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THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KABALE
LAND CIVIL APPEAL NO. 0015 OF 2023
(Arising from Land Case No. 0005 Of 2016)

AKANKWASA DAVID=====APPELLANT

10

VERSUS

1. GEOFREY BITARABEHO

2. E. BYAMUGISHA

3. D. MWEBESA=====RESPONDENTS

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BEFORE: HON. JUSTICE SSEMOGERERE KAROLI LWANGA

JUDGMENT

Brief Facts.

This is an appeal from the judgement of the learned Trial Magistrate Grade I, Kabale Magisterial Area, Her Worship Tabaruka Racheal delivered April 17, 2023.

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The plaintiff, now the Appellant, sued the defendants for the following reliefs:

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- i) A declaration that he was the exclusive owner of the suit land located at Birambo in Maziba sub-county, Kabale district;
- ii) A declaration that the sale of property by the second and third Respondents in November 2015 was null and void;
- iii) Eviction and a permanent injunction order against the defendants as well as their agents;
- iv) General damages for trespass; and
- v) Costs of the suit.



5 This was a family dispute. The Appellant claimed him and the first Respondent were brothers, sons to the late Semei Kabonyi and the 2nd and 3rd Respondents were nephews to the Appellant and first Respondent.

The facts leading to the cause of action arose from the sharing of alleged family land owned by their deceased father in 1985 between the Appellant, first
10 Respondent and the mother to the second and third Respondents. The suit land was the Appellant's share, and he permitted his own mother Rose Kabonyi to stay on the property. Second that the mother of the 2nd and 3rd Respondents Jolly Kayangirwe came to look after his mother. In 2003, the Appellant's mother Rose Kabonyi died and the mother of the 2nd and 3rd Respondents remained in the
15 homestead. That Jolly Kayangirwe remained in possession of the homestead and died in 2011. That unknown to the appellant, the 1st respondent under duress by the 2nd and 3rd respondents gave part of the land to Jolly Kayangirwe made a document which the Appellant was coerced into signing. Further that in 2015, the 2nd and 3rd Respondents descended onto the suit land and destroyed the
20 appellant's house causing him financial loss. In his defence, 1st Respondent admitted the land belongs to the Appellant, save for a portion of land he gave to "Apuri" son of Jolly Kayangirwe. 1st Respondent also asserted he gave the suit land to Jolly Kayangirwe to reside there temporarily until her death as a brother and did not deprive his brother, the Appellant his share of the estate. He did not
25 contest allegations that the 2nd and 3rd Respondents destroyed the Appellant's house. He acknowledges Appellant owns the suit land. 2nd and 3rd Respondent denied trespass and allegations against them stating they had lived on the suit land for over 40 years.

5 At trial three issues were raised for determination by court. These are:

- (i) Whether the suit land belonged to the Appellant?
- (ii) Whether the Respondents had trespassed on the suit land?
- (iii) What remedies were available to the parties?

The learned Trial Magistrate heard evidence from both parties in which the above
10 facts were not challenged from the testimony of all the parties. The key facts being
that both Appellant and first Respondent agreed the Appellant owned the land,
being his share from their late father's estate. The 2nd and 3rd Respondents' case
was that they grew up on the land and when their mother died in 2011, they
remained on the land. Lastly, that Jolly Kayangirwe their mother got the land
15 from their mother and father around 1983, at page 8 of her judgment.

In her resolution of the claim, she summed up the evidence at pages 4-8 of her
judgment. This summary raised a number of points of law relevant to the
competing claims by the parties. First, that the plaintiff's land was his share out
of his deceased father's estate. Second that his division of the estate was in
20 contravention of the law, as no letters of administration had been obtained in
respect of the estate at page 7 of her judgment.

At the end of the trial, a preliminary objection was raised by the 2nd and 3rd
Respondents stating that the Appellant never took possession of the land, and
they were in possession of land at all material times from 1985. They claimed that
25 the Appellant's claim was time barred under Section 5 of the Limitation Act, now
Cap 290, formerly Cap 80 at page 8 of the judgment. The objection was challenged
by the Appellant that it was an afterthought, raised after pleadings had closed

5 contrary to Order 6, Rule 6 of the Civil Procedure Rules, S.I. 71-1. The learned Trial Magistrate dismissed the preliminary objection as an afterthought at page 11 of her judgment.

She resolved the first issue in the negative, finding that the land was part of the estate of the late Appellant's deceased father at page 12 of her judgment. She
10 found as a matter of fact and law, that no letters of administration had been obtained and any distribution of land, out of which the Appellant or any other person claimed land was null and void. She found at page 13 of her judgment that both Appellant and Respondents could not claim ownership of unadministered land. She denied the declarations sought by the plaintiff, dismissed the action for
15 trespass as the Appellant had not proved his case that he was the lawful owner of the land, with costs to the Respondents, hence this appeal.

Representation.

In the lower court and in this appeal, the Appellant was represented by M/S
20 Beitwenda & Co Advocates. 1st Respondent was represented by M/S Bikangiso & Co Advocates. 2nd and 3rd Respondents were represented by M/S Muhangi & Co Advocates.

