

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT HOIMA
CIVIL APPEAL NO. 057 OF 2023
(Formerly, MSD Civil Appeal No.007 of 2022)

(Arising from Hoima Chief Magistrate's Court, C.S No.100 of 2012)

ISINGOMA EPHRAIM :::::::::::::::::::::::::::::::::::APPELLANTS
VERSUS
RUKANYANGA MARGRET::::::::::::::::::::::::::::::::: RESPONDENT

(Appeal from the judgment and orders of H/W Kagoda Samuel Ntende, the Chief Magistrate of Hoima in C.S No.100 of 2012 delivered on 18/11/2022)

Before: Hon. Justice Byaruhanga Jesse Rugyema

JUDGMENT

- [1] This Appeal file and the lower court file are among the files that were affected by the fire that gutted the High court registry, Hoima on the morning of 21st October 2023. The Registry staff were able to reconstruct the entire file hence the progress of this appeal to this stage of judgment writing.

Background

- [2] The Respondent filed C.S No.100 of 2012 against the Appellant for trespass, eviction order and general damages for trespass over the suit land/Kibanja situate at Kicwamba Ward, Mparo Division, Hoima Municipality, Hoima District.
- [3] It was the Respondent/plaintiff's case that the plaintiff is the only surviving daughter of the late **Hairora Jackson** who passed away in 1993 from whom she inherited the suit Kibanja and therefore, that she is the only beneficial customary owner of the Kibanja in question.

- [4] That in the year 2000, the Appellant/defendant without any claim of right whatsoever and without the consent of the Respondent/plaintiff entered upon the suit land and assumed ownership thereof by way of cultivation and harvesting of coffee thereon at the detriment of the Respondent. That the Appellant has since barred her from accessing and using the land.
- [5] In his defence, the Appellant/Defendant denied the Respondent's claims and contended that the suit Kibanja never belonged to the Respondent's late father **Hairora Jackson** so as to form part of his estate over which the Respondent would have beneficiary customary ownership thereof.
- [6] The Appellant averred that the suit land/Kibanja belonged to his late father **Baramu Isingoma** who before his death had allowed his brother, **Hairora Jackson** to use the same for building of a house since after his return from Kampala, he had nowhere to settle. The Appellant contended that upon the death of the late **Hairora Jackson** therefore, the suit land reverted and remained the property of the Appellant's late father **Baramu Isingoma** who before his demise in 1995, handed over the land to the Appellant in the presence of a one **Fransi Muntu, Yabezi Mabona** and **John Tibaganjana** (who unfortunately are all deceased). That he has since 1995, occupied and utilized the land unhindered until 2008, when the Respondent started claiming it.
- [7] The trial Magistrate on his part evaluated the entire evidence that was presented before him and examined the 2 memoranda of understanding executed by the Appellant before the Government Local authorities (wherein the Appellant acknowledged that the suit land belonged to the estate of the Respondent's late father), the late **Hairora Jackson** and found that the suit land belonged to the estate of the late **Hairora Jackson**, the plaintiff/Respondent's father.
- [8] The trial Magistrate therefore entered judgment in favour of the Respondent/plaintiff that the suit land belongs to the estate of the late **Jackson Hairora**, the Respondent's father and that the Appellant/defendant is a trespasser on the suit land. He accordingly ordered for vacant possession of the same and demolition of the Appellant's illegal structures thereon.
- [9] The Appellant was dissatisfied with the Judgment and orders of the trial Magistrate and lodged the instant appeal on the following grounds:

1. *The learned trial Chief Magistrate erred in law and fact when he failed to properly scrutinize and evaluate the evidence on record thus leading him to reach a wrong decision that prejudiced the appellants.*
2. *The learned trial Chief Magistrate erred in law and fact when he awarded to the Respondent general damages of shs.5,000,000/= which is too high when there was no evidence adduced by the Respondent to justify the award of general damages or that he prayed for it during the her testimony, leading him to reach a wrong decision that prejudiced the Appellant.*
3. *The learned trial Chief Magistrate erred in law and fact when he awarded to the Respondents mesne profits of shs. 2,000,000/= which was too high when the Respondent had not adduced any evidence to prove mesne profits or prayed for the same during her testimony, leading him to reach a wrong decision that prejudiced the Appellant.*

Counsel legal representation

- [10] The Appellant was represented by **Mr. Aaron Baryabanza of M/s Baryabanza & Co. Advocates, Hoima** while the Respondent was represented by **Mr. Asasira Benjamin of Justice Centres Uganda, Hoima**. Both counsel filed their respective submissions for consideration in the determination of this Appeal.

