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**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KABALE
CIVIL APPEAL NO. 012 OF 2023**

(Arising from Chief Magistrates Court of Kisoro via Civil Suit No. 010 of
2017)

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NGIRABAKUNZI DENIS :::APPELLANT

VERSUS

HABAGATSI JAMES ::: RESPONDENT

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BEFORE: HON. JUSTICE SSEMOGERERE, KAROLI LWANGA

JUDGEMENT

Brief Facts:

20 This is an appeal from the decision of His Worship Raphael Vuena, the learned Magistrate Grade I in Kisoro Chief Magistrates’ Court in Land Claim No. 010 of 2017. The appellant was the defendant in a suit brought in the lower court for recovery of land for trespass. Other reliefs sought by the respondent (“plaintiff” in the trial court) were eviction, a permanent injunction, a declaration that the respondent was the owner of the suit land
25 and costs of the suit.

In the trial court, the respondent alleged that the appellant’s brother, a one Sunday Geoffrey (the “appellant’s brother”) had been given the suit land in Gikoro, as a marriage gift by his parents on which he built a house. Second, that the respondent and the appellant’s brother jointly bought a Kibanja at
30 Gacekere “A” village, Kyaka Parish, Kyaka Town Council, Kyegegwa district. Thereafter, on August 27th, 2011, the appellant’s brother by written agreement (the “2011 agreement”) exchanged the suit land at Gikoro with the respondent. That immediately, the appellant learnt of the exchange, he

5 immediately began disturbing the respondent, and brought **Civil Suit No. 060 of 2011** which was dismissed for want of prosecution with costs.

The respondent is a paternal uncle of the appellant, a brother to the appellant's father. The suit land originally belonged to the respondent's father, who gave the suit land to the appellant's parents as a marriage gift.
10 When the respondent's father died, the suit land remained with the respondent's mother Maria Nyirampoza. The appellant and his brothers were young at the time of the death of their father and were brought up by the respondent and his mother, Maria Nyirampoza. When they became of age, their mother decided to give them marriage gifts, and the appellant's
15 brother was given the suit land, where he built a house and planted some bananas and grew other crops. The appellant's younger brother was also given a piece of land, and each started using this land undisturbed and uninterrupted.

On the alleged date in 2011, Sunday Geoffrey, elder brother of the appellant
20 sought to exchange the suit land with the respondent, so that the respondent could take and own the suit land. And Sunday Godfrey owned the land in Kyegegwa permanently. The 2011 agreement was signed between the respondent, Sunday Geoffrey, Maria Nyirampoza and Nsabimana Innocent. The appellant never allowed the respondent to take
25 possession and use the land, hence the action in the lower court. In the lower court, the appellant's defence was that the respondent never owned the suit land, and the exchange was a nullity. Second, appellant's case was that he lived on the suit land and cultivated the surrounding land for many years. Third, that Sunday Godfrey's land was on land neighboring Gikoro
30 Primary School which he had sold to the respondent; and that Sunday Godfrey had never owned the suit land.

The trial court framed two issues for determination: These were:

- (a) Whether the exchange between the respondent and Sunday Godfrey was lawful?
- 35 (b) What remedies was lawful?

In resolving, the first issue, court heard testimony of the parties and their respective witnesses. For the respondent, court heard the testimony of his

5 mother, Maria Nyirampoza, who testified that she and her deceased husband received the suit land as a gift from her father-in-law; a fact corroborated by the respondent, and one of the appellant's witnesses, DW2. Later, she gave the appellant's brother the suit land as a marriage gift, but also at different intervals gave different pieces of land from the said
10 marriage gifts by her late father-in-law to the appellant and her other son, Nsabimana Innocent, PW3. Each of the three sons, took possession and began using them (the "gifts"). Appellant's testimony was to the effect that he inherited the land from his late father. Court rejected appellant's position hence this appeal. Court observed that it would not be for him (the
15 "appellant") alone to inherit land alone among his three brothers. With the status of the gift inter vivos, court upheld the gift and held it was lawful to exchange the land.

