

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KABALE
CIVIL APPEAL NO. 18 OF 2024
(ARISING FROM LAND CIVIL SUIT NO. 15 OF 2021)

VERSUS

BYANDUSYA WILLY ::::::::::::::::::::RESPONDENT

BEFORE: HON. JUSTICE SSEMOGERERE, KAROLI LWANGA

JUDGMENT

Brief Facts:

This is an appeal by Mumbutu Fred (“Appellant”), plaintiff in Civil Suit No. 15 of 2021 against the decision of the learned Principal Magistrate Grade One, Isaac Rukundo, of Rubanda Court in the Kabale Chief Magistrate’s Magisterial area delivered on August 27, 2024. Appellant sold respondent two pieces of land. The first at Muko (Ndego), in Katojo cell, Rushasha, Ikumba, Rubanda district. In respect of the first parcel, the agreed sale price was UGX 15,000,000/=. The second parcel was at Nyamabare. In respect of the second parcel, the agreed sale price was UGX 10,000,000/=. Appellant brought an action against the respondent in the lower court for unpaid balances; (i) UGX 2,000,000/= in respect of the first parcel and (ii) UGX 5,000,000/= in respect of the second parcel. At trial, the appellant and respondent agreed, that there was an unpaid balance of UGX 2,000,000/= in respect of the first parcel which the respondent withheld; as part of the land covered by the sale agreement was claimed by a third party, Ruth Ampeire, a neighbor of the parties. In respect of the second parcel of land, respondent claimed appellant had been paid in full. The record of proceedings at page 5, fails to clearly identify which agreement was made in September 2019 and which agreement was made October 2020.

5 Two issues were framed for determination by the trial court: These were:

- (1) Whether any of the parties had breached the above purchase agreements; and
- (2) What remedies are available to the parties.

10 In respect of the first parcel of land, the learned Trial Magistrate evaluated testimony of the parties and that of DW2 Ruth Ampeire at page 5 of his judgment. He summarized her testimony at page 6 of his judgment, stating she bought land from the appellant in 2015; and that in 2020, her workers went to work on the same land and found some new boundary marks, causing her to
15 take corrective action to fence off her land, that was being claimed by the respondent. The learned Trial Magistrate agreed with the respondent that he could not pay for a parcel that he had inspected and had been reduced by the portion claimed by Ruth Ampeire. This would in his judgment at page 6 would be allowing the appellant to benefit from a dishonest transaction.

20 In respect of the second parcel of land, the learned Trial Magistrate found at page 7 of his judgment that the respondent had adduced evidence of how he had paid the balance, specifically, UGX 1,000,000/= through mobile money. Second that the balance of UGX 4,000,000/= was paid by cash at the premises of the respondent which was corroborated by DW3, Macklean Musesimenta, the
25 respondent's cashier. This resolved the claim in respect of the second parcel.

He found judgment for the respondent, stating that the appellant was not entitled to specific performance as the size of the land he had negotiated for, had reduced in size. He held at page 8,

“It was no longer land worth the negotiated price.”

30 The learned Trial Magistrate, gave judgment to the respondent with costs, hence this appeal.

5 **Grounds of appeal.**

Appellant dissatisfied with the judgment brought this appeal. He framed 4 grounds of appeal.

These are:

- 10 (1) The learned Trial Magistrate erred in law and fact when he failed to evaluate the evidence on record and arrived at the wrong conclusion;
- (2) The learned Trial Magistrate erred in law and fact when he believed the respondent's story which is tainted with irregularities to the detriment of the respondent causing injustice to him;
- 15 (3) The learned Trial Magistrate erred in law and fact when he ignored the appellant's case that he cleared the encumbrance by Ampeire Ruth in the LC 1 court at Katojo Cell and instead faulted him as being deceitful whereas not;
- 20 (4) The learned Trial Magistrate erred in law and fact when he ignored the fact that both sale transactions were in writing and instead relied on oral evidence of the defence to hold that the respondent paid UGX 5,000,000/= to the appellant, when there was no acknowledgment or evidence to that effect.

He prayed for additional orders:

- 25 (1) An order by the respondent to pay the appellant UGX 7,000,000/=;
- (2) Interest from the date of judgment on the above amount from the date of judgment till payment in full.

Representation:

- 30 This appeal was argued by M/S Lawton Advocates who took over from M/S Nasiima Patience & Co Advocates. The respondent was represented by M/S Bikangiso and Co Advocates. The parties appeared before me on May 22, 2025, and court directed them to file written submissions, which they accordingly did.

