

5
THE REPUBLIC OF UGANDA
IN THE SUPREME COURT OF UGANDA
AT KAMPALA

CIVIL APPEAL NO.14 OF 2014

10 Coram: [KATUREEBE CJ.TUMWESIGYE, ARACH-AMOKO, NSHIMYE,
MWONDHA, JJ.SC.]

BETWEEN

GRACE ASABA :::APPELLANT

AND

15 GRACE KAGAIGA:::RESPONDENT

15 *[Appeal from the decision of the Hon. Richard Buteera, Kenneth Kakuru and Prof. Lillian Tibatemwa- Ekirikubinza, JJA, Civil Appeal No.83 of 2011 dated 25th March 2014.]*

20 **JUDGMENT OF JUSTICE A.S NSHIMYE, JSC**

Brief facts:

25 This is a second appeal from the judgment of the High Court delivered by Ruby Opio-Aweri. J (as he then was) on 23rd November 2009.

The crux of the appeal arises from a question as to whether the appellant was involved in a fraudulent transaction of the suit land comprised in LRV 2588 Folio 12 Plot 1802 Block 15 land at

5 Nsambya thereby disentitling her the protection of being a bona fide purchaser of the property for value without notice.

The background:

10 The respondent, Grace Kagaiga was sued for trespass to land comprised in LRV 2588 Folio 12 Plot 1802 Block 15 land at Nsambya by Emanuel Kaweesa on 10. 03.1997 in HCCS No. 223 of 1997 before Tabaro J.

The respondent failed to enter appearance after service of summons had been effected upon her. Subsequently, an ex parte judgment was entered against her to the tune of Ushs. 28, 913,150/=.

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Following the respondent's failure to pay the costs and damages of the suit as ordered by the High Court, the suit land was attached and sold in execution to Joyce Lamwaka, Harriet Asaba and Grace Asaba as joint tenants. The land was subsequently transferred to the appellant's name as a sole owner.

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The appellant registered her interest in the said leasehold on the 1st day of June 2000 as a sole owner.

25 The transfer of land into the appellant's name became a bone of contention that led the respondent together with the registered Trustees of Kampala Archdiocese to sue the appellant in the High Court vide **Civil Suit No. 179 of 2005** before Ruby Opio-Aweri J.

5 The Issues of contention at the High Court were:

1. *Whether the defendant obtained the transfer of LRV 2588 Folio 12 Plot 1802 Block 15 land at Nsambya with the consent of the 1st Plaintiff(Kampala Archdiocese).*

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2. *Whether or not the sale of land comprised in LRV 2588 Folio 12 Plot 1802 Block 15 land at Nsambya by court bailiffs was lawful.*

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3. *Whether or not the defendant (current appellant) is a bona fide transferee for value without notice.*

4. *Whether Plaintiffs are entitled to the reliefs sought.*

Findings of High Court

The High Court held that:

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1. When the suit property was ordered by the High Court to be attached and sold, the clause in the lease agreement (that the lessee was not to assign sublet or part with possession of the whole or part of the premises without the written consent of the lessor) could not take away the jurisdiction of the High Court to order attachment and sale of the property to a third party. That duty lay upon the 2nd Plaintiff (current respondent) who was the lessee then and not upon the defendant (current appellant). The Court which ordered attachment and sale was

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5 not obliged to seek consent from the 1st or 2nd Plaintiff for permission to attach and sale the suit property.

2. That the sale of the land to the appellant was lawful and the defendant was a bona fide purchaser for value without Notice.

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3. All the particulars of fraud against the defendant were not proved and could not be attributed to her because she was not the bailiff; the allegations of under pricing, sale without certificate of title, sale before time indicated in the advert were all attributable to the court bailiffs who are not parties to the suit.

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4. That the defendant (Grace Asaba) purchased the property from a court bailiff after court ordered the attachment and sale of the 2nd Plaintiff's property. The 2nd plaintiff was a judgment debtor. Sale was conducted through an advert. There was a sale agreement. The defendant bought the property in good faith. She paid valuable consideration. The court bailiffs had apparent authority to sell. She purchased without notice of fraud as there was none. In all the circumstances, the defendant was a bona fide purchaser for value without notice.

