

5

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KABALE
CIVIL APPEAL NO. 001 OF 2024
(ARISING FROM LAND CLAIM NO. 11 OF 2018)**

NYIRANZAYIRWANDA FRIDA:::::::::::::::::::::::::::::::::APPELLANT

10

VERSUS

**KYINGANEYE VANIS
NYIRAZIHAWE ELIZABETH
NYIRABAGANDA REBECCA :::::::::::::::::::::::::::RESPONDENTS**

15

**BEFORE: HON. JUSTICE SSEMOGERERE, KAROLI LWANGA
JUDGEMENT**

Brief Facts:

20

This is an appeal against the decision of His Worship Vueni Raphael, the learned Magistrate Grade I, Kisoro, as he then was.

25

This is a protracted family dispute. Appellant and her sister (formerly the “plaintiffs”) brought an action for recovery of two pieces of land located in Gatse Town Council, in Kisoro district and Gatse village, Nyakinama Sub-county in Kisoro district against their sisters and mother, the first, third and second respondent respectively.

30

Their case was that the suit land was given to the appellant in 2016 in writing by their late father John Ayigihugu. On January 28th, 2018, the appellant and her sister alleged that the respondents trespassed on their land and started to cultivate it without the consent and authorisation of the appellant.

5 In respect of the second piece of land, the allegation was that the land was given to the appellant's sister, second plaintiff in the lower court, by their father John Ayigihugu, also in writing. On January 24th, 2018, the second and third respondents allegedly entered the suit land and begun cultivating crops.

10 In reply, the respondents denied the two claims. They denied trespass. Second respondent, the mother denied that the father ever gave the suit land to the Appellant and her sister. They also claimed ownership of the suit land. The second respondent alleged that in 2016, while her husband was still alive, they were coerced to sign a document which later turned out to be an agreement to give land to the appellant and her sister. That she with her husband reported the matter to the Chief Magistrate Kabale who advised it was illegal to force them to share their estate while alive.

20 There are two other documents, in respect of the suit land; one dated January 20, 2010, allegedly endorsed by the second respondent and her husband, before a former district probation and welfare officer. The second, is dated March 7th, 2017, where at a family meeting, the third appellant was appointed a caretaker. Lastly, that on July 11th, 2010, their late father gave the suit land to the Appellant, her sister and the 1st respondent. Unfortunately, these documents appear to be missing from the record.

At trial, two issues were framed for resolution. These were:

1. Whether the bequest of the suit pieces of land by the parents of the appellant and her sister in the office of the district probation and welfare officer, was lawful
2. What remedies were available to the parties.

35 The learned Trial Magistrate heard evidence from both parties, which showed there was a dispute between the Appellant and her sister, on the one hand and their father, on the other which was adjudicated by Court in

5 Kisoro in Land Claim No. 029 of 2011, in which their late father denied ever
giving them land. There was also written evidence by the Chief Magistrate
Kabale who advised against the alleged land distribution before the former
Probation and Welfare Officer. The learned Trial Magistrate ruled the
10 alleged distribution was against their will (the late husband and second
respondent). He dismissed their claim with costs, hence this appeal.

Memorandum of Appeal:

Only the first plaintiff appealed. Appellant framed two grounds of appeal in
the amended memorandum of appeal. These are:

- 15 1. That the learned Trial Magistrate erred in law when he failed to
properly subject the evidence on record to serious scrutiny and came
to the wrong conclusion that the alleged acts of the second
respondent and her late husband purportedly giving the suit land to
the Appellant and her sister were against their will.
- 20 2. That the learned Trial Magistrate erred in law and fact, when he
reached the wrong decision that the suit land did not belong to the
Appellant and her sister.

Representation:

25 This appeal was argued by M/S Alice Namara and Co. Advocates on behalf
of the appellant. M/S Beitwenda and Co. Advocates argued the appeal on
behalf of the respondents. At an oral hearing on June 17, 2025, appellant
was given leave to file an amended memorandum of appeal to comply with
the provisions of **Order 43, Rule 2 of the Civil Procedure Rules, S.I. 71-1,**
30 **(the “Civil Procedure Rules”)** which she did. The parties agreed to proceed
by way of written submissions, and have accordingly complied.

Discussion and Analysis:

Briefly, the appeal contests the alleged distribution before the District
35 Probation and Welfare Officer dividing the estate of the second respondent

5 and her husband to settle a dispute between the 2nd respondent and the appellant. The case for the appellant was that the role of the Probation and Welfare Officer was mediation of a dispute.

