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**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT MBALE  
HCT-04-CV-CA-0009/2004**

(Original Mbale CS No 79 of 1997)

**JACKSON KUNDU NAMAWA.....APPELLANT**

**VERSUS**

**MATHIAS MATANDA.....RESPONDENT**

**BEFORE: THE HON. MR. JUSTICE RUGADYA ATWOKI**

**JUDGMENT**

This is a second appeal. The appellant was granted leave to appeal to this court from the decision of the Chief Magistrate in which he allowed an appeal from the Grade 2 Magistrate sitting at Bubutu in Mbale in a land dispute between the parties.

The facts from which the appeal arose are difficult to fathom as I suffered from the absence of the record of proceedings and judgement of the trial court.

From the record in the Chief magistrates court, it appears that the appellant sued the respondent for his share of the land, which originally belonged to his grandfather. This land was given to him by the clan as part of his inheritance from his deceased father, who in turn inherited from the grandfather.

The respondent took possession of the land as a caretaker when the one who was originally looking after it was imprisoned. The respondent refused to vacate the same, hence the suit for vacant possession.

The respondent's case was that the land belonged to him, having received the same as part of his inheritance from his father, who had received it as his share from his father, the grandfather of the parties to this suit. The parties are cousins as their fathers were brothers, and the suit land belonged to their grandfather.

The trial court found for the appellant and on appeal the Chief Magistrate reversed the decision of the trial court, and decided in favour of the respondent. The appellant sought and was granted leave to appeal to this court.

The only ground of appeal was that the learned chief magistrate erred in law to have held that the second sharing which had been held to be illegal by the court of first instance was well reasoned and just to both parties in the absence of evidence on record.

In written submissions Counsel for both the appellant and for the respondent made extensive reference to the judgement of the trial court. As I stated above, I was handicapped by the unexplained absence of the record of proceedings and judgement of the trial court. This absence was only realised at the time of writing the judgement.

It was not possible to give a just and reasoned judgement of the appeal without the judgement and record of proceedings of the court of first instance, which contained the impugned evidence of sharing of the land by either the clan in either March 1996 or December 1996, or by the grandfather in 1959.

In his submissions to court, Counsel for the appellant noted that, 'the learned Chief Magistrate having found as a fact that there was no consensus between the two factions which effected the distribution in the alternative would have ordered for a retrial of the matter.'

He prayed in the alternative that this court orders a retrial in the interests of justice so that the issue of when the land was shared out, if at all would be determined by the court after hearing evidence from both sides. From such a decision, court would come to a decision whether the appellant was entitled to the relief he sought or to any other relief.

I am aware that this suit has stayed for long in court. But In view of the predicament of not having the record of proceedings and the judgement of the court of first instance, I would not be doing justice to the parties to make a decision in spite of that handicap, simply to expedite conclusion the suit. I am also painfully aware of the problems facing the land tribunals, which would have jurisdiction as courts of first instance in land matters. To remit the case to the land tribunal for adjudication may cause even further delay.

For those reasons, I will order that the case be remitted to the court of the Chief Magistrate for a retrial. Costs in this court shall abide the results of the retrial.



**RUGADYA ATWOOKI**

**JUDGE**

**21/03/06.**

Court: This judgement shall be read to the parties by the Deputy Registrar of the court.



**RUGADYA ATWOOKI**

**JUDGE**

**21/03/06.**