

THE REPUBLIC OF UGANDA.

IN THE HIGH COURT OF UGANDA HOLDEN AT JINJA.

CIVIL APPEAL NO. 144 OF 2016.

(Arising from Iganga Civil Suit No. 008 of 2010)

1. PASTOR BALABA DAVID

2. IGANGA PENTECOSTAL CHURCH ::::::::::: APPELLANTS.

VERSUS

1. PASTOR LUBAALE PAUL

2. CENTRE FOR EVANGELISM MINISTRY::::::::: RESPONDENTS.

JUDGMENT ON APPEAL.

BEFORE HONOURABLE LADY JUSTICE EVA .K. LUSWATA.

Introduction.

The appellant through Okoth Osillo Advocates brought this appeal against the judgment and decision of His Worship Godfrey Kaweesa delivered on 8/12/2016. M/s Isabirye & Co., Advocates opposed the appeal on behalf of the respondents.

Background.

The appellants' claim in the lower Court is for the recovery of unregistered land located in Igamba village in Iganga Town Council measuring approximately 150x 120 ft (hereinafter the suit land). It was pleaded that the 1st appellant bought the suit land from one Mwamad Gulume in two phases between 1996 and 2010, for the benefit of the 2nd appellant under which the 1st appellant also serves as both a director and the senior pastor. That having completed purchase of the suit land, the appellants

developed it with a Church building and then embarked on the process of its registration as a town plot.

That at some point, the 1st appellant invited and hosted joint ministry activities with the respondents on the suit land. That sometime during 2008, the respondents and their agents without any claim of right or proprietary interest, started claiming ownership of the Church building and suit land, forced the appellants off the land, took possession of it and continue to illegally occupy and conduct their activities as a Centre for Evangelism. That the respondents have resisted all attempts by the appellants to stop that illegal occupation.

In defence to the claim, the 2nd respondent pleaded that they own the suit land which they purchased while under the directorship of the 1st respondent, (at a time with the 1st appellant was still a servant/minister of the 2nd respondent) in the name and style “*Iganga Pentecostal Church.*” That the purchase was made in three phases from Gulume Mohamed and Musasizi David between September 1996 and October 1997, using funds generated by them, through a fundraising committee.

The respondents specifically contended that the registration of the 2nd appellant using a name already owned by the 2nd defendant as a subsidiary Church was fraudulent. They in addition contested the agreement of sale presented by the appellants as fraud done in connivance with Gulume the vendor, since the final purchase was made in 1997 when Gulume handed over vacant possession to them after which they applied for a leasehold interest in the suit land, for the benefit of the in the 2nd respondent. They denied ever forcing the appellants off the suit land and Church, contending that the 1st appellant left on his volition with the intention of forming his own ministry elsewhere. They contended further that the 2nd appellant who only came into existence in 2009, could not have acquired property before its existence.

In rejoinder to the defence, the appellants denied any fraud and contested the fact that the 2nd respondent ever had a building/fundraising committee in respect of the suit land. It was then explained that upon its incorporation, the 2nd appellant resolved to give legal efficacy to the purchase of the suit land by its act of novation, in executing a fresh sale agreement with the vendor.

Grounds of appeal.

In his judgment, the learned Magistrate found that neither appellant had purchased the suit land, and that by registering the 2nd appellant, the 1st appellant was acting fraudulently in an attempt to disentitle the 2nd respondent. He in addition found that the 2nd respondent was the mother ministry under whom the Church operated and as such, the respondents were in rightful possession of the suit land. Being dissatisfied with that decision, the appellant filed this appeal on the following three grounds.

- i. That the learned trial magistrate erred in law and fact when he failed to properly evaluate the evidence on record and hence arrived at a wrong decision.**
- ii. That the learned trial magistrate erred in law and fact when he decreed the suit land to the respondents without credible supporting evidence thus causing a miscarriage of Justice.**
- iii. That the learned trial magistrate erred in law and fact when he disregarded and failed to take into account the overwhelming evidence in support of the appellants' claim thus occasioning grave injustice.**

Duty of the first appellate court.

The duty of the first Appellate court has been reiterated in numerous cases. It is to re-evaluate and or re-appraise the evidence on record and then come to its own

conclusion. **Hon. Justice A. Karokora** (J.S.C as he then was) in the case of **Sanyu Lwanga Musoke Vs. Sam Galiwanga, SCCA No. 48/1995** held that;

“...it is settled law that a first Appellate Court is under the duty to subject the entire evidence on the record to an exhaustive scrutiny and to re-evaluate and make its own conclusion while bearing in mind the fact that the Court never observed the witnesses under cross-examination so as to test their veracity...” See also case of **Banco Arabe Espanol Vs Bank of Uganda, SCCA NO.8 OF 1998**

The powers of the High Court as an appellate Court are stipulated in **Section 80** of the **Civil Procedure Act Cap 71**. When considering an appeal, the High Court has power to determine the case finally, to remand the case, to frame issues and refer them for trial, to take additional evidence or to require such evidence to be taken and to order a new trial.