Duty of the 1st Appellate Court

- [11] The law governing first appeals as in the instant one is well settled. The duty of the 1st Appellate court is to review the record of evidence for itself in order to determine whether the decision of the trial court should stand. In so doing, court must bear in mind that an appellate court should not interfere with the discretion of a trial court unless it is satisfied that the trial court in exercising its discretion has misdirected itself in some matter and as a result, arrived at a wrong decision or unless it is manifest from the case as a whole that the court has been clearly wrong in the exercise of discretion and that as a result, there has been a miscarriage of justice, **Stewards of Gospel Talents Ltd Vs Nelson Onyango, HCCA No.14 of 2008** and **NIC Vs Mugenyi [1987] HCB 28**.
- [12] This court in this case therefore, is duty bound to rehear the case by reconsidering all the evidence before the trial court and come up with its own

decision.

Ground 1: The learned trial Chief Magistrate erred in law and fact when he failed to properly scrutinize and evaluate the evidence on record thus leading him to reach a wrong decision that prejudiced the appellant.

[13] Under this ground of appeal which I find rather too general thus offending the provisions of **O.43 r.1(2) CPR** which require the memorandum to set forth concisely the grounds of objection to the decree appealed from (**Migadde & Ors Vs Nakibuule & Ors, HCCA No.53/2019**), counsel for the Appellant submitted that the learned trial Magistrate failed to evaluate the evidence on record thus leading him to reach a wrong and unjust decision. Counsel attacked the trial Magistrate's reliance on the evidence of the Appellant's sister, **Tiburihwa Gladys (PW2)** whom he claimed had hatred of the Appellant and the 2 memoranda where the Appellant acknowledged the suit land to belong to the Respondent's father and committed himself to vacate (**P.Exh.1&2**), when there was evidence that he signed the documents under duress. That though the Appellant signed the 2 exhibits, he led evidence that he did so under duress, that he was coerced into signing the documents.

[14] It is my view that the mere fact that **Tiburihwa Gladys (PW2)**, sister to the Appellant admitted that she had a land dispute with the Appellant because the Appellant had denied **PW2's** children from occupying the suit land is not sufficient evidence that **PW2's** evidence was seriously discredited. At **page 9 of the typed proceedings**, during cross examination, **PW2** stated thus:

"I have no grudge with the defendant. We have no dispute between us. We have a land dispute over the land my late father left."

[15] The above results of cross examination do not discredit **PW2's** evidence that it was a one **William Kato** who gave the father of the Respondent, **Jackson Hairora** the suit Kibanja and that she knew its boundaries and that the land is separated from that of the Appellant by boundary marks of miramura trees. The results of the cross examination above do neither render **PW2** dishonest nor show that she lied to court.

[16] Besides, there is the other overwhelming evidence from **Bagonza Francis** (PW3) who has been the area L.C1 chairperson for the last 13 years and **Kahigwa Francis** (PW4), that the suit land belonged to the late father of the Respondent demarcated by Miramura trees and other trees and that during his life time, the late **Hairora Jackson** never had any dispute with the Appellant's family over the suit land. Their evidence which was not materially challenged by the Appellant supported and corroborated the evidence of the Respondent (PW1) and that of **Tiburihwa Gladys** (PW2), the sister of the Appellant. As rightly found by the trial Magistrate, the Respondent's father had been in occupation and utilization of the land before 1961 as revealed by **Byenkya Rosemary** (DW3) who at the time of her testimony in court i.e, on 3/7/2018 was 50 years old. On **page 26 of the proceedings** during cross examination DW3 stated thus:

*"I mentioned that the land (suit land) was given to my father (father of the Appellant) by **Kato William**. When my father was given land by **Kato William** I was not yet born but my father used to tell us. By the time I grew up the late **Hairora**, father to the plaintiff was staying on the suit land...."*

[17] The above evidence of **DW3** clearly show that the father of the Respondent had occupied and utilized the suit land for more than 50 years, the age of **DW3**. This is also the evidence of **Kahigwa Francis** (PW4) aged 60 years who testified that he was born and found the father of the Respondent using the land.

[18] From the foregoing, I do find that it is not true that the trial Magistrate gave special treatment to the evidence of **PW2** and ignored that of **DW4** who are both sisters to the Appellant. He weighed the evidence of both witnesses and believed that of **PW2**. I do not have any reasons whatsoever to fault him on this aspect.

[19] As regards the claim by counsel for the Appellant that the Appellant was coerced to sign the 2 memoranda of understanding (**P.Exh.1&3**) where the Appellant acknowledged that the suit land belongs to the father of the Respondent and committed himself to vacate, I find no evidence to support such a contention on the part of the Appellant that he was coerced to sign the two documents.

