

REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT TORORO
HCT-19-LD-CA-129 OF 2019

BABWIRE BARNABAS:.....APPELLANT
VERSUS
WANDERA PAUL:.....RESPONDENTS

JUDGMENT

BEFORE: HON. DR. JUSTICE HENRY I KAWESA

This Appeal arises from Civil Suit No. 002/2016 of the Busia Chief Magistrate’s Court where Her Worship Agwero Catherine found the suit in favour of the Plaintiff. The Defendant being dissatisfied filed this appeal.

The appeal raises two grounds of appeal as follows: -

Ground 1

That the learned Trial Magistrate erred in Law and fact when she failed to evaluate the evidence of the Plaintiff and his witnesses *visa vie (sic)*, the evidence of the Defendant and his witnesses and the facts laid down in the minutes of the family meeting held on 29th July 2007 thereby occasioning a miscarriage of justice.

Ground 2:

The learned Trial Magistrate erred in Law and fact when she misdirected herself and held that the suit land was given to the Respondent as a gift *intervivos* by the Respondent's late father, ignoring the claim of fraud raised by the Defendant thereby occasioning a miscarriage of justice.

Preliminary Objection.

The Respondent raised a preliminary objection on two fronts. Firstly, that the memorandum of appeal was served out of time thereby violating Section 2 of the Civil Procedure Act, Order 49 Rule 2 of the Civil Procedure Rules and O.5 Rule (2) requiring service within 21 days.

This objection was however explained away by the Appellant in rejoinder, whereby it was shown that the memorandum of appeal was endorsed on 1st October 2019 and served on 22nd October 2019. I have checked the record and found that on the 12th July 2022, the matter was handled as per the rejoinder. This ground of objection is moot and is rejected.

The 2nd limb of objection regards the fact that the memorandum of appeal offends Order 43 Rule (1) and (2) of Civil Procedure Rules for being verbose and argumentative.

The Respondents caused argues that there is no concise decision of the learned trial Magistrate being appealed from and the Appellant has not set out the particular decision being appealed.

The Appellant's Counsel in rejoinder stated that the grounds do not offend the law quoted. I do agree.

The grounds as they are concluded in an orthodox writing style which borders on being "windy", but not necessarily argumentative or narrative.

The grounds show the grounds of dissatisfaction on which Court's decision is sought. This objection also fails.

Turning to the merit of the appeal, it is the duty of this Court sitting as an appellate Court of first instance to reevaluate the evidence and reach its own conclusions aware that it did not watch or interact with the witnesses. See *Henry Kifamunte versus Uganda Cr. App No. 10/97*

Resolution

Ground 1

Regarding the evaluation of evidence, I have reevaluated the evidence on record and do find that, the evidence is straight forward on this issue.

The evidence before Court as led by the Plaintiff was as follows:

PWI; Wandera Paul. Said the land in dispute is about 1½ and it was given to him in 2001 on 8th September by his late father Nakanda Livingston. This was in the presence of the Defendant (Wabwire Banabas), his wife; Teddy Wandera and Joyce Nakanda; wife of their late father Livingston Nakanda.

His father made an agreement for him which he exhibited in Court as Annexure 'A'. He built mere on a house in the infective of his father. In 2016 on the 9th January the Defendant trespassed on this land and destroyed his infer fence and other crops which made him suffer damage he assessed at shs. 2,550,000/= (*two million, five hundred fifty shillings only*) and also uprooted his coffee trees valued at 14,904,00/= *fourteen million, nine hundred four thousand shillings only*).

He told Court that in 2007 the clan distributed the remaining land of the estate of his father but him and the Defendant had already benefited as they had received their shares earlier on. He further argued that the land in dispute belongs to him and he is not a trespasser.

He called evidence through PW2; Paul Mangeni Tanga, PW3 Joyce Nakanda and PW4; Muji Patrick Ngolobe who all witnessed and confirmed his evidence as above.

The Defendant's evidence was through DW1; Wabwire Dennis who averred that the suit land did not belong to the Plaintiff but was belonging to his younger brother Nakanda Francis following a distribution of the estate on 29th July 2007. His evidence is supported by D2 Daniel Barasa Nakanda DW3 Francis Nakanda.

I note that none of the defence witnesses mentioned anything about the Plaintiff's evidence in regard to being given the land by the deceased himself during an agreement in support of this fact, and the

fact that even his house on the disputed land was constructed by him during the life time of his deceased father.

I do find that the learned trial Magistrate correctly assessed the value of all evidence on record and reached a correct conclusion that the weight of evidence fitted in favour of the Plaintiff who had shown by credible evidence that the portion in dispute had been gifted to him by his late father and was no longer part of his distributable estate.

All who attempted so to do were doing so in abuse of the process of law and Learned Trial Magistrate was right to find that the Defendant was a trespasser. The assessment of damages was also based on the correct considerations as the amount was specifically pleaded and proved.

In all this appeal has no merit and fails on all grounds.

Its dismissed with costs to the Respondent.

I so order.

.....
Dr. Justice Henry I Kawesa
JUDGE
22/09/2023