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Dissatisfied with the above decision, the current respondent together with the Registered Trustees of Kampala diocese appealed to the Court of Appeal on the following grounds:

5 **Grounds of Appeal to the Court of Appeal:**

1. *That the learned trial judge, erred in law and in fact when he held that the court had no obligation to seek consent before transferring a lease in executing of a decree.*
2. *The learned trial judge erred in law and fact in failing to address the issue as to whether the respondent obtained transfer of LRV 2588, Folio 12 Plot 1082 Block 15 land at Nsambya with the consent of the 1st appellant.*
3. *The learned trial judge erred in law and fact in holding that the respondent was a bona fide purchaser without notice of any fraud.*
4. *The learned trial judge erred in law and fact when he failed to properly evaluate the evidence on record hence reaching a wrong decision.*

Findings of the Court of Appeal

20 In reversing the judgment of the High Court, the Court of Appeal found in favour of the current respondent and held *inter alia* that:

1. *“We do agree with the learned trial judge that clause (2) (c) of the Lease agreement is a covenant between the lessee and the lessor and does not take away the power of court to order attachment and sale and the court was not obliged to seek consent from the 1st or 2nd respondent. In view of that finding, ground 1 of the appeal fails.*

5 2. We have re-evaluated the evidence on record. We agree
with counsel for the appellant that if the trial judge had
properly evaluated the evidence on record, he would have
found as we do that the respondent was not a bona fide
purchaser for value without notice. The sale of the suit
10 property to the respondent was tainted with fraud. The
court highlighted that the fraud arose in respect to the
evidence that the appellant had bought the property from
the court bailiffs on 26th February 2000 whereas she had
earlier testified that she purchased the same property from
15 the joint tenants that is Joyce Lamwaka, Harriet Asaba
and Grace Asaba”.

The current appellant being aggrieved with the Court of Appeal
decision, appealed to this Court on the following grounds:

- 20 1. **The learned justices of Appeal erred in law in setting
aside the sale of land comprised in LRV 2558 Folio
12 Plot 1802.**
- 25 2. **The learned Justices of Appeal erred in law in
holding that the appellant was part and parcel of
the fraud and that she was not a bona fide
purchaser for value without notice.**
3. **The learned Justices of Appeal erred in law in
ordering that the property and title of LRV 2558**

5 *Folio 12 Plot 1802 reverts to Grace Kagaiga and further directing that the Commissioner Land Registration registers the property and Title in the names of Grace Kagaiga.*

Representation

10 The appellant was represented by Mr. Birungi Wycliffe and Mr. Alex Kabayo. On the other hand, the respondent was represented by Mr. Gilbert Nuwagaba.

Both counsel for the appellant and respondent adopted their written submissions which we have considered in resolving this
15 appeal. Grounds 1 and 2 were argued together and ground 3 was argued separately.

Ground 1

Submissions of the Appellant:

20 Counsel for the appellant re-stated the duty of a second appellate court and submitted that the learned Justices of Appeal failed in their duty to reappraise the evidence; thus the appeal merited consideration of the errors made by the learned Justices of Appeal even where there were concurrent findings.

25 With regard to ground 1, it was submitted that the Court of Appeal reached a wrong decision of setting aside the sale of land comprised in LRV 2558 Folio 12 Plot 1802 to the appellant by finding that she

5 was privy to a fraudulent transfer and was therefore not a bona fide purchaser for value without notice.

Counsel further faulted the learned justices' finding that the Appellant's registration as proprietor of the land was fraudulent because she had obtained the suit property through an unlawful
10 court execution sale.

With regard to ground 2, counsel for the appellant argued that the allegation of fraud must be specifically pleaded, strictly proved and attributed to the transferee. That, the respondent failed to prove that the appellant was fraudulent in acquiring the property. In
15 support of this argument, he relied on the authorities of ***Kampala Bottlers Ltd vs. Damanico (U) LTD SCCA No. 22 of 1992 and Fredrick J.K. Zaabwe vs. Orient Bank Ltd SCCA No.4 of 2006.*** In light of this, the appellant argued that the learned Justices of the Court of Appeal had to examine the whole transaction on how the
20 appellant came to obtain the property in order to determine whether there was any fraud either, directly or by implication attributable to her.