Discussion and Analysis:

The thrust of this Appeal, is an invitation to court to consider the same facts, and depart from the conclusions of the learned Trial Magistrate. Appellant in brief is asking this Court in exercise of its appellate jurisdiction under **Order 43, Rule 27 of the Civil Procedure Rules, S-1-71-1, (the “Civil Procedure Rules”)** to make fresh orders, which ought to have been passed or made by the trial court.

The appellant is inviting the court to subject the evidence before the trial court to fresh and exhaustive scrutiny before coming to its own conclusion.

The duty of the first appellate court has been laid out in many cases, *Kifamunte v Uganda Supreme Court Criminal Appeal No. 10, 1997* being the foremost, which emphasized the duty of the first appellate court to consider the evidence in the trial court on its own, and make its own views on it known. In civil matters, the principles are the same. In *John Kafeero v Peterson Sozi, Civil Appeal, No. 173 of 2012*, the Court of Appeal emphasized as follows:

“It is the obligation of the appellate court to appraise inferences of fact.”
[emphasis mine].

The decision of the learned Trial Magistrate and this Court turns on inferences of fact from the testimony led by the parties at trial. In short, the facts as will be seen in this decision while not many are dispositive of the allegations before the learned Trial Magistrate. It is the interpretation of the facts on which determination of this appeal lies.

I now turn to the grounds of appeal.

(1) **The learned Trial Magistrate erred in law and fact when he failed to evaluate the evidence on record and arrived at the wrong conclusion;**

The thrust of the appellant’s argument was to the effect, the respondent’s case lacked an addendum confirming the payment of the balance, given the fact that this was a written agreement. The respondent responded to the appeal on just

5 one ground seeking to reaffirm each and every finding by the trial court. They cited circumstantial evidence of the second transaction, after the respondent had defaulted on paying UGX 2,000,000/= in respect of the first agreement. It is impossible to follow these arguments to a clear conclusion.

10 There is sufficient evidence to support the findings of the learned Trial Magistrate. At page 14 of the record of proceedings, there is testimony of the appellant confirming the terms of the first and second agreement. At page 15, of the record of proceedings, he acknowledged he had sold land to Ruth Ampeire; the relevant words are as follows:

15 “The land at Katojo, where I demand UGX 2,000,000/=: he did not pay me the balance also. I know Ruth Ampeire. I sold the same small piece. The rest was sold to the defendant.”

20 On cross examination, the appellant admits at page 17, that he did not call Ruth Ampeire to witness the sale of land to the respondent. Ruth’s ownership of this small piece of land is acknowledged by PW2 Tweheyo Jacenta, at page 19 of the record of proceedings. These admissions by the appellant in his own testimony, and his own witnesses, specifically PW2 resolves the contention of the respondent that to the effect that he never involved Ruth Ampeire, the owner of the contested land in the sale, and the fact that he had sold this small piece of land to her in 2015.

25 In respect to the second claim, for UGX 5,000,000/=: appellant at page 16 of the record admits to receiving UGX 1,000,000/= from the respondent via mobile money but alleges it was for a different purpose, i.e. a timber transaction. He does not offer any evidence in support of that proposition. In respect of the balance of UGX 4,000,000/=: the learned Trial Magistrate believed the testimony of DW2, Macklean Musiimenta, the cashier, that he gave money to the appellant in the presence of the respondent at page 27 of the record of proceedings. On cross-examination, DW2 stated the payment was for land. He also controverted the appellant’s claim that had an ongoing timber business with the respondent at page 28 of his testimony. None of this testimony was
35 challenged during cross examination.

In my opinion, this ground resolves the entire appeal.

5 **Ground 1 fails.**

- (2) The learned Trial Magistrate erred in law and fact when he believed the respondent's story which is tainted with irregularities to the detriment of the respondent causing injustice to him;
- 10 (3) The learned Trial Magistrate erred in law and fact when he ignored the appellant's case that he cleared the encumbrance by Ampeire Ruth in the LC 1 court at Katojo Cell and instead faulted him as being deceitful whereas not;

15 These grounds offend **Order 43 Rule 2 of the Civil Procedure Rules**, which provides as follows:

“The memorandum shall set forth, concisely and under distinct heads, the grounds of objection to the decree appealed from **without any argument or narrative**; and the grounds shall be numbered consecutively.”
[Emphasis mine].

20 An appeal is a reasoned disagreement with a decision of a competent court or tribunal. For ease of reference, I have underlined the offensive content, that renders these grounds incompetent. Appellate grounds must be framed to enable the respondents to know the exact complaint and to prepare their response. It is of little surprise, the respondents were not able to draft a

25 coherent response to this ground, See the recent decision of the Court of Appeal in **Total Seeta Service Station V Stanbic Bank Limited Uganda and Julius Baale, Civil Appeal No. 165 of 2019, 2025 UGCA 173, decided June 12, 2025.**

In this appeal, ground 1, is too general, and grounds 2 and 3 are argumentative and full of narrative. This alone according to Mugenyi A., J.A. in the above

30 decision is enough to strike the grounds summarily.