According to **Section 80 (2) CPR**, the High Court has the same powers and nearly the same duties as are conferred on courts of original jurisdiction in respect of suits instituted in it. See **Byaruhanga v Kahemura (HCT – 01 – LD – CA – 0019 OF 2016) [2017] UGHCLD 94 (14 December 2017)**;

I will closely take note of the principals/dictum espoused in the above decisions.

Preliminary Objection.

A preliminary objection was raised by respondent’s counsel in their submissions that all three grounds as raised by the appellant offend the provisions of **Order 43 Rule 1(2) CPR**. They argue that the grounds as framed do not satisfy the standard set by this rule in as far as they do not set forth concisely what the learned trial Magistrate failed to evaluate. That they are too general and do not specifically show appellants’ compliant in respect to what the trial magistrate did or did, not do. I do agree with that submission in respect of the first and third grounds, and the following are my reasons:

Order 43 Rule 1(2) CPR provides that;

“The memorandum shall set forth concisely and under distinct heads the ground of objection to the decree appealed from without any argument or narrative and the grounds shall be numbered consecutively.”

The above law is couched in mandatory terms. It mandates a court to reject a ground of appeal that is in-concise and drafted in a manner that is a narrative or argumentative. The High Court decision in **Olanya Vrs Ociti & 3 Ors (Civil Appeal No. 64/2017) UGHHCCD 52 (11/1/2018)** explained this well. It was held that:

“Properly framed grounds of appeal should specifically point out errors observed in the course of the trial, including the decision which the appellant believes occasioned a miscarriage of justice. Appellate Courts frown upon the practice of advocates setting out general grounds of appeal that allow them to go on a fishing expedition at the hearing of the appeal hoping to get something they themselves do not know.” Also see **Edward Katumba Byaruhanga Vrs Daniel Kyewalabye Musoke CACA No. 2/1998, (1999) Kalr 621** and **AG Vs Florence Baliraine CA No. 79/2003.**

In both grounds 1 and 3, the appellant makes a sweeping attack on the entire record. It is not clear which evidence was disregarded or wrongly evaluated. The appellate Court cannot find fault where it is not concisely raised. Although it is my mandate to re-evaluate the evidence adduced in the lower court, I can do so only in line with what has been raised on appeal. Grounds 1 and 3 are too general to merit consideration on appeal. Fortunately, the second ground which is better framed, should be able to address the appellant’s main grievance that the Magistrate awarded the suit land to the respondents without any supporting credible evidence. It will of course require this Court to revisit the entire record which I will do in this judgment.

Thus, I resolve the preliminary objection raised for the respondent by dismissing both grounds 1 and 3 of this appeal.

A brief summation of the evidence and counsel's submissions

PW1 testified that he joined Iganga Pentecostal Church in 1996 which was then situated at King of Kings Secondary School. That he had previously met Pastor Nictor Lubaale in 1988 who was by then a Pastor for Centre for Evangelism at Iganga Town Council Primary school. That PW1 and his associates (including King of Kings Secondary School, Balaba Prossy, Isubikalu Robert, Mwesigwa Edward, and Harriet Mwesigwa) purchased the suit property from Gulume through a total of five purchase agreements. That the final agreement dated 10/2/2010 was made only in order to hand over the suit land and Church building to the 2nd appellant, a duly registered company and community based organization (CBO). That he handed over the first three original purchase agreements to the appellants before disagreements arose between them. That after completing the purchase, he embarked on obtaining a lease title in favour of the 2nd appellant through Esau Kyankone (**DW7b**), which process was halted when the defendants ejected the plaintiffs from the suit land.

PW2 the vendor for the suit land stated that when he first approached him, the 1st appellant informed him that he was buying the plots for the Church. That it is the 1st appellant who paid him all the purchase money on behalf of the 2nd appellant. PW3 who was PW2's brother, substantially supported that evidence.