The learned Justices of Appeal emphasized the irregularities in the execution process in which they found that there were material
25 discrepancies in the description of the suit property that was subject to the sale and the price at which the property was actually sold.

5 Counsel for the appellant submitted that had the learned Justices
of Appeal reappraised all the evidence on record, they would have
found that the appellant was not a party to the suit in which the
respondent's property was attached and sold. He asserted that
since it was the court bailiff who had prepared the advertisement
10 for sale of the property and the return from the execution, the
irregularities in the execution process as found by the learned
Justices of Appeal could not be attributed to the appellant. Counsel
contended that there was no evidence to show how the appellant
had influenced the said irregular execution process undertaken by
15 the court bailiff and that the appellant had no notice of any
unlawful act.

He submitted that it was unfair for the Court of Appeal to impute
the actions or any omissions or mistakes whatsoever of the bailiff
on the Appellant who had no prior notice about them.

20 **Ground 3**

As to whether the Learned Justices of Appeal erred in law in
ordering the suit land to revert to the respondent, the appellant
argued that the Justices of Appeal agreed with the learned trial
judge's holding that the lease agreement between the respondent
25 and the Registered Trustees of Kampala Diocese did not take away
the power of court to order attachment and sale. The court was not
obliged to seek consent from the respondents. That as such, the
subsequent registration and transfer to Joyce Lamwaka, Harriet
Asaba and Grace Asaba was proper. Counsel contended that if the

5 appellant's ownership was to be challenged, the property would
revert back to the 3 joint proprietors and not the respondent.
Therefore, the learned Justices of Appeal erred in ordering both a
reversion of the suit property in the names of the respondent and
ordering the Commissioner Land registration to register the suit
10 property in the respondent's name.

Finally counsel prayed that the appeal be allowed with costs in this
court and in the *courts below*:

Respondent's submission in reply:

Ground 1

15 For the respondent, it was argued that this ground was vague in
that it was a direct challenge of the powers of the Court of Appeal.
That it implied the Court of Appeal had no powers to set aside the
sale. Counsel relied on **Section 11 of the Judicature Act, Rule 32**
of the Judicature (Court of Appeal Rules) Directions which are to
20 the effect that in determining an appeal, the Court of Appeal shall
have all the powers and jurisdiction vested under any written law of
the court from the exercise of original jurisdiction of which the
appeal originally emanated and reverse or vary the decision of the
High Court respectively.

25 Counsel stated that the Justices of Appeal having reminded
themselves of their duty as a first appellate court re-evaluated the
evidence and came to the correct conclusion that the sale of land
comprised in LRV 2559 Folio 12 Plot 1802 be set aside.

Contrary to the appellant's submission, this Court as a second appellate court was not to depart from the concurrent findings of fact by the *courts a quo* by re-evaluating the evidence as a first appellate court. That this Court can only depart from the findings of fact only if special circumstances exist. For this submission, counsel relied on ***Muddumba vs. Wilberforce Kiluse SCCA No. 9 of 2002*** in which Oder JSC stated that the second appellate court could only depart from concurrent findings of fact by the trial Magistrate's Court and appellate High Court if special circumstances justified doing so.

In light of the foregoing, counsel submitted that the appellant did not show that special circumstances existed necessitating this Court to re-evaluate the evidence to depart from the concurrent findings of fact of the lower courts.

20 **Ground 2**

Counsel for the respondent adopted the submissions he made in arguing the appeal in the Court of appeal. In summary, the arguments were that the appellant does not qualify to be bona fide purchaser for value without notice because the transaction under which she obtained ownership of the property was tainted with

25 illegalities.

According to counsel, the illegalities included a discrepancy in the description of the suit land that was advertised in the New Times

5 newspaper and that which was subject to the execution of the court order. That the sale was unlawful; further, that the sale of the suit property to the appellant occurred before the day of 11th March 2000 indicated in the advertisement.

10 It was contrary to order 22 of the Civil Procedure Rules which requires that the sale of immovable property sold by public auction be made after advertising for 30 days. Another illegality pointed out was that there was discrepancy on how the appellant obtained title. That she testified at the trial in the High Court that she had purchased the property after attachment and sale of the same. She 15 stated further that the court ordered that it be transferred into her names. In contrast, Harriet Asaba one of the joint proprietors testified that the transfer to the appellant of the property as sole proprietor was made from the joint tenants after she had cleared the sums of money that they had given her to enable her purchase 20 the property.

