BETWEEN ZIMARIRIZE JOHN ::::::::::::::::::::::::::::::

VERSUS

1. BAGIRANISE MILTON

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2. MAHANGARE MERAB

3. TIBAZIGIRIZA MAGRENA::::::::::::::::::::::::::::

[Appeal from the judgment of Magistrate Grade One of Kihimi (His Worship Andrew Katurubuki)
dated 30th October, 2019]

BEFORE: HON. JUSTICE TOM CHEMUTAI**JUDGMENT**

The Appellant filed Civil Suit No. 122 of 2013, against the Respondents seeking for recovery and a declaration that the suit land at Kebiremu Cell belongs to the Plaintiff, a permanent injunction against the Respondent, their agents or servants from further interfering with the suit land, general damages and costs of the suit.

The plaintiff contends that he and his sisters acquired the suit land through their late mother who was also given the same by her late father Paul Bifabusha who died in 1995.

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The Appellant contended that the suit land was given to his mother Bahumura upon him disturbing his properties to his four wives. That he and his sisters acquired the suit land through their mother who passed on. The Respondent refuted the Appellant's contention and they alleged that the suit land belonged to the estate/ family of the late Bifabusha.

The learned trial Magistrate heard the matter and determined it in favor of the Respondents, to the effect that the suit land belonged to the estate of the late Paul Bifabusha and that all the beneficiaries of the estate of the late Bifabusha were entitled to a share.

The appellants being dissatisfied with the judgment of the trial Court, appealed to this Court in Civil Appeal No.44 of 2019.

The Appellant's Memorandum of Appeal has four grounds of appeal which appear as follows:

- 1. That the learned Trial Magistrate Grade One erred in law when he failed to evaluate evidence on record in holding that the evidence of the Defendants was more coherent than that of the Plaintiff.
- 2. That the learned Trial Magistrate Grade One erred both in law and fact when he held that the land which was given to the Plaintiff is the one the Plaintiff sold out.
- 3. That the learned Trial Magistrate Grade One erred both in law and fact when he held that the suit land was Paul Bifabusha's share forming part of his estate which was left undistributed.
- 4. The learned Trial Magistrate Grade One erred both in law and fact when he held that the suit land was not given to the Plaintiff's mother and should be shared by all parties according to the Succession Act Cap. 162.

Representation.

The Appellant was represented by counsel Bwagi Jonathan from M/s Bwagi & Co. Advocates and the Respondent was represented by M/s Muhangi Justus & Partners Advocates.

Both counsel filed their written submissions and authorities thereto.

Appellant's submissions

Counsel for the Appellant submitted that at the lower Court, the Appellant (PWI) in his testimony at page 15 of the Proceedings testified that his Late father a one Paul Bafabusha had five wives. That before his death, he had distributed his land to his wives. That during the said distribution, the land in question was orally given to Bahumura (The plaintiff's biological mother). He added that the same evidence was confirmed by PW2, Jonavisi Mukaruga, and Edivina Bakuzakundi (PW3).

Counsel averred that the Plaintiff and his witnesses proved that the suit land was given to his mother as her share in her husband's estate. That all the other wives had also been given their shares and as such their children would benefit from their respective mothers' share.

Counsel contended that the Appellant's mother had a homestead and land around and that it was the other land around suit land that the Plaintiff sold to Rwakaremera.

Counsel contended that the Plaintiff and his witnesses testified that there was no land belonging to late father Paul Bifabusha that remained undistributed.

Counsel submitted that the suit land was the share given to the Plaintiff's mother by her husband. That there was no land to be shared by all the parties and thus since there was no land left unshared, there was no need for Letters of Administration for the estate of the late Bifabusha.

Submissions for the Respondent.

Counsel for the Respondent contended that the trial court evaluated the evidence on record and came to a rightful decision. He contended that it was illegal for the Appellant to claim to own the suit land yet it was share of his mother which he and his other siblings were beneficiaries. He contended that the suit was fatally defective for lack of representative order.

Counsel contended that the suit was time barred because the Appellant claimed the suit land belonged to his father who passed on in 1995 and that the Plaintiff filed the suit in 2013. He cited sections 5 and 20 of the Limitation Act.

Counsel contended that the Appellant testified that the suit land was a share given to his mother by his father when he was distributed his properties and he noted that the Appellant did not recall when the distribution of the properties was done. That he did not have any document to prove

distribution and that the appellant did not recall the date or month when the suit land was given out.

Counsel contended that there was a major contradiction on the issue of possession, that the Appellant gave contradictory statements on possession as being in 1983 and 1991.

Counsel contended that DW1 gave evidence that his late father distributed part of his estate before he met his death, however, he left the suit land undistributed. He added that this was supported by evidence of DW2, DW3, DW4, DW5.

Counsel contended that the trial Court rightly held that the land the appellant sold was actually his mother's share.

Consideration of the court.

The duty of the first appellate court has been defined in several cases. In the case of Administrator General vs Bwanika James and Others, Supreme Court Civil Appeal No.7 of 2003, Justice Oder, JSC, held:

"It is a well-settled legal principle, embodied in Rule 29 (1) of the Court of Appeal Rules, that on a first appeal, the parties are entitled to obtain from the appeal court its own decision on issues of fact as well as of law. Although in a case of conflicting evidence the appeal court has to make due allowance for the fact that it has neither seen nor heard the witnesses, it must weigh the conflicting evidence and draw its own inferences and conclusions: See Coghland Vs. Cumberland (1898) 1 ch. 704 (Court of Appeal of England): and Pandya V R. (1957) E. A 336)"

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Reference can be made also to Fr. Narsensio Begumisa and Others v Eric Tibebaga Supreme Court Civil Appeal No.17 of 2002 and Goustar Enterprises Ltd Vs Oumo [2006] EA 77.

I note that the parties are relatives, children, and wives of the late Paul Bifabusha. The suit land originally belonged to the said late Bifabusha, which the Appellant claims, that was given to his late mother upon distribution of his properties by said late Bifabusha. The Respondent denied the allocation of the suit land to Plaintiff's mother and claimed that what was allocated to the Plaintiff's mother was sold by the Plaintiff to one Rwakaremera.

The trial Court after evaluation of evidence found that the land which was given to the Appellant's Mother was the land which the Appellant sold to Rwakaremera. The Court also correctly in my view, held that the suit land was part of the estate of the late Paul Bifabusha, which was not distributed at the time of his death.

I therefore find no merits in the appeal, it is hereby dismissed with costs to the Respondents.

Dated at Rukungiri this 19th day of April ...2024.

TOM CHEMUTAI JUDGE

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