The duty of a first appellate court, is distinguished from that of a second appellate court. In **Kafeero Sentongo v Sozi, Civil Appeal No. 173 of 2012, 2021 UGCA 46**, Egonda Ntende J.A., observed thus:

10 "The duty of a second appellate court is intertwined with the duty of a first appellate court although the two are different. The Supreme Court has distinguished clearly the duties cast on each court in the case of **Kifamunte Henry v. Uganda Criminal Appeal No. 10 of 1997**, which is a criminal case but instructive even in civil cases on this point, thus; "We agree that on a first appeal, from a conviction by a Judge the appellant is entitled to have the appellate Court's own consideration and views of the evidence as a whole and its own decision thereon. The first appellate court has a duty to review the evidence of the case and to reconsider the materials before the trial judge. The appellate Court must then make up its own mind not disregarding the judgment appealed from but carefully weighing and considering it. When the question arises as to which witness should be believed rather than another and that question turns on manner and demeanour, the appellate Court must be guided by the impressions made on the judge who saw the witnesses. However, there may be other circumstances quite apart from the manner and demeanour, which may show whether a statement is credible or not, which may warrant a court in differing from the Judge even on a question of fact turning on credibility of witness which the appellate Court has not seen."

As stated in the preface this appeal is about evaluation of evidence and the inferences the trial court made from it to arrive at the conclusions it made. I will also add, that this court in its decision, **Kemitare & another v Kanyaraju, Civil Appeal No. 26 of 2013, 2025 UGHC 316**, has emphasized the importance of resolving the ownership of property prior to making other findings.

I now turn to the grounds of appeal. Appellant argued the grounds together.

1. That the learned Trial Magistrate erred in law when he failed to properly subject the evidence on record to serious scrutiny and came to the wrong conclusion that the alleged acts of the second

5 respondent and her late husband purportedly giving the suit land to the Appellant and her sister were against their will.

2. That the learned Trial Magistrate erred in law and fact, when he reached the wrong decision that the suit land did not belong to the Appellant and her sister.

10 Appellant argued that in order to resolve the first issue, correctly, the learned Trial Magistrate had to determine the legality of the bequest of the suit pieces of land that happened at the office of the District Probation and Social Welfare officer, and conclude whether it was lawful or not. Appellant attacked the evaluation of the evidence, as a mis-inference of facts. In his
15 judgment, the learned Trial Magistrate at page 4 of his judgment stated the actions of the Probation Officer were unlawful. This was contradicted by the evidence at page 12 of the record of proceedings, which states:

“Columbus came as a mediator. The [dispute] [I have supplied the correction] was in the ownership of the suit land. After mediation, the
20 parents agreed to give each child a piece of land. I don’t know why our mother turned around and took the land I was given. All of us settled and no other complaint arose.”

On further cross examination, by PW1, the appellant. She stated as follows at page 12 of the record of proceedings.,

25 “I am not aware of the distribution by any authorities. Apart from the suit land, I was given a Kibanja where to build and to cultivate. 1st plaintiff was given no other plot apart from the 1st described suit land.”

30 Further at page 13, of the proceedings, she closes, thus:

“He came to resolve a dispute, Columbus did not say nothing or advised our father to distribute.”

35 The respondents in their arguments state the evidence must be viewed as a whole transaction. They refer to **page 10 of the record of proceedings**, which controverts the argument by the appellant. At page 10, the testimony

5 of the appellant is to the effect that the agreement was brought by Columbus, the probation officer.

“The agreement was given by Columbus, the Probation Officer. It was Elizabeth, the second respondent who brought Columbus to write the agreement. Also present was Akiza Christopher, Rwanika Sam among
10 others. I signed. The 3rd respondent was not there and she did not sign.”

I now turn to the letter of the Chief Magistrate dated March 29th, 2010 addressed to the Probation and Welfare Officer, Kisoro. I reproduce it in
15 toto:

“Mr. Ayigihugu is alive. All his children are adults and therefore do not fall under the Children Act.

20 “Your office and that of the Child and Family Protection Unit have no jurisdiction in the matter.

If the children of Ayigihugu, have any claims against him, they have to sue him in courts of law but not to hide under the Children Act.

25 This is to inform you that the distribution of the estate of Ayigihugu that you carried out on January 20th, 2010 has no legal effect, it is null and void.

30 The parties are informed are informed that Ayigihugu has control over all his estate and he alone can distribute it, according to his wish, Anybody, not satisfied with his willful distribution can then sue him.” [Emphasis mine].

35 The letter did not resolve any issue. It was immediately challenged by the widow. She wrote to the Chief Magistrate on April 4th, 2010. She challenged the unilateral actions of her husband, in her letter, headed, Responding to your letter about Ayigihugu John and Family. In paragraph 4 of this letter, she stated that her husband had given away land without her consent. This

5 letter also marked “A” is not recorded anywhere in the record, whether it was tendered or marked as an exhibit.

The record therefore has a major issue, proper admission and marking of the exhibits.