That therefore, the Justices of Appeal could not be faulted for their findings on this ground.

Ground 3

25 It was submitted in regard to this ground that, to revert the title back to Joyce Lamwaka, Harriet Asaba and Grace Asaba would mean that court was legitimizing the fraudulent sale and transfer into their names and the appellant would remain a beneficiary of

5 this fraud thus the Court was justified in reverting the title back to the respondent.

Counsel finally prayed that the appeal be dismissed with costs.

Submissions by Counsel for the appellant in rejoinder:

10 In rejoinder, it was submitted for the appellant that the respondent misconstrued ground 1 to suggest that the appellant was challenging the Court of Appeal's jurisdiction to set aside the sale.

15 According to counsel, ground 1 did not offend Rule 82 (1) of the Rules of this Court which requires that the grounds of objection in a memorandum of appeal be non-argumentative and non-narrative. To the contrary, they said ground was concise and precise.

That the appellant objects to the findings of fact and application of the law forming the basis of the learned Justices' decision to set aside the sale.

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25 In regard to the necessity to re-evaluate the evidence where there were findings of fact by the lower courts, the appellant submitted that the present appeal is distinguishable from the appeals in the authorities cited by the respondent. That the present appeal presents a situation, where the Court of Appeal and High Court differed on findings of fact.

5 In response to the arguments in regard to ground 3, the appellant submitted that the learned Justices of Appeal did not fault the transfer of the suit land to the 3 proprietors. How then could they have reverted the property to the respondent if the transfer from the court sale to the 3 proprietors was not faulted?

10 **Analysis of the Court**

It is trite law that the duty of a first appellate court is to reconsider all material evidence that was before the trial court, and while making allowance for the fact that it has neither seen nor heard the witnesses, to come to its own conclusion on that evidence.

15 On the other hand, the second appellate court's duty lies in determining whether the first appellate court carried out its duty as a first appellate court. **[See for example: *Kifamunte Henry vs. Uganda SCCA No. 10 of 1997 cited in Uganda Breweries Ltd vs. Uganda Railways Corporation SCCA No.6 of 20001, D.R***
20 ***Pandya vs. R (1957) E.A.***] In considering whether the first appellate court carried out its duty, the respondent in her reply to the appellant's submission argued that this court was restricted from disturbing the concurrent findings of fact of the lower courts.

25 It is trite law that an appellate court such as this one ought to be slow where concurring findings of fact have been made by the trial Court and concurred by the first appellate Court. **(*Barclays Bank Ltd vs. Sakari 1996-97 SCGLR 639, Ganga Bishan vs. Jay***

5 **Nrayan, A.I.R 1986 S.C. 441**). However, there are instances where if the second appellate court is satisfied that there are strong pieces of evidence on record which are manifestly clear that the findings of the trial Court and the first appellate Court are erroneous such concurrent findings may be altered by the appellate court.

10 Without prejudice to the foregoing, I find that the present appeal is not one in which the *courts a quo* made concurrent findings of fact. Whereas the High Court found the appellant a bona fide purchaser for value without notice, the Court of Appeal on the other hand found fraud that was attributed to the appellant and hence not a
15 bona fide purchaser for value without notice. The only concurrent finding made by the two courts was the finding that the court did not need to seek consent of the registered proprietor before making the order of attachment of the suit property.

I shall proceed to consider whether the Court of Appeal as a first
20 appellate court re-evaluated the evidence on record before it reached its own conclusion.

Having restated the role of a first appellate court, the Court of Appeal stated as follows:

25 ***We shall now proceed to analyze the evidence on the record, the submissions and the way the trial court handled the matter in the High Court for us to resolve the issues raised and the grounds of the appeal before court. ... We shall re-evaluate the***

5 ***evidence in respect of the court order, the attachment, sale and transfer of the suit property.***

The Court of Appeal based on the following evidence to reach the conclusion that appellant was not a bona fide purchaser for value:

10 The first finding was that there was discrepancy in the return made by the bailiff of the public auction sale of the suit property. While the appellant testified that the property was purchased on 26th February 2000 for a total sum of Ushs. 23,000,000/=, the court bailiff in the return indicated that the suit land was sold on 31st March 2000 for a sum of Ushs. 25,000,000/=.

