

home where she was married. The disagreement arose in 2008 when the first Appellant transferred (customarily) the suit pieces of land to the second Appellant without the Respondents consent.

The Appellant, due to extreme advanced age did not appear or testify. She was represented by her son whose defence is that the land belonged to his mother. PW 1 stated that his grandfather RUGIMBANA had two sons, namely, SEBIDEGA and NGIRUMPATSE SEBIDEGA, the Plaintiffs father and what belonged to her father became hers. After death of her mother in 1970s she left the land in hands of 1st Defendant as a caretaker.

The Plaintiffs version was supported by PW 2 Mulekezi 72 years old, PW 3 Munyamasoko James 65 years old. These two oldmen stated that they knew that the plaintiff inherited the suit land from her late parents and on getting married, she entrusted the land to the first Defendant/Appellant.

SEBUJANGWE (D1) stated that the mother bought the land in 1976 from Janet Nyirandatwa. This land is at Nyambiri. That the mother bought a second piece at Nyambiri in 1961 (same place) produced exhibit D1 and D2. Land at KABAYA was his mother's marriage gift given 1938.

NYIRABIRARE (D2) 45 years denied ever being given this land and all the time she saw first Appellant using the land.

Before the testimonies were received the following issues were raised:-

1. Whether or not the claimant is the owner of the suit land.
2. Whether or not the Defendants dispossessed the claimant of her land.

3. What remedies are parties entitled to.

At the conclusion the trial Magistrate found that the two pieces belonged to the claimant and that she had entrusted it to the Defendant (1) to cultivate and share the harvest. That this practice continued until D1 donated it to D2. He orders that land be shared between the parties. Following the above decision the Appellants filed the following grounds of Appeal:-

1. That the trial Magistrate erred in law by failing to record and consider Appellants evidence leading to biased judgment in favour of the Respondent.
2. That trial Magistrate erred in law when he failed to apply law of limitation to the suit.
3. That the learned trial Magistrate failed to consider each issue for determination.
4. That the trial Magistrate failed to render a reasoned Judgment leading to a miscarriage of Justice.

Ground 1: Whether the learned trial Magistrate erred in law by failing to record and consider the Appellants testimony leading to a biased judgment in favour of Respondent.

In the final address the Appellants did not substantiate this allegation and the Appellant's Advocate was in conduct of the trial and presentation of Defence witnesses whose evidence is reflected on record. These included DW 1

Sebujangu and two grounds of appeal and it must fail. The Appellant had a duty to prove this allegation which was not done.

Ground 2: Whether the trial Magistrate failed to apply limitation Act and arrived at a decision that was contrary to the law.

The issue of limitation was not part of the issues for determination by the trial court. It is not proper to raise this issue on appeal. Considering the trial record, Rev. Bikangiso raised the matter of limitation in his written submission which was belatedly and wrongly. It was belated and wrong because the decision on it is needed evidence at the trial. It was not raised as a preliminary point of law and was not tried as an issue. This conduct of defence by the Appellant's Advocate is contrary to the rule of law in the case cited by Mr. Twikirize Timothy for Respondent, **GENERAL PARTS (U) LTD AND ANOTHER VS NPART CIVIL APPEAL 9 OF 2005 (SCU)** and **GENERAL INDUSTRIES (U) LTD VS NPART CIVIL APPEAL 25 OF 1998**. The holdings in these cases settled that:-

- (1) An Appellate court acts only on material that was properly before the trial court unless for good cause the appellate court gives leave to any party to adduce additional evidence.
- (2) It is improper for a party to attempt to influence the decision of an appellate court with evidence which was neither properly adduced and admitted during the proceedings in the lower court nor received by order of that appeal court.

Apart from the above irregularity and illegality which are sufficient to have this ground of appeal struck out, I find that it lacks merit on the face of the record. The Respondent's claim is that she entrusted the suit land with the first respondent, to keep it for her and to use it and in return to give her part harvests which stopped in 2008 when she gave the land to second Appellant. The elements of the parties transaction between the parties is summarised as follows:-

- (a) That the suit land belonged to the Respondent.
- (b) That the first Appellant kept it as a trustee for the Respondent

but obliged to give back to the Respondent part of the harvest.