Discussion and analysis:

This is a first appeal, as a first appellate court, it is its duty to evaluate the
25 evidence on the record and make its own conclusions. See *Beyanga Apollo v Lucia Baryezo Babyayanga and another in High Court Civil Appeal No. 28 of 2022* decided April 15, 2025. This decision sets forth the duty of the first appellate court to *evaluate evidence on the record and make its' own conclusions.*



5 In their memorandum of appeal, the Appellant raised two grounds. These are:

1. The learned Trial Magistrate erred in law when she failed to properly evaluate the evidence on record, thereby occasioning a miscarriage of justice.
2. The learned Trial Magistrate erred in law when she granted orders which
10 are not commensurate with the judgment.

In their submissions the Appellant abandoned the second ground of appeal. I find fault with the framing of the first ground of appeal. It is too general. The decision of the learned Trial Magistrate was based on concise points of law based on uncontroverted testimony of both the Appellant and Respondents. I propose to
15 frame the ground this way:

1. Whether the learned Trial Magistrate erred in fact and law, when she found that no distribution of the estate of the late Semei Kabonyi could happen as the estate was unadministered, and no ownership could pass to any of the parties.
- 20 Counsel for the Appellant cited a number of authorities to support their position, but the import of the authorities is the opposite. Counsel cited the case of **Kayabura Enock & Another v Joash Kahangirwe Civil Appeal No. 88 of 2015, (Court of Appeal)** cited with approval in the decision of the same court in **Mugyenzi Justus & 2 others v Kateeba Rose & 3 others, Civil Appeal No. 162**
25 **of 2021**, where Madrama JA as he then was stated as follows:

“The law vests legal title of the estate property in the appointed administrator in a character of a trustee liable to distribute the estate to the

5 lawful beneficiaries in accordance with the law. If the property was settled
by the children of the intestate, it can only be settled by the parties but if
once the matter is brought to the courts of law, the formal process of
succession has to take effect. The formal process comes into operation upon
grant of letters of administration.....

10 The formal process of the law transmits the estate to an entitled beneficiary
under the law of intestacy.....”

Counsel cited this decision to support the proposition to disagree with the learned
Magistrate Grade I, concluding letters of administration were not needed to settle
the estate. This was a selective application for the authority. I have reproduced
15 Madrama JA’s correct statement of the law, to the effect once a dispute arises, or
any contention requiring court to resolve, then letters of administration must be
sought. The process of application of letters of administration where assets and
liabilities of the deceased are settled, is the proper procedure for settling
contentious estates, as well where beneficiaries cannot agree to settle an estate
20 voluntarily in the absence of a will.

I have nothing useful to add to this careful summary of the legislative scheme
governing succession. Neither the Appellant nor the beneficiaries in their
testimony testified that letters of administration a condition precedent to
distribution had been granted. This observation of fact invited the correct
25 conclusion of law by the Trial Magistrate.

Having made this finding, the learned Trial Magistrate was correct in dismissing
any claims of trespass as no party could claim ownership. This is the correct

5 position of the law in Uganda. See the decision of this court in *Beyanga Apollo v Lucia Baryezo Babyayanga and another in High Court Civil Appeal No. 28 of 2022* decided April 15, 2025. Beyanga found a non-owner cannot sustain a claim of trespass.

Counsel for the 1st Respondent incorrectly cited Section 176 of the Succession Act, 10 Cap 268 stating that it is to the effect that property of the deceased cannot be dealt with or otherwise transferred without grant of letters of administration. The correct section is Section 187 of the Succession Act which provides as follows:

15 “Except as provided in this section.....no right to any part of the property of a person who died intestate shall be established in any court of justice, unless letters of administration have first been granted by a court of competent jurisdiction.” (Emphasis mine).

As soon as the settlement was challenged, the proper recourse was application for letters of administration by the beneficiaries of the estate of the late Semei Kabonyi. I find no reason to interfere with the findings and reasoning of the 20 learned Trial Magistrate. With due respect to all the parties, I find the decision in *Mugyenyi Justus & 2 others v Kateeba Rose & 3 others Civil Appeal No. 162 of 2021*, distinguishable, as the parties had all agreed to the distribution.

The sole ground of the appeal fails.

25 **Comment:**

This appeal highlights the need for specialized government services to be brought closer to the people. The regional office of the Administrator General should be operationalized in Kabale to handle the numerous land disputes that are at the

5 risk of shutting down the court system, due to lack of this service. Many of the
litigants and would be litigants would be diverted to this office for effective
administration of their estates in accordance with the law.

Conclusion:

This appeal fails.

10 Counsel for the Appellant correctly identified this dispute as a family matter and
declined to pray for costs. I agree with this thoughtful and considerate
submission.

I order that each party bear their own costs in this court and the court below.

15 **I SO ORDER**

DATED AT KABALE, THIS ^{29th}..... DAY OF APRIL 2025.

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Ssemogerere, Karoli Lwanga
Judge.