15 Secondly, the appellant led evidence that the suit land was transferred to her names by the three joint tenants that is Joyce Lamwaka, Harriet Asaba and Grace Asaba but she was the same person who signed an agreement of sale with the court bailiff indicating that she had acquired the property by the sale ordered by
20 court.

The Court of Appeal also noted that the record showed that the suit property was advertised for sale in the New Times News paper on 11th March 2000. Since the sale was conducted as a result of the advertisement, the appellant could not have been aware of a sale
25 that was conducted on 26th February 2000. The Court of Appeal thus concluded that the appellant was involved personally in a fraudulent transaction of the suit property.

5 Arising from the above, I am satisfied that the Court of Appeal did reevaluate the evidence presented on record before reaching their own conclusion. Ground one would therefore fail.

Ground 2

10 A registered transfer becomes paramount over any other interest on the land save for fraud. **Section 92 (2) of the Registration of Titles Act** provides:

15 *“Upon the registration of the transfer, the estate and interest of the proprietor as set forth in the instrument which he is entitled to transfer or dispose of shall pass to the transferee and the transferee shall thereupon become the proprietor thereof”.*

Section 64 (1) of the Registration of Titles Act also provides:

20 *Notwithstanding the existence in any other person of any estate or interest, whether derived by grant or otherwise, which but for this Act might be held to be paramount or to have priority, the proprietor of land or of any estate or interest in land under the operation of this Act shall, except in the case of fraud, hold the land or estate or*
25 *interest in land subject to such encumbrances as are notified on the folium of the Register Book constituted by the certificate of title, but absolutely free from all other encumbrances*

5 I note that the above provisions afford protection to registered proprietors if they are bona fide purchasers for value without notice of alleged fraud.

To be a **bona fide purchaser**, one must act in good faith, honesty, without fraud, collusion, or participation in wrong doing.

10 **Purchaser for Value** means that value consideration must be given to earn the immunity from equitable claimants. Value means any consideration in money, money's worth (e.g. other lands, stocks and shares or services or marriage. (See *Le Neve v. Le Neve (1747)* 1 Ves Sen 64: Wh & T. ii 157 *Willoughby v. Willoughby* 1 TR.
15 **763.**

Without Notice means that the purchaser must have no notice of the existence of equitable interest. He or she must have neither actual, notice nor constructive nor imputed notice.

20 A person has actual notice of all facts of which he has (or has had) actual knowledge whichever way that knowledge was acquired. A purchaser would be able to plead absence of notice only if he/she had made all usual and proper inquiries, and had still found nothing to indicate existence of equitable interest.

25 Can it be said then that the appellant qualifies as a bona fide purchaser for value without notice of the alleged fraud? I don't think it is on record that the appellant acquired the suit land through sale by public auction upon an order of court. That sale was advertised in the New Times daily and was scheduled to take

5 place on the 11th of March 2000. However, the actual sale to the appellant was made on 26th February 2000 and a return of the execution to court by the bailiff was made on the 1st of March 2000. This, in the first place was contrary to the provisions of the law governing sale of immovable property by public auction.

10 *Order 22 rule 62 of the Civil Procedure Rules provides:*

Sales, by whom conducted and how made.

Except as otherwise prescribed, every sale in execution of a decree shall be conducted by an officer of the court or by such other person as the court may appoint for this purpose, and shall be made by public auction in the prescribed manner.

Rule 63 provides:

Notification of sales by public auction.

(1) Where any immovable property is ordered to be sold by public

20 auction in execution of a decree the court shall cause a copy of the order to be served in the manner set out in rule 51(2) of this Order for the service of the order of attachment and, in sales of both movable and immovable property, shall also cause public notice and advertisement of the intended sale in such manner as the court thinks fit.

5 Rule64 provides:

Time of sale.

