

THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
CIVIL APPEAL NO. 58 OF 2009

LUKYAMUZI EMMANUEL.....APPELLANT

5 **VERSUS**

HAJATI AISHA NANTUME MALE.....RESPONDENT

*(An appeal against the Judgment and orders of Hon. Justice V.F Musoke Kibuuka dated 12th
May 2009 in H.C.C A No. 011 of 2002 at Masaka High Court)*

CORAM:

10 **HON. MR. JUSTICE REMMY KASULE, JA**
HON. MR. JUSTICE KENNETH KAKURU, JA
HON. JUSTICE PROF.LILLIAN E.TIBATEMWA, JA

JUDGMENT OF THE COURT

15 This is a second appeal. The appellant instituted a suit at the Chief Magistrates' Court at Masaka
vide Civil Suit No. MMA 117 of 1996 against the respondent together with one Ahmed Kayongo
apparently as administrators of the estate of the Late Moses Male. He sought to recover shs.
2,100,000/= or 0.5 Acres part of plot 25-27 Speke Road Masaka from the estate of the said Late
Moses Male. In that suit he contended that the Late Moses Male had sold to him the part of the
said land but had later refused to transfer the land to him and had also refused to refund the
20 purchase price the appellant had paid for the land.

The learned Chief Magistrate on 29th April 2002 found for the plaintiff, now appellant, and
entered Judgment in his favour for shs. 1.6 million shillings having found that the Late Moses
Male had in fact part refunded to the appellant shs. 500,000/= before his death.

25 The respondent appealed to the High Court at Masaka through High Court Civil Appeal No.011
of 2002.

The learned appellate Judge allowed the appeal. He found, after evaluation of evidence adduced at the trial, that in fact the Late Moses Male had refunded the purchase price fully. That he had paid to the appellant shs. 2,500,000/= by two cheques one dated 27th June 1994 for shs.2,000,000/= (Two million shillings) and the other dated 3rd August 1994 for shs. 500,000/= 5 (Five hundred shillings only).

The appellant was dissatisfied with decision of the learned appellate Judge and hence this appeal.

The memorandum of appeal is set out as follows;-

- 1) *The learned Judge erred in law and fact when he failed to judiciously re-examine and appraise the evidence on record as a first appellate court and came to a wrong*
10 *decision.*
- 2) *The learned Judge erred in law and fact when he came to the conclusion that the appellant / respondent had been paid by the late Male.*
- 15 3) *The learned Judge erred in law and fact when he concluded that there was a departure from pleadings and labeled the appellant dishonest whereas not.*
- 4) *The learned Judge erred in law and fact when he declined to award the appellant*
20 *interest in the claim.*

When this appeal came up for hearing learned counsel **Moses Kugumikiriza** was for the appellant who was also present in Court. Neither the respondent nor their counsel **Mr. John Matovu** of Matovu, Kamugunda and Co. Advocates, were present.

25 The Court record indicated that the respondent's advocates had been duly served. They had acknowledged service but indicated that Mr. Matovu who was in personal conduct of the suit was indisposed.

This Court allowed the appellant’s counsel to proceed with the appeal in the absence of the respondents or their counsel. Firstly the respondent’s absence was unexplained. Secondly the respondent’s counsel could not have moved Court to adjourn the appeal by a mere letter. It is well settled that a letter does not adjourn a matter before Court. Steps ought to have been taken
5 for another advocate to hold brief for counsel who could not attend court when the appeal was called for hearing.

Mr. Kugumikiriza, with leave of court, adopted his conferencing notes as submissions where upon Judgment was reserved.

10

We have carefully perused the Court record and the appellants conferencing notes. We have also studied carefully the authorities relied upon by the appellant. This is a second appeal. Unlike the first appellate Court, a second appellate Court has no duty to re-evaluate the evidence unless the first appellate Court had failed its duty to so do. *See; Henry Kifamunte Vs Uganda (Supreme*
15 *Court Criminal Appeal No. 10 of 1997).*

This Court has limited jurisdiction while determining second appeals. **Rule 30(1)** of the Rules of this Court imposes a duty on the Court to re-appraise the evidence only on first appeals. **Section 72** of the Civil Procedure Act also limits second appeals to this Court to only questions of law.

20 It stipulates as follows;-

“Appeals from appellate decree

72. Second appeal

25

- (1) Except where otherwise expressly provided in this Act or by any other law for the time being in force, an appeal shall lie to the Court of Appeal from every decree passed in appeal by the High Court, on any of the following grounds, namely that-***

- a) *the decision is contrary to law or to some usage having the force of law;*
- b) *the decision has failed to determine some material issue of law or usage having the force of law;*
- c) *a substantial error or defect in the procedure provided by this Act or by any other law for the time being in force, has occurred which may possibly have produced error or defect in the decision of the case upon the merits.*

(2) *An appeal may lie under this section from an appellate decree passed ex parte.”*

We have already reproduced the memorandum of appeal. All the 4 grounds of appeal relate to questions of law and fact in contravention of **Section 72** of the Civil Procedure Act referred to above.

On that account alone we find that this appeal is incompetent in law and we would strike out the same.

10

Be that as it may, we have carefully perused the Judgment and we have found that the learned appellate Judge properly re-evaluated the whole evidence as required by law before coming to the decision that he came to. We find no reason to fault his decision.

15 The decision of the learned appellate Judge is not contrary to any law, neither did he fail to determine any material issue of law. In passing Judgment the learned appellate Judge made no substantial error in any legal procedure that could have resulted into an erroneous decision.

Accordingly we would have found no reason whatsoever to fault his decision had we not struck out the appeal on account of its being incompetent.

This appeal therefore fails and as already stated it is hereby struck out with no order as to costs since neither the respondent nor her counsel appeared in Court to defend the same.

Dated at Kampala this 19th day of June 2015.

10

.....

HON. REMMY KASULE
JUSTICE OF APPEAL

15

.....

HON. KENNETH KAKURU
JUSTICE OF APPEAL

20

.....

HON. PROF.LILLIAN E.TIBATEMWA
JUSTICE OF APPEAL