On his part, PW4 the senior health inspector of Iganga Municipality, confirmed that they opened and maintained a file for the 2nd appellant on 28/10/1999 in the names of "Iganga Pentecostal Church Igamba area". Contrary to that evidence, **PW6** the Secretary Iganga Town Council stated that he recalled **DW7 (b)** as the agent assisting the 1st appellant to process a land title and the application he received from him was for "**Iganga Pentecostal Church Centre for Evangelism**" which they maintained upon request, and because the 1st appellant did not provide information or documents that excluded the "**Centre for Evangelism**". On his part, PW5 the LCI of Igamba was

aware that the appellants purchased the suit land from Gulume and begun paying for it in installments in 1996. He was aware of the agreement signed between them in 2009 to correct any previous agreements they had executed. He continued that his court had at one time handled a dispute between the appellants and the 1st respondent where he ruled in favour of the former, and that he subsequently advised the Town clerk of Iganga that the 2nd appellant had land that they intended to develop.

Mwesigwa Edward Benjamin **DW1** who authored and witnessed **DEX12**, claimed to have been a member of the Iganga Pentecostal Church between 1983 and 1996 where the 1st appellant found and joined him in 1996. Specifically that he worked under Lubaale Nictor one of the founder members of the Centre for Evangelism, the later which is a duly registered entity running a ministry that has been planting churches in Iganga region e.g the Iganga Pentecostal Church, Kibinga Pentecostal Church, Bukaye Pentecostal Church and Ibulanku Pentecostal Church. He denied knowledge of the 2nd appellant as a registered company but admitted that him and the 1st appellant previously worked together as leaders in the Iganga Pentecostal Church, a ministry of/under the Centre for Evangelism. On the other hand, **DW5** author of **PEX13**, stated that as its secretary, he made the agreement on behalf of Iganga Pentecostal Church on 10/9/1997.

DW5 explained that he was involved in mobilization of resources through pledges and offertories for the purchase of the suit land, as one of their programs by the Iganga Pentecostal Church, under the Centre for Evangelism. That as was the practice, once the purchase was made, the original documents were taken into custody of the Centre for Evangelism. He contested that fact the suit land belonged to the 1st appellant as an individual and contended that the Church structure was put up using Church and not the 1st appellant's money.

Both Robert Isibuka **DW2** who authored and witnessed **DEX13**, and Waiswa James **DW3** claimed to have been members of Iganga Pentecostal Church Centre for Evangelism since 1986. Both supported the evidence that entity started Churches in Iganga, Bukaye, Kirinya Busiir, Bwanalira, and Malongo. **DW3** explained that Nictor Lubaale was the first pastor for the Iganga Pentecostal Church while the 1st respondent was the overseer for Centre for Evangelism Ministry. That Nictor Lubaale left for Nairobi and was succeeded by the 1st appellant, and it was during the latter's term that the suit land was purchased on behalf of the Church from Mohammed Gulume and Musasizi David.

DW2 further testified that upon instructions of the 1st appellant, he authored the document on which Gulume received his balance on 24/2/1997. Both **DW2** and **DW3** were aware that the proceeds to purchase the suit land were obtained from fundraising by the Church members under the encouragement of the 1st appellant and that **DW2** himself at one time paid an installment from money he picked from the Church bursar. According to **DW7 (b)**, the 1st appellant was sent on disciplinary leave for three months, but that on 14/12/2008 before the period expired. The 1st appellant peaceably left to form his own Church, after which he had the 2nd appellant registered in 2009. **DW8** claimed to have recorded the Church service at which the 1st appellant communicated his wish to leave. A tape of the recording and its transcription were confirmed as authentic by **DW9** and admitted as **DEX 6** and **7** respectively.

DW3 testified further that after purchase of the suit land, the Church formed a building committee under one Babiga Charles and the 1st appellant was assigned the duty of mobilizing funds. **DW4** Joy Mwesigwa, a treasurer of Iganga Pentecostal Church Centre for Evangelism (between 2002-2008), also maintained that the Church members (the 1st appellant inclusive) owned the suit land because they raised the

money for its purchase. That pledges were banked on accounts at the Stanbic Bank (former Uganda Commercial Bank) and Uganda Finance Trust Bank for which she, the 1st appellant, and Kibande Nicholas were signatories. Further that the signatories to **DEX2** were her, the 1st appellant and **DW7 (b)** the church elder.

DW7 (a) Paul Nictor Lubaale testified that the 1st appellant succeeded him as pastor when he left in 1996. He explained that the Centre for Evangelism was registered in 1981 with him, Lwayaya James and Lubaale as directors. That they then set up churches in Kiringa, Busiilo, Nakabugu, Buwala and Malongo. He continued that the Iganga Pentecostal Church was likewise established in 1982 under the Centre for Evangelism, and he was in 1983 appointed its Pastor. That the Iganga Pentecostal Church (like all other subsidiaries) was registered under the mother ministry. That it was housed at different locations and it was while they were worshipping at the former King of Kings Secondary School when they purchased the suit land as a permanent venue. He continued that a team was put in place to raise money from the Church membership, and the purchase price was mainly sourced from them, after which, the 1st appellant started paying for it on behalf of the Church.