- [20] In his witness statement, the Appellant claimed that between 2011 and 2012, he was forced to make a document agreeing to vacate the suit land (**P.Exh.1**) after he had been arrested by the sub county chief in respect of the suit land and threatened to be imprisoned.
- [21] A perusal of **P.Exh.1** however show that it was executed before the Sub county Chief, **Mr. Tumusiime Moses**, the L.C1 vice chairman of the area, **Kahigwa Eva**, **Kahigwa Francis** (PW4) and **Tiburihwa Gladys** (PW2) among others. Both PW2 and PW4 categorically testified that the sub county chief never threatened the Appellant to sign the document (**P.Exh.1**) None of the Appellant's witnesses alluded to the alleged threats by the Sub county Chief.
- [22] As regards **P.Exh.3**, the Appellant claimed that he was arrested and taken to the RDC'S office on hand cuffs and forced to sign another document (**P.Exh.3**). Again, there is no evidence to support such claims by the Appellant. None of the Appellant's witnesses alluded to the arrest and hand cuffing of the Appellant as he was being taken to the RDC's office where he signed the document (**P.Exh.3**).
- [23] As a result of the foregoing, I find no reason to fault the trial Magistrate's reliance on both documents acknowledging that the suit land belonged to the Respondent's father, **Jackson Hairora** and whatever protests the Appellant made thereafter, which are merely his refusal to fulfil his commitment and comply with **P.Exh.1 & 3** he executed, were mere afterthought. The claim that the suit land was given to him by his father is not supported by any tangible evidence worth believing.
- [24] In the premises, I find ground 1 of the appeal without merit and it accordingly fails.

Ground 2: The learned trial Chief Magistrate erred in law and fact when he awarded the Respondent general damages of shs.5,000,000/= which is too high when there was no evidence adduced by the Respondent to justify the award of general damages or that he prayed for it during her testimony leading him to reach a wrong decision that prejudiced the Appellant.

[25] This ground of appeal is rather argumentative and therefore prohibited by **O.43 r.1 (2) CPR**. The law on general damages however, as rightly submitted by both counsel for the parties, is that damages are awarded at the discretion of the court and the purpose is to restore the aggrieved party to the position he would have been in had the breach or wrong not occurred, **Haley Vs Baxendale (1984) 9 ExCh 341**.

[26] In the instant case, the Respondent pleaded general damages and prayed for the same at the end of her testimony. In **Uganda Commercial Bank Vs Kigozi [2002] 1 EA 305**, it was held that in the assessment of general damages, the court should be guided by the value of the subject matter, the inconvenience the plaintiff may have been put through and the nature of and extent of the injury suffered.

[27] In the instant case, the Respondent adduced evidence of how she had been battling with the Appellant from the year 2000 when the Appellant trespassed on her father's land by reporting him to the L.Cs, the sub county chief and the parish chief and then the RDC's office. It is evident therefore that the Respondent suffered insurmountable inconvenience, stress and mental torture by the Appellant's act of denying her access to her inheritance of the estate left by her late father. The trial Magistrate awarded her general damages of Ugx 5,000,000/=. I find no justification to interfere with the trial Magistrate's discretion in awarding the Respondent the above sum. The 2nd ground of appeal is found devoid of merit and it also accordingly fails.

Ground 3: The learned trial Magistrate erred in law and fact when he awarded the Respondent mesne profits of shs. 2,000,000/= which was too high when the Respondent had not adduced any evidence to prove mesne profits or prayed for the same during her testimony, leading him to reach a wrong decision that prejudiced the Appellant.

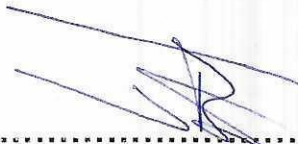
[28] This ground of Appeal is also argumentative offending **O.43 r. 1(2) CPR**. However, in agreement with counsel for the Appellant, I find that on record, though the Appellant had possession of the suit land and constructed thereon a commercial house and therefore reaping profit from his wrongful possession of the suit land, no evidence was adduced by the Respondent to prove the profits the Appellant actually received or the Respondent would have received from the suit land if the wrong complained of had not occurred to justify the

trial Magistrate's award of **Ugx 2,000,000/=** as mesne profits. Mesne profits are defined as those profits which the person in wrongful possession actually received or might with ordinary diligence received from it and do not include profits due to improvements made by the person in wrongful possession, **John Kivumbi Vs K.C.C, HCCS No.1471/2014.**

[29] In the premises, I find that the trial Magistrate erred in law and fact when he awarded the Respondent mesne profits of **Ugx 2, 000,000/=** which had no basis in law. The 3rd ground of appeal is found to have merit and it accordingly succeeds.

[30] However, all in all, the Appeal fails due to **grounds 1 and 2** which have been found to be devoid of merit save for **ground 3** which succeeds. Therefore, the award of mesne profits of **Ugx 2,000,000/=** is accordingly set aside. The orders that the suit land belongs to the estate of the late **Hairora Jackson** (plaintiff's father), that the defendant/Appellant is a trespasser on the suit land, vacant possession and demolition of the illegal structures on the suit land, permanent injunction restrain the defendant and his agents or persons claiming under him from using and interfering with the Respondent's use of the suit land, general damages of **Ugx 5,000,000/=** at a court rate interest from the date of judgment on the lower court till full payment and costs of the lower suit are accordingly upheld. This Appeal is therefore dismissed with costs.

Dated this 18th day of October, 2024.



Byaruhanga Jesse Rugyema
JUDGE