(c) That in 2008 the first Appellant donated the land to the second Appellant without consent of the Respondent.

Therefore, there was no cause of action until 2008 therefore the allegation of the limitation act being applicable to this case does not arise. This ground of appeal for this reasons must fail.

Ground 3: Whether the trial Magistrate erred in law by failing to address each issue for determination in the case and occasioned miscarriage of justice.

In my view there is no fast and hard rule that each issue should be addressed and resolved separately. I find nothing wrong with examining the evidence in the case as a whole provided the judgment answers the listed issues. The moment he decided that the land belonged to the Respondent and that the Respondent had entrusted it to the first appellant it follows that the first Appellant had no authority or right to donate it or in any other way alienate the land without the consent of the Respondent.

As far as regards the fourth ground of appeal, I find no merit whatsoever. There is no particular format that constitutes a judgment. Judgment writing is a matter of style by individual judicial officer. Judgment will be valid once it is the court's final determination of the rights and obligations of the parties based on the evidence adduced and gives reasons or grounds for the decision. I have found no merits in the fourth ground of appeal and in the final analysis the Appeal is dismissed as a whole with costs to the Respondent. Since there was no specific appeal against the order for sharing the pieces of the land. For the reasons given by the trial Magistrate I do hereby confirm the orders.



J.W. KWESIGA

JUDGE

21/9/2012

In presence of:

Rev. Bikangiso for the Appellant present.

Mr. Twikirize Timothy for Respondent absent. Both parties are absent.

Mr. Joshua Musinguzi- Court Clerk.

THE REPUBLIC OF UGANDA

1\ THE HIGH COURT OF UGANDA AT KABALE

HCT CIVIL APPEAL NO. 03 OF 2009

(From Land Claim No. 7 of 2008 Before Grade 1 Magistrate Kisoro)

1. NYIRABAYOKO -j
2. NYIRABIRARE j ::: PLAINTIFF

VERSUS NYIRANDEKEYAHO :::
DEFENDANT BEFORE HON. MR. JUSTICE J.W.
KWESIGA JUDGMENT

This is an Appeal from Kisoro Grade One Magistrates decision over a land dispute between the parties named above. Rev. Bikangiso represented the Defendants/Appellant during the trial and in this Appeal. Mr. Twikirize appeared for the Respondent on Appeal although she was not represented at the trial.

On request by the parties advocates this Appeal was allowed to proceed

and be disposed of through written submissions. From the start I must observe that this is a typical case where the innovation of written submissions has been so grossly abused by useless, irrelevant and misleading arguments and quotation of in applicable authorities that are so stressful to follow to trace any helpful grain from a heap of rubbish. This calls for a consideration to abandon this approach which was initially thought to be helpful in expediting disposal of suits but has now proved counter-productive. As a result of this, I will pay attention to the issues settled at the trial, the evidence adduced during the trial and the Judgment of the trial court. I will examine these aspects of the case and arrive at my conclusions in this case.

I am mindful of this courts obligation as an appellate court, to consider the evidence, evaluate it afresh and draw conclusions bearing in mind that this court had no opportunity of seeing or hearing the witness.

See: (1) SELLE & ANOTHER VS ASSOC. MOTORBOAT CO. LTD AND ANOTHER (1968) EA 123

(2) UDB VS NIC AND ANOTHER CIVIL APPEAL NO. 28 OF 1995 fSCU).

The dispute at hand is very simple. A dispute over ownership of two pieces of land at KABAYA and NYABYIRI in Kisoro District. The facts on record show that the Respondent's father and the first Appellant's husband were brothers. The second Appellant is a daughter of the first Appellant and therefore a cousin of the Respondent. The first Appellant is reported to be about 100 years old while the Respondent is stated to be over 70 years old.

The Respondent sued the first Appellant for wrongfully donating the suit

land that the Respondent had inherited from her late father/mother to her daughter, the second Appellant. The land had been left to the first Appellant to use it and care for it in return to give the Respondent part of what she harvested from the land. The Respondent was living about 1 ½ kilometers in a