DW8 further testified that in addition to collection, members offered building services and materials **DW7 (a)** further explained that the Centre for Evangelism remained the mother body where member churches would meet and for that reason, every official transaction required the use of the official address for the Centre for Evangelism and bank accounts indicated that address. That when a team bought any property, it would be property of the church and the purchase documents deposited with headquarters for Centre for Evangelism.

On his part, **DW7 (b)** stated that Pastor Lubaale was an overseer of their mother Ministry, Centre for Evangelism which planted Iganga Pentecostal Church. He admitted being entrusted with the responsibility of opening up their file for an

application for land at the Iganga Town Council and he also acted as chairperson of the building committee of the Church building. That that upon the advise of the 1st appellant, they changed their name to **“Iganga Pentecostal Church Centre for Evangelism”** and in 2004, they made a sign post in that name. That later after disagreements arose as a result of the 1st appellant’s misconduct, he changed the sign post by erasing the words **“Centre for Evangelism”**. DW8 also supported the evidence that Pastor Lubaale was the ministry overseer for Centre for Evangelism which is the mother ministry of Iganga Pentecostal Church Centre for Evangelism, with the 1st appellant being only a member until 1997 when he became a pastor to succeed Pastor Nictor Lubaale.

Decision of the court

Stemming from the detailed evidence above, it is true that there was protracted evidence provided by either party to claim they owned the suit land. However, I hasten to point out that the Magistrate did not decree the suit land to the respondents as stated in the second ground of appeal. Instead, in his decision, he found that the appellants had failed to discharge their burden of proof against the respondents. He in addition found that the respondents were not in wrongful possession of the suit land. My duty is to confirm whether the evidence supports that finding.

The agreement dated 26/9/1996 **DEX12** for the purchase of two plots, and the agreement of 16/10/1997 for the third plot (**DEX13** and **PEX13**) where Musasizi David was compensated for his land, all indicate the Iganga Pentecostal Church as the purchaser. The 1st appellant only appears as witness to **DEX1** and **DEX13**. In his evidence, the 1st appellant himself acknowledged that the originals are in the possession of the 2nd respondent which is in line with the testimony of **DW1, DW7 (a)** and **DW7 (b)** that after the purchase of land by the local churches under Centre for

Evangelism, the originals are always kept with the mother Ministry, Centre for Evangelism.

The evidence of **DW1, DW2, DW3, DW4, DW8, DW7(a)** and **DW7(b)** is that the money used to buy the suit land was solicited from members of the Iganga Pentecostal Church under the Mother Ministry Centre for Evangelism, was strong and un rebutted. It was shown that the Church set up committees in charge of fundraising and building, one of which the 1st appellant himself headed. The 1st appellant did not deny being a member of the church at the material time and provided no strong evidence in rebuttal to show that he used his own money to purchase the suit land or develop it. Him and PW2 only showed that he was present when the purchase was made, and on one occasion, paid the purchase price. It is not in contention that by the time the first agreements were made, the 2nd appellant did not legally exist, and therefore could not purchase any land.

There was evidence available that the Iganga Pentecostal Church begun operations in 1982. Therefore, by the time the 1st appellant joined the Church, the unregistered entity known as Iganga Pentecostal Church was already in existence under its mother ministry, Centre for Evangelism. I find that the trial magistrate was correct in holding that the 1st appellant was not one of the founder members of the unregistered entity in 1996 when he joined as a leader. There is yet more evidence to support my conclusion.

The respondents' witnesses substantially testified that the 1st appellant was working for the 2nd respondent under the name "Iganga Pentecostal Church Centre for Evangelism", a name he himself suggested. The fact that the 2nd respondent set up and supported other churches in the Busoga region (Iganga Pentecostal Church inclusive) was strong and un rebutted. Also, the fact that the Church was a subsidiary or entity run under the 2nd respondent is evident in several ways. Iganga Pentecostal Church

used the 2nd respondent's address (P.O. Box No.39), the same name and address under which the Church's bank accounts were registered. In **DEX5**, the Church registration form (with respect to their registration with the National Fellowship of Born Again Pentecostal Churches-Uganda) is in the name of "**Iganga Pentecostal Church Centre for Evangelism**". Also, the partnership agreement with Compassion International Incorporated (whose activities were evident on the suit land during the locus visit), were also in the same name. Also, the plausible explanation for the 1st appellant to hand over the first purchase agreements to the 2nd respondent, would be that it was the latter in whose interest it was purchased.