Grounds of Appeal:

20 Appellant framed two grounds of appeal. These are:

1. The learned Trial Magistrate erred in law and fact, when he held that the exchange of the suit land between the Respondent and Sunday Godfrey with the land in Kyegegwa was lawful.
2. The learned Trial Magistrate erred in law and fact when he failed to
25 properly evaluate the evidence on the record, as a whole coming to the wrong conclusion that the Respondent was the lawful owner of the suit land.

Representation:

30 This appeal was argued by M/S Elgon and Co Advocates for the appellant. M/S Bikangiso and Co Advocates appeared for the respondent. At an oral hearing on June 12, 2025, learned Counsel for both parties agreed to file written submissions, which obligation they applied with.

Discussion and Analysis:

Appellant chose to argue the grounds of appeal together. This appeal is a unique one. However, it is important to state that the first ground has three, legs, (a) one error of law, (b) one mixed error of law and fact; and (c) an error of fact.

1. The learned Trial Magistrate erred in law and fact, when he held that the exchange of the suit land between the Respondent and Sunday Godfrey with the land in Kyegegwa was lawful.

I propose to treat the arguments in support of the first ground separately; for easier resolution as follows:

- (i) Whether the learned Trial Magistrate erred in law, when he upheld the distribution of the suit land by the mother of the appellant to her son, Sunday Godfrey as lawful; in the absence of a grant of letters of administration;
- (ii) Whether the distribution of land was a valid gift inter-vivos to Sunday Godfrey; and
- (iii) Whether the exchange of land between Sunday Godfrey and the respondent; of land in Kyegegwa with the suit land was lawful.

In support of their arguments, the appellant contends the suit land belonged to the estate of his late father, Kanyarunga John, and therefore the widow, Maria Nyirampoza could not distribute the same without letters of administration, and therefore could not give away what she did not own.

For the same reasons, appellant contends, there could not be a valid inter-vivos gift as the widow, Maria Nyirampoza could not donate/give land that did not belong to her, under the principle of **nemo dat quod non habet**, “*No one can give what they don’t have.*”

Further, the appellant raised additional points of law, which were not well articulated as such, to the effect that the suit land was “family land”; as it had the matrimonial home, that the three brothers had been born on the same land, and the land was a source of their livelihood.

5 The appellant noted their mother and father had received the land jointly as a gift. In short, that absent a grant of letters of administration, the mother had no authority to give away this land on her own.

The respondent did not contest the gifting of the land to both the mother and late father of the Appellant and Sunday Godfrey. The respondent stated
10 that mother and father were joint owners of the land. The respondent supported the distribution, by the mother by stating the mother distributed land to her 3 sons.

15 **2. The learned Trial Magistrate erred in law and fact when he failed to properly evaluate the evidence on the record, as a whole coming to the wrong conclusion that the Respondent was the lawful owner of the suit land.**

In respect of this second ground, the appellant attacked the finding of the Trial Magistrate on the first issue, that upheld the mother's gift to the
20 respondent. Appellant argued that this finding was erroneous on the basis that there was no valid gift inter-vivos, as the donor did not have title to the land that she distributed. Second, in the absence of good title, her son, Sunday Godfrey could not receive a good title either, and in conclusion, he himself had nothing lawful to exchange with the respondent.

25 In opposition to the second ground, the respondent argued that the framing of this ground offended **Order 43 Rule 1 of the Civil Procedure Rules, S.I.71-1** (the "**Civil Procedure Rules**"). Respondent attacked this ground as totally argumentative. Respondent supported the finding the learned Trial Magistrate to the effect that the respondent having received a valid gift, was
30 the lawful owner of the land.

Having summarized the ground of appeal, and arguments for and against each position, I wish to make the following observations. Both parties avoided framing grounds in the following logical order; First, points of law which dispose of an entire appeal, should be argued first. A point of law
35 may be preliminary or substantive in nature. It is unfortunate, the appellant nearly dispossessed himself of an important ground of appeal, whether the mother of the appellant lawfully distributed land jointly owned with the

5 late husband. There is also another set of facts that may have colored
consideration of the matter. The respondent is a paternal uncle of the three
male children, Sunday Godfrey, Isaac Nsabimana and Njirabakunzi Dennis.
Upon the death of his brother, Kanyaruganda, he married their mother, the
10 widow, Maria Nyiramposa. See page 7, of the record of proceedings. It is
clear from Maria's testimony, her dealings in this land were not well
received by all her 3 children. I reproduce part of paragraph 2 at page 8 of
the record of proceedings verbatim.