10 No sale hereunder shall take place until after the expiration of at least thirty days in the case of immovable property, and, except in the case of property
of the nature described in rule 40(2) of this Order, of at least fifteen days in the case of movable property, calculated from the date on which the public notice of sale has been advertised as provided in these Rules; except that in the case of movable property the judgment
15 debtor may consent in writing to a less period. (Emphasis ours)

Kerr on the Law of Fraud and Mistake, 5th Edition page1 states that fraud includes “all acts, omissions, and concealments which involve a breach of legal or equitable duty, trust or confidence, justly
20 reposed, and are injurious to another, or by which an undue or unconscientious advantage is taken of another. All surprise, trick, cunning, dissembling and other unfair way that is used to cheat anyone”.

In the instant appeal, the sale occurred before the expiry of the 30
25 days required under order 22 of the Civil Procedure Rules. The sale was scheduled to take place on 11th March 2000. The appellant in fact had knowledge of this date as she was in direct contact with the court bailiff, an officer of the court authorized to carry out the

5 sale. The appellant after depositing the first installment went ahead to sign an agreement of sale with the bailiff.

The return made by the bailiff indicated differing sums of money resulting from the sale. The agreement the appellant signed indicated that she purchased the land at Ushs. 23,000,000/= while
10 the return made to court indicated that the sale price was Ushs. 25,000,000/= such a transaction marred with irregularities and inconsistencies that the appellant knew of and participated in she cannot be a bona fide purchaser. The appellant's registered interest therefore cannot be protected under **Sections 92 and 64 (supra) of**
15 **the Registration of Titles Act.**

In view of the above circumstances, I am unable to fault the learned Justices for finding that the appellant was not a bona fide purchaser for value without notice.

This ground too fails.

20 **Ground 3**

With regard to ground 3, it was argued that the learned Justices of Appeal having found that the appellant was not a bonafide purchaser ought to have reverted the property back to the three joint purchasers (Joyce Lamwaka, Harriet Asaba and Grace Asaba)
25 who were the first purchasers. On the other hand, the respondent argued that to revert the title back to the three purchasers would mean that court was legitimizing a fraudulent sale and transfer.

5 The evidence on record indicated that the joint purchase by Joyce
Lwamwaka was for the reason that Joyce Lamwaka and Harriet
Asaba had lent money to Grace Asaba to purchase the property.
Therefore, as security pending the refund of the sums lent, they
appeared on the title as joint purchasers. However, it is Grace
10 Asaba (the appellant) who had all the interest in purchasing the
property. This explains why the property was later transferred to
Grace Asaba as sole owner. In essence therefore, the interest in the
suit property from the onset lay with the appellant.

15 Having found as above that the appellant was not a bona fide
purchaser for value without notice, it would be absurd to revert the
property to her as it would amount to this Court condoning an
illegality.

In **Cardinal Nsubuga and Another [1982] HCB 13** which was cited
with approval in **Kisugu Quarries vs. the Administrator General**
20 **SCCA NO. 10 of 1998** it was held:

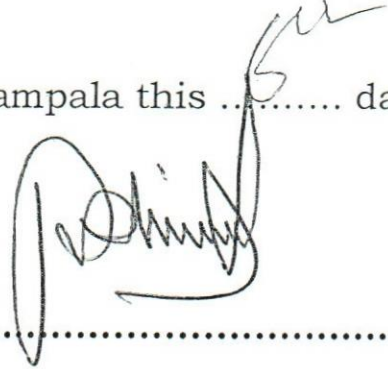
*A court of law would not allow an illegality that
escaped the eyes of the Trial Court to cause
undesirable consequences and that a Court cannot
sanction what is illegal and an illegality once
25 brought to the attention of the court, overrides all
questions of pleadings including admissions made.*

5. Since a registered proprietor's title can be impeached in circumstances where fraud exists as I have found, I am unable to revert the suit property to the appellant.

Ground 3 therefore also fails.

For the reasons given above, I find no merit in the appeal and would
10 dismiss it with costs to the respondent.

Dated at Kampala this 5 day of April 2017.