Citing authority, appellants' counsel submitted that Gulume the vendor and the 2nd appellant by executing **Exh.P4** legally conferred ownership of the suit land to the 2nd appellant. This Court equally observes that pre-incorporation contracts are not enforceable by companies unless a new contract is made after incorporation to effect the previous agreement. See for example **Kigalane Hotel Ltd Vs. UEDCL HCCS No. 557/2004** (reported in **20008**) (**Kalr**) **840**.

In **Greenland Bank Ltd (In Liquidation) Vs Express Sports Club Ltd HCT-00-CC-CS-232-2006** Hon. Justice Lameck. N. Mukasa referred to the **Laws of England 3rd Edition Vol. 6 Para 825** at page 426 which states:-

"In order that the Company may be bound by agreements entered into before its incorporation, there must be a new contract to the effect of the previous agreement." He further held further that;

"In the instant case, the Plaintiff did not plead ratification of the pre incorporation loan agreement. Secondly there was no agreement between the plaintiff and the defendant company ratifying the loan agreement. The memorandum and articles of association of the defendant company were not an agreement between the defendant and the plaintiff and therefore could not ratify a pre-incorporation agreement with the

plaintiff. Lastly there were no pleadings to show that the defendant company had continued to operate the pre-incorporation Express Sports Club's account and/or to enjoy benefits of the loan facility. ''

In the sale agreement dated 10/2/2010, Gulume purported to sale the suit land to the 2nd appellant for a purchase price of Shs. 2,450,000/-. That agreement in addition purported to cancel all previous agreements entered into between the parties and their agents. The 1st appellant and other members of the 2nd appellant signed on behalf of the purchaser. That notwithstanding, the 1st party who was not privy to the pre-incorporation contract could not bind the 2nd appellant in the final agreement. The correct entity with that mandate would be the 2nd respondent which was a registered entity with Iganga Pentecostal Church as its subsidiary Church.

The accepted evidence then, and now on appeal, is that Iganga Pentecostal Church (the unregistered entity) was not the precursor of the 2nd appellant. It is in fact clear from the evidence that it is the 2nd respondent and not either appellant who continued with running the Church business after incorporation of the 2nd appellant. The 1st appellant's assertion that he was forced out of the Church was not well substantiated and infact, he did not plead those specific facts which is required under Order 6 rr 3 CPR. Although the video recording was contested as being a duplicate and probably edited, the 1st appellant did not deny that the events of 14/12/2008 took place.

The memorandum and articles of association of Iganga Pentecostal Church Ltd, indicate that it was registered on 21/1/2009 after the 1st appellant relinquished his ties with the Church and had left. The evidence available is that he intended to start his own Church which he did by incorporating the 2nd appellant. Even so, I would agree with the Magistrate's finding that that action was partly done with intent to defraud the 2nd respondent, as the mother ministry. The evidence indicates that the 1st appellant may have formed that fraudulent intention even before he cut his ties with

the respondents. **DW7(b)** testified (and this was confirmed during the locus visit) that at some point, the 1st appellant tore up the certificate of registration issued by the 2nd respondent to the Church and then instructed an askari to erase the words “Centre for Evangelism” from a Church sign post. In his estimation, this would have ousted the 2nd respondent’s ownership of the Church, which in law is not the case.

In conclusion, there was credible evidence supporting the decision of the Magistrate that the 2nd defendant was the mother ministry under whom the Iganga Pentecostal Church operated, including purchasing of the suit land. He was in addition correct to find that the appellants did not prove their claim on a balance of probabilities. I would accordingly have no reason to fault the Magistrate on his decision in that regard.

Accordingly, ground two fails.

However before I take leave of this appeal, I find that the suit was not properly filed with regard to certain parties. The evidence is that the 1st appellant negotiated the purchase of the suit property for the benefit of the 2nd appellant, and eventually passed on his interest to them. Although this was disproved, the fact would still remain that by the time he filed the suit, the 1st appellant had no legal interest in the suit land. He would thereby have *no locus standi* to sue either respondent. Likewise, the 1st respondent never professed to own the Church or suit land. He was strong on his evidence that he was only employed first as an elder and then as a pastor of the Church which is now established to be a subsidiary of the 2nd respondent. The strong evidence was that the Church and its ministry was at all times, of the property of the 2nd respondent, a duly incorporated entity. The 1st respondent was thus wrongly sued.

However, my observations above would have no effect on my final decision in this appeal. It is dismissed with costs of this court and of the lower Court being awarded to the respondents.

I so Order

.....

EVA K. LUSWATA

JUDGE

DATE : 19/03/2021