15 "The plaintiff is the paternal uncle to the defendant and Sunday
Godfrey. The two decided to exchange these lands so that Godfrey's
former homestead (the "suit land") is taken by the plaintiff and
Godfrey takes the land in Kyaka-Kyegegwa. This was reduced in
writing. I was present on that day. I signed the agreement by writing
my name. The Defendant ("Appellant") was present on that date of
20 the agreement. The Defendant refused to sign in the agreement, saying
let them do their own and he will do his own. I don't know why he
said so. It was me who gave Sunday Godfrey the suit land." [Emphasis
mine.

At pages 8-9, Maria Nyiramposa attempts to offer an explanation on cross
examination,

25 "I am a wife to the Plaintiff. I married him after the death of my 1st
husband.I got married to the Plaintiff when I was 45 years old,
now about 15 years ago. We had our affairs with the Plaintiff and later
got married to him after staying together."

She repeats in the same first paragraph:

30 "I don't know why the Defendant refused to sign the agreement
between the Plaintiff and Sunday Godfrey. Sunday had a house on the
suit land; he destroyed it by himself when he was migrating."

The highlighted evidence, specifically the testimony of the widow, Maria
Nyiramposa supports the following findings by this court. First, there was a
35 gift of land from the appellant's grandfather to his son, now deceased and
his wife, Maria Nyiramposa. No specific customs were cited by either party
in submissions, to rebut the common law presumption of joint tenancy with

5 a right of survivorship, “*jus accrescendi*”. **Black’s Law Dictionary, 6th Edition at page 857**, defines *jus accrescendi* as follows:

“The right of survivorship. The right of the survivor or survivors of two or more joint tenants to the tenancy of the estate, upon the death of one or more joint tenants.”

10 In a joint tenancy, at common law, the four unities of possession, interest, title and time must all exist. These four unities are defined in the definition of joint tenancy in **Black’s Law Dictionary, 6th Edition at page 1466**:

15 “Joint tenants, are persons who own lands by a joint title created expressly by one and the same deed or will. Persons who (i) have one and the same interest, (ii) accruing by one and the same conveyance, (iii) commencing at one and the same time; and (iv) held by one and the same undivided possession. [Punctuation and numbering supplied].

20 See the decision of my brother, Oyuko Anthony Ojok J., **In the matter of Tumusiime Nathan Both and in the matter of an Application for Legal Guardianship by Kwizera Besi FC Guardianship No. 001 of 2020 (unreported)**. At page 3, of this decision, the learned Judge, said the presumption of joint tenancy, is rebuttable. He states:

25 “At common law there is a presumption that a joint tenancy is created each time there is more than one owner of land, however this presumption is rebutted in two circumstances i.e. lack of one or more of the four unities, or by use of words of severance such as “between” or “equally” this would sever the unities and convert the joint tenancy into a tenancy in common.”

30 Upon the death of one joint tenant, his or her ownership interest is extinguished. **Section 56 of the Registration of Titles Act, Cap 230** supports this position as well.

It appears, the Learned Trial Magistrate without explicitly stating so, proceeded under the same position. I find it hard to agree with this disposal, which should have been inquired into at trial.

35 The judgment of the Trial Magistrate ignored the possibility that the suit land could potentially have been a tenancy in common, rather than a joint

5 tenancy. The following reasons support this finding. First, it was a marital gift, to two parties. Second, the evidence on the record, points to at least one instance, when under the customs of the land, the land could have reverted from one owner of the land to another owner, this confirmed by the fact of the remarriage in the testimony of Maria Nyiramboza at pages 8-
10 9 of the judgment. Third, the refusal of the appellant to sign the distribution/exchange agreement from which he did not benefit points to a dispute on the ownership and disposal of the land.