15

AUGUSTINE S. NSHIMYE
JUSTICE OF THE SUPREME COURT

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT KAMPALA

**(CORAM: KATUREEBE; CJ; TUMWESIGYE; ARACH-AMOKO;
NSHIMYE; MWONDHA; JJ.S.C.)**

CIVIL APPEAL NO: 14 OF 2014

BETWEEN

GRACE ASABA ::: APPELLANT

AND

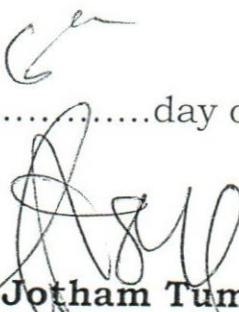
GRACE KAGAIGA ::: RESPONDENT

[Appeal from the decision of the Court of Appeal at Kampala (Hon. Richard Buteera, Kenneth Kakuru and Prof. Lillian Tibatemwa-Ekirikubinza, JJA) dated 25th March, 2014 in Civil Appeal No. 83 of 2011]

JUDGMENT OF TUMWESIGYE, JSC.

I have had the advantage of reading in advance the judgment prepared by my learned brother, Hon. Justice Nshimye, JSC. I agree with him that this appeal should be dismissed. I also agree with the orders he has proposed.

Dated at Kampala thisday of.....2017


Justice Jotham Tumwesigye
JUSTICE OF THE SUPREME COURT

**THE REPUBLIC OF UGANDA
IN THE SUPREME COURT OF UGANDA AT KAMPALA**

(Coram: Katureebe, CJ; Tumwesigye; Arach-Amoko; Nshimye; Mwondha;
JJ.S.C)

CIVIL APPEAL NO. 014 OF 2014

BETWEEN

GRACE ASABA APPELLANT

AND


GRACE KAGAIGA RESPONDENT

[Appeal from the Court of Appeal at Kampala (Buteera Richard, Kenneth Kakuru and Ekirikubinza-Tibatemwa, JJA) dated 25th March 2014 in Civil Appeal No. 83 of 2011]

JUDGMENT OF MWONDHA JSC

I have had the benefit of reading in draft the judgment of Hon. Justice Nshimye JSC. I agree that this appeal be dismissed with costs to the respondent.

Dated at Kampala this  day of  2017


Faith Mwondha

JUSTICE OF THE SUPREME COURT

REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT KAMPALA

(CORAM: KATUREEBE CJ, TUMWESIGYE, ARACH-AMOKO, NSHIMYE, MWONDHA, JJSC;)

CIVIL APPEAL NO: 14 OF 2014

BETWEEN

GRACE ASABA:.....APPELLANT

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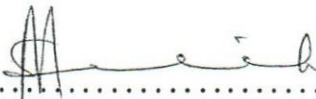
GRACE KAGAIGA:.....RESPONDENT

[Appeal from the decision of the Court of Appeal at Kampala (Hon. Richard Buteera, Kenneth Kakuru and Prof Lillian Tibatemwa-Ekirikubinza, JJA) dated 25th March, 2014 in Civil Appeal No.83 of 2011]

JUDGMENT OF ARACH-AMOKO, JSC

I have had the advantage of reading in advance the judgment prepared by my learned brother, Hon. Justice Nshimye, JSC. I agree with him that this appeal ought to be dismissed. I also agree with the orders he has proposed.

Dated at Kampala this.....^{6th} day of.....^{June} 2017

.....

ARACH-AMOKO, JSC

THE REPUBLIC OF UGANDA
IN THE SUPREME COURT OF UGANDA
AT KAMPALA
CIVIL APPEAL NO.14 OF 2014

Coram: (Katureebe, CJ; Tumwesigye; Arach-Amoko; Nshimye; Mwendha, JJ.S.C)

BETWEEN

GRACE ASABA **APPELLANT**

AND

GRACE KAGAIGA **RESPONDENT**

[Appeal from the decision of the Hon. Richard Buteera, Kenneth Kakuru and Prof Lillian Tibatemwa-Ekirikubinza, JJA Civil Appeal No.83of 2001 dated 25th March 2014.]

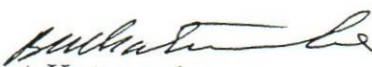
JUDGMENT OF KATUREEBE, CJ

I have had the benefit of reading in draft the judgment of my brother, Nshimye , JSC and I agree with him that this appeal has no merit and it should fail.

I also agree with the order he has proposed as to costs.

As all the other members of the Court agree, this appeal is hereby dismissed with costs to the respondent. The decision of the Court of Appeal is confirmed.

Dated at Kampala this *6* day of *April* 2017


Bart Katureebe
CHIEF JUSTICE