10

It is referred to by the Appellant, PW1 at **page 11**, of the record of proceedings:

15

“The dispute pertained to the suit land, the LC I Chairman, Christopher Akiza and Columbus who were chairing the dispute resolution meeting.

20

They distributed the suit land between me, Rosa, Rebecca Vanis, Robert, Mucunguzi also shared. The land belonged to the 2nd defendant and my late father Ayigihugu. They went ahead and wrote PEX1.”

I make an inference of fact that these two documents are at the center of the ownership dispute.

25

The first is the letter by the Chief Magistrate whose contents are reproduced above. The second is this PEX1, which does not appear in the court file.

30

What is clear, is that the second respondent gave contradictory testimony which should have been probed by court to its conclusion. First, she denied consenting to any such distribution, then stated she gave her shares to the plaintiff to **at page 18** of the proceedings. On cross examination, she stated,

35

“Your father and I never gave you the disputed land. I gave you your shares and to you, took the shares of my grandchild Robert.”
[Emphasis mine].

5 I never signed the disputed land to you. You had a dispute over this land but before the family could resolve it, you said you don't want to be won over litigation that is why you ran to court."

10 In the June 2010, letter, she admits she brought the Probation Officer to her home to contest the distribution by her husband, whom she accused had connived with her son, Sanvura Silas, and it appears precipitated the complaint to the Chief Magistrate. The contents of this letter partly contradict and partly bolster her sworn testimony.

15 "On his second visit, our son decided to hide himself but I had agreed with my husband on how we would distribute land to our children, including our grandson in the presence of his late father. This was done in the presence of the village chairperson, clan members and the probation officer. We catered for all the children equally.
20 Unfortunately, both of us do not know how to write and we fixed our thumbprints willingly and without any force or coercion in the broad daylight before our clan members." [Emphasis mine].

She further challenged the Chief Magistrate by stating:

25 "Your Worship, all our children are equal before the law, therefore we cannot give one child and leave out others. Already we had given 3 pieces of land to our son and we added him more during the second distribution, why should we discriminate our daughters as if they are
30 not children."

It is clear, at the time of the filing of the suit, neither the Chief Magistrate's letter nor that of the appellant's mother's letter had had any effect. It was a case of disposal of marital property by John Ayigihugu without the consent
35 of the spouse Nyirazahawe Elizabeth.

Land Claim No. 011 of 2018 proceeded with a degree of informality, that led to an impossible situation, a trial proceeded, with several irregularities which occasioned a miscarriage of justice, to both parties. With respect to

5 the appellant, the claim that land was given to her by the father, the trial court proceeded without interrogating the title of the father. With respect to the respondents, and partly, the appellant and her sister, there was a possibility again of transmission of title to both but the relevant agreement is absent from the court record.

10

The learned Trial Magistrate misdirected himself at page 4 of his judgment by addressing himself to a distribution by the Probation Officer which is not anywhere in the record of proceedings. Further, the finding that the alleged acts by the 2nd respondent and her late husband giving the suit land against their will is directly contradicted by the widow's own letter dated April 4, 2010, and corroborated by her own testimony at **page 18** of the proceedings.

The record before court, therefore, is incomplete.

20

Neither the plaintiffs, nor the defendants at trial, established a clear and uncontroverted title to the suit land.

This clear error occasioned a miscarriage of justice, and this court, the first appellate court, must on the authority of **Kifamunte v Uganda**, cited above, interfere with the findings of the trial court, because there was a miscarriage of justice.

30 **Comment:**

The trial missed an opportunity to resolve all competing claims in the family. These arose out of: (a) unilateral decisions by the deceased, John Ayigihugu; (b) an alleged distribution to remedy the unilateral distribution, without admitting the relevant evidence; and (c) resolving what portion of the former marital estate was now part of the deceased's Ayigihugu John's estate. The widow's testimony affirmed she had given land to the Appellant. This fact should have been probed further by court.

5

Findings and Conclusion:

This appeal succeeds. Each party to bear its own costs.

10 I remand the matter for further proceedings under **Section 80(1)(b) and (c)** of the **Civil Procedure Act, Cap 282**, (the “Civil Procedure Act”) to the Kisoro Chief Magistrates’ Court for trial by a different trial Magistrate to determine the following issues:

- 15 (a) Whether there was any lawful distribution or other disposal by the 2nd respondent and her late husband to any of the other parties in the suit?
- (b) Who is the owner of the suit land?
- (c) Whether claims of trespass can be sustained by the Appellant
- 20 against the respondents?
- (d) What remedies are available to the parties?

I SO ORDER,

25 DATED AT KABALE THIS 8TH DAY OF JULY 2025.



SSEMOGERERE, KAROLI LWANGA
JUDGE

30

35