As discussed in resolution of Ground 1, the specific allegations fail for two reasons. First, I agree with the evaluation of the evidence of the learned Trial Magistrate. I don't find any misdirection on his part. Second, the point of dispute was whether there had been full payment by the respondent and if not

5 whether the appellant was entitled to specific performance. I am satisfied with his findings and conclusions.

Grounds 2 and 3 must fail.

10 **Ground 4: The learned Trial Magistrate erred in law and fact when he ignored the fact that both sale transactions were in writing and instead relied on oral evidence of the defence to hold that the respondent paid UGX 5,000,000/= to the appellant, when there was no acknowledgment or evidence to that effect**

15 Ground 4 must fail as a matter of law. It is an attempt by the Appellant to cite the parole evidence rule codified in **Section 92 of the Evidence Act, Cap 8 (the “Evidence Act”)**. Neither of the circumstances in Section 92 exist. The fact of payment, upon which the learned Trial Magistrate took testimony did not contradict, vary or add to or subtract from the written agreements. **Section 92**
20 **of the Evidence Act**, provides as follows:

“When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved, according to section 91, no evidence of any oral agreement or statement shall be admitted, as between the parties to
25 any such instrument or their representatives in interest for purposes of contradicting, varying, adding to or subtracting from its terms.”

I wish to add that terms of a contract, however unfair, will be upheld, over any oral testimony. In **Mbabazi Moris v Monday Ronald & Another, Civil Appeal No. 11 of 2022**, this court upheld rescission of a written contract for sale of
30 land, where the purchaser had paid UGX 3,200,000/= and left a balance of just 100,000/= but missed the due date. The only time the court will interfere with a contract is where the terms are patently illegal, commanding any of the parties to perform illegal acts, the result of which the contracts will be vitiated by court. I fault counsel for the appellant for misdirecting his appeal, as a generic attack
35 of the entire decision without recognizing common points of agreement

5 between the parties and specifying the points of disagreement with the decision appealed from, and how they would result in a different outcome if given different inferences by the appellate court.

Ground 4 fails.

10 **Comment:**

A ground of appeal must mirror an issue at trial. Black's Law Dictionary is of assistance here. There are two triable issues, in court. First is an issue of fact. According to **Black's Law Dictionary, 6th Edition at page 831,**

15 "issue of fact arises when a fact is maintained by one party and is controverted by another in the pleadings. An issue which arises upon a denial in the answer of a material allegation of the complaint, or in the reply of a material allegation in the answer."

Second is issue of law. According to **Black's Law Dictionary, 6th Edition at page 832,**

20 "issue of law arises where evidence is undisputed and only one conclusion can be drawn therefrom."

As can be seen in this judgment, there are no discernible issues of law. Second grounds 2 and 3, do not merit consideration as they have no bearing on consideration of the appeal, or adjudication of the complaint for the same
25 reasons.

Findings and Conclusion:

The appellant failed to discharge the burden of proof, as to the particular facts, he needed to succeed. These are:

- 30 (a) In respect of the first transaction, whether all the land inspected by the respondent at the time of the purchase; was still available to him after a prior transaction in which he had sold the land to Ruth Amumpeire in 2015, chose not to involve her as a neighbor when he

5 sold the land to the respondent. This evidence was corroborated by his own witness, PW2, who had no collateral gain to make from her testimony. Appellant was not entitled to specific performance after part of the land covered by the agreement was claimed by a third party.

10 (b) In respect of the second transaction, the learned Trial Magistrate believed the testimony of the Respondent in respect of the mobile money transaction of UGX 1,000,000/=; and his cashier in respect of the UGX 4,000,000/=. The evidence of the appellant controverting the respondent's claims was not believed for two
15 reasons. First the alleged timber business between the parties did not exist; and second, he failed to rebut the evidence by the respondent's witnesses that had received funds. No written agreement was necessary to receive payment under a contractual agreement; that would be inviting court to supply contractual terms
20 where none existed.

Grounds 1,2,3 and 4 fail.

Orders sought by the Appellant under Order 43 Rule 27 of the Civil Procedure Rules are denied.

Costs to the Respondent in this court, and the court below.

25 I so ORDER,

DATED AT KABALE, this day of June, 2025.



30 SSEMOGERERE, KAROLI LWANGA
JUDGE.