Whereas Article 31 of the Constitution, provides for equal rights in marriage to property, it does not extinguish the individual rights to property in Article
15 26(1) and (2) of the Constitution. See the decision of this court in **Jerurina Kamanzi v Frederico Bianco and 2 others, Civil Appeal No. 16 of 2023, unreported.**

I support the position of the Appellant, that the decision of the learned Trial Magistrate foreclosed two possible findings. First, that in respect of at least
20 one half of the land, the suit land belonged to an intestate, governed by **Section 20 of the Succession Act, Cap 268** (the “Succession Act”). **Section 20 of the Succession Act** provides as follows:

“A person dies intestate in respect of all property which has not been disposed of by a valid testamentary disposition.”

25 There is no evidence on the record, that the acts of the widow, Maria Nyiramboza are supported by a valid testamentary disposition. The entitlement to property of the deceased is by devolution under **Section 21 of the Succession Act** to persons entitled to the property of the deceased under the Act. These persons are listed under **Section 23 of the Succession Act**; as
30 the spouse, lineal descendant, dependent relatives and customary heirs. The right to an intestate’s property is established when letters of administration have been granted by a court of competent jurisdiction. **Section 187 of the Succession Act**, provides as follows:

“Except as provided in this section, but subject to **Section 4 of the Administrator General’s Act**, no right to any part of the property of a
35 person who has died intestate shall be established in any court of

5 justice, unless letters of administration have first been granted by a court of competent jurisdiction.” [Emphasis mine].

10 In **Lwanyikirira v Administrator General, Misc. Application 2298 of 2024**, reported at **2025 UGHC 247**, my sister, Karazarwe Mukwaya J., in deciding the competence of a suit over unregistered land, faulted the applicants for failing to take out letters of administration in order to claim rights in the suit land. She concluded their claims were barred by law by operation of Section 187 of the Succession Act (op cit).

15 Second, in respect of **Section 29(2) of the Succession Act**, the learned Trial Magistrate erred in law when he foreclosed himself to the possibility that the late Kanyarunga John, had disposed of it by a valid testamentary disposition. This may have been the cause of the conflict between these family members.

20 I find that the above-mentioned errors of law, on their own caused a miscarriage of justice. The issues for determination were wrongly framed, as they ignored any possible defects of the title, the widow Maria Nyirampoza was conveying by a gift inter-vivos to her son, Sunday Godfrey. The absence of letters of administration vitiated the widow’s title and ability to convey the land entirely. Needless to add, the common law presumption of joint tenancy or even the statutory one under the **Registration of Titles Act, Cap 230** would not apply, as this was unregistered land governed by customary law.

A finding of trespass cannot be sustained as a point of law similarly, without finding ownership in favor of the complaining party, in this case, the respondent.

30 The appeal succeeds for this reason, on both grounds. I decline to award costs against the respondent who was an innocent party in this transaction.

5 **Comment:**

This is a case of an unfortunate family clash, between two sons of a widow who remarried, contracting a second marriage to the brother of the father of her children. In an administration cause, parties have the benefit of using alternative means of dispute resolution under the guidance of the Administrator General, the Local governments of the areas where the deceased resided and finally court. The Appellant did not concede or agree with the decisions of his mother and step-father.

Findings and Conclusion:

15 In exercise of the powers of the High Court as an appellate court, under **Section 80(1)**, of the **Civil Procedure Act, Cap 282**, I make the following orders.

1. Remand the case to the Chief Magistrates' Court at Kisoro for a fresh trial to determine the following issues:

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(a) Whether the suit land is part of the estate of the late Kanyarunga John who is deceased;

(b) What was the nature of tenancy of the "marital gift" held by Kanyarunga John and Maria Nyiramboza under customary law?

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(c) Whether letters of administration are required by law to dispose of the property to the deceased, Kanyarunga John?

(d) What remedies do the parties have?

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2. All orders and declarations by the learned Trial Magistrate in the court below are vacated.

3. Each party to bear its own costs in this court, and the court below.

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5 I SO ORDER,

DATED AT KABALE THIS 30th DAY OF JUNE, 2025.

A handwritten signature in blue ink, appearing to read 'Ssemogerere', is centered on the page.

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**SSEMOGERERE, KAROLI LWANGA
JUDGE.**