THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
CIVIL APPEAL NUMBER 0014 OF 2013
ARISING OUT OF CLAIM NUMBER 78 OF 2004 OF THE CHIEF MAGISTRATES' COURT OF HOIMA AT HOIMA

DOROTHY KAJUMBA ISINGOMA **APPELLANT**

VERSUS

SEWALI EVELYN
KAZIMMBIRAINE
PROSY KACHOPE **RESPONDENTS**

JUDGMENT

Dorothy Kajumba Isingoma, hereinafter called the appellant has brought this appeal against Sewali Evelyn, Kazimbiraine and Prosy Kachope, the appellant, hereinafter called the Respondents to challenge the decision of Mr. Ndangwa Richard, Magistrate Grade I, delivered on October 10th 2012, in which he held that the Respondents were not trespassers on the appellants land as they owned the land. He also held that the Appellant got the title to her land through fraud. The appellant was aggrieved by this decision and filed the present appeal. The appellant framed nine grounds of appeal. I will not repeat the grounds of appeal save to mention that all the grounds rotate around the issue of whether the Magistrate properly evaluated the evidence and the remedies available to the parties.

From the evidence on record, the Appellant purchased two and half acres of land from Rwanyamirembe in 1989 for a consideration of three hundred thousand shillings. The land was titled, although at the trial the appellant did not produce the title to the land, which she received from Rwanyamirembe, after completing the purchase price. After purchasing the land, the Appellant instead of renewing the title, decided to process a new title for the land. She got the title in 1990. This title was renewed in 2004. The appellant claimed in the lower court that when she bought the land, the land did not have any settlers on it save for an old foundation which belonged to the late Ersto Kwebiiha, who originally owned the land and later sold it to Rwanyamirembe. The Appellant was however, surprised when she found when the Respondent had trespassed on her land and established buildings thereon without her permission. The Respondents on their part, each claimed to have purchased their respective bibanjas lawful and all except the 3rd Respondent claimed to have been in occupation of the suit land long before the Appellant acquired it.

The first Respondent, claimed to have acquired her land from her husband, Hajji Sewali in 1972. Hajji Sewali testified that he bought the Kibanja in 1972 from Joyce Nyakana and that the land

had a house at wall plate which he completed. He thereafter gave it to his wife, who has been living on it since then.

The second Respondent claimed that he bought a Kibanja measuring 50 by 100 feet from Joseph Banage and Tito Tibeita t/a Aba Banage and Brothers in 1990. According Joseph Banage and Tito Tibeita they got the land from Ddaliya vide an agreement which was signed Henry Toddi- the son to Ddaliya and themselves on 27th February 1976. They had wanted to develop the land but I guess they ran short of funds. So, they kept the land until 1990 when they sold it to the 2nd Respondent, whom they gave a buiding plan for the land which had been approved in the 1970s.

The third Respondent claimed that her husband William Kiberu, bought the suit land in 1983 from Mikayi Rwangirama. Kiberu told court that at the time he bought the land, it had a foundation of a house and that the seller gave him an approved building plan for the house, which was exhibited in court.

The trial Magistrate dismissed the Appellant's case on the grounds that the Respondents had bibanjas on the suit land. He also ruled that the Appellant did not know the boundaries of her land and that she obtained her title to the land fraudulently because she never involved the neighbors and local leaders in processing her application to bring the land under the Registration of Titles Act. The trial Magistrate, also drew an adverse inference from the failure by the Appellant to produce the original title to the suit land despite having been ordered to do so. The trial Magistrate advised that the High Court cancels the Appellant's title because it had been secured fraudulently.

The Appellant was represented by a firm of M/s Birungi & Co Advocates while the Respondents were represented by a firm of M/s Nahamya, Kafureeka & Co Advocates. At the hearing of the appeal the parties filed written submissions.

I have reviewed the record of appeal and I note that although the Magistrate visited the locus in qou and actually made reference to his findings in the judgment, the said record is missing from the file. I have noted that the issue of the missing record at the locus in qou was raised by the court on 30th April 2015, when the matter appeared before Justice Rugadya for hearing but other than the parties confirming to the court that indeed, the Magistrate visited the locus in qou, nothing was done to recover the missing record.

The record at the locus in qou is very important in this appeal, for the following reasons, namely:

1. The Magistrate Grade I heavily based his decision on his findings at the locus in qou;
2. The record at the locus in qou would have been useful in helping the court to determine the exact location of land belonging to the different parties as some witnesses testified that the land of the plaintiff which they inspected before it was titled, was outside the suit land;

3. The record would have also been useful in helping the court to determine the age of the developments on this land, as some of the Respondents claimed that they have very old buildings which they put up before the Appellant acquired tittle to the land;
4. To determine whether the Respondents are on the suit land and if so what portions of the suit land are they on. The exact location and size of the Respondents' pieces of land, which by all accounts is less than the 2.5 acres the Appellant claims, would be useful in helping the court to decide extent to which the Respondents are on the suit land in case the court found them as trespassers.

In the absence of the record at the locus in qou which is critical to determining the interests of the different parties in the appeal, there is no way I can conclusively deal with this appeal without causing a miscarriage of justice. The best option is to set aside the decision of the Magistrate Grade I and direct that the case be heard afresh. However, given that this case is very old and some of the witnesses may not be easily found, it is not necessary to rehear the witnesses, whose evidence was well recorded apart from asking the Appellant to produce the original title to the suit land, which she failed to avail court during the trial. The Respondents will have the liberty of cross examining the Appellant on the title. The Chief Magistrate should only conduct a fresh locus in qou and determine the case on the basis of the evidence as recorded by the lower court to save time and resources of the parties.

Each party will meet their own costs of this appeal as they are not to blame for the missing record at the locus in qou.

It is so ordered.

Gadenya Paul Wolimbwa
JUDGE

28/4/2022

All the parties are absent
Mr. K. Kamuhanda - C. clerk
Judgment reading rescheduled
Court